



Office of Mayor Miro Weinberger

MEMORANDUM

TO: City Council
FROM: Mayor Miro Weinberger
DATE: December 31, 2020
RE: Veto of Charter Change re: Independent Community Control Board and Call for Collaboration and Progress

Pursuant to Article 18 – Section 46 of the Burlington City Charter, which authorizes the mayor to veto any action of the City Council, I am returning the “Independent Community Control Board To Oversee Investigation And Discipline Of Police Misconduct Charter Change” (“Charter Change”) passed at the Council’s December 14 meeting to you unsigned and providing you my written objections to it below.

I send you this communication while still desiring to find a route to come together and unite behind a proposal that will forge new consensus on this critical policing issue and represent meaningful racial justice for our BIPOC communities. As I detail below, I remain ready to meet with City Council President Max Tracy and other councilors to try to find common ground that would allow me to rescind this veto before you take final action on this matter Monday night.

If we cannot find consensus now and my veto is sustained, we must find other ways to make near term progress on the issue of police discipline and reforms that protect and build trust with the public, especially BIPOC communities. Therefore, this letter also includes a plan for implementing improvements to the police discipline system immediately, and bringing a Charter Change for the beginning of the 2022 session should my veto stand after Monday night.

Objections to the December 14 Charter Change Proposal

My overriding objection to the proposed charter change is that as written it will contribute to the dismantling of the Burlington Police Department and compromise the City’s ability to ensure public safety.

In the short-term, placing the Charter Change on the ballot is likely to accelerate the departures of sworn officers from the department. The department is already down 20% from its maximum staffing levels, perhaps the largest reductions of officers of any department in the country since the national protests of last summer. Putting the current divisive and controversial Charter Change on the ballot will give further fuel to this trend, and likely hasten the day in which the City will need to stop staffing an overnight shift and cut back on other basic public safety services that residents expect.

Over the medium and long-term, the proposed Charter Change, if adopted, will have even greater impacts on the City’s ability to field an effective police department. The current proposal will cause concerns for prospective police officers and department leaders, because the board appears designed to be hostile to police officers. An Oversight Board should be required to adjudicate discipline fairly and impartially, or hew to defined standards. Further, the removal of the

Chief of Police from having a role in all serious disciplinary decisions is unique within all the models we have reviewed, and its impacts on the operations of the department are unknown and a cause of deep concern.

A further serious problem of the Charter Change proposal is that it is so detailed that serious errors and unintended problems are likely, and they will be very difficult to react to or fix. As this Charter Change proposal was being developed, the City Attorney and City Councilors recommended that the authors draft critical, broad authorizing language, and leave important details to be set through ordinances in future City Council action. Instead, in a significant break from best practice, the Councilors who led this effort have included large amounts of detailed, new, untested language. As a result, if passed, errors and unintended problems arising out of that new language will be baked into the Charter, making them inherently challenging to respond to and address. Future evolutions and improvements of the new system that the City desires to make are also likely to require charter changes. This structured rigidity is likely to create festering problems and serious challenges for public safety in the years to come.

Finally, while I would not veto the proposal over this issue alone, it is also problematic that the proposal does nothing to increase the ability of the mayor to formally weigh in on major disciplinary matters, despite the concerns about this that I raised repeatedly for a year. After months of demonstrations, it is very clear that the public holds the mayor accountable for police disciplinary decisions. To meet this public expectation, the charter should allow some formal role for the mayor in the adjudication of these matters.

Offer to meet and withdraw this veto if common ground is found

I veto the Charter Change with great reluctance, because I agree that the current charter is problematic and there is urgency to amend it. I believe I was the first Burlington elected official to bring attention and concern, a year ago, to the near-absolute power of the Chief to impose discipline under our current system. Such monopoly of important authority is an aberration in our democratic system, it has contributed significantly to community distrust, and we are likely to face continued disputes over future disciplinary actions until this issue is addressed.

Further, it is clear that the Council and Administration agree on many key issues related to police discipline. As stated in my alternative December 7 charter change proposal, I support granting a community board the ability to conduct independent investigations into complaints, subpoena sensitive department information, and overrule the Chief when necessary on disciplinary decisions. While I believe we could achieve the reforms we need through our existing Police Commission system, I am willing to accept and support the Council's proposed framework of creating a new, independent board if my other concerns are met.

Given that we agree on many key issues, it is unfortunate that the Councilors leading this charter change have made no effort to work out our remaining differences and denied our requests to meet and discuss changes before passage of the Charter Change on December 14. I remain willing to meet and to work in good faith to find common ground before Monday's meeting. I made this willingness clear to President Max Tracy in a phone message earlier today and hope he will accept this invitation for collaboration.

An alternative plan that can progress immediately

If this final effort to find a consensus charter change now fails and the Council sustains my veto, the problems in our police discipline system will remain, and we must keep working on this issue with purpose and urgency. In such an event, I am committed to taking the following steps to implement

immediate improvements to our current system and continue momentum towards future structural changes:

- I will work with the City Council to bring forward a resolution soon that immediately delegates new disciplinary authority to the Police Commission, including the authority to conduct independent investigations. We do not need a charter change to delegate this authority to the citizen oversight board that exists today.
- I will also work with the City Council to bring forward soon a current year budget amendment granting the Police Commission a budget for conducting such independent investigations.
- Ultimately, we will still need a charter change on police discipline. As soon as possible, the Council and the Administration should appoint a new Special Committee of Councilors and Administration representatives that continues to work to find common ground on this issue. This committee should be tasked with hearing from both racial justice advocates and police officers who will serve under a new system, and returning with a consensus proposal by mid-2021.
- To ensure that this consensus proposal can be put to the voters and delivered to the legislature for the start of the 2022 session, I propose that we commit to a Special Election next fall (such a Special Election will also likely be necessary for TIF project bonding authority and perhaps other infrastructure bonding as well).
- One of the major short-comings of the Council's current charter change proposal is that it is unclear what standards the new board would attempt to hold officers accountable to. I propose that the Council and Administration act in January to address that short-coming by requesting that the Police Commission review the current departmental discipline standards and recommend new standards in advance of a Special Election next fall.
- While getting police discipline right is critical, we must expand our focus if we truly seek to secure different policing outcomes. I have requested that our Director of Police Transformation Kyle Dodson complete a review of our officer training and evaluation systems and issue recommendations to me and the City Council before the end of his six-month tenure. Further, Director Dodson has been exploring the creation of a process to forge reconciliation between the Burlington police and the BIPOC community, and I have asked him to conclude that work and issue recommendations before his tenure ends.