



Office of Mayor Miro Weinberger

To: City Council
From: Mayor Miro Weinberger
Date: February 2, 2023
Re: Opposition to the Police Control Board Charter Change

This March, voters will be asked to weigh in on a proposal to amend the City Charter to establish a Police Control Board. The proposed control board would be an “independent department” of the City, empowered to hire staff, investigate any incident, choose its jurisdiction, and discipline Police Department staff without input from the Chief or opportunity for grievance or appeal. Board members cannot include law enforcement and would be appointed by a citizen appointment committee. There is no process to remove board members, and there is no budget before voters to assess the cost.

I vetoed this proposal in 2020 because I have serious concerns that if implemented, this charter change would undermine our collective efforts to rebuild the Police Department. All City employees should be held accountable for their actions, but with fairness and due process.

My concerns about the proposed Control Board are as follows:

1. Like the action to reduce the size of the Police Department by 30%, this initiative is a risky experiment with Burlington’s public safety with little to no precedent or planning.

- While many cities, including Burlington, have various types of community oversight boards for police matters, very few have disciplinary authorityⁱ.
- Advocates for the Burlington Charter Change say that it is modeled after Madison, WIⁱⁱ and Chicago, ILⁱⁱⁱ, however, the police oversight systems in both cities are dramatically different from what is proposed for Burlington in numerous ways, including their disciplinary authority, structure, accountability, and more^{iv}.
- In the nearly three years this charter change has been discussed, no other U.S. city has been identified where an independent board is empowered with both investigatory powers and disciplinary authority over officers, nor is there an example of another city in which the Police Chief^v does not have a leadership role in the adjudication of discipline. This is true even for Oakland, CA, and Chicago IL, which are under federal consent decree, following decades-long histories of serious and sustained police misconduct⁶.
- This unprecedented control board concept proposed for Burlington has not been independently reviewed or recommended by the CNA Report or any other City report. If approved by voters, the charter change language cannot be amended, reviewed, or approved by the Mayor, City Attorney, or City Council⁵. Instead, upon passage, this charter change would advance to the Vermont Legislature and the Governor for approval.

2. The proposed charter change lacks basic protections to ensure the fairness and due process that all City employees deserve, and will undermine our efforts to rebuild the Burlington Police Department.

- The proposed Control Board does not include any standards or requirements to guarantee police officers due process, and eliminates appeal rights within the City system (officers are allowed appeal to the Vermont Superior Court). The Charter change also explicitly removes the right of officers and their union to a grievance process.
- In contrast to Oakland’s disciplinary board, the proposed Control Board does not require board members to have any expertise in training, law enforcement, the law, human resources or other comparable disciplinary experience. In fact, Burlington residents who are or have ever been employed by any law enforcement agency are prohibited from serving on the board.^{vi}
- Unlike the disciplinary boards of other cities and Burlington’s own existing volunteer commissions, this proposed control board would be totally unaccountable to elected officials or the public. The Mayor and the City Council have no direct role in appointing board members^{vii} and the Charter change includes no provisions for recalling or terminating board members for cause.
- In contrast to other disciplinary boards, this proposed Control Board has the ability to completely remove the Chief from any role in the disciplinary process and could investigate and issue discipline for any incident that it chooses to take jurisdiction.^{viii}

3. The proposed Control Board will be wastefully expensive, draining large amounts of resources from other social reform and public safety priorities.

- The proposed Charter Change calls for the creation of an independent department with its own Executive Director and own authority to hire employees, consultants, and legal representation, and establish and maintain an investigatory office. It is unclear from the new charter language what, if any, limitations the Mayor and City Council can put on this spending and no cost projection exists for the voters to consider.^{ix}
- This proposed Charter Change ignores the recommendations of the 2020 City report^x to tailor any new accountability efforts to Burlington’s small city context.
- This proposed charter change would throw out the years of work that has been done and is ongoing to strengthen and refine the ability of the Burlington Police Commission to serve as an effective community oversight body.

Our Current Accountability Structure

The City of Burlington has been long committed to advancing responsible reforms to strengthen oversight of the Burlington Police Department, ensure police accountability, and improve transparency in the policies, actions, and outcomes of local law enforcement.

Since 2016, significant actions have been taken to overhaul our use of force policy, strengthen police oversight including new internal and public processes to review use of force incidents, making all use

of force incidents, including video, public, making all police data public, and expand the oversight powers of the Burlington Police Commission which reviews all citizen complaints and use of force incidents.

As I stated when I vetoed the Council's Control Board proposal in 2020, I am supportive of finding common ground by more clearly articulating and strengthening the role and responsibilities of the Police Commission.

Current police accountability measures in Burlington include:

- **The Police Commission reviews all complaints and police uses of force**
 - The Police Commission is a volunteer citizen body with members appointed by the City Council with Mayor presiding that reviews every use of force in the Burlington Police Department and all civilian complaints.
 - The Police Commission may elect to investigate a complaint or use of force and makes recommendations to the Chief of Police on discipline.
 - The Police Commission is also responsible for reviewing and making recommendations on all Police Department policies and issues its own independent annual report.
- **The Mayor formally reviews all use of force incidents that result in injury or raise significant public concern**
 - Per Mayoral Executive Order, any time a police officer uses force that results in injury to any person or that raises significant public concern, the Police Chief formally reviews the incident and body camera footage with the Mayor, Chief of Police, City Attorney, and Human Resources Director.
 - The Police Chief must seek the Mayor's concurrence with his discipline decision before it is rendered.
- **All officers wear body cameras and footage of incidents of public interest are released quickly**
 - Burlington Police Officers have been required^{xi} to wear body-worn cameras during their duty for approximately a decade.
 - Per a new policy^{xii}, the Burlington Police Department now proactively publicly releases body-worn camera footage within 30 days of an incident whenever the use of force involves bodily injury or death, the use of a firearm, the use of discretionary nonlethal force (such as deploying aerosol sprays or batons), or any incident determined to be of public interest by the Mayor, the Chief, or a majority of the Police Commission, unless a criminal inquiry would prevent release.
 - No other agency in Vermont proactively releases body-worn camera footage.
- **BPD's use of force policy was rewritten in 2020 to emphasize de-escalation**
 - In 2019, representatives of a wide range of community groups and the public came together as the Committee to Review Police Practices.

- In July 2020, after the murder of George Floyd, Chief Murad took that committee’s work and wrote the most progressive and forward-thinking use-of-force policy in the state. It contained much stronger rules against excessive force, a far greater emphasis on de-escalation and deceleration, and added a duty to intervene, duty of care, and duty to report. It was sufficiently effective that it was largely used as the template for the new, statewide use of force policy for all of Vermont^{xiii}.
- On a monthly basis, the Burlington Police Department presents each and every use of force to the Police Commission and the public, so that members of the public can review and evaluate them. No other agency in Vermont does this.
- **BPD has long been a state leader in collecting and publishing police data**
 - The Police Department releases a comprehensive annual report that includes data and information about police interactions and uses of force so that citizens may review Police Department trends. This report includes data disaggregated by race.
 - The City first made a public report of incident data by race in 2014, and all incident data from 2012 to present is available online via the open data dashboard.
 - There are numerous reports by the BPD and the City related to policing available online, including special reports on traffic stops, use of force, hate crime, policing and the opioid crisis, and diversity and recruitment^{xiv}.

ⁱ City Attorney Eileen Blackwood issued a report on civilian oversight in 2020 states “very few oversight agencies have the authority to actually impose discipline.” Link: [KENNETH A \(boarddocs.com\)](https://www.kennetha.com/)

ⁱⁱ By City ordinance the Madison Police Civilian Oversight Board, and its Independent Police Monitor, have only advisory authority over officer discipline, including the Chief: [CHAPTER 5 - POLICE DEPARTMENT AND POLICE REGULATIONS | Code of Ordinances | Madison, WI | Municode Library](#)

ⁱⁱⁱ According to Chapter 2-78 of Chicago Municipal Code, the Chief Administrator of the Civilian Office of Police Accountability has the authority to recommend to the Superintendent discipline or non-disciplinary remedial action against a member of the police department. If the CA and the Superintendent do not agree, Municipal Code (subsection 2-78-130 (a)) prescribes an adjudication process overseen by a member of a third and separate organization, the Chicago Police Board : [Municipal Ordinance - Civilian Office of Police Accountability \(chicagocopa.org\)](https://www.chicagocopa.org/)

^{iv} Aside from the structural differences between the proposed Burlington board and other boards described above, the Madison and Chicago examples also depart from the proposed Burlington charter change in significant ways, including: the respective boards are created by ordinance and not by City charter, the boards may not determine their own jurisdiction, the respective Mayors and Councils have authority over board member appointments, board members may be removed for cause, the governing City ordinances guarantee due process for officers, and citizens with law enforcement experience are not summarily banned from serving on the boards (Madison does exclude current and former officers who worked in the State of Wisconsin within 10 years of appointment).

^v Note that in many cities the top sworn law enforcement executive is not the Police Chief, but instead has another title, such as Superintendent or Commissioner.

^{vi} Oakland, in contrast, says that appointments to its Commission “shall include members with knowledge and/or experience in the fields of human resources practices, management, policy development, auditing, law, investigations, law enforcement, youth representation, civil rights and civil liberties, as well as representation from communities experiencing the most frequent contact with the Department.” (<https://cao-94612.s3.amazonaws.com/documents/Measure-S1.pdf>, p.7)

vii All of the members of the Chicago board are appointed by the Mayor. In Oakland, the Mayor appoints 3 of the 7 board members and the Mayor and City Councilors each appoints a member of a Selection Panel that chooses the remaining members. (For Chicago see:

https://www.chicago.gov/city/en/depts/cpb/auto_generated/cpb_leadership.html; For Oakland see: <https://cao-94612.s3.amazonaws.com/documents/Measure-S1.pdf> pages 7-8)

viii Chicago has long had a civilian oversight agency (COPA), which was strengthened significantly in 2016. Even with its broad investigatory powers and resourced professional staff, City ordinance narrows the scope of which incidents COPA may investigate to complaints against Chicago police officers for domestic violence, excessive force, coercion, or verbal abuse, and all incidents involving the use of force even without a complaint. COPA is not empowered to enforce discipline. In the Oakland example, the Chief of Police has a prescribed role in adjudicating discipline. Ordinance and charter language is cited above in footnotes 3 and 4.

ix In 2021, the City Council of Madison, WI appropriated over \$500,000 for initial start-up costs for its Police Civilian Oversight Board and Independent Police Monitor: https://captimes.com/news/local/govt-and-politics/madison-city-council-approves-milestone-police-oversight-measures/article_c8d06d07-3066-5e4c-97f6-c1ee89372b6b.html In Chicago, the COPA recommended a budget appropriation for FY23 for over \$15 million : https://www.chicago.gov/content/dam/city/depts/COFA/ProposedBudget/FactSheets/2023-FactSheets/COFA_FY23-BudgetRec_DEP060-COPA_FactSheet.pdf

x Memo by City Attorney Eileen Blackwood, Determining a New Model for Civilian Oversight of the Burlington Police Dept : [KENNETH A \(boarddocs.com\)](#)

xi BPD Department Directive, Body-worn camera systems: <https://www.burlingtonvt.gov/sites/default/files/Police/files/DD14.1%20-%20Body%20Worn%20Camera%20Systems.pdf>

xii Body-worn camera footage release policy: [Body-worn Camera Footage Release final.pdf \(burlingtonvt.gov\)](#)

xiii DD05 Statewide Policy on Police Use of Force [DD05 Statewide Policy on Police Use of Force.pdf \(burlingtonvt.gov\)](#)

xiv Online reports and the open data dashboard can be found at [Transparency and Data | City of Burlington, Vermont \(burlingtonvt.gov\)](#)