|  |  |
| --- | --- |
|  | **Traverse** |
| **Receipt of complaints** | **Charter (from August 2020 Complaint Policy)*** Add to Section 184 or 190 language regarding the right to submit either external or internal complaints to either BPD or the Police Commission

**Ordinance (from August 2020 Complaint Policy)*** BPD, in collaboration with the Burlington Police Commission, will develop and make publicly available a Community Complaint form.
* All complaints, whether generated externally or internally, are referred to as Community Complaints.
* When a complaint is received by members of the Burlington Police Commission, the member of the Burlington Police Commission should encourage the person making the complaint to submit it via the Burlington City website or should personally take the complaint, attempting to capture all the information otherwise contained in the Community Complaint Form.
* All Community Complaints are documented on a spreadsheet maintained by the Deputy Chief of Administration, or designee.
 |
| **Recordkeeping** | **Ordinance (from August 2020 Complaint Policy, adding that categorized level of the offense should be included in complaint record, and adding recordkeeping for use-of-force incidents)*** The Deputy Chief of Administration, or their designee, will maintain a written record of each complaint and use-of-force incident. That written record will at a minimum include:
	+ The name(s) of the employee(s) involved.
	+ The date of receipt of the allegation or use-of-force incident.
	+ The date of the alleged incident, if known.
	+ The type or nature of the allegation or use-of-force incident.
	+ The name(s) of the person(s) who investigated, if any.
	+ The final disposition of each complaint or use-of-force incident, including the categorized level of the complaint or use-of-force incident, if any (lower-, mid-, or higher-level).
	+ How the matter was closed out with the complainant.
* In addition, if the matter involves use of force, or an allegation of dishonesty or other serious misconduct, including, but not limited to, all complaints categorized as higher-level, the written record will include:
	+ All action taken in response to the complaint or use-of-force incident.
	+ Identification of all witnesses, documents, evidence, or other information obtained or consulted in the course of the investigation.
 |
| **Initial review of complaints** | **Charter (existing charter language)*** Keep language in Section 190 about Chief’s role to initially investigate complaints.

**Ordinance (from August 2020 Complaint Policy, adding use-of-force incidents)*** When a use-of-force incident occurs or a complaint is received by the Burlington Police Department about the conduct of an employee of the Burlington Police Department, the Chief of Police shall cause that complaint to be investigated as soon as practical by an individual or individuals with no interest in or attachment to the issue or officer(s) being investigated.
* Lower-level and some mid-level complaints that are able to be resolved quickly and at first level of supervision, remain as Community Complaints.
* Some mid-level complaints or certain use-of-force incidents may be escalated to an Administrative Review (AR). An AR is designed to determine if a complaint needs to be elevated to a Bureau of Internal Affairs investigation or if it is able to be handled without a robust personnel investigation.
* Higher-level complaints or use-of-force incidents will either be an Administrative Review or will be escalated to a Bureau of Internal Affairs investigation.
* The Chief of Police, in consultation with the States Attorney’s Office, will make the determination of if a complaint or use-of-force incident needs to be referred outside the Department for investigation of possible criminal conduct.
* The Chief of Police is responsible for reporting any misconduct of Burlington Police Department employees that falls under 20 VSA 2401 to the Vermont Criminal Justice Training Council.
 |
| **Initial categorization of complaints** | **Ordinance (from August 2020 Complaint Policy, adding use of force incidents)*** Complaints and use-of-force incidents will be categorized by BPD as lower-level, mid-level, or higher-level consistent with the Burlington Police Officers’ Association Contract, Article XV, section 15.2.
 |
| **Reporting of Complaints to Police Commission** | **Charter (from August 2020 Complaint Policy, adding all use of force incidents, not just those that result in injury)*** Add to Section 184 or 190 language that the Police Commission shall receive notification of and updates on the status of any community complaints and investigation of use-of-force incidents.

**Ordinance (from August 2020 Complaint Policy, adding all use-of-force incidents, not just those that result in injury, and removing any delay in reporting to the Police Commission on use-of-force incidents, as is set forth in current directive and policy)*** The Chief will report to the Police Commission on all use-of-force incidents and complaints against members of the department as follows:
	+ Updates about complaints against employees and any use-of-force incidents will be shared with the Commission at the first meeting following receipt of the complaint or the occurrence of the use-of-force incident, unless the matter is of such urgency that a special meeting is required.
	+ Updates regarding use-of-force incidents or any complaint involving allegations of unlawful discrimination shall include demographic data about the officer(s) and subject(s) such as gender, age, and race. Status updates on the progress of complaints under investigation will be provided to the Commission, as appropriate, and further detail and access to reports/video/etc shall be provided to the Police Commission at the first meeting after the investigation has been completed.
	+ For lower- and mid-level matters, the Chief will provide a verbal or written summary of the complaints and their status or disposition.
	+ For higher-level matters, such as those involving an allegation of excessive use of force, dishonesty, discrimination, harassment, or other serious misconduct; or for any lower- or mid-level matters that results in discipline beyond a written reprimand; or for any other conduct for which suspension or termination is recommended, the Chief will provide the Police Commission with a full verbal briefing of the allegations and the recommended disposition of the case.
	+ **Legal Note: Current policy requires that the above information be provided to the Police Commission in Executive Session. I have removed that reference here but would appreciate legal guidance on the extent to which it needs to be added back in, given the confidentiality of personnel matters.**
 |
| **Police Commission Access to Information** | **Charter (from August 2020 Complaint Policy, adding use-of-force incidents)*** Add to Section 184 or 190 language affirming the Police Commission’s right to access information regarding community complaints and use-of-force incidents, including, but not limited to, any written materials, any audio or video footage, evidence, or other information related to the matter.

**Ordinance (from August 2020 Complaint Policy, adding use-of-force incidents)*** The Police Commission shall have access to the written records of all use-of-force incidents and complaints, including, but not limited to, any audio or video footage, written materials, evidence, or other information related to the matter, subject to the Vermont Public Records Act, and the Burlington Police Officers’ Association agreement.
* If the matter has been referred outside of the Department for investigation of possible criminal conduct, the materials will be made available to the Police Commission once a determination has been made that the materials may be disclosed to the Police Commission without adversely affecting any possible prosecution.
* **Legal Note: Add any other confidentiality requirements, but only to the most limited extent necessary to maintain legally required confidentiality.**
 |
| **Police Commission Rights After Receipt of Investigation Report** | **Charter (from August 2020 Complaint Policy, adding right to conduct independent investigation)*** Add to Section 184 or 190 language that Police Commission may either accept the Chief’s recommended action, or request reconsideration and/or make their own recommendation, and with a majority vote conduct a separate investigation by an independent monitor or counsel.

**Ordinance (from August 2020 Complaint Policy, adding right to conduct independent investigation)*** Within 14 days after receipt of the investigation report on any complaint or use-of-force incident, the Police Commission may:
	+ accept the Chief’s report and recommended action; or
	+ request that the Chief reconsider the action and/or make a recommendation to the Chief about the investigation, process, categorized level, disposition (including recommending a range of sanctions for the misconduct), or other aspect of the matter
* Prior to making any request for reconsideration or making a recommendation different than the Chief’s recommended action, the Police Commission may, by a majority vote, conduct a separate investigation through an independent monitor or counsel who will have access to the same information as the Chief in conducting their investigation, including, but not limited to, the right to take witness statements, written materials, audio or video footage, evidence, or other information related to the matter.
* If no action is taken within 14 days, the Chief’s recommendation shall be considered final.
* **Legal Note: I agree we need language regarding a complainant’s ability to remain updated on the status of their complaint, and at least to be informed of the complaint’s disposition. I’d appreciate guidance on where to best incorporate this without running afoul of confidentiality requirements.**
 |
| **Next Steps After Any Request for Reconsideration or Recommendation from the Police Commission**  | **Charter (from August 2020 Complaint Policy, adding that Chief’s explanation must be in writing)*** Add to Section 184 or 190 that the Chief may accept or reject the Police Commission’s recommendations. If the Chief rejects the Police Commission’s recommendations, the Chief shall provide written explanation to the Police Commission why the recommendations were not accepted.

**Ordinance (from August 2020 Complaint Policy, adding that Chief’s explanation must be in writing)*** The Chief may accept or reject the Police Commission’s recommendations.
* If the Chief rejects the Police Commission’s recommendations, the Chief shall provide written explanation to the Police Commission why the recommendations were not accepted.
* If a majority of the Police Commission disagrees with the Chief’s decision, the Police Commission Chair shall report this to the Mayor.
* **Legal Note: As in other areas, I understand the personnel disclosures required under this section may require confidentiality requirements, but I would like a legal opinion on how to be as transparent as possible, including, but not limited to, whether any confidentiality concerns could be mitigated by anonymized reports.**
 |
| **Appeal Rights re: Disciplinary Matters** | **Charter*** Remove from Section 190 the Police Commission’s current role as appellate body over disciplinary matters.
* Add language on new body to hear disciplinary appeals, preference being City Council or a subdivision of the Council (e.g., HR Committee)
* **Legal Note: I believe a separate body is necessary because of the Police Commission’s expanded role in reviewing complaints.**
* **Legal Note: Awaiting answer on whether BPOA CBA can add third step of arbitration after whatever appellate process is established by our Charter.**
* **Legal Note: I don’t think we should address this now but, looking forward, I suggest the Charter Change Committee review whether we should mirror whatever process we come up with here for the Fire Department, as I believe the charter language applicable to the Fire Department is outdated from current practice.**
 |
| **Police Commission Rights on Auditing and Monitoring Departmental Policies** | **Charter (reflecting what I understand to be current practice, adding a path to resolve disputes through City Council)*** Add to Section 184 language that:
	+ any changes, modifications or additions to the rules and regulations of the department must be adopted by the Police Commission;
	+ that the Police Commission may initiate their own recommendations on the same; and
	+ that where the Police Commission fails to adopt a proposal from the Department, or the Department refuses a recommendation from the Police Commission, the matter may be referred by either party to the City Council.
 |
| **Police Commission Oversight of Chief** | **Charter (from August 2020 Complaint Policy)*** In addition to what already exists in Article 36 of the Charter, add to Section 190(b): Whenever the Police Commission becomes aware of allegations of misconduct by the Chief of Police, or if the Police Commission has concerns about the performance of the Chief of Police, the Police Commission shall report this to the Mayor in a timely manner.
* **Legal Note: Existing August 2020 policy provides a path for the Police Commission to report alleged misconduct to the VCJTC. I’d like confirmation on whether this is permitted under 20 VSA 2401 and, given the uncertainty that was caused by the most recent report to the VCJTC, I believe we should have a discussion on whether this is the appropriate path.**
 |
| **Reporting to City Council** | **Ordinance (from August 2020 Complaint Policy, adding use-of-force incidents)*** The Police Commission shall report to the Burlington City Council at least annually and the report shall include, but not e limited to, a redacted summary of the number, type, and disposition of complaints and use-of-force incidents reported to the Police Commission.
* **Legal Note: I cannot track down the exact language, but I believe other boards and commissions are statutorily required to report to the City Council (e.g. Board of Health, Housing Board, Parks Commission, etc.). For the sake of consistency, make sure the language applied to Police Commission is consistent with other boards and commissions, with exception of clearly adding that the Police Commission’s report should include information on complaints and use-of-force incidents.**
 |