Report by the Special Committee to Review Community Policing Practices, to the Burlington City Council

The Special Committee to Review Community Policing Practices (“The Committee”) was formed as a result of a resolution of the Burlington City Council adopted on 3 June 2019. The Committee was tasked with performing a public review of Burlington’s policing policies and oversight practices in order to provide policy change recommendations including, but not limited to, “civilian oversight structures; use of force policy; officer training; police information disclosure practices; disciplinary processes; officer wellness initiatives; [and] data collection, data quality, data analysis, and related public availability practices” (p. 2).

The committee was instructed to provide its policy change recommendations to the City Council on or before its last meeting in November. At the City Council meeting on 18 November 2020, the Chair and the Vice-Chair of the committee informed City Council that, in part due to the breadth of the mandate and the shortness of time allotted to the committee, the committee was unable to provide policy recommendations at that time and requested an extension. The committee received an extension, with further instructions from the Burlington City Council to prioritize providing policy change recommendations with respect to community oversight and the use of force policy.

The committee’s work consisted of reviewing informational materials, both in print and through presentations, from the Burlington Police Department (“BPD”) and from police departments and organizations across the country, as well as from some community organizations that interact with policing. The committee deliberated over these materials and over other topics of interest with the goal of producing recommendations for policy changes and changes to police oversight practices.

The following consists of the committee’s recommendations, presented in four sections: the first section details the committee’s suggestions with respect to BPD’s use of force policy; the second section details the committee’s suggestions with respect to BPD’s community oversight structures; the third section details the committee’s suggestions on other policy change recommendations not subsumed under the first two sections; and the fourth section details the committee’s recommendations for future work and for ensuring that policies and practices continue to receive regular review.

While this report contains the recommendations of the committee as a body, it should not be assumed that every member of the committee endorses every individual item contained herein; there was a healthy amount of discussion and disagreement throughout the work of the committee.
I. BPD’s Use of Force policy

BPD’s current Use of Force (UoF) policy is contained in Department Directive DD05: Response to Resistance / Use of Force. The committee recommends that DD05 be updated, and that the updated DD05 include at least the following features:

- The updated UoF policy should clearly articulate and provide officers clear guidance on the BPD’s general philosophy about use of force, including that de-escalation should always be prioritized whenever it is safe and feasible to do so, and that officers should always be expected to use the lowest level of force appropriate to achieve officers’ legal objectives;
- The updated UoF policy should emphasize that all uses of force should be proportional;
- The updated UoF policy should articulate that officer behavior can escalate the level of force needed to respond to a situation, and should sanction such officer behavior when unnecessary or unreasonable;
- In drafting the updated UoF policy, it should be carefully considered whether the appropriate standard for improper use of force is that it is “unnecessary” or that it is “unreasonable”, and if it is determined that the appropriate standard be “unreasonable”, the updated UoF policy should make explicit that BPD’s interpretation of reasonable behavior is not determined by the court’s interpretation of reasonable behavior;
- The updated UoF policy should articulate that officers have an affirmative duty to intervene if they witness the use of excessive force;
- The updated UoF policy should articulate that officers have an affirmative duty to care for persons in their custody.

The committee further recommends that BPD take additional steps to communicate its philosophy on use of force, including its commitment to de-escalation, to the public in order to promote community awareness and provide greater public confidence in BPD practices and in police-civilian interactions.

II. BPD’s community oversight structures

BPD’s current community oversight structures are as follows: pursuant to the amendments to the Burlington City Charter passed by Act #M-6, 2001 by the General Assembly of the State of Vermont, and pursuant to the resolution 01-1116 on the reorganization of the governance of the city, and informed by the Memo by Mayor Peter Clavelle providing guidance on the reorganization of the governance of the city of Burlington, the Burlington Police Commission (“Police Commission”) exists and has authority which is strictly advisory in nature with the following exceptions:

- The Police Commission exercises some authority with regard to the consideration/adjudication of employee grievances, pursuant to the Agreement
Between City of Burlington and the Burlington Police Officers Association ("BPOA contract"). The BPOA contract currently in effect states (16.7 B) that a grievant or the Burlington Police Officer’s Association may submit a grievance to the Board of Police Commissioners as step 2 of the grievance procedure if the grievance has not been settled after grievances to the Burlington Chief of Police;

- As laid out in Burlington Police Department Directive DD01, the Police Commission reviews and approves of all Department Directives, and “is the sole and final authority relating to the approval, revision, issuance, or purging of any Departmental Rule, Regulation, or Directive governing employees of the Burlington Police Department” (DD01, p. 5).

The role of the Police Commission in reviewing complaints against police officers is currently set forth in a policy document ("Role of the Burlington Police Commission in Reviewing Complaints Against Police Officers"). This policy states, among other things, that each member of the Police Commission shall have access to the written records of all “external complaints” against members of BPD, and that the Chief of Police will report to the Police Commission on all external complaints against members of the department in a manner prescribed by the seriousness of the complaint, where “minor complaints” require that the Chief of Police provide a verbal or written summary and “major complaints” require that the Chief of Police provide the Police Commission a full verbal briefing during executive session. The Police Commission may then accept the Chief of Police’s report and recommended action; or request additional information; or request that the Chief of Police take a different action; or postpone action to a later date. If the Chief of Police does not accept the Police Commission’s recommendations, the Police Commission may appeal to the Mayor.

In forming our recommendations about community oversight, the committee was guided by the following questions:

1) Do we have confidence that whoever occupies the role of Chief of Police will have both the desire and the means of gathering all the information needed to make good decisions with respect to officer discipline?

2) Do we have confidence that the Police Commission will have total access to, and will receive in a timely manner, all of the relevant information that the Chief of Police has with respect to making a disciplinary decision?

3) Do we have confidence that the Police Commission’s judgment about appropriate discipline will be impactful?

If the answer to 1 were “no”, then that would be a consideration in favor of giving the Police Commission independent means of gathering information, for example by giving the Police Commission independent investigatory and/or subpoena powers.
If the answer to 1 were “yes” but the answer to 2 were “no”, then that would be a consideration in favor of clarifying and strengthening the process through which the Police Commission obtains information relevant to disciplinary investigations and proceedings.

If the answer to 1 and 2 were “yes” but the answer to 3 were “no”, then that would be a consideration in favor of clarifying and strengthening the process through which the Police Commission’s judgment is intended to have an impact.

And if the answer to all three questions were “yes”, then that would be a consideration in favor of leaving the community oversight model largely as it is (though minor adjustments and revisions might still be appropriate).

With regard to question 1, the committee does not think that the Chief of Police lacks the means of gathering the information needed to render appropriate judgments. The committee does believe, however, that the Police Commission’s oversight function would benefit from being able to hear directly from complainants when feasible. The committee thus recommends that all complainants be notified that they have the option of speaking with a member of the independent Police Commission regarding their complaint if they wish.

With regard to question 2, the current policy detailing the role of the Police Commission in reviewing complaints states that the Chief of Police will report to the Police Commission on all “external complaints”, and that members of the Police Commission will have access to the records of all such complaints. The policy does not currently make explicit when the Police Commission is to receive this information or how the information is to be made available, and the process of and timing by which the Police Commission has received information has been irregular since the policy was first adopted. Moreover, the current policy is limited to “external complaints”, and does not clearly articulate the role that the Police Commission ought to play when there has been no formal external complaint filed. The committee thus recommends that the Police Commission be notified as soon as is practical (and no later than the next regular Police Commission meeting) when there is an external complaint, and also that the policy provide clear expectations for when the Police Commission shall be notified and consulted for matters that do not have a corresponding external complaint.

With regard to question 3, the current policy only explicitly gives the Police Commission the power to appeal to the Mayor. Although nothing in the current policy explicitly rules out the ability of individual Police Commissioners to express their concerns to relevant community stakeholders (including the Mayor, City Council, the press, local civil rights and social activism groups, etc.), and while Police Commissioners have typically understood themselves to retain their rights to express their concerns in that way, the policy document only identifies the Mayor as the entity to which the Police Commission can appeal if they feel the Chief of Police is irresponsibly disregarding their suggestions. Moreover, while the Mayor has the power to hire and fire the Chief of Police, the city charter states (24 App. V.S.A. ch. 3, § 190) that dismissals, demotions in rank, and suspensions without pay of members of the police force are the sole purview of the Chief of Police (with the Police Commission having the power to hear appeals).
Thus, the ability of the Police Commission to appeal to the Mayor is of limited effectiveness. The committee recommends that the policy provide further guidance on what avenues the Police Commission has available to it to communicate their concerns if they feel (collectively or individually) that the Chief of Police’s disciplinary powers are being exercised poorly or inconsistently with community expectations.

Moreover, while the current policy states that each member of the Police Commission will be given access to written records of external complaints by the Chief of Police, it is not explicit about what happens when there are concerns about the performance of the Chief of Police himself or herself, especially when no corresponding formal external complaint has been filed. The committee believes that in any reasonable oversight model, the oversight body should have some degree of oversight of the Chief of Police as well, and so the committee recommends that that be made explicit in the policy articulating the role of the Police Commission.

Given the Police Commission’s role in providing oversight of BPD, the committee recommends that the Police Commission take proactive steps to be more responsive and available to community concerns, and that the Police Commission have better communication with the public, especially when there are incidents that are of particular public interest. While Police Commission oversight can involve disciplinary or personnel records and so might be constrained in what it can communicate, the committee recommends that steps be taken to ensure that the Police Commission can communicate with the public, whether that be to raise concerns about BPD’s disciplinary process or whether that be to allay public concerns that the disciplinary process was inadequate. The committee also recommends that the Police Commission regularly go into the community (as for example through attending community meetings) in order to listen and inform the community about the Police Commission role and oversight functions. Further, the committee recommends that the Police Commission formulate a policy to follow up with complainants upon the resolution of a complaint in order to inform them simply whether discipline has been imposed (while recognizing that the Police Commission cannot divulge further information such as the nature or amount of any discipline imposed owing to the privacy of personnel records).

III. Other policy change suggestions and observations

The committee discussed several issues that are relevant and important for how BPD carries out its policing mission and for improving BPD’s relationship with the community. While we did not have the time to work out fully-developed proposals for many of these suggestions, we still recommend that BPD leadership, the Police Commission, the Mayor, and City Council find ways to implement these suggestions.

A. The committee believes that there ought to be a clearly articulated policy governing when body cam footage can and should be released to the public. While the committee sees the challenges in formulating any such policy, given the sometimes-competing concerns about privacy and transparency, and given that some degree of discretionary judgment is likely to be
necessary for any such policy to be practicable, nevertheless the committee recommends the formulation of such a policy.

B. The committee recommends that BPD formalize the inclusion on the BPD hiring committee of a BPD employee with training in domestic violence issues such as a victim’s advocate or domestic violence prevention officer, in order to ensure that there is additional screening at the hiring stage.

C. The committee recommends that BPD find ways of increased interactions with and accountability with the community. While informal social events such as “Creemee with a Cop” are good, and while we encourage broadening such efforts, we also recommend that BPD engage in more systematic listening sessions throughout the community in order to hear people’s concerns and be responsive to them.

D. While the committee is aware of and appreciates efforts that BPD has made to increase the pool of interested recruits who are women and who are from minority communities, the committee encourages BPD to continue those efforts and look for more creative ways to increase the numbers of such officers in BPD. The committee also encourages BPD to look for ways to incentivize people with social work backgrounds to apply to BPD.

E. Because the committee believes that increased social service capacities decreases the chance that officer/community interactions will be negative, the committee recommends that BPD develop a plan to expand their social service partnerships and social service capacities, including but not limited to BPD’s relationship with the Howard Center Street Outreach, potentially in line with the Denver Police Department’s Crisis Intervention Response Unit.

F. In order to further future efforts to repair relationships with the community and in order to facilitate a more targeted addressing of community concerns, the committee recommends that the city hire a consultant skilled in survey techniques to determine how the community feels about BPD and what changes the community would like to see implemented.

G. Because of concerns in the past that members of city council were not aware of police-community member interactions that were concerning, the committee recommends that a policy be created and that clear lines of communication be established so that city councilors are certain to be informed of incidents of concern for the community.

H. The committee recommends that BPD increase or improve the amount and the quality of anti-bias training that officers receive.

IV. Future steps

The committee believes that there are many ways that policing in Burlington can be improved, and that police-community interactions can be made more healthy, that this committee did not have the opportunity to properly address owing to time constraints. Nevertheless, this
committee feels that it would be unfortunate if the city of Burlington, or if BPD, were to consider this committee’s report as the last word in policing improvement and reform. We therefore urge the city of Burlington, BPD, and the Police Commission to find ways to continue these reform efforts.

Because the Police Commission is ultimately responsible for the adoption of BPD policies, the committee recommends that the Police Commission communicate with and get input from relevant community stakeholders in order to continue the development of effective policies and reforms. Much of the work of this committee falls within the broad purview of the Police Commission’s powers, and so this committee recommends that the Police Commission continue that work.

Further, the committee recommends that BPD and the city report to the public on what steps have been taken to implement these suggestions within a year of the submission of this report.

Submitted respectfully,

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