

M E E T I N G N O T I C E

BENNINGTON SELECT BOARD

Monday, December 19, 2022

Bennington Fire Facility

Multi-Purpose Room - 3rd Floor

130 River Street

Bennington, Vermont 05201

A G E N D A

6:00 PM

1. Pledge of Allegiance
2. Vision Statement
3. Consent Agenda 6:00 PM - 6:05 PM
 - A. Minutes of December 12, 2022 (if available)
 - B. Warrants
4. COVID Update 6:05 PM - 6:15 PM
5. Public Comment 6:15 PM - 6:30 PM
6. BennHi Update 6:30 PM - 6:45 PM
7. FY24 Budget Overview 6:45 PM - 7:00 PM
8. Quality Control, Internal Investigations and Discipline
2nd Reading 7:00 PM - 7:10 PM
9. Manager's Report 7:10 PM - 7:15 PM
10. Upcoming Agenda 7:15 PM - 7:25 PM
11. Other Business 7:25 PM - 7:30 PM

We endeavor to host inclusive, accessible events that enable all individuals to engage and participate fully. To request an accommodation or for inquiries about accessibility, please contact Paul Dansereau, Facilities Director:
pdansereau@benningtonvt.org or call 802-447-9715.

**SELECT BOARD
MINUTES ADDENDUM
December 12, 2022**

Present: Jeannie Jenkins, Chair, Tom Haley, Jim Carroll, Bruce L Clark, Jeanne Conner, V. Chair, and Gary Corey. Absent: Sarah Perrin. No staff present.

The Board went into executive session at 7:56 for a contract matter.

The Board came out of executive session at 8:10 pm. but took no action. There being no other business, the meeting adjourned at 8:10 pm.

Respectfully submitted,


Stuart A. Hurd



Quality Control, Internal Investigations and Discipline	Related Policies: Code of Conduct, Internal Investigations
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this Office for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable Vermont Statutes : T.20 VSA Sec 2401 (4) ; T.1 VSA Sec 313 (1-10)	
Date Adopted:	Review Date:

POLICY: To provide citizens and employees the ability to bring forward complaints about the conduct of members whenever that citizen or employee believes a member has acted improperly. A process has been established which enables the BPD to initiate positive, corrective action, discipline, and re-training or education for improper conduct while protecting members from unwarranted criticism for properly discharged duties. All complaints will be investigated in accordance with federal and state law, the Town of Bennington's Personnel Policy, the New England Police Benevolent Association Working Agreement ("Working Agreement"), BPD Internal Affairs Policy & Procedures, and the procedures described herein.

CONTENTS: General Philosophy

- I. Origin of Complaints
- II. Rights of the Member
- III. Quality Control
- IV. Authority of the Chief
- V. Discipline
- VI. Role of Supervisors, Authority to Discipline, General Continuum
- VII. Appeals
- VIII. Dismissal
- IX. Records
- X. Additional Sources & References

GENERAL PHILOSOPHY

The BPD has a well-established tradition of serving the community with integrity and professionalism. To maintain this proud tradition and continue improving the quality of service the BPD provides to the community, each member must accept their responsibility for maintaining high professional standards. This policy is also intended to serve as a component of the BPD's effective internal affairs program as contemplated in 20 V.S.A. § 2401 (4).

I. ORIGIN OF COMPLAINTS

- A. Allegations of violations of the BPD's policies and procedures may be initiated from within or outside of the BPD. Every such allegation and/or charge will be investigated by the BPD and reviewed by the Lieutenant and Chief of Police.
- B. An employee electing to lodge a complaint against another employee may transmit the complaint verbally or in writing to their immediate supervisor. The supervisor shall document the complaint in writing and notify the Chief of Police, via the chain of command. Should the complaint be against a supervisor, the Chain of Command shall dictate who shall receive the complaint. Should it be against the Chief, the Town Manager shall be the recipient of the complaint.
- C. A citizen or other civilian verbally lodging a complaint against a member will be asked to document the complaint by completing a "Citizen's Complaint Form", which requires the complainant's name, address and telephone number and a brief statement describing the incident. If complainant elects not to document their complaint, the person receiving a verbal complaint shall endeavor to obtain pertinent facts from the complainant and then refer the complaint to the On Duty Supervisor, who shall fill out the "Citizen Complaint Form" with as much information as is available. All complaints must be reported to the Chief of Police, via the Chain of Command.
- D. This policy does not apply to minor misunderstandings on the part of a complainant, which can be quickly resolved with an explanation of Vermont State law and/or Department policy. Such minor misunderstandings may be resolved by the shift supervisor and should be documented in writing to the Lieutenant and Chief of Police. If the complaining citizen or other civilian is not satisfied with this resolution, they may complete a "Citizen's Complaint Form" as outlined in Paragraph C, above.
- E. The Chief of Police shall review every Citizen's Complaint received by the BPD and shall determine what further investigation is necessary to make a determination with respect to the Citizen's Complaint. The Chief will forward all relevant information to the Lieutenant whenever the Chief shall determine that further investigation is necessary.

- F. Every effort shall be made to facilitate the convenient, courteous and prompt receipt and processing of every Citizen Complaint. Any member who interferes with, discourages or delays the making of such complaints, shall be subject to disciplinary action.
- G. A "Citizen's Complaint Form" shall be available to the public.

II. RIGHTS AND OBLIGATIONS OF THE MEMBER

The rights and obligations of members who are under investigation and subject to interrogation or any reason which could reasonably lead to disciplinary action are set forth in the Working Agreement and Vermont law. The procedure outlined in the Working Agreement shall be followed for all internal investigations, regardless of the involved member or officer's rank. The procedure for internal investigations involving non-sworn members shall be consistent with the applicable agreement (The New England Police Benevolent Working Agreement or Town of Bennington's Personnel Policy). In addition, the following shall also apply to the extent consistent with the Working Agreement and Vermont law:

- A. The member will be informed prior to the interview that they are a subject of investigation, the nature of the investigation, and their rights and responsibilities relative to the investigation.
- B. All interviews are to be limited in scope to activities, circumstances, events, conduct or acts, which pertain to the incident that is the subject of the investigation. A member may be requested to participate in other investigative processes that are specifically directed and narrowly related to the investigation.
- C. No member shall be compelled to take a polygraph, participate in a photo or live line-up, disclose financial records, or submit to medical examinations during the course of an internal investigation.
- D. Investigations shall be completed promptly, normally within thirty (30) days. The time required may vary from case to case based on the nature of the allegation(s) and the complexity of the investigation. If additional time is necessary to complete the investigation, the Chief of Police may authorize an extension of up to sixty (60) days, for a maximum time limit of ninety (90) days.

III. QUALITY CONTROL & INVESTIGATIONS

- A. Organization

The Chief of Police shall oversee the Quality Control and Investigations. The Chief shall staff the office as needed with personnel trained in Internal Affairs Investigations to achieve its objectives.

- B. In the course of an investigation, the Lieutenant shall report on a regular basis directly to the Chief of Police on all complaints investigated and the status of each such investigation and in turn, the Chief of Police shall keep the Lieutenant advised of all incoming complaints. The Chief of Police will be notified as soon as possible by the affected Supervisor of any complaint that may result in an investigation.

C. Procedures

1. Trained personnel will commence any investigation so directed by the Chief of Police. A supervisor may investigate minor complaints (i.e. rudeness) for the purpose of performance, counseling and coaching. Trained personnel shall investigate or cause to be investigated any allegation of criminality on the part of a member of any conduct that could result in a record of permanent discipline.
2. Upon receiving a complaint from the Chief of Police, the Lieutenant will select an investigator to conduct the investigation.
3. The investigator shall have freedom of movement, authority to interview all personnel regarding infractions of the BPD's policy, procedure, rules and regulations, or state or federal law, in reference to any ongoing investigation.
4. No retaliatory measures shall be taken against anyone due to any investigation conducted under its authority.
5. During the course of any investigation conducted all relevant records and reports from any source within BPD's control shall be immediately available to the investigator upon request. **The Chief or their designee** shall have the authority to request relevant records and reports outside of BPD's control as necessary for the investigation.
6. Upon completion of investigations, the investigator in charge shall prepare a report of findings, which shall be promptly furnished to the Chief of Police, through the Chain of Command.
7. Upon completion of the Chief's decision-making process, the results **shall** be provided to the Town of Bennington's Community Policing Advisory Review Board (CPARB). Should CPARB wish to review the complaint or other incident, the Chief shall provide CPARB with all information gathered in the course of the investigation redacting names as appropriate. The information

provided to CPARB shall exclude personnel records as protected under Vermont law, and the disciplinary outcome of any internal investigation. Review by CPARB shall be performed in accordance with its mandate as set forth in "Resolution for Community Policing and Review Board" as the same may be amended by the Select Board from time to time. Upon completion of any such review, CPARB will share its impressions with the Chief of Police, in Executive Session to the extent such review implicates the provisions of 1 V.S.A §313(a)(1)-(10). The Results of CPARB's review shall be given in an open session of a CPARB meeting.

- D. The Chief of Police shall maintain a complete record of complaints. These records shall be maintained separate from all other department records and shall be strictly confidential.
- E. The assignment of Internal Affairs functions does not relieve Supervisors of their responsibilities for the prompt investigation of all alleged acts of misconduct or other breaches of discipline by members they supervise.
- F. It is not practical, nor possible, to establish a firm and set penalty and corrective measure for every conceivable situation necessitating disciplinary action or review for unprofessional conduct. Extenuating or mitigating circumstances and other factors will govern the severity of disciplinary action, consistent with the Working Agreement and Vermont law.
- G. The Lieutenant shall ensure the following with regards to maintaining contact with the original complainant:
 - 1. The complainant shall be advised when their complaint is received.
 - 2. When reasonably requested, the complainant will be periodically informed as to the status of their complaint.
- H. On an ongoing basis, the Chief of Police shall compile a statistical summary of all complaints investigated. This summary shall be made available to BPD members and to CPARB. If the summary report indicates the need for training is detected, the CPARB may make appropriate recommendations to the Chief of Police. Additionally, each instance in which a complaint is received is an opportunity to examine practices, procedures, and conduct. Each should be examined and alterations to policy, practice, or operations may be necessary, unless it involves mandated policies and procedures in the State of Vermont.

IV. AUTHORITY OF THE CHIEF OF POLICE

- A. The Chief of Police shall:
 - 1. Review every investigation to determine the appropriate disposition.
 - 2. Make a finding, using the following disposition categories:

Unfounded - The investigation indicates that the act or acts complained of did not occur or failed to involve members or police officers.

Exonerated - Acts reported did occur, but were justified, lawful and proper.

Non-sustained - Investigation fails to disclose sufficient evidence to prove clearly or disprove the allegations made in the complaint.

Sustained - The investigation disclosed sufficient evidence to clearly prove the allegations made in the complaint.

Non-involved - The investigation establishes that the individual named in the complaint is not involved in the alleged incident.

3. The Chief of Police or their designee shall make reasonable efforts to notify the complainant, in writing, of the outcome of the investigation.
- B. The authority of the Chief of Police and Town Manager to suspend members or officers from duty is derived from the Working Agreement.

V. DISCIPLINE

The BPD strives to engage in progressive and corrective discipline. Whenever it is necessary to discipline a member, it shall be done fairly and in such a manner to avoid undue embarrassment of the member in front of the public, fellow members or other employees. All disciplinary action shall be consistent with the requirements of the Working Agreement and State law.

- A. The BPD recognizes and encourages the use of training as an effective method of improving employee productivity, morale, and adherence to policies. The BPD agrees with the **tenets** of progressive and corrective discipline, where appropriate.
- B. The severity of a disciplinary action shall be commensurate with the cause of action. The specific types of disciplinary measures to be taken against a member are defined in the applicable Working Agreement or Town's Personnel Manual.
- C. The BPD encourages supervisors to verbally counsel and coach members for minor transgressions, when appropriate. Counseling shall not be considered a disciplinary measure and may not need to be documented. There may be occasions, however, when a supervisor will document an informal verbal counseling by making an entry into the Guardian Tracking System. This entry is not discipline. It is merely a record of the issue made available to other supervisors, should there be additional transgressions. Any action taken beyond an entry into the Guardian Tracking System shall be considered a disciplinary action and must be

consistent with the provisions of this directive and the applicable Working Agreement.

D. Factors in Disciplinary Decisions

Described here are the factors that will be considered in the disciplinary decision process for alleged breaches of policy or rules. It is critical that a system of discipline be established that contributes to minimizing abuse of police authority and promotes the BPD's reputation for professionalism. Each member must understand and be guided by the standards that have been established in the Code of Conduct.

It is recognized and understood that members will make errors from time to time in carrying out their responsibilities. While each error offers an opportunity for the BPD and member to learn, it is also understood that some errors will have greater consequences than others for the public, the department and the member.

Disciplinary action must be imposed in a consistent and fair manner. Consistency is defined as holding everyone equally accountable for unacceptable conduct. Fairness is defined as understanding the circumstances that contributed to the conduct while applying the consequences in a way that reflects this understanding. In order to ensure that members are treated in a consistent and fair manner, the determination of consequences for conduct that does not meet the BPD's expectations will be made based upon a balancing of factors, in a manner consistent with the Working Agreement and Vermont law.

Discipline Factors

Member Motivation: The BPD exists to serve the Bennington Community. One factor in examining a member's conduct is whether or not the member was acting in the public interest. A member who violates a policy or procedure in an effort to accomplish a legitimate police purpose, and who demonstrates an understanding of the broader public interest inherent in the situation, will be given more positive consideration in the determination of consequences than one who was motivated by personal interest. From time to time, it may be difficult to distinguish between public and personal interest. As an example, arresting a dangerous criminal is in the public's interest. The greater public interest is for the police to carry out its responsibilities while protecting the public's Constitutional guarantees. But if an officer attempts to devise an innovative, nontraditional solution for a persistent crime or service problem and unintentionally runs afoul of minor procedures, the desire to encourage creativity may carry significant weight in determining any discipline that might result.

Degree of Harm: The degree of harm resulting from an error is a factor in deciding the consequences of a member's conduct. Harm can be measured in a variety of ways. By way of example only, harm can be measured in terms of the monetary cost to the BPD and/or the community, whether personal injury results from error or by impact of an error on the public's confidence in the BPD.

Member Experience: The level of experience of a BPD's member to which an error is attributable is a factor relevant to determining appropriate discipline. By way of example only, whether a member is relatively new or an experienced member in an unfamiliar assignment might be treated more leniently than a member who has significant experience.

Intentionality: Errors can be classified as intentional or unintentional.

An unintentional error is an action or decision that turns out to be wrong, but based upon the information available at the time it was taken, was reasonably believed to be in compliance with policy and the most appropriate course. Unintentional errors also include those momentary lapses of judgement or acts of carelessness that result in minimal harm. BPD's members will be held accountable for these errors, but the consequences will be more corrective than punitive unless a pattern emerges.

An intentional act or a decision occurs when a member knew or should have known, that such act or decision was in conflict with law, established training or procedures, rules, or policy. Generally, intentional errors will be treated more seriously and carry greater consequences than unintentional errors. Within the frame-work of intentional errors, there are certain behaviors that are entirely inconsistent with the responsibilities of the police profession. These include dishonesty, theft, physical abuse of citizens, disparate treatment of community members based on immutable characteristics (such as race, ethnicity, or national origin), and other equally serious breaches of the trust placed in officers of the police officer's profession. An officer will face discharge from the BPD when it is clear that the officer has intentionally engaged in behavior constituting a serious breach of the public trust.

Officer/Member Past Record: To the extent allowed by law and Working Agreement, a member's past record will be taken into consideration in determining the consequences of a failure to meet the BPD's expectations. A member that repeatedly makes errors can expect the consequences of this behavior to become progressively more punitive. A member's past record reflecting hard work, dedication and achievements to the community and department will be given requisite consideration in the determination of any disciplinary action.

VI. ROLE OF SUPERVISORS, AUTHORITY TO DISCIPLINE, GENERAL CONTINUUM

- A. Outcomes of reviews or investigations may result in a continuum of responses which include education and training, performance counseling, corrective actions or discipline. The continuum includes but is not limited to (responses may include more than one of the items in the continuum in some instances), in no specific order based on behavior set out in this policy.

Non-Disciplinary Outcomes

1. Verbal performance counseling and/or Guardian Tracking entry
2. Training/re-training
3. Written performance notation
4. Written counseling
5. Referral to professional counseling - such as the Employee Assistance Program

Disciplinary Outcomes

6. Written reprimand
7. Suspension, forfeiture of pay or forfeiture of accrued earned time
8. Reassignment/Demotion
9. Suspension, forfeiture of pay or forfeiture of accrued earned time
10. Dismissal

- B. The Chief of Police has the authority to take the following disciplinary actions with respect to a subordinate:

1. Issue verbal reprimands
2. Issue written reprimands
3. Temporarily suspend a member using administrative leave
4. Recommend to the Town Manager further disciplinary action

- C. The Town Manager and Chief of Police may issue verbal or written reprimands. The Chief of Police, or in their absence, the Chief's designee is the only member of the BPD with the authority to discipline other members of the BPD, as outlined in the Working Agreement and state law.

VII. APPEALS

Any appeal relative to disciplinary action shall be handled according to the applicable Working Agreement, the Town of Bennington's Personnel Policy, and in conformity with state law.

VIII. DISMISSAL

All dismissals shall occur in accordance with the applicable Working Agreement or Town of Bennington's Personnel Policy, and in conformity with state law. If employee misconduct results in dismissal of a trial period employee, it shall be the responsibility of the Chief of Police or their designee to provide information regarding the content of the member's personnel file as it relates to dismissal.

IX. RECORDS

Maintenance and retention of records of disciplinary action are governed by the applicable New England Police Benevolent Association Working Agreement or the Town of Bennington's Personnel Manual as it relates to dismissal.

X. ADDITIONAL SOURCES & REFERENCES

Agreement between the Town of Bennington Police Department and the New England Police Benevolent Association

This Policy is hereby adopted by the Bennington Select Board on this
19th day of December, 2022.

Select Board Chair

The policies and procedures outlined above are hereby adopted by the Chief of Police of the Town of Bennington, Vermont this _____ day of _____, 2022 and is effective as of this date until amended or repealed.

Paul J. Doucette, Chief of Police

MANAGER'S REPORT
December 19, 2022

ACTION

Nothing at this time.

INFORMATIONAL

Benmont Ave/ County Street Sewer Line Replacement The last section on County Street from the tacks to Depot St remains. Apparently 9 lead lines were found in the stretch from Benmont to the tracks so that portion of the project slowed down. The good thing is that work will be paid for from the lead service line replacement monies. We're still shooting for a completion before Christmas..

FOLLOW UP

The Communications Coordinator's Report is attached.



Town of Bennington

Communications Coordinator Report — December 19, 2022

Winter is Here!

The first real snow of the winter fell on December 12. We were perhaps fortunate that we had a mild start to the winter, but I'm sure all the ski areas are happy that we are back on track with the snowy weather. Remember that the overnight parking ban began on November 15 and will continue until March 31, 2023!

Midterms, Select Board, and School Boards

Our Town Clerk, Cassandra Barbeau, reports that "overall there was a small increase in voter participation over the last mid terms in 2018." Town Clerks play a key role in everything election related in VT.

Elections for the Select Board and School Boards are now on the horizon. Traditionally, candidates for these positions begin campaigning right after the holidays, but can start anytime in December. The deadline for all required paperwork and petitions is six weeks prior to Town Meeting. That makes the deadline to be on the ballot January 30, 2023.

To run for a seat on the Select Board or a School Board, you should start by visiting the Town Clerk. To be on the ballot you need to fill out a "Consent of Candidate" form and have a petition signed by 30 registered voters in the Town that is specific to the position you are seeking. The Town Clerk will guide you on how to properly fill out the form and petition to ensure there are no problems. The form is available by the secretary of state on the Vermont.gov website, but it is highly recommended that you pick it up at the Town Clerk's office so they can assist you and prevent errors that could jeopardize a candidacy.

Town meeting day is always the day before the first Tuesday in March when the town budget is voted on. This year, Town Meeting will be on Monday, March 6, 2023. The vote will occur on Tuesday March 7.

Bennington's Select Board is made up of seven members who serve a three year term. The terms are staggered so 2-3 seats are up for election each year. Bennington is unusual in this respect as most VT towns with Select Boards have just five members.

Willow Park Playgrounds:

We got lucky with the weather! We had assumed that the final top coat of the new rubberized surface for the playgrounds at Willow Park would have to wait until spring before it could be properly installed. Mother Nature had a different idea. Temperatures climbed just high enough the week of December 12 for Play By Design's rubber installation vendor to be able to put the final top coat on. This completes the biggest remaining step for the new playgrounds.

Paul Dansereau, Bennington's director of facilities, was on hand for the final top coat. "The vendor was able to move forward with the final top coat. It was a close call getting it done so late in the year. We got lucky with the weather and the company will stand behind the full warranty on their work."

The project is still not 100% done. Several items will have to wait until spring before they can be completed. Those include: a final section of curbing that needs to be installed by the exercise area adjacent to the playground, final cleanup and successful seeding of new grass, additional mulching, a few other checklist items, and a final inspection and certification.

We are all disappointed that the playgrounds were not completed in time for kids to use it in 2022, but we would rather get it done right than getting it done wrong in a hurry.

We are grateful to our team members such as Mark Sawyer and RJ Joly for sharing concerns that ensured that the Town got the full value of the work we contracted for. A ribbon cutting celebration for the new playgrounds will be held in the spring of 2023 to announce the official re-opening.

Citizen Outreach:

Because of the shorter time between meetings this holiday season, I'm reporting on just two weeks. I met with citizens seven times over this time on a variety of issues, ideas, and concerns. There were three public record requests to my office.

Community Outreach

In addition to outreach about the elections, we also had some seasonal reminders about the Parking Ban, and updates around the work at Willow Park.

250th Anniversary Planning:

Work on 250th planning was a big part of the last two weeks. There was a meeting for the Bennington 250th steering committee as well as for the fundraising task force and educational task forces. Planning for the next full committee meeting that will take place in January has also begun. A nice story about the planning effort was published in the Bennington Banner on November 29.

I also was part of the Vermont 250th Commission's education committee team that was a presenter at the Vermont Alliance of Social Studies conference in Montpelier on December 7. The conference was the first since the pandemic and was well attended with over 150 people. The goal was to increase awareness of the 250th to educators and to solicit their feedback on how we can assist them at the state level to include 250th related themes in their classroom curriculums.

Website Development

The new website combining the current town website as well as the Planning and Permits website and the Bennington Police Department website is nearing completion.

I have begun working with volunteer "beta testers" to help with testing the new navigation and user friendliness of the website. Each testing session discovers new things to be added, fixed, or improved which is exactly the purpose of this testing. Testing will continue this week and next, and will finish with a "soft launch" to the select board and Town Department managers probably right after the holidays.

Once this testing is completed, we will be ready to switch to the new website! At this point, it looks like the total cost of the new website will be around \$12,500... about half the cost we had budgeted for.

The partner the town has been working with on the new site is REVIZE, which specializes in municipal websites. Their client list includes over 1,600 towns including many in Vermont such as South Burlington and St. Albans.

Facebook POST OF THE MONTH:

One of my very first posts as communications coordinator was a picture of the vegetation being removed from the future Rail Trail pathway and it did really well in terms of reach, over 6,000 which was an eye opener for me at the time.

Deja vu... this recent post for the "soft" opening of the Rail Trail did similarly well in terms of reach with an impressive 6,950 reach. Posts of this sort have consistently proven to be of great interest to the community. Our town seems to really like our trails!

