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

**August 23, 2021**

**BENNINGTON SELECT BOARD**

BENNINGTON FIRE FACILITY
MULTI PURPOSE ROOM-3RD FLOOR
130 River Street
Bennington, VT 05201

## A G E N D A

**6:00 P.M.**

1. Pledge of Allegiance

2. Vision Statement — 6:00 PM - 6:05 PM

3. Consent Agenda — 6:05 PM - 6:10 PM
   A. Minutes of August 9, 2021
   B. Warrants

4. Public Comment — 6:10 PM - 6:25 PM

5. Community Policing — 6:25 PM - 6:50 PM
   A. Second Reading - Employee Nepotism and Fraternization
   B. 1st Reading - Code of Conduct
   C. Use of Force Policy (Statewide)
   D. Other

6. Covid Related Issues — 6:50 PM - 7:05 PM

7. Manager's Report — 7:05 PM - 7:15 PM

8. Upcoming Agendas — 7:15 PM - 7:20 PM

9. Other Business — 7:20 PM - 7:30 PM

10. Executive Session
    A. Contracts

# BENNINGTON SELECT BOARD MEETING

## 130 RIVER STREET

## BENNINGTON, VERMONT 05201

## AUGUST 9, 2021

## MINUTES

**SELECT BOARD MEMBERS PRESENT:** Jeannie Jenkins-Chair; Jeanne Conner-Vice Chair; Bruce Lee-Clark; Jim Carroll; Tom Haley; and Gary Corey.

**SELECT BOARD MEMBERS ABSENT:** Sarah Perrin.

**ALSO PRESENT:** Stuart Hurd-Town Manager; John Rogers; Jennifer Jasper; Norm LeBlanc; Jack R.; 6 citizens; Jim Vires-CAT-TV; and Nancy H. Lively-Secretary.

At 6:00pm, Ms. Jenkins called the meeting to order and asked those not vaccinated to wear a mask or social distance if unable to wear a mask, and that there are wipes to wipe down the microphone if you wish to speak.

***Bruce Lee-Clark moved and Tom Haley seconded to remove #4. COVID Update from tonight's Agenda with plans to reschedule for the September 13, 2021 Board Meeting.***

Any questions for Dr. Dobson should be sent to Ms. Jenkins by Wednesday morning for her to send to Dr. Dobson for him to respond to. Mr. Hurd will then post the questions and responses on the Town website.

***The motion carried with Sarah Perrin absent.***

### 1. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited by all present.

### 2. VISION STATEMENT

Ms. Conner read the Town's Vision Statement that was adopted by the Select Board on August 24, 2020:

"Bennington is a welcoming, engaged, inclusive, resilient community where everyone regardless of identity shares in our vitality and benefits from an outstanding quality of life."

### 3. CONSENT AGENDA

**A. MINUTES OF JULY 26, 2021**

**B. WARRANTS**

***Bruce Lee-Clark moved and Tom Haley seconded to approve the Consent Agenda with the Minutes of July 26, 2021 amended as follows:***

***Line 147, Change "future." to "future - working on fixing the age discrepancies between the Senior Center and the YMCA."***

***The motion carried with Sarah Perrin absent.***

**4. COVID UPDATE**

Rescheduled for the September 13, 2021 Board Meeting.

**5. PUBLIC COMMENT**

The following Public Comment Practices to make the experience for all involved a productive and informative use of the Public Comment period at Select Board meetings was placed on the podium for those that wish to make Public Comments to reference:

1. Public Comment is to allow residents an opportunity to share information or make announcements that benefit the community at large.
2. The topic should **not** be related to an agenda item. If a member of the public wants to comment on an agenda item they can do so during the discussion of that item.
3. Comments should be 3 minutes or less.
4. You are required to state your real name and town of residence.
5. Sharing comments, announcements and concerns are encouraged rather than asking questions. Public Comment is not a time for discussion. If you have specific questions it is best to call the Town Manager to get a full explanation and accurate information.
6. If the topic requires much discussion the item will be considered as an agenda item at a future meeting.

Norm LeBlanc, Commander of the Local VFW, reminded everyone of the sacrifices those overseas and their families are enduring. The VFW, Bennington Elks Club, Bennington Eagles Club, American Legion, Lions Club, and the Rotary are gathering any small items that are listed on the flier, in the Bennington Banner, and on their respective websites to be sent to our troops. They will be collecting these until August 12th. "It's the little things that matter."

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Jack R. commented that "the justification of requiring an individual's real name for Public Comments doesn't fit the Vision Statement".

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John Rogers noted that the housing for recovery that Turning Point is working on is very beneficial to those in recovery but the strict accountability requirements are not a fit for everyone. Pathway Vermont works with the group that are not ready to sign onto the tight restrictions. They have presence in counties within the State and are working on coming to Bennington County. Mr. Rogers shared a local success story that was spearheaded by Pathway Vermont. On August 21st, everyone has been invited to a Walloomsac River Walk at 10:00am followed by a meet-and-greet with the founder of Pathway Vermont at the Mission City Church at 11:30am.

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Jennifer Jasper, Executive Director of the Bennington Performing Arts Center (BPAC) - Oldcastle Theatre Company shared the following:

- We reopened in May after being closed for a year and attendance is up.
- Our tickets are $25 this year.
- Visiting Mr. Green was our first show of the season and averaged 60 people per performance.
- We were grant funded for a new heat pump and air cleaners that have been installed for an air exchange rate of 8 times/hour.
- We encourage mask wearing but it is not mandated. Staff are masked and sanitize between productions.
- The upcoming productions were shared with the final summer performance on Labor Day Weekend.
- Community partners include the Bennington Bookshop and W. Collective, as well as, sponsorships from other local businesses.
- We hope to convince downtown businesses to stay open after 9:00pm so that theatre goers have a place to go after the performances.
- The Bennington Community Theatre season begins in September with many community and educational events. Their admission is $10.
- Contact information is www.bpacvt.org; Facebook; or 802-447-0564.

Mr. Hurd stated that Shakespeare's Will was "fantastic" and Ms. Conner will be going Thursday.

**6. COMMUNITY POLICING UPDATE**

**A. FIRST READING - EMPLOYEE NEPOTISM AND FRATERNIZATION**

Mr. Lee-Clark stated the following:

- The first reading of Employee Nepotism and Fraternization has been reviewed by the Town's attorney, State's attorney, and the Bennington Police Chief.
- The Committee that worked on this policy with Mr. Monks, Mr. Ferrara, and Mr. Lee-Clark were Lon McClintock, Kara Lusa, and John Pike.

- The Town's attorney suggested the following on III. Policy:, A. Nepotism:, "1. The BPD shall not hire any person(s) fitting the definition of "Closely Related Individuals" without consideration and approval by the Town Manager after consultation with the Select Board."
- Send any suggestions to Mr. Lee-Clark by August 17th.
- The 2nd reading on this policy will be at the August 23rd Meeting.

**B. UPDATE**

Ms. Conner reported:

- Task Force applications are being accepted from community members - those that live and/or work in Bennington - must be in at the end of business on August 20th.
- We are requiring one reference or recommendation from a co-worker, boss, or someone who has worked with you on a board.
- Interviews will take place in September and we are "shooting for" an 11-person board.
- The Task Force will be researching a Citizen Review Board Model.

Ms. Conner added that she, Ms. Jenkins, and Mr. Lee-Clark are the Working Group and have been meeting weekly for 1 ½ years. They have been deeply involved in the process, so if anyone has any questions, they are encouraged to reach out to any of the three.

**7. SET TAX RATES**

Mr. Hurd explained the following on the tax rates:

- The General Fund - all properties = $0.7862, an increase of $0.0322
- The Highway Fund - all properties except the Villages of Old Bennington and North Bennington = $0.4010, a decrease of $0.0032
- The Fire Fund - all properties in the Village of Bennington and Old Bennington excluding the Village of North Bennington and Bennington Rural Fire District No. 1 = $0.0833, a decrease of $0.0009
- Total = $1.2705, an increase of $0.0281
- When calculated as a percent increase, the rate increase equals a 2.26% increase

***Bruce Lee-Clark moved and Jeanne Conner seconded to approve the following FY2022 Tax Rates:***

| | |
|---|---|
| ***General Fund -*** | ***$0.7862*** |
| ***Highway Fund -*** | ***$0.4010*** |
| ***Fire Fund -*** | ***$0.0833*** |
| ***TOTAL -*** | ***$1.2705*** |

***The motion carried with Sarah Perrin absent.***

## 8. MANAGER'S REPORT

Mr. Hurd reported the following:

- *E911 Municipal Contact* -

***Jeanne Conner moved and Bruce Lee-Clark seconded to designate Deb Madden as Bennington's E911 Municipal Contact. The motion carried with Sarah Perrin absent.***

- *Bennington Battle Day Parade* - Will take place on Sunday, August 15th, beginning at 12:30pm and is expected to last about an hour with no judging to take place.

- *Town Offices Hours of Operation* - After a two month review, the Town Offices will be open from 7:30am until 4:30pm beginning on August 17th.

- *Construction Project Update* - It is possible that paving will take place August 3rd or August 4th. These projects include the PFOA related projects, the south end project (a water pressure improvement project), and the lead service line replacement projects.

- *National Night Out* - Was well attended and a good time was had by all.

In addition:

- ✓ The VTRANS Route 9 Bridge replacement is moving along slowly with engineers working on the scope of work and meeting with the land owners. It is scheduled for 2023.
- ✓ The Community Development Report that is in the Board packets is worth reading. Kudos to Ms. Barsotti for the work that she does.

## 9. UPCOMING AGENDA

August 23, 2021 - Policy 1st Reading - Code of Conduct

August 23, 2021 - Policy 2nd Reading - Employee Nepotism and Fraternization

August 23, 2021 - Senior Center Follow-Up

August 23, 2021 - 1st Set of Procedures from the Bennington Police Department

The Board will be looking at the Community Survey within the next couple of weeks with the hope that it will be going out to the public in mid-September.

## 10. OTHER BUSINESS

Mr. Lee-Clark: Thanked the Chamber of Commerce and the other organizers, the sponsors, and the owner of the lot where the Home Brew Fest took place this past Saturday for a job well done.

Ms. Conner: Was asked by the fire fighters to remind everyone that the parade will be Sunday and all information about the events taking place throughout the weekend is on the Bennington Fire Department Facebook page.

***At 6:45pm, Jim Carroll moved and Jeanne Conner seconded the adjournment of the meeting. The motion carried with Sarah Perrin absent.***

Respectfully submitted,

Nancy H. Lively

Secretary

| Employee Nepotism and Fraternization | Related Policies: Code of Conduct |
|---|---|
| *This policy is for internal use only and does not enlarge, limit, or indemnify 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 agency for non-judicial administrative action in accordance with the laws governing employee discipline.* | |
| Applicable State Statutes: | |
| Date Implemented: | Review Date: |

I. **Purpose:** The Bennington Police Department (BPD), including its employees and agents, shall carry out its duties with impartiality and fairness so that public and organizational confidence is maintained. Public trust, workplace safety, agency operations and morale require that all BPD employees avoid a conflict or the appearance of a conflict of interest between their professional responsibilities and any involvement in a Closely Related, Related, or Intimate Relationship with other employees. To promote efficient operation of the BPD in accordance with its stated purposes, all employees shall avoid situations that give rise to an actual or perceived conflict.

II. **Values:**

- Avoiding conflicts of interest
- Advancement based on merit.
- Providing equal employment opportunities
- Encouraging and promoting harmonious working relationships
- Creating a positive working environment
- Maintaining a safe work environment
- Protecting the safety of Officers in the field

- Fairness
- Fair hiring and disciplinary practices

## III. Policy:

A. Nepotism:

1. The BPD shall not hire any person(s) fitting the definition of "Closely Related Individuals" without consideration and approval by the Town Manager after consultation with the Select Board.

2. The Chief of Police shall obtain from persons applying for positions within the BPD disclosure of any relationships with current employees that fall within the definitions laid out within this policy, to the extent permitted by law.

B. Fraternization:

~~In the event that~~ *When* a BPD employee becomes involved in an Intimate Relationship with another employee, each employee has a duty to notify the Chief of Police as soon as possible. Supervisors shall not supervise a subordinate with whom they have an Intimate Relationship.

## IV. Definitions:

**A. Closely Related Individuals:** A relationship resulting from family ancestry or marriage. For this policy this includes spouse, parent (including adopted, foster, step, and in-law); children (including adoptive, foster, or step); brother or sister; living in the same household as the employee or another individual related by blood or marriage in the same household as a Bennington Police Department employee. Closely Related Individuals include domestic partners, Civil Union partners, and persons living in a committed relationship.

**B. Related Individuals:** Grandparent or grandchild; aunt or uncle; niece or nephew; cousin, or any other relative in the community.

**C. Personal relationship:** See **Intimate Relationship.**

**D. Supervisor:** An employee who has authority, direct or indirect, over another employee by virtue of their rank, seniority, or job classification.

**E. Subordinate:** An employee who is answerable to another employee based on their rank, seniority, or job classification.

**F. Intimate Relationship:** A relationship in which individuals share interdependently, in a manner that is distinct from the general population, and/or share responsibility for the rights and responsibilities of a familial relationship, including (without limitation) physical occupancy of a shared residential space.

This policy is adopted by the Select Board of the Town of Bennington, Vermont, this ____ day of _____, 2021, and is effective as of this date until amended or repealed.

_____, Chairperson

* * * * *

| CODE OF CONDUCT | Related Policies: Social Media, Response to Resistance/Use of Force, Duty to Intervene, Use of CEW's, Collaborative Partnerships |
|---|---|
| *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 department for non-judicial administrative action in accordance with the laws governing employee discipline.* | |
| Applicable Vermont Statutes/Rules: | |
| Date Adopted: | Date Reviewed: |

## I. PURPOSE

The mission of the Bennington Police Department (BPD or Agency) states in part, "The BPD is accountable to the community for providing everyone, regardless of identity, with respectful and equitable law enforcement, protection, and service." In accordance with that mission, all members of the BPD ("Member" or "Members," as defined in Section III, below) must be fully aware of the ethical responsibility of their position and must strive constantly to live up to the highest standards of professional policing, and commit to understanding and following all of the General Orders (adopted Policies) of the BPD.

The purpose of this policy is to provide standards of conduct embodied in the Law Enforcement Officer's Oath of Honor and this Agency's statement of values and mission so that all officers and employees of the BPD have a clear understanding of Agency and community expectations pertaining to conduct and activities while on and off duty.

## II. POLICY

### A. PRIMARY RESPONSIBILITIES OF A POLICE OFFICER

A Bennington Police Officer acts as an official representative of government who is required and trusted to work within the law. The Officer's powers and duties are

conferred by statute. The fundamental duties of a Police Officer include serving the community; safeguarding lives and property; protecting the public; keeping the peace; and ensuring the rights of all to liberty, equality and justice. Officers shall follow the BPD's mission and values statement, oath of honor and this Code of Conduct. If an officer experiences an ethical conflict with respect to these obligations, the Officer should consult a supervisor for further clarification. Officers shall abide by all laws, regulations, BPD policies, rules and procedures. Officers shall obey all lawful orders.

B. PERFORMANCE OF THE DUTIES OF ALL MEMBERS (*See* Policy on Fair and Impartial Policing)

All Members shall perform all duties impartially, without favor or affection or ill will and without regard to ~~status, sex, race, religion, political belief or aspiration~~ actual or perceived race, color, religion, national origin, sex, ancestry, age, service in the US Armed Forces, disability as defined by 21 V.S.A. § 495d(5), sexual orientation, or gender identity (13 V.S.A. § 1455). All citizens will be treated equally with courtesy, consideration, and dignity.

Members shall not knowingly join or participate in any organization that advocates, incites, or supports criminal acts or criminal conspiracies or that promotes hatred or discrimination toward racial, religious, ethnic, or other groups or classes of individuals protected by law. Members will never allow personal feelings, animosities or friendships to influence official conduct. Laws will be enforced appropriately and courteously and, in carrying out their responsibilities, Members will strive to achieve the greatest level of cooperation from the public. They will conduct themselves in appearance and deportment in such a manner as to inspire confidence and respect for the position of public trust they hold.

C. DISCRETION

A Member will use the discretion vested in the position responsibly and exercise it within the law. The principle of reasonableness will guide the Member's determination, and the Member will consider all surrounding circumstances in determining whether any legal action should be taken.

Consistent and wise use of discretion, based on professional policing competence, will do much to preserve good relationships and retain the confidence of the public. There can be difficulty in choosing between conflicting courses of action. It is important to remember that a timely word of advice rather than arrest, in appropriate circumstances can be a more effective means of achieving an outcome that is just, equitable, and beneficial to the community, so long as such discretion is not exercised in a manner that is discriminatory.

D. USE OF FORCE (*See* Response to Resistance/Use of Force, Duty to Intervene, and Use of CEW's)

~~"Respect for Life is the primary value of the Bennington Police Department."~~ "The BPD and all officers recognize that the sanctity of human life serves as the guiding principle in use of force decisions."[1]

A Bennington Police Officer will never employ unnecessary force or violence and will use only such force in the discharge of duty as is reasonable in all circumstances.

The use of force should be used only with the greatest restraint and only after discussion, negotiation, persuasion, or other de-escalation techniques have been found to be inappropriate or ineffective. While the use of force is occasionally unavoidable, every Police Officer will refrain from unnecessary infliction of pain or suffering and will never engage in cruel, degrading or inhumane treatment of any person.

E. CONFIDENTIALITY (*See* Social Media Policy)

When a Member sees, hears, or learns of information that is generally understood to be confidential in nature, the member will maintain such confidentiality unless the performance of duty or provision of law requires otherwise, or as directed by Court Order.

Members of the public have rights to security and privacy, and information obtained about them must not be improperly divulged. This includes but is not limited to:

- Members are prohibited from using law enforcement sensitive information gained through their position to advance financial or other private interests of theirs or others, or where such disclosure is not reasonably necessary in furtherance of job performance or other official duty
- Members shall not take or release photographs capturing sensitive information or images unless authorized to do so.
- Members shall not, when officially acting as a representative of the BPD, divulge or willfully permit to have divulged any information gained by reason of their position, for anything other than its official, authorized purpose.

F. INTEGRITY

A Member will not engage in acts of corruption or bribery, nor will a Member condone such acts by others.

The public demands that the integrity of Bennington Police Department Members be above reproach. Members must avoid any conduct that might compromise integrity and thus undercut the public confidence in the Bennington Police Department.

[1] [1] "Response to Resistence/Use of Force Policy" of the Bennington Police Department, adopted 12/14/2020.

Members will refuse to accept any gifts, presents, subscriptions, favors, gratuities or promises that could be interpreted as seeking to influence the Member from performing official responsibilities honestly and within the law. Bennington Police Department members must not receive private or special advantage from their official status. Respect from the public cannot be bought, it can only be earned and cultivated.

G. COLLABORATION WITH OTHER AGENCIES (*See* Collaborative Partnerships)

Bennington Police Department Members will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. In addition, the BPD will collaborate with a variety of community agencies and organizations in order to fulfill its vision and mission; to include, but not limited to: United Counseling Service, Project Against Violent Encounters (PAVE), Southwestern Vermont Medical Center (SVMC), Vermont Council for Independent Living (VCIL), or other agency or organization.

An Officer or Agency may be one among many organizations that may provide law enforcement services to a jurisdiction. (e.g. Vermont State Police, Bennington County Sheriff's Department). It is imperative that all Members assist colleagues fully and completely with respect and consideration at all times.

When the BPD enters a collaborative relationship with an agency expressed in a Memorandum of Understanding (MOU) a copy of that MOU will be made available to all Members of the department.

H. PERSONAL-PROFESSIONAL CAPABILITIES

Bennington Police Department Members will be responsible for their own standard of professional performance and will take every reasonable opportunity to enhance and improve their level of knowledge and competence.

Through study and experience, a Bennington Police Department Member should acquire a high level of knowledge and competence that is essential for the efficient and effective performance of duty. The acquisition of knowledge is a never-ending process of personal and professional development that should be pursued constantly.

I. PRIVATE LIFE (*See* Social Media Policy)

Bennington Police Department Members will behave in a manner that does not bring discredit to the agency or themselves. (*see* J. below)

Members shall follow applicable law and the policies of the BPD regarding their participation and involvement in political activities. Where legal mandates are silent on this issue, members shall be guided by the following examples of prohibited political activities while on-duty, in uniform, or otherwise serving as a representative of the BPD. Members shall not:

1. Place, affix, or display any campaign literature or other paraphernalia in or on government-owned or controlled property, to include offices and vehicles.
2. Solicit political funds from any member of the BOD or other governmental agency of this jurisdiction.
3. Solicit contributions, signatures, or other forms of support for political candidates, parties, or ballot measures.
4. Use official authority to interfere with any election or with the political actions of other officers or the general public; or
5. Favor or discriminate against any person seeking employment because of political opinions or affiliations.

A Member's character and conduct while off duty must always be exemplary, thus maintain a position of respect in the community in which they live and serve. The Member's personal behavior must be beyond reproach.

J. CONDUCT UNBECOMING AN OFFICER

Members shall not conduct themselves in a manner, on or off duty, that:

- casts doubt on their integrity, honesty, moral judgment, or character.
- brings discredit to the Bennington Police Department.
- impairs the BPD's efficient and effective operation.

**III. DEFINITIONS:**

A) Discretion: A power or right conferred upon officers by law of acting, or not acting, officially in certain circumstances, according to the dictates of their own judgement and conscience and their Oath of Honor.

B) Reasonable: The behaviors and actions that would be used by other reasonable and well-trained officers if faced with the same or similar circumstances.

C) Member: As used in this document, this means any employee of the Bennington Police Department, whether sworn, civilian, full time, part-time, or otherwise.

This Policy is adopted by the Select Board of the Town of Bennington, Vermont, this ____ day of _____, 2021 and is effective as of this date until amended or repealed.

_____

Jeannie Jenkins, Chairperson

| CODE OF CONDUCT | Related Policies: Social Media, Response to Resistance/Use of Force, Duty to Intervene, Use of CEW's, Collaborative Partnerships |
|---|---|
| *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 department for non-judicial administrative action in accordance with the laws governing employee discipline.* | |
| Applicable Vermont Statutes/Rules: | |
| Date Adopted: | Date Reviewed: |

## I. PURPOSE

~~Since t~~The mission of the Bennington Police Department (BPD or Agency) states in part, "The BPD is accountable to the community for providing everyone, regardless of identity, with respectful and equitable law enforcement, protection, and service.~~,~~" ~~A~~aIn accordance with that mission, all members of the ~~Bennington Police Department~~BPD ("Member" or "Members," as defined in Section III, below) must be fully aware of the ethical responsibility of their position and must strive constantly to live up to the highest ~~possible~~ standards of professional policing, and commit to understanding and following all of the General Orders (adopted Policies) of the BPD.

The purpose of this policy is to provide standards of conduct embodied in the Law Enforcement Officer's Oath of Honor and this ~~A~~agency's statement of values and mission so that all officers and employees of the BPD have a clear understanding of ~~A~~agency and community expectations pertaining to conduct and activities while on and off duty.

~~The Town of Bennington and the Bennington Police Department Police Officers, Dispatchers and Civilian Staff believe it is important that they have clear advice and counsel available to assist them in performing their duties consistent with these standards, and has adopted the following ethical mandates as guidelines to meet these ends.~~

## II. POLICY

A. PRIMARY RESPONSIBILITIES OF A POLICE OFFICER

A Bennington Police Officer acts as an official representative of government who is required and trusted to work within the law. The Officer's powers and duties are conferred by statute. The fundamental duties of a Police Officer include serving the community; safeguarding lives and property; protecting the ~~innocent~~ public; keeping the peace; and ensuring the rights of all to liberty, equality and justice. ~~(IACP B-1 & B-3)~~ Officers shall follow the BPD's mission and values statement, oath of honor and this Code of Conduct. If an officer experiences an ethical conflict with respect to these ~~items~~obligations, the~~y~~ Officer should consult a supervisor for further clarification. Officers shall abide by all laws, regulations, BPD policies, rules and procedures. Officers shall obey all lawful orders.

B. PERFORMANCE OF THE DUTIES OF ALL MEMBERS (~~*Refer to*~~ *See* Policy on Fair and Impartial Policing~~FAIP~~)

All M~~m~~embers shall perform all duties impartially, without favor or affection or ill will and without regard to ~~status, sex, race, religion, political belief or aspiration, (New List)~~ actual or perceived race, color, religion, national origin, sex, ancestry, age, service in the US Armed Forces, disability as defined by 21 V.S.A. § 495d(5), sexual orientation, or gender identity (13 V.S.A. § 1455). All citizens will be treated equally with courtesy, consideration, and dignity. ~~(IACP B-10 Last Bullet)~~

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Members shall not knowingly join or participate in any organization that advocates, incites, or supports criminal acts or criminal conspiracies or that promotes hatred or discrimination toward racial, religious, ethnic, or other groups or classes of individuals protected by law. Members will never allow personal feelings, animosities or friendships to influence official conduct. Laws will be enforced appropriately and courteously and, in carrying out their responsibilities, M~~m~~embers will strive to ~~obtain~~ achieve ~~maximum~~ the greatest~~-~~ level of cooperation from the public. They will conduct themselves in appearance and dep~~a~~ortment in such a manner as to inspire confidence and respect for the position of public trust they hold.

C. DISCRETION

A ~~m~~Member will use ~~responsibility~~ the discretion vested in the position responsibly and exercise it within the law. The principle of reasonableness will guide ~~the~~the ~~-M~~member's determination~~s~~, and the M~~m~~ember will consider all surrounding circumstances in determining whether any legal action ~~shall~~ should be taken.

Consistent and wise use of discretion, based on professional policing competence, will do much to preserve good relationships and retain the confidence of the public. There can be difficulty in choosing between conflicting courses of action. It is important to remember that a timely —word of advice rather than arrest, ~~which may be correct,~~ in appropriate circumstances can be a more effective means of achieving an

outcome that is ~~desired and~~ just, equitable, ~~-~~and beneficial to the community, so long as such discretion is not exercised in a manner that is discriminatory.

D. USE OF FORCE (~~Refer to,~~*See* Response to Resistance/Use of Force, ~~and~~ Duty to Intervene, and Use of CEW's)

~~"Respect for Life is the primary value of the Bennington Police Department."~~ "The BPD and all officers recognize that the sanctity of human life serves as the guiding principle in use of force decisions."[1]

A Bennington Police Officer will never employ unnecessary force or violence and will use only such force in the discharge of duty as is reasonable in all circumstances.

The use of force should be used only with the greatest restraint and only after discussion, negotiation, ~~and~~ persuasion, or other de-escalation techniques have been found to be inappropriate or ineffective. While the use of force is occasionally unavoidable, every Police Officer will refrain from unnecessary infliction of pain or suffering and will never engage in cruel, degrading or ~~inhumane treatment~~inhumane treatment of any person.

E. ~~CONFIDENTIALITY~~ (CONFIDENTIALITY (~~Refer to,~~*See* Social Media Policy)

~~Whatever~~ When a M~~m~~ember sees, hears, or learns of information that is generally understood to be ~~of a~~ confidential~~ity~~ in nature, ~~and whenever,~~the member will ~~be kept secret~~ maintain such confidentiality unless the performance of duty or ~~legal provision~~provision of law~~-~~ requires otherwise, or as directed by Court Order.

Members of the public have rights to security and privacy, and information obtained about them must not be improperly divulged. This includes but is not limited to: ~~(IACP #9- Bullets 5 & 7; C-2 Bullet 2).~~

- Members are prohibited from using law enforcement sensitive information gained ~~-~~through their position to advance financial or other private interests of theirs or others, or where such disclosure is not reasonably necessary in furtherance of job performance or other official duty.
- Members shall not take or release photographs capturing sensitive information or images unless authorized to do so.
- Members shall not, when officially acting as a representative of the BPD, divulge or willfully permit to have divulged any information gained by reason of their position, for anything other than its official, authorized purpose.

F. INTEGRITY

[1] "Response to Resistance/Use of Force Policy" of the Bennington Police Department, adopted 12/14/2020.

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A Mmember will not engage in acts of corruption or bribery, nor will a Mmember condone such acts by others.

The public demands that the integrity of Bennington Police Department Mmembers be above reproach. Members must avoid any conduct that might compromise integrity and thus undercut the public confidence in the Bennington Police Department. Members will refuse to accept any gifts, presents, subscriptions, favors, gratuities or promises that could be interpreted as seeking to ~~cause~~ influence the Mmember ~~to refrain~~ from performing official responsibilities honestly and within the law. Bennington Police Department members must not receive private or special advantage from their official status. Respect from the public cannot be bought, it can only be earned and cultivated.

G. ~~COOPERATION~~ COLLABORATION WITH OTHER AGENCIES (~~Refer to~~ *See* Collaborative Partnerships)

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Bennington Police Department Mmembers will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. In addition, the BPD will collaborate with a variety of community agencies and organizations in order to fulfill its vision and mission.; ~~T~~to include, but not limited to: United Counseling Service, Project Against Violent Encounters (PAVE), Southwestern Vermont Medical Center (SVMC), Vermont Council for Independent Living (-VCIL), or other agency or organization.....

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An ~~O~~officer or ~~agency~~ Agency may be one among many organizations that may provide law enforcement services to a jurisdiction. (e.g. Vermont State Police, Bennington County Sheriff's Department). It is imperative that all Mmembers assist colleagues fully and ——completely with respect and consideration at all times.

When the BPD ~~enters into~~enters a collaborative relationship with an agency expressed in a Memorandum of Understanding (MOU) a copy of that MOU will be made available to all Mmembers of the department.

H. PERSONAL-PROFESSIONAL CAPABILITIES

Bennington Police Department Mmembers will be responsible for their own standard of professional performance and will take every reasonable opportunity to enhance and improve their level of knowledge and competence.

Through study and experience, a Bennington Police Department Mmember ~~may~~ should acquire ~~the~~ a high level of knowledge and competence that is essential for the efficient and effective performance of duty. The acquisition of knowledge is a never-ending process of personal and professional development that should be pursued constantly.

I. PRIVATE LIFE (~~Refer to~~ *See* Social Media Policy)

Bennington Police Department M~~m~~embers will behave in a manner that does not bring discredit to the agency or themselves. (*see* J. below)

~~Officer~~Members shall follow applicable law and the policies of the BPD regarding their participation and involvement in political activities. ~~(IACP – D) Members shall follow applicable law and policies of the BPD regarding their participation and involvement in political activities.~~ Where legal mandates are silent on this issue, members shall be guided by the following examples of prohibited political activities while on-duty, in uniform, or otherwise serving as a representative of the BPD. Members shall not:

1. Place, affix, or display any campaign literature or other paraphernalia in or on government-owned or controlled property, to include offices and vehicles~~;~~.
2. Solicit political funds from any member of the BOD or other governmental agency of this jurisdiction~~;~~.
3. Solicit contributions, signatures, or other forms of support for political candidates, parties, or ballot measures~~;~~.
4. Use official authority to interfere with any election or with the political actions of other officers or the general public; or
5. Favor or discriminate against any person seeking employment because of political opinions or affiliations.

A M~~m~~ember's character and conduct while off duty must always be exemplary, thus maintain a position of respect in the community in which they live and serve. The ~~member's~~ Member's personal behavior must be beyond reproach.

J. CONDUCT UNBECOMING AN OFFICER

Members shall not conduct themselves in a manner, on or off duty, that:

- casts doubt on their integrity, honesty, moral judgment, or character~~;~~.
- brings discredit to the Bennington Police Department.
- impairs the BPD's efficient and effective o~~p~~peration.

**III. DEFINITIONS:**

A) Discretion: A power or right conferred upon officers by law of acting, or not acting, officially in certain circumstances, according to the dictates of their own judgement and conscience and their Oath of Honor.

B) Reasonable~~ness~~: The behaviors and actions that would be used by other reasonable and well--trained officers if faced with the same or similar circumstances.

C) Member: As used in this document, this means any employee of the Bennington Police Department, whether sworn, civilian, full time, part-time, or otherwise.

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This Policy is adopted by the Select Board of the Town of Bennington, Vermont, this ____ day of _____, 2021 and is effective as of this date until amended or repealed.

_____
Jeannie Jenkins, Chairperson

~~IV. PROCEDURES:~~

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# Statewide Policy on Police Use of Force

***Effective date: October 1, 2021***

INTRODUCTION:

***This is a statewide use of force policy created pursuant to Executive Order 03-20. This policy is a guide and shall not be construed as creating any substantive or procedural rights enforceable at law by any party in any civil, criminal, or administrative matter. It only applies in internal agency or Criminal Justice Council proceedings, as appropriate. This policy shall not be construed as creating a higher legal standard of care with respect to third party claims. This policy and its appendices are subject to the considerations in this introduction as well as the definitions that follow, and shall be construed consistent with any law governing the use of force, including 20 V.S.A. § 2368.***

Every law enforcement officer in Vermont is committed to upholding the Constitution, as well as the laws of the United States and Vermont, while defending the civil rights and dignity of all persons. Whenever possible, police seek to accomplish lawful objectives through cooperation with the public and with minimal reliance on physical force to overcome resistance.

There are times when use of force against a citizen is unavoidable. In these cases, the decision to use force should not be undertaken lightly and the facts and circumstances of each case must be evaluated carefully and thoroughly. Many times, this analysis must be made in a split second under tense and rapidly evolving circumstances.

While force is used in response to a subject's behavior, officers should recognize that their own conduct can contribute to the need to use force. Whenever feasible and safe for all involved, officers should seek to use de-escalation techniques, which include effective communication skills and use of available resources to reduce the need to use force.

Nothing in this policy should be construed to require officers to assume unreasonable risks in the performance of their duties. The safety of the officer(s) and the public is paramount. Officers who fail to use timely and adequate force when it is necessary may endanger themselves, the community and fellow officers. Conversely, officers who use unreasonable force degrade the community's confidence in the police and expose themselves and the agency to legal risks.

POLICY STATEMENT:

This agency believes in the sanctity of every human life and in the value of de-escalation and effective communication. When force is necessary to bring an event or incident under control, officers will use only objectively reasonable force to accomplish lawful objectives.

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## SECTION 1: DEFINITIONS

**Active resistance** - A subject using physical activity to resist or take affirmative action to defeat an officer's ability to take them into custody or to seize them, but the subject's actions would not lead a reasonable officer to perceive a risk of physical injury to themself, the subject, or a third person. Examples of active resistance include pulling away, escaping or fleeing, struggling and not complying on physical contact.

**Passive resistance** – A subject who takes no affirmative action to defeat police efforts to make an arrest but who does not respond to verbal commands and may refuse to move by sitting down, acting as "dead weight" or similar.

**Active aggression** - Behavior that an objectively reasonable officer would believe creates an imminent risk of physical injury to the subject, officer, or third party, but would not lead a reasonable officer to perceive a risk of death or serious bodily injury. Examples include an attack on an officer, strikes, wrestling, undirected strikes with injury potential, kicking, shoving, punching, and other words or behavior indicating that such actions are imminent.

**Deadly force** – Any use of force that creates a substantial risk of causing death or serious bodily injury.[1] Also referred to as lethal force.

**De-escalation** - Actions used by officers, when safe and feasible without compromising law-enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of gaining voluntary compliance from a subject. This generally refers to the act of moving from a state of high tension to a state of reduced tension. Common de-escalation techniques include deliberately slowing the progression of law enforcement actions, using barriers, cover and distance, as well as communicating in a calm, clear manner, using active listening skills and asking open ended questions. When appropriate *and available*, officers should consider calling in and relying on resources, such as crisis teams or embedded social workers, to assist in de-escalating a situation.

**Force** – Physical coercion employed by a law enforcement officer to compel a person's compliance with the officer's instructions.[2] For the purpose of this policy, this includes all law enforcement actions beyond compliant handcuffing.

**Imminent threat of death or serious bodily injury** – Based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity and apparent intent to immediately cause death or serious bodily injury to the law enforcement officer or another person. An imminent threat is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of harm, but is one that, from appearances, must be immediately addressed and confronted.[3]

**Intervene** – To come between, whether physically or verbally, to prevent or alter a result or course of events.

**Law enforcement officer** – Shall have the same meaning as 20 VSA 2351a[4], used interchangeably with "officer."

**Necessary** - When a reasonable officer with the same information and in the same situation would conclude that no reasonably effective alternative appears to exist.

**Objectively reasonable** - Whether the decision by a law enforcement officer to use force was objectively reasonable shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances. A law enforcement officer's failure to use feasible and reasonable alternatives to force shall be a consideration for whether its use was objectively reasonable. The calculus of reasonableness must allow for the fact that police officers are often forced to make split-second decisions about the amount of force that is

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[1] H.145 language (a)(2)
[2] H.145 language (a)(3)
[3] H.145 language (a)(4)
[4] H.145 language (a)(5)

necessary in a particular situation, in circumstances that are tense, uncertain, dynamic and rapidly evolving.

Factors to be considered in determining the objective reasonableness of force include, but are not limited to:

- The seriousness of the crime or suspected offense;
- The level of threat or resistance presented by the subject(s) (e.g. proximity to weapons, potential for escape, availability of other resources or officer backup);
- Whether the subject was posing an immediate threat to officers or a danger to the community;
- The potential for injury to citizens, officers or subjects (e.g. levels of exhaustion, relative size, strength, skill level, age of suspect versus officer as well as number of officers versus subject(s).

**Chokehold**– means the use of any maneuver on a person that employs a lateral vascular neck restraint, carotid restraint, or other action that applies any pressure to the throat, windpipe, or neck in a manner that limits the person's breathing or blood flow.[5]

**Proportional** - To be proportional, the level of force applied must reflect the totality of circumstances surrounding the situation at hand, including the nature and immediacy of any threats posed to officers and others. Officers must rely on training, experience, and assessment of the situation to decide an appropriate level of force to be applied. Reasonable and sound judgment will dictate the force option to be employed. Proportional force does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be proportional, objectively reasonable, and necessary to counter it.

**Totality of the circumstances** – means the conduct and decisions of the law enforcement officer leading up to the use of force and all facts known to the law enforcement officer at the time, including the conduct of the person or persons involved.[6]

## SECTION 2: CONSIDERATIONS PRIOR TO FORCE BEING USED

The authority of law enforcement to use physical force is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and with sanctity for every human life. Every person has a right to be free from excessive force by officers acting under authority of the State.[7] The decision by a law enforcement officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by law enforcement officers, in order to ensure

[5] H.145language (a)(1)
[6] H.145language (a)(6)
[7] H.145language (b)(3)

that officers use force consistent with law and with agency policies.[8] Agencies shall provide officers with training, clear policy guidelines and supervision on use of force consistent with law and policy.

Use of force is intended only to control behaviors and situations while accomplishing a lawful purpose. It is never intended to be punitive. Officers must constantly re-assess the totality of the circumstances in any encounter where force is necessary to gain compliance from an individual.

A law enforcement officer shall use only the force objectively reasonable, necessary and proportional to effect an arrest, to prevent escape or to overcome resistance of a person the officer has reasonable cause to believe has committed a crime or to achieve any other lawful law enforcement objective.[9] Whenever feasible, officers shall allow individuals reasonable time to submit to arrest or detention before force is used.

**When possible, officers shall use de-escalation tactics.** This includes taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation, reduce the likelihood that force will be necessary and increase the likelihood of cooperation from the person. The goal of de-escalation is to reduce the immediacy of a threat so that more time, options, and resources can be called upon to resolve the situation without force or with a reduction in the amount of force necessary. This commitment to de-escalation means that officers should not knowingly create exigency or take actions that may increase the likelihood of force becoming necessary.

De-escalation may include the use of such techniques as scene management; calm, respectful and clear communication; use of warnings; verbal persuasion; deliberately slowing the progression of law enforcement actions; creating more space between the officer and person; using cover or barriers; and team tactics. Even as a use of force encounter is happening, de-escalation must be re-evaluated so that if the level of resistance offered by the subject goes down, so should the officer's response.

**Special situations:** Appendix D provides guidelines for interacting with persons experiencing mental impairment. When a law enforcement officer knows that a subject's conduct is the result of a medical condition, mental impairment, developmental disability, physical limitation, language barrier, drug or alcohol impairment, or other factor beyond the subject's control, the officer shall take that information into account in determining the amount of force appropriate to use on the subject, if any.[10] This is especially important when responding to calls for service that are non-criminal in nature such as a welfare check or a known mental health crisis.

Police use of force is in response to behaviors, and the underlying cause of those behaviors may not always be apparent during a police-citizen encounter. Some people with mental and physical impairments may be unable to comply with police requests for reasons beyond their

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[8] H.145 language (b)(4)
[9] H.145language (b)(2)
[10] H.145 (b)(5)

control. Intoxicated or otherwise impaired individuals may also have a compromised ability to understand or comply with commands from police. When officers have knowledge of these disabilities or conditions, they should factor this knowledge into their response to these individuals, so long as it is safe to do so. When time allows during interactions with such persons, officers should emphasize de-escalation as well as the ability to use time and physical distance to reduce the likelihood of force being necessary.

## SECTION 3: LESS LETHAL FORCE

The dynamics of all encounters are unique. It is impossible to attempt to categorize and define the levels of force appropriate in any given situation or set of variables. When an officer determines that use of force is necessary and appropriate, the officer shall utilize objectively reasonable force. Officers should modulate their use of force as resistance changes.

In determining whether a particular use of force is objectively reasonable, the officer must consider:

A. The seriousness of the offense the officer believes the subject is involved in;
B. Whether or not the subject poses an immediate physical threat to the officer or others;
C. The degree of the threat posed by the subject;
D. Whether the subject is actively resisting or attempting to evade arrest/detention by flight;
E. Whether the totality of the circumstances justifies the officer's response.

Agencies shall provide officers with a range of force options and appropriate training or certification on these tools or techniques. Not all agencies will have the same force options. Officers may only carry tools/weapons that are approved by the agency and for which they have been trained. Officers must comply with all training requirements of the Vermont Criminal Justice Council. Agencies must provide policy guidance on the use of agency-approved tools or weapons. Improvised tools as described in section C below are not subject to the approval and training in this paragraph.

Officers are responsible for visually inspecting their issued equipment prior to each shift and testing any equipment consistent with training and manufacturer's recommendations. Any equipment that the officer knows is not functioning properly shall not be used.

When an officer meets resistance in the performance of lawful duties, reasonable attempts to inform the subject of the reason the officer is taking relevant actions should be made. To the extent feasible, persuasion and de-escalation should be used and officers should take reasonable steps to provide accessible, effective communication.

When a subject is not compliant, response to resistance can be addressed by "empty-hand" techniques or in some circumstances, using tools designed to bring a situation under control. Examples of empty-hand techniques include:

A. **Officer Presence/Verbal Commands/Persuasion:** While not a use of force, officer presence and communication can be an effective way to control a situation. Officers should use effective communication skills when practical. Persuasion may occur by a show of authority either by a uniform presence or obvious identification as a police officer. Verbal and non-verbal commands should be given to direct and let the subject know what is expected of them. Officers should document their verbal orders regarding arrest, investigative detention, or protective custody, verbal warnings regarding non-compliance and the results. The subject should be informed as to the reason for detention as soon as practical.

   The option of officer presence and verbal commands should not be construed to suggest that an officer risk losing control of a situation, or potentially endanger the safety of themselves or others, where the use of escalated force is the proper choice.

B. **Control/Restraint (including soft empty-handed control techniques):** Officers may use a variety of techniques in accordance with their training to gain compliance of passively or actively resistant subjects including but not limited to techniques using their hands, elbows, arms, legs and bodies.

Common tools used in police use of force include:

A. **Aerosol Agents:** Aerosol Agents are designed to respond to various threat levels and may be utilized to address subjects who are actively resisting. When an aerosol agent has been used an officer shall, as soon as practical, provide the subject with the Administrative Warning form (See Appendix B) in preparation for providing care for the individual contaminated by the product. Decontamination should occur as soon as practical following the application of an aerosolized agent.

   Oleoresin Capsicum (OC) 10% solution is an example of an aerosol agent used by some departments. It may be issued in one of several delivery systems including individual "fog" spray, or individual "stream" spray, or a crowd control "fog" system. The crowd control "fog" system may be used in special circumstances and must be authorized by the Officer in Charge.

B. **Conducted Energy Weapon (CEW):** See statewide policy on CEW use. **In addition to the statewide policy, officers must carry a CEW in a "cross draw" manner that is over the midline of their body toward their non-firearm side or on their non-firearm side in a "support hand draw" manner.**

C. **Police Batons:** A fixed or expandable impact and control weapon. The baton is designed to respond to various threat levels. Since the levels of force used in response to threats differ, the officer must evaluate the level of the threat to determine the appropriate techniques to be employed. Batons can be used in accordance with approved techniques and target areas as a tool for control and restraint techniques, impact techniques and as an instrument to assist in the movement of individuals or groups of individuals. There may be exigent circumstances that prevent the use of a baton but require the use of an impact device due to the level and immediacy of a threat. In such circumstances, an officer may utilize alternate techniques or devices, as good judgment would deem appropriate, such as the use of arms and legs, flashlight, clipboard or other such method.

**Additionally, under circumstances that present an *imminent risk of serious bodily injury or death*, that from appearances must be immediately addressed and confronted, improvised weapons such as pens, knives carried by officers to cut ligatures and seat belts and other such tools or instruments could be used.**

D. **Use of police canines (K-9):** Canines can be used in numerous ways that are not considered a use of force such as search and rescue or evidence searches. When used as a force option to protect the handler and/or others or to apprehend a person, canines are generally considered to be commensurate to an impact tool. An example of using canines at a lower level of force is a sit watch to monitor subjects who have been detained. See agency policy on use of police canines for more information.

E. **Less Lethal Impact Munitions (LLIMs) or impact projectiles:** LLIMs are designed to function as extended range impact weapons and their use is justified whenever use of an impact technique is appropriate. The intended role of less lethal munitions is to immobilize resistant persons at safe distances to prevent injury to officers or the public. LLIMs are discharged only by specially trained officers called "Grenadiers."

i. LLIMs may be used to prevent the escape of suspects under appropriate circumstances. In these cases, the severity of the threat posed by the continued freedom of the suspect must be carefully weighed.

ii. LLIMs are also effective in crowd control and riot situations. When their use is anticipated in this capacity, the Grenadier will obtain clearance from the Officer in Charge prior to deploying one or more LLIMs. (NOTE: Crowd control policy further informs this area of operations. No use of force action, including LLIMs, shall be used during peaceful protests and demonstrations.)

iii. The decision to use LLIMs should never be done at the risk of officers' safety or that of the public. Officers should not assume unreasonable risks in deploying LLIMs against a suspect threatening to use deadly force.

iv. If a suspect is threatening to use deadly force and LLIMs offer an opportunity to resolve the incident without use of deadly force, LLIMs may be deployed if:

a. The scene is contained and there are not active attempts of serious bodily injury; and

b. There is adequate staff on scene to supplement the use of LLIMs with deadly force options should LLIMs fail to control the suspect and result in further deterioration of the incident.

v. LLIMs may be used against wild and domestic animals to drive them away or to deter an attack. Where an animal poses a threat of bodily injury or must be euthanized, conventional firearms should be used.

F. **Firearms (Lethal Force):** see section 4 below.

G. **Factors in Choosing the Level of Force Deployed:** Circumstances that may be considered in the officer's assessment of physical threat and the appropriate use of force include, but are not limited to, the following:

i. Severity of the offense or significance of the need to apprehend the subject;
ii. Age;
iii. Size;
iv. Skill level (whether they possess knowledge of martial arts, advanced fighting techniques, etc.);
v. Number of suspects;
vi. Whether the suspect is armed or reported to be armed;
vii. Actual proximity to weapons;
viii. Prior experience with the suspect(s);
ix. Location of the encounter;
x. Background or peripheral hazards;
xi. The subject's response to commands/instructions;
xii. Availability of cover for the officer(s);
xiii. Physical condition and position of the officer and subject(s) – are there injuries, is the officer on the ground or in a compromised position;
xiv. Time considerations – when possible officers should seek to use additional time to their advantage to reduce the likelihood of having to use force through planning. Other time considerations include the action/reaction lag time, as well as the uncertainty of any response or instrument instantly stopping a threat.

xv. When a law enforcement officer knows that a subject's conduct is the result of a medical condition, mental impairment, developmental disability, physical limitation, language barrier, drug or alcohol impairment, or other factor beyond the subject's control, the officer shall take that information into account in determining the amount of force appropriate to use on the subject, if any. [11]

Officers are not required to use or consider alternatives that increase danger to themselves or to others. Nothing in this policy requires officers to assume unreasonable risks. In assessing the appropriate use of force, the safety of the public and the officer(s) is paramount.

All tools/devices intended for police use of force should be securely carried in their approved holders when performing uniform patrol functions. Tools should only be removed from their holders when their use is anticipated, for inspection or testing, or for storage in secure areas such as prior to entering interview rooms, booking facilities or while fingerprinting.

## SECTION 4: LETHAL FORCE

**General:** Lethal force is used to stop an action that could reasonably result in death or serious bodily injury to a person.

Agencies must specify what types of firearms, ammunition or other lethal force tools are authorized for use by officers.

Agencies shall also provide guidance on care, safe handling, storage and inspections of all lethal force tools.

**Use of Force Authorization:** An officer is justified in using deadly force upon another person only when, based on the totality of the circumstances, such force is objectively reasonable and necessary to:

1. Defend against an imminent threat of death or serious bodily injury to the officer or to another person; or
2. Apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.[12]

[11] H.145 language (b)(5)
[12] H.145 language (c)(1 A & 1 B)

The use of deadly force is necessary when given the totality of the circumstances, an objectively reasonable law enforcement officer in the same situation would conclude that there was no reasonable alternative to the use of deadly force that would prevent death or serious bodily injury to the officer or to another person.[13]

A law enforcement officer shall cease the use of deadly force as soon as the subject is under the officer's control or no longer poses an imminent threat of death or serious bodily injury to the officer or to another person.[14]

Even when lethal force is permissible, officers should assess whether its use creates a danger to third parties that outweighs the likely benefits of its use. For example, background or peripheral environments should be considered.

In the event an officer uses force that results in the death or serious bodily injury of a person, the procedure found in Appendix A "*Lethal force post-incident procedures and statewide policy on review of BWC recordings following lethal force incidents*" shall apply.

**Verbal warning:** When feasible, an officer shall, prior to the use of force, make reasonable efforts to identify himself or herself as a law enforcement officer and to warn that deadly force may be used.[15]

**Lethal force restrictions:**

A. Officers shall not use deadly force against a person based on the danger that person poses to themself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or another person.[16] Put more simply, officers shall refrain from using deadly force against a person who is only posing a threat to their own life and no other.

B. Chokeholds: A law enforcement officer shall not use a chokehold on a person unless deadly force is justified pursuant to 20 V.S.A. § 2368 (c) (1 – 4).[17]

C. Warning shots: Are strictly prohibited.

D. Discharging a Firearm and Moving Vehicles: An officer will not discharge a firearm at or from a moving vehicle unless: a person in the vehicle is threatening the officer or another person with lethal force other than the vehicle; or, the vehicle is operated

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[13] H.145 language (c)(2)
[14] H.145language (c)(3)
[15] H.145language (c)(5)
[16] H.145language (c)(4)
[17] H.145 language ((c)(6)

to deliberately strike a person(s) and all other means of defense (including moving out of the path of the vehicle) have been exhausted or are not practical.

E. Unholstering Firearms: Firearms should only be drawn when an officer has reason to fear for their safety or the safety of others (see section 7 (A.) below), and at no other time in any public place, except for humane destruction of an animal described below.

F. Dangerous/Injured Animals: Firearms may be utilized to euthanize a dangerous animal or one so badly injured that humanity requires its removal from further suffering when no other disposition is reasonably practical.

G. Alcohol or Drugs: Officers will not use any Department issued or approved firearm while under the influence of alcohol or regulated drugs not otherwise prescribed by a medical professional.

## SECTION 5: DUTY TO INTERVENE

All officers have an affirmative duty to intervene whenever they witness another officer using a chokehold or using excessive force.[18] In addition, officers shall report any instance of excessive force or use of a chokehold to a supervisor prior to the end of the shift during which it occurred.

## SECTION 6: DUTY OF CARE

Whenever a person in an officer's care or custody sustains an injury, becomes unconscious, displays a further altered mental status, or states that s/he is injured, the officer must provide, timely summon, or obtain appropriate medical attention. This applies whether the officer used force or not, and whether the person's condition preceded custody. Officers will provide care commensurate with their training and experience and officers will quickly summon emergency medical assistance when needed.

Additionally, any time a person has been sprayed with an aerosolized agent that causes irritation, s/he will be decontaminated as soon as practical. Officers will read the OC administrative warning form to the person being decontaminated. (See Appendix B)

## SECTION 7: REPORTING & SUPERVISORY REVIEW

[18] H.145(b)(7)

A. Reporting – Whenever an officer uses force beyond compliant handcuffing, they will complete a Use of Force Report (See Appendix C) and identify all relevant supporting documentation such as recordings, witness statements, etc. within 72 hours, except in the following circumstances:
    i. The officer is injured or otherwise unable to complete the report, in which case the officer shall provide the necessary information verbally to a supervisor as soon as practical.
    ii. When lethal force is used, or whenever the actions of an officer result in death or serious bodily injury to a person, the officer will not complete a Use of Force Report. Instead, an administrative investigation will be completed. The administrative investigation team will complete the data required in the Use of Force Report.
    iii. In cases where multiple officers use force in excess of compliant handcuffing during an incident, only one officer will author a Use of Force Report which clearly names all officers who used force. Each officer who used force will complete a supplemental report and all reports will be included as supporting documentation when the Use of Force Report is submitted.

Pointing the muzzle of a firearm at or in the direction of a person is considered a use of force. Officers shall not point the muzzle of a firearm at or in the direction of a person absent articulable facts that the situation may escalate to the point where use of lethal force would be justified. Drawing or maintaining a firearm at a ready position may be considered as a use of force if it is done during an encounter with a subject(s) or within view of the public. There is a clear distinction between escalating the use of force by unholstering a firearm during an encounter with others, versus unholstering a firearm during a building search, execution of a search warrant or any other activity in which only law enforcement personnel are present.

Use of Force Reports shall contain details of the citizen's actions and the officer's responses. Officers should take reasonable steps to gather and preserve any electronic or physical evidence, including witness statements, regarding use of force incidents.

B. Supervisory review procedure – A supervisor will review the Use of Force Report and all supporting documentation. At a minimum, supervisory review includes:
    i. Ensuring that the information submitted is complete and all required data is present.
    ii. Determining if the use of force was objectively reasonable and consistent with this policy. The supervisor shall make a notation indicating their approval or disapproval of the use of force being reasonable.
    iii. Identifying any need for training, performance counseling or other administrative action.

iv. If necessary, consulting with the officer or returning the report for more information.
v. Supervisory review of whether the decision by an officer to use force was objectively reasonable shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances. A law enforcement officer's failure to use feasible and reasonable alternatives to force shall be a consideration for whether its use was objectively reasonable.[19]
vi. The home agency CEO shall make a referral to the Vermont Criminal Justice Council pursuant to 20 V.S.A. §2401 (2)(C) anytime a finding of excessive use of force is made.
vii. The home agency CEO shall make a report to appropriate authorities if the review uncovers evidence that a crime has been committed.

## SECTION 8: ADMINISTRATIVE INVESTIGATION

The Vermont law enforcement community recognizes the enormous responsibility that comes with the authority to use force. As guardians of our communities, the police must ensure that all uses of force, but especially those resulting in death or serious bodily injury, are thoroughly reviewed.

Anytime an officer employs lethal force or takes action that results in death or serious bodily injury to a person; the agency shall conduct an administrative investigation. This investigation is separate from any criminal investigation that may occur. The agency may employ outside assistance to conduct the administrative review. The purpose of the review is to document the incident, complete required Use of Force report(s), determine if the incident is within policy, identify areas for improvement and to determine if there are any training or policy implications.

This investigation may result in remedial training, recommendations for discipline or commendation, or recommendations for policy revision. [See Appendix A for more information]

## SECTION 9: TRAINING

At a minimum, officers must comply with all certification and in-service training standards of the Vermont Criminal Justice Council. For the purpose of annual certification, only use of force and tactics training conducted by instructors certified by the Vermont Criminal Justice Council is acceptable. All officers will receive a copy of and training on use of force policies at least annually and all training will be documented. In addition, all officers shall be trained on ways to

[19] H.145language (b)(1)

avoid confrontations, de-escalate conflict and recognize during a physical confrontation when de-escalation must occur.

If an agency considers sending officers to additional use of force or tactics training, the CEO should carefully review the content and philosophy of the training to ensure that it is consistent with Vermont law and this policy. Agencies are cautioned that standards for police use of force vary widely across the country and considerable scrutiny should be given to other trainings. Material from outside resources may not be introduced into the use of force training curricula for Vermont law enforcement officers unless the additional content has been reviewed by the VCJC Use of Force Committee and approved by the VCJC.

##

***References:***

"8 Can't Wait" from Campaign Zero

An Introduction to Vermont Criminal Law, Edition XIV revised 2018

Burlington, VT Department Directive 05 "Use of Force" revised June 17, 2020

Camden County, NJ Police Department policy "Use of Force" revised 08/21/2019

Federal Executive Order #13929 issued June 16, 2020

Final Report of the Major Cities Chiefs Association Police Reform Working Group January 2021

National Consensus Policy on Use of Force 2020

Police Executive Research Forum's Guiding Principles on Use of Force

Seattle, WA Police Department Manual, Title 8 "Use of Force"

South Burlington Police Department PR-302 "Use of Force"

United Nations Code of Conduct on Use of Force

Use of Force Policies: Dispelling the Myths by Lexipol

VT Act 165 & VT H.145 spring 2021

VT League of Cities & Towns policy "Response to Resistance" revised 2020

VT State Police DIR-701, 702, 703 Use of Force, Reporting & Training

**Appendix A - DRAFT Statewide Use of Force Policy on lethal force post-incident procedures and statewide policy on review of BWC recordings following lethal force incidents**

INTRODUCTION:

Impartial and thorough investigation of officer involved shootings and other serious use of force incidents is essential to ensure police accountability, transparency and to maintain public trust. The following procedure is to be followed whenever an officer is involved in a lethal force incident (see definition below).

Among other things, this document describes the transition from an officer(s) being the investigator to that officer(s) becoming the subject of parallel investigations (administrative and potential criminal) in the wake of a lethal force incident. It also provides clear direction on the use of BWC recordings in the wake of a lethal force incident.

DEFINITIONS:

***Chief Executive Officer (CEO):*** Means the person in control of a police agency, normally the Chief, Colonel or Sheriff.

***Lethal force incident***: Whenever an officer uses lethal force (whether the subject is injured or not); and, any incident where an officer takes any action that results in death or serious bodily injury to a person. Hereinafter referred to as "incident".

***Public Safety Statement***: A statement given at the scene of a lethal force incident, or as soon as practical, that allows the on-scene investigation to continue once the involved officer(s) leaves the area. It is a brief statement provided to the on-scene supervisor. The statement should include initial information such as type of force used; location of injured or dead person(s); description of any outstanding subject(s) including direction and mode of travel, known weapons, clothing description, etc.; description and location of any known victims, witnesses or evidence; and, any other information necessary to ensure officer and public safety and assist in the apprehension of outstanding suspects.

PROCEDURE:

When an incident covered by this policy occurs:

A. Officers should take actions necessary to render the scene safe.

B. When necessary or requested by subject(s) involved, officers shall immediately summon emergency medical services and immediately provide appropriate medical attention.

C. The ranking officer on scene shall assume incident command, and immediately request the response of a supervisor. Upon arrival, the supervisor shall take control of the incident scene.

D. The incident location should be secured for purposes of investigation and evidence preservation.

E. The involved officer(s) should provide a Public Safety Statement prior to leaving the scene when practical. The Public Safety Statement should be made as contemporaneously to the event as possible.

F. The involved officer(s) should be removed from the scene to a secure location or a medical treatment facility if necessary. An officer or other support person should be assigned to stay with the involved officer(s). If available, a Peer Officer Support Team (POST) member or similar crisis response staff should be assigned this task. The support person should avoid conversation about the incident and instead focus on the officer's health and well-being.

G. To maintain the integrity of the investigation those involved should not discuss the incident amongst themselves. This excludes communication with family, legal counsel, mental health personnel, medical personnel or union representation. Employees should be encouraged to refrain from watching or listening to the news, social media or podcasts regarding the incident in which they were involved.

H. Appropriate personnel should be contacted, including but not limited to the CEO, the VT State Police Major Crime Unit, the State's Attorney's Office and POST members or counselors as necessary.

I. At the direction of the Major Crime Unit, the involved officer(s) shall be photographed, and any injuries documented prior to the end of the shift. All BWC or other recordings of the incident shall be preserved as evidence by the home agency. The home agency will be asked to provide all video, audio, phone and radio transmission recordings of the entire incident to the Major Crimes Unit. Additionally, the officer(s)' firearm or other tools used in the incident will be collected and preserved as evidence. The CEO will determine if and when a replacement firearm will be issued to the involved officer(s).

J. When practical, the involved officer may walk through the scene to assist Major Crimes Unit with his/her location at the time lethal force was used and/or leading up to lethal force.

K. Involved officers shall **not** be allowed to view their body-worn camera footage prior to being interviewed by the Major Crime Unit, nor will they be permitted to review any other recordings of the incident or have them described by others. (See below for additional detail)

VT STATE POLICE INVESTIGATION:

When a Vermont law enforcement agency is involved in a lethal force incident, there are multiple priorities that must be considered. First and foremost, the agency must ensure public safety by cooperating with any investigation that seeks to identify person(s) who violate State or Federal law. Further, the agency has an obligation to its community to be as transparent and accountable as possible. Agencies also have an obligation to their employees who have the right to be treated fairly and in accordance with applicable collective bargaining agreements. There are times in the wake of a lethal force incident when the officer(s) becomes the focus of a criminal investigation to assess compliance with the law.

Officers involved in lethal force incidents are afforded the same constitutional rights as any person under criminal investigation. It is preferable for transparency that officers participate in the Major Crime Unit's investigative process.

The following procedure is the statewide practice for Major Crime Unit review of lethal force incidents:

1. Officer(s) provides a public safety statement at the scene.
2. Officer(s) do not review BWC or other recordings of the incident, nor are they given an account of any recordings by anyone.
3. Officer and their attorney meet with investigators to provide an initial statement unaided by recordings or other information surrounding the incident.
4. Following this statement, the officer and their attorney may review the officer's BWC or cruiser camera footage and or other video that would show the officer's perspective at the time force was used.
5. The officer and their attorney may then provide investigators with additional information.

Discrepancies between an officer's unaided and aided statements following an incident are expected. The science of memory in the wake of a stressful or traumatic event is extensive and points to numerous physiological phenomena during acutely stressful situations (e.g. auditory exclusion and tunnel vision) being common causes of discrepancies.

ADMINISTRATIVE INVESTIGATION:

Whenever an officer uses lethal force, the home agency will initiate a parallel administrative investigation. The CEO of the home agency may request an independent review or investigation by an outside entity. Even if an outside entity is used, the administrative investigation is different from a potential criminal investigation in that the involved officer(s) is/are compelled to participate in the administrative investigation process as a condition of employment. The administrative investigation will be conducted in compliance with 20 V.S.A. §2401(4) and 2402 and any other applicable law or regulation of the Vermont Criminal Justice Council.

In the event that an outside law-enforcement agency with jurisdiction (normally the VSP Major Crime Unit) initiates an investigation into the incident for the purpose of determining if there is criminal liability, the administrative investigation should occur after the criminal investigation and decisions by the Attorney General's Office and the State's Attorney's Office are complete.

The administrative investigator will interview the involved officer(s) and witnesses, and review all available evidence, information and statements. The administrative investigator may use information obtained as part of the criminal investigation but may **not** provide any information from the administrative investigation to criminal investigators or prosecutors. All applicable collective bargaining agreements will be followed during an administrative investigation.

The officer shall be kept informed of the progress of the administrative investigation and upon completion, notified in writing of the outcome.

The CEO or their designee shall notify the State's Attorney, relevant municipal/state legal counsel, and any duly appointed police oversight body (in executive session) of the administrative investigation's outcome. If the investigation concludes a necessity to report to the VCJC pursuant to 20 V.S.A. §2401, it shall be done without delay. A guide to reporting officer misconduct can be found here: https://vcjc.vermont.gov/content/act-56-reference-guide.

RECOMMENDATIONS PRIOR TO RETURN TO DUTY:

The officer(s) should be placed on administrative leave or assigned to administrative duties with no enforcement responsibilities pending completion of the criminal investigation and decision about prosecution by both the Attorney General's Office and the State's Attorney's Office. [20]

It is strongly recommended that the CEO direct the officer to obtain psychological follow-up for post-incident trauma and that the agency pays for such services. With prior approval from the CEO, an officer may seek psychological follow-up from a licensed professional of their choice. At least an initial psychological follow-up should be completed before the officer is reassigned to duty.

RELEASE OF BWC OR OTHER RECORDINGS IN THE WAKE OF A LETHAL FORCE INCIDENT:

Recordings, or portions thereof, taken during the course of these significant incidents do become public pursuant to public records law. In the wake of an incident, ensuring due process for every person involved is essential. The question of releasing recording is not *if*, but *when*.

[20] Keeping an officer on admin duty may not be feasible in some agencies. The CEO should carefully evaluate the circumstances and consult with the State's Attorney and Attorney General's Office prior to returning the officer to duties that may involve enforcing laws/ordinances or using force.

Following lethal force incidents, it is not uncommon for multiple agencies to possess copies of BWC or other recordings. For instance, the home agency, the Vermont State Police and the State's Attorney's Office or Attorney General's Office may all have copies of the relevant recordings. This can create confusion, duplication of effort and expense as well as inconsistency when presented with public information requests for release of the footage. Because multiple copies of digital recordings will exist, the following guidance is intended to identify the agency with the superordinate interest at certain stages post-incident.

When an outside agency (usually VSP) conducts a criminal investigation, the investigating agency will provide the home agency with a letter requesting preservation of all evidentiary items and describing the investigative process. Recordings are considered evidence in a criminal investigation. While the criminal investigation is ongoing, VSP (or other outside agency) is in control of the record[21] and, in consultation with prosecutors, will control release of recordings until the investigation is complete and the case has been reviewed by both the Attorney General's Office and the State's Attorney's Office.

a. If the VSP investigation results in criminal charges, the prosecuting agency shall be in control of the record and control release until such charges are resolved.
b. If the VSP investigation does not result in criminal charges, the home agency resumes its controlling role as the keeper of the record.

This procedure is intended to provide clarity to involved agencies, members of the public and media and to avoid confusion and unnecessary duplication of effort to process requests for recordings. Nothing in this guidance is intended to shield recordings from public examination. There are numerous factors that impact the release of body-worn camera or other recordings of a serious incident. It is not possible to create a definitive timeline for the release of recordings given the number of legal, investigative, operational, and external factors that bear on events on a case by case basis. Footage should be released as soon as practical in consultation with investigators, prosecutors, and organizational leaders. Whenever possible, release will occur within 30 days of the incident.

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[21] 1 V.S.A. 317(c)(5)

**Appendix B – Administrative Warning for Use of Aerosol Agents**

When an aerosol agent has been used an officer shall, as soon as practical, provide the subject with the Administrative Warning below in preparation for providing care for the individual contaminated by the product. Decontamination should occur as soon as practical following the application of an aerosolized agent.

Name: _____ Date:_____ Incident #:_____

You have been contaminated with an aerosol agent (insert the name of the product), a natural product derived from cayenne peppers. This aerosol agent is non-toxic and the effects will wear off in a short time.

The effects of being exposed may complicate other medical conditions, including, but not limited to:

1. Overdoses;
2. High levels of drugs like cocaine, amphetamines, barbiturates, PCP, opiates, heroin, prescription drugs or alcohol;
3. Medical conditions relating to heart problems;
4. Pregnancy.

I am going to ask you five questions for your own safety. Not answering my questions, withholding information or giving false or misleading answers could delay medical treatment and may seriously jeopardize your health and safety.

Do you understand everything I have told you? ___ YES ___ NO ___ Refused to answer

1. Are you currently under the influence of cocaine, amphetamines, barbiturates, PCP, opiates, heroin, prescription drugs or alcohol?

   ___ YES ___ NO ___ Refused to answer

2. Are you, or could you be pregnant? ___ YES ___ NO ___ Refused to answer

3. Do you have heart problems, lung problems, diabetes, high blood pressure, allergies or any other serious medical condition? ___ YES ___ NO ___ Refused to answer

4. Do you have a pacemaker? ___ YES ___ NO ___ Refused to answer

5. Do you wish to be medically evaluated? ___ YES ___ NO ___ Refused to answer

**Appendix C UOF Policy** – Use of Force Reporting minimum requirements

Whenever an officer uses force beyond compliant handcuffing, they will complete a Use of Force Report and identify all relevant supporting documentation such as recordings, witness statements, etc. **At a minimum**, agencies will collect data on the following fields:

1. Name, DOB, gender, race, address and contact info of the person or persons force was used on.
2. Name/rank/radio or badge number of the officer(s) involved.
3. Date/time/location of the use of force.
4. Incident number and call type
5. Description of the incident location to include whether it was indoors/outdoors, lighting conditions, and weather conditions.
6. Reason for the use of force such as: to effect an arrest, to defend self, to defend another, to effect an investigative detention, etc.
7. Description of the subject's behavior that necessitated the use of force.
8. Description of the level of resistance offered by the subject such as: passive resistance, active resistance, or assaultive.
9. Description of the force used by the officer(s) such as: empty hand controls or strikes, aerosol agent, baton (strikes or control/restraint techniques), display or use of CEW*, firearm, etc. This description should include all officer actions taken beyond compliant handcuffing, the intended target area, the area affected and a description of whether each action was effective to gain compliance. If relevant, the make/model/serial number of the tool used must be recorded.
10. Description of any injuries to the subject or officer, including where and by whom medical evaluation (if any) was provided, transport method to treatment, and photographs of injuries. A description and photos of any injuries should be obtained when feasible, even if the subject refuses medical attention.
11. Identification of other officers or agencies present when force was used.
12. Identification of any known witnesses.
13. A narrative of the incident including identification of any supplemental information such as medical records, recordings, whether the subject(s) is a member of a special population, if any community resources such as mental health professionals were consulted, etc.
14. Name of the supervisor(s) who reviewed the use of force report and an indication of whether the use of force was within or outside of policy.

*If a CEW is used, the following information should be documented:

a. Type of use (deployed from distance or drive stun) and number of cartridges and/or cycles applied;

b. Clothing of the subject and whether contact probes penetrated the subject's skin;

c. Whether CEW use was effective;

d. Taser and cartridge(s) serial numbers.

## APPENDIX D to Vermont Statewide Use of Force Policy – Use of Force Guidelines for Interacting with Persons Known to be Experiencing or Perceived to be Experiencing Mental Impairment

### I. PURPOSE

These guidelines are an extension of the Statewide Use of Force policy and are intended to assist Vermont law enforcement officers when they encounter persons known to be experiencing, or perceived to be experiencing, mental impairment to bring safe and effective resolution to the situation.

### II. INTRODUCTION

Act 27 addresses standards for law enforcement use of force. Specifically, 20 V.S.A. § 2368 (b)(1) states that a law enforcement officer's failure to use feasible and reasonable alternatives to force shall be a consideration for whether the use of force was objectively reasonable. Officers should make reasonable efforts to de-escalate the situation and if force is necessary, use only the force that is objectively reasonable, necessary and proportional to resolve the situation.

### III. MENTAL IMPAIRMENT

#### A. Definition

For purposes of these guidelines, mental impairment is defined as a diminishment in an individual's cognitive, emotional or behavioral functioning as a result of physiological or psychosocial factors. A person may experience mental impairment for a variety of reasons, including as a result of a mental illness, drug or alcohol use or a physical illness such as a traumatic brain injury or a diabetic emergency.

#### B. Signs that someone may be experiencing mental impairment

Signs that someone may be experiencing mental impairment include, but are not limited to:

- A person experiencing mental impairment may be distracted by auditory, visual or other stimulus and unable to comply with directions from law enforcement or to listen effectively.
- Appearance of heightened emotion or the opposite – flat affect/no emotions.
- Atypical aggression or displaying an unusually high energy level.
- Person may appear to be reacting to external or internal stimuli that is not able to be perceived by the officer (voices, smells, seeing something the officer doesn't).
- Disorganized behavior or atypical behavior like walking in traffic, not having clothes on or doing things that are unexpected given the context/environment.
- Incoherent speech, delayed speech, unprompted vocalizations or providing responses that do not match the questions asked.

- Sensitivity to auditory or sensory stimulation, covering their ears, turning away.
- Rocking back and forth or other self-soothing mechanisms.
- Non-compliance with officer's instructions in a manner that indicates an inability to comprehend or follow instructions rather than outright defiance. For example, a person may try to retreat away out of fear or appear to "freeze up."

### C. Possible reactions to uses of force by a person experiencing mental impairment

These are generalized statements and do not apply to all persons experiencing mental impairment

The person may have unexpected strength and tolerance to pain. This information may be useful when determining how many officers should be present and whether or not a hands-on approach will be successful or merely cause the officer(s) to have to escalate their level of force.

The person may be vulnerable to ill effects of Taser or certain restraints because of pre-existing or medication-induced conditions (if possible, check with family members or health care providers about a subject's pre-existing conditions before deploying force)

## IV. GUIDING PRINCIPLES

No two situations are alike. While every encounter is unique, there are some fundamental principles that should be upheld in every situation involving a person known to be experiencing or perceived to be experiencing mental impairment. First, acknowledging the sanctity of human life – including the lives of the subject(s), the officer(s), and the general public – is central to the police mission to protect and serve. In addition, the ability for law enforcement officers to display patience, humanity and genuine compassion in these situations will lead to better outcomes and increase public confidence. Next, law enforcement must go beyond a "what is justified" mindset to striving for what is the best possible outcome with the least amount of harm to all involved. This includes trying to limit the amount of trauma experienced by the subject, their family and the community. Lastly, law enforcement officers must be self-aware and not create the exigency that requires a use of force.

## V. LEGAL CONSIDERATIONS

There are specific state and federal laws as well as case law that apply to law enforcement use of force against persons law enforcement officers know or perceive to be experiencing mental impairment.

### a. Vermont Use of Force Law

Vermont's recently enacted statewide use of force law provides that when a law enforcement officer knows that a subject's conduct is the result of a mental impairment, the officer must take that information into account in determining the amount of force appropriate to use on the subject, if any.[22]

Vermont's statewide use of force statute also provides that a law enforcement officer shall not use deadly force against a person based on the danger that person poses to himself or herself if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the law enforcement officer or to another person.[23]

For example, if a person with a gun is threatening to kill themselves, it would be unlawful for a law enforcement officer to use deadly force against that person if an objectively reasonable officer would not believe that the person poses an imminent threat of death or serious bodily injury to others, including the law enforcement officer.

### b. Accommodations for Individuals with Known or Apparent Disabilities

When feasible, law enforcement officers should seek to reasonably accommodate individuals with known or apparent disabilities, including when considering the use of force against such individuals. Reasonable accommodations are specific to each situation. Examples of accommodations that may be reasonable include:

- Recognizing that an individual may be overwhelmed and removing distractions from the scene.
- Obtaining relevant information from family members, friends or others at the scene who know the individual and their history.
- Asking an adult member of the individual's family to participate in transport.
- Speaking slowly, simply, and briefly.
- Limiting the number of people who speak to the individual.
- Maintaining a comfortable distance from the individual.
- Engage in non-threatening communications.
- Use the passage of time to defuse a situation.
- Avoid physical contact.
- Call a nearby mental health counselor or peer support specialist.

[22] 20 V.S.A. §2368, subdivision (b)(5) (Added 2021, No 27, eff. October 1, 2021.)

[23] 20 V.S.A. §2368, subdivision (c)(4) (Added 2021, No 27, eff. October 1, 2021.)

c. Case law

A subject's mental impairment is one of among many factors that a court will consider in determining whether a law enforcement officer's use of force was objectively reasonable.[24] Other factors include the severity of the crime at issue, whether the subject poses an immediate threat to the safety of the officers, and whether the subject is actively resisting arrest or attempting to evade arrest by flight.[25]

Thus, use of force against an individual who has committed no crime, poses no threat to the community and whom the officer knows or reasonably should know is experiencing mental impairment is not evaluated in the same way as use of force to apprehend a person suspected of serious criminal wrongdoing or who poses a threat to the community.[26]

## VI. PROCEDURES

### A. Alternatives to be considered

Gaining control is not always necessary if the person is not harming themselves or others. The following suggestions are meant to emphasize the importance of understanding the role of law enforcement in a given situation. If no crime has been committed and the police are serving in a caretaking function, it is essential that the officer make an independent assessment of the situation.

- Even though police were called to the scene, does this constitute an emergency or an appropriate use of police resources? Absent an articulable fear of danger to a person, officers should consider if there are other community partners that might be better suited to handle this situation.

- Even though a person may be experiencing mental impairment does that mean police have to intervene or take the person into custody? Is it a crisis? Is there danger to self or others? Is there an emergent need to take action rather than summon other resources or make a referral to resources?

- Although a person may have a mental illness, this does not necessarily mean they are in need of or want mental health care.

### B. Identify the situation – planning/preparation

When time is available – such as during the response to such an incident – time can be used effectively to assist in a successful resolution. Either the responding officer, or in some cases, the dispatcher,

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[24] *Brunette v. City of Burlington*, Case No. 2:15-cv-00061, at p. 40 (D. Vt. Aug. 30, 2018); *Chamberlain v. City of White Plains*, 960 F.3d 100, 106 fn. 9, 108, and 114 (2d Cir. 2020)

[25] *Graham v. Connor*, 490 U.S. 386, 395 (1989).

[26] *Chamberlain v. City of White Plains*, 960 F.3d 100 (2d Cir. 2020); Gray v Cummings, 917 F.3d 1, 11 (1st Cir. 2019); *King v. Hendricks County Comm'rs*, 954 F.3d 981, 984 (7th Cir. 2020); *Vos v. City of Newport Beach*, 892 F.3d 1024, 2034 (9th Cir. 2018).

should begin to assess the circumstances by gathering as much information as is available. Useful information can be gleaned by considering the following preparation steps:

*BEFORE ARRIVAL TO THE SCENE*

- Who called the police and what prompted the call? What does the caller know about the subject? A family member with knowledge of the subject's condition and past history may be able to provide more reliable information than a stranger who can only report behaviors happening in real time.
- If there have been prior instances of the person needing assistance, does the caller know what helped?
- Dispatch should ask the caller if there are weapons involved, who is on scene and what the physical environment is.
- Officers should be familiar with the resources available in the area and enlist assistance as necessary because local resources may have knowledge of the individual and there may be a plan in place for this person.
- Check prior involvements with the person – is there information that points to a mental health impairment? Could this help explain some of the conduct being reported?
- Check CAD/RMS or other resources to see if there are contacts listed or family members or acquaintances who may be useful in the encounter. Information from prior encounters may provide ways to connect with the person.

*UPON ARRIVAL AT THE SCENE*

- Upon arrival and initial assessment of the situation, the officer should ask *do I need to take immediate action?* If the answer is yes, nothing in this appendix prevents an officer from doing so. If not, **slow everything down**.
- Officers should consider whether summoning a trained crisis negotiator or mental health clinician would be appropriate.

### C. Response guidelines – while in the encounter

Once on scene and able to assess the totality of the circumstances, officers may be able to use some of the following suggestions to facilitate a safe outcome. Time, containment, communication, self-regulation and utilization of community resources are effective tools to work toward peaceful resolution.

*CONTAINMENT*

- Keep distance from the person whenever able, both for officer safety reasons and to avoid making the person feel trapped.
- Try to limit the number of other influences who may be escalating the situation unknowingly (other persons on scene).

*TIME*

- Slow down the pace of events and try to establish rapport. Try to create a non-threatening environment where conversation can occur.
- Allow for the possibility that a successful resolution may look different than a typical police response. Expect that this will take longer than usual and do not rush to problem solving. Be open to alternative resolutions and collaboration with other stakeholders.

*SELF-REGULATION*

- Self-regulation – controlling your own level of stress and conveying calm. Officers should be mindful to not escalate things by their own behavior.
- Make a conscious choice to shift from enforcement mode to peaceful resolution mode. The safety of all persons trumps the need for the officer to control every movement. Be respectful. Avoid whispering or laughing. Validate the person's concerns and perspective of distress whether or not it is something you personally would find distressing.
- Officers should continually re-assess the purpose of their presence on scene and what the desired outcome is. Focus on keeping the person and situation calm.
- Be nice. Treat the person as a fellow human and provide the level of service that you would want if this was your loved one.

*COMMUNICATION*

- Utilize a contact officer and a cover officer. The cover officer should ensure the environment is safe and allow the contact officer to focus on the subject. The contact officer should be the only one to talk to the subject. The contact officer should continually assess their demeanor and intensity to try and de-escalate the situation. Consider changing contact officers or changing roles among responders if things are not going well or if the contact officer loses their patience.
- Command presence is unlikely to be effective in an encounter with a person experiencing mental impairment. Shouting or making threats is often counterproductive. Maintain your professionalism and calm demeanor. Do not use profanity or raise your voice. Some persons experiencing certain mental impairments may experience hyper-sensitive hearing such that a whisper may sound like a shout.
- Avoid directives such as "calm down" or "relax". Consider using non-adversarial phrases such as "I see you are upset. Please tell me about it" or "What can I do to help you?" Assure the person that you are there to help and they are not in trouble (or that the trouble can be overcome).
- Make only one request at a time or ask only one question. Ask open ended questions. Listen carefully to the responses and see if there is useful information to develop rapport or identify needs. Repeat back what they have said to you, paraphrase and check for understanding.
- Be aware of your non-verbal cues – facial expressions, body language, tone of voice and eye contact can be effective to help de-escalate a volatile situation.
- If an officer takes an action, assessing whether it had the desired effect or not will help inform next steps.

*COMMUNITY RESOURCES*

- Utilize community resources such as social workers, CRISIS clinicians, military resources (if the subject is a veteran), peer support specialists or other community members with special knowledge or a connection to the subject and allow them to inform elements of the response or take the lead as appropriate.
- Offer alternative resources as appropriate – if you gain information that the person is concerned about domestic violence or substance use, offer to connect them to community resources that do not focus on mental health.

## VI. SPECIAL SITUATIONS

### A. Welfare checks

When called to check the welfare of a person, the primary objective is to help and do no harm. Most welfare checks do not involve an allegation of criminal behavior and that changes the calculus of what is reasonable. The desired outcome is to get the subject whatever help they need without unnecessary harm or trauma being inflicted through the encounter.

*DISPATCHER/CALL TAKER*

- The call taker/dispatcher should try to ascertain as much information as possible about the situation, the subject of concern and the caller.
- Determine the caller's basis of knowledge of the subject.

*LAW ENFORCEMENT INDEPENDENT ASSESSMENT*

The officer needs to make an independent assessment of the situation and whether police intervention is needed. Consider speaking to the complainant prior to responding. Is an in-person response required?

*UPON ARRIVAL*

- On arrival, state who you are and why you are there. Try to reassure the person that you are there to help and determine that they are safe. Provide information about what would assist in resolving the concern.
- Try to establish communication, even if through a closed door.
- Officers should determine whether or not the person poses a risk to themselves or others. If the answer is yes, a plan should be made to take the person into protective custody. If the answer is no, the officer should consider making referrals to available resources or asking community resources to follow up with the subject.

*WARRANTLESS ENTRY –CONSIDERATIONS*

It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable. However, officers may render emergency assistance to occupants of private property who are seriously injured or threatened with such injury. The mere possibility of danger is insufficient. And, a person's mental illness does not alone create an exigent circumstance.

The core question is whether the facts would lead a reasonable officer to believe that there was an urgent need to render aid or take action. A warrantless search is no longer permissible once the exigency ends. The exigent circumstances rule does not apply where the police, without a warrant or any legally sound basis for warrantless entry, threaten that they will enter without permission unless admitted.

If police are going to make forced entry to the residence or a room, strong consideration should be given to announcing the intention to do so and allow the person an opportunity to open the door. Again, officers should not create the exigency that then requires immediate, forced entry.

**B. Warrants for emergency examination**

Law enforcement officers are periodically requested to take a person into custody pursuant to a warrant for emergency examination (EE). These guidelines should provide strategies for these encounters. Officers are reminded to make reasonable accommodations during service of EE warrants so long as it is feasible under the circumstances.

##

APPENDIX E: Police use of military equipment

UNDER CONSTRUCTION by the Vermont Criminal Justice Council's

*Military Equipment Acquisition Working Group*

On Aug 13, 2021, at 08:04, Jeannie Jenkins <jjenkins@benningtonvt.org> wrote:

***External Email***
***Use caution with links and attachments.***
***Forward suspicious emails to phishing@phin.org***

Hi Trey,

We have three questions to forward to you:

1. What are Vermont's masking best practices or do we simply follow CDC guidance?
2. At what point should Town meetings (Select Board, planning commission, etc.) move to required masking or remote? *(perhaps this is a version of question 1)*
3. I have 4 granddaughters in the local schools, 2 are immune-compromised. What practices should I be asking the school board to implement to protect the health of my grandchildren?

Thank you - and see you in September, Jeannie

DISCLAIMER: The information contained in this electronic message is legally privileged and confidential under applicable law and is intended for a particular addressee(s). If it is not clear that you are the intended recipient, you are hereby notified that you have received this transmittal in error; any review, copying or distribution or dissemination is strictly prohibited. If you suspect that you have received this transmittal in error, please notify Southwestern VT Health Care Corporation immediately by return email reply to helpdesk@phin.org, and immediately delete the transmittal and any attachments without making any copy or distribution. Thank you.

**Stuart Hurd**

---

**From:** Dobson, Trey
**Sent:** Tuesday, August 17, 2021 9:53 AM
**To:** Jeannie Jenkins
**Cc:** Stuart Hurd; Jeanne Conner
**Subject:** Re: [EXTERNAL EMAIL] COVID questions

Good morning! My apologies for the delayed response.

1 and 2. CDC guidelines on masking are based on both prevalence of virus in a community and assumption of vaccination rate. The guidelines specifically states to wear masks indoors regardless of vaccination status while ***in public,*** making the generalization that 50% of those encountered will be unvaccinated. The guidelines were not meant for a group of fully vaccinated individuals gathered indoors for an event, meeting, or other reason. The risk for this group in spreading the virus, and then spreading to others, remains very low (nothing is zero risk other than exclusive isolation).

The CDC recommends masks for everyone in public areas while viral prevalence is greater than 50 cases per 7 days per 100,000 population. That recommendation is meant to provide some autonomy and understanding of individual risk, particularly for the vaccinated. For example, one remains at low risk going to a typical grocery in Vermont, while the risk increases for attending church or crowded meeting in which there exists a mix of vaccinated and unvaccinated.

Here is a quick list of my recommendations:
- Ask that everyone wear masks at indoor public forums
- Mask not required at outdoor events (recommended for immunocompromised and those living with immunocompromised)
- Masks not required at private indoor meetings in which ALL participants vaccinated (and there are advantages in having these meetings without requiring masks)
- Avoid municipal mask mandate (complex reasoning here, best for verbal discussion in which I am happy to participate)

3. All present wearing masks indoors due to high viral prevalence and many not eligible for vaccine. Eat outside when possible. Distance when eating indoors.

Feel free to contact me anytime. Take care!

---

**Trey Dobson**

**MANAGER'S REPORT**
**August 23, 2021**

## ACTION

Garlic Town road closures The Chamber is requesting the following road closures on Saturday September 4th from 6:30 AM until 6 PM: School Street from Main to Pleasant; Valentine St from Union to Pleasant (the whole length) and Depot St from Main to the Entrance to GBIC's. Property owners will be notified.

Action requested Motion to approve the closures as requested.

## INFORMATIONAL

Senior Programs Attached please find the number of visits to the Senior Center during June and July. It is clear that Bingo and Bone Builders are very important offerings. While this is helpful information, it is also important to know who is using the facility. What is the range of ages; what is the mix of participants (male/female); what programs are desired by seniors; what are other Centers doing; what can we do better to communicate with the senior community; what is the role of Meals on Wheels; can this be improved; what other agencies may assist us in meeting the needs of seniors; how does the Y fit in; what other space may serve us better? We are embarking on a fact-finding mission to try to answer these questions. It is my goal to report back to the Board no later than November 8, 2021. This will allow for consideration of changes and to better understand budgetary impacts for the following fiscal year.

Highway Discontinuance issues Attached is a memorandum explaining two issues that have arisen regarding two roads brought to my attention by VTRANS. The first involves highway mileage; the second involves E911addressing. I have reached out to those impacted by the recommended changes and there are no objections. If the Board agrees, I will proceed to formally warn a public hearing.

Morgan Spring delivery system relocation We are very close to an agreement on this relocation effort. If we successfully close this negotiation, construction could start in September of this year and conclude before March 2022. Select Board approval will ultimately be needed for any new contracts for water purchases. The current contract expires in January 2023.

## FOLLOW-UP

The Bennington Police Department Report is attached.

The Bike/Ped Monthly Report is attached.

**Stuart Hurd**

**From:** matt@swvtchamber.com
**Sent:** Thursday, August 12, 2021 2:49 PM
**To:** Stuart Hurd
**Cc:** Mikaela Lewis; Lt Joel R Howard; Grande, Camillo; Shannon Barsotti; Dan Monks; Doucette, Paul; John Shannahan
**Subject:** Re: Road Closure Request - Garlic Town, USA

6

REVISED:

Date: August 11, 2021

Stuart Hurd, Town Manager

Town of Bennington

205 South Street

Bennington, Vermont 05201

Re: Road Closures Request

Stu,

Please consider this letter as our request for road closures for our Garlic Town, USA event on Saturday, September 4th. We are requesting that the specific roads mentioned below be closed to traffic from 6:30am until 6pm that day.

The road sections needing to be closed are the portion of School Street running from Pleasant to Main, all of Valentine Street running from Union to Pleasant and Depot Street from after the gas station and TJ's Fish

Fry from Main Street to before the GBICs parking lot and bridge (as we did recently with the Summer Homebrew Festival).

Our plans are to use the privately owned greenspace lot on the corner of Valentine Street and Main Street for select nonprofit children's activities and select vendors during Garlic Town (this will be known as "Clove C"), as well as have safe passage for our hay wagon drivers to deliver patrons to Cloves and downtown. School Street will be used for table seating for attendees as well as an information booth. Depot Street section closure will provide more walkability and safety between Clove A (at the Bennington Station Lot) and Clove B (on the former Tuttle lot).

We are requesting the use of road blocks (closure signs, road cones, etc.), but can manage the closing of that section of the road ourselves.

Of course, let me know if you have any questions.

Thank you,

Matt Harrington

Southwestern Vermont Chamber of Commerce

Cc: Chief Paul Doucette

Lt. Camillo Grande

Dan Monks

Lt. Joel Howard

John Shannahan

Shannon Barsotti

Mikaela Lewis

# JUNE 2021 SENIOR DATA

| DAY | M | T | W | T | F | S | S | M | T | W | T | F | S | S | M | T | W | T | F | S | S | M | T | W | T | F | S | S | M | T | W | T | F | S | S | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| DATE | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | | | | | TOTAL | |
| PAINTING GROUP | | | | | | | | 1 | | | | 1 | | | 2 | | | | 1 | | | 1 | | | | 1 | | | | | | | | | | 7 | PAINTING GROUP |
| BONE BUILDERS | | 21 | 2 | 21 | 3 | | | | 23 | 3 | 21 | 3 | | | | 16 | 1 | 17 | 3 | | | | 19 | 3 | 21 | 2 | | | | | | | | | | 179 | BONE BUILDERS |
| CRAFT CORNER | | | | 3 | | | | | | | 4 | | | | | | | 4 | | | | | | | 3 | | | | | | | | | | | 14 | CRAFT CORNER |
| HELP / INFORMATIO | | 1 | | 1 | 1 | | | | | 1 | | | | | | | 1 | 1 | | | | | | | | 1 | | | | | | | | | | 7 | HELP / INFORMATION |
| SOCIALIZE | | | | 2 | | | | | 1 | 1 | | | | | 1 | 3 | 1 | | | | | 6 | 1 | 1 | 1 | | | | | | | | | | | 18 | SOCIALIZE |
| FOOT CLINIC | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 0 | FOOT CLINIC |
| POT LUCK | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 0 | POTLUCK |
| CARDS & GAMES | | | | | | | | | | | | | | | | | | | | | | 3 | | | | 2 | | | | | | | | | | 5 | CARDS & GAMES |
| BINGO | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 0 | BINGO |
| SPECIAL EVENT | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 0 | SPECIAL EVENT |
| TAG SALE | | | | | | | | | | 1 | 2 | | | | | 2 | | | | | | | 1 | | | 2 | | | | | | | | | | 8 | TAG SALE |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 0 | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 0 | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 0 | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 0 | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 0 | |
| DAILY TOTAL | 0 | 22 | 2 | 27 | 4 | 0 | 0 | 1 | 24 | 6 | 27 | 4 | 0 | 0 | 3 | 21 | 3 | 22 | 4 | 0 | 0 | 10 | 21 | 4 | 25 | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 238 | DAILY TOTAL |

| | |
|---|---|
| 238 | MONTHLY TOTAL |

# JULY 2021 SENIOR DATA

| DAY | M | T | W | T | F | S | S | M | T | W | T | F | S | S | M | T | W | T | F | S | S | M | T | W | T | F | S | S | M | T | W | T | F | S | S | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| DATE | | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | | TOTAL | |
| PAINTING GROUP | | | | | | | | | | | | | | | 2 | | | 1 | 3 | | | 4 | | | | 2 | | | | | | | | | | 12 | PAINTING GROUP |
| BONE BUILDERS | | | | 23 | 1 | | | | 29 | | 23 | | | | | 31 | | 33 | | | | | 28 | | 24 | | | | | | | | | | 192 | BONE BUILDERS |
| CRAFT CORNER | | | | 2 | | | | | | | 2 | | | | | | | 3 | | | | | | | | | | | | | | | | | 7 | CRAFT CORNER |
| HELP / INFORMATION | | | | | | | | C | 2 | 2 | 1 | | | | 1 | | | 1 | 3 | | | 1 | 1 | | | 1 | | | | | | | | | 13 | HELP / INFORMATION |
| SOCIALIZE/ COFFEE TALK | | | | 2 | 2 | | | L | | 7 | 6 | 1 | | | 6 | 3 | 7 | 2 | 1 | | | 1 | 2 | 4 | 3 | 1 | | | | | | | | | 48 | SOCIALIZE/ COFFEE TALK |
| CARDS & GAMES | | | | | | | | E | | | | | | | | | | | | | | 6 | | | | | | | | | | | | | 6 | CARDS & GAMES |
| BINGO | | | | | 14 | | | D | | | | 17 | | | | | | | 18 | | | | | | | 21 | | | | | | | | | 70 | BINGO |
| SPECIAL EVENT | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 0 | SPECIAL EVENT |
| TAG SALE | | | | | | | | | | 1 | | | | | | | | | 1 | | | | | 1 | 1 | | | | | | | | | | 4 | TAG SALE |
| WALKING | | | | | | | | | | | | | | | 3 | | | | | | | 5 | | | | | | | | | | | | | 8 | WALKING |
| TRIVIA | | | | | | | | | | | | | | | | | 5 | | | | | | | | | | | | | | | | | | 5 | TRIVIA |
| MOVIE | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 0 | MOVIE |
| GREEN MTN TRIP | | | | | | | | | | | | | | | | | | 5 | | | | | | | | | | | | | | | | | 5 | GREEN MTN TRIP |
| OTHER | | | | | | | | | 1 | | | 2 | | | 2 | | | | | 1 | | 1 | | | | | | | | | | | | | 7 | OTHER |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 0 | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | 0 | |
| DAILY TOTAL | 0 | 0 | 0 | 27 | 17 | 0 | 0 | 0 | 32 | 10 | 32 | 20 | 0 | 0 | 14 | 34 | 12 | 45 | 27 | 0 | 0 | 18 | 31 | 5 | 28 | 25 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 377 | DAILY TOTAL |

| | |
|---|---|
| 377 | MONTHLY TOTAL |

**MEMORANDUM**

To: Select Board

From: Stuart A. Hurd, Town Manager

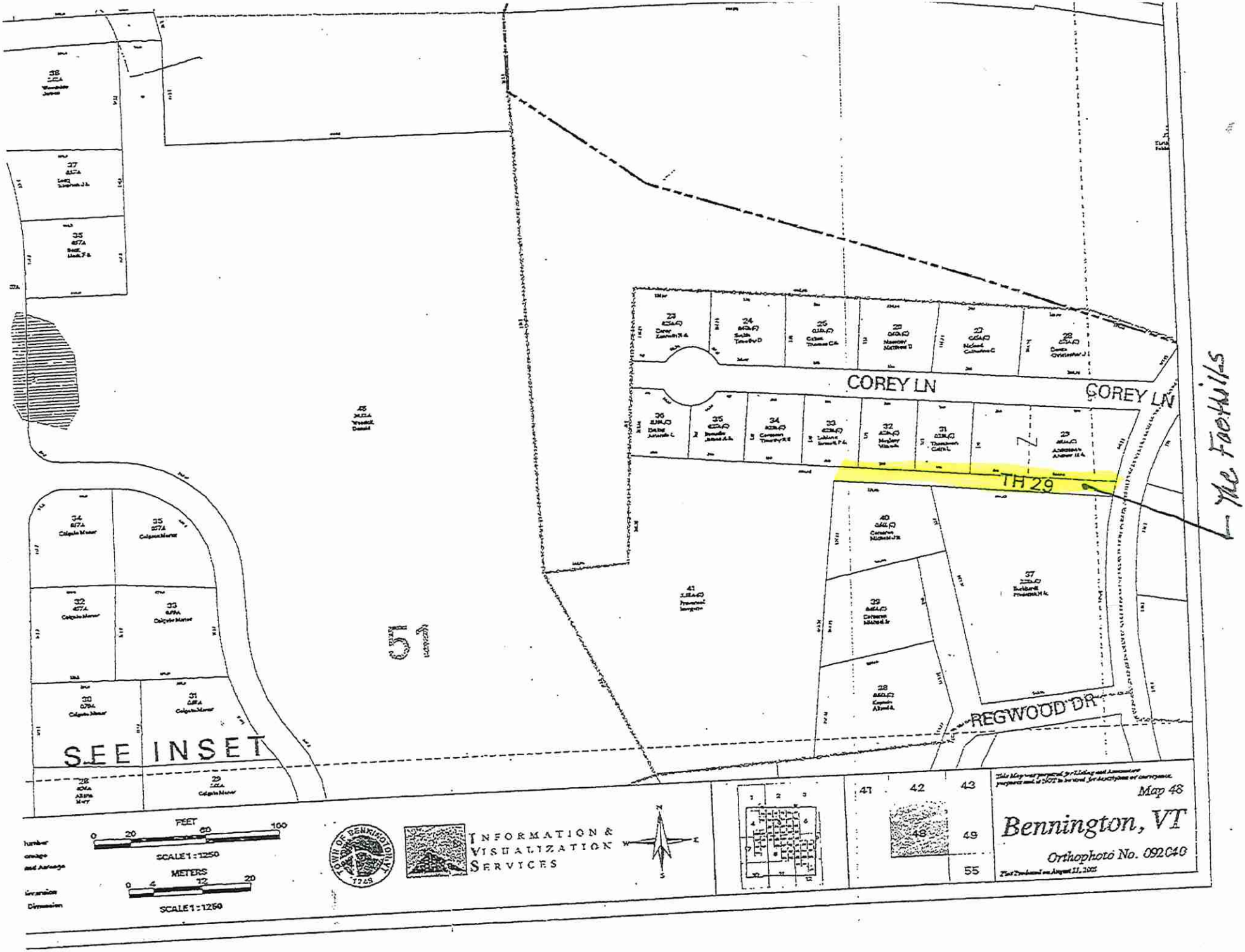
Re: Highway adoption/discontinuance issues

Date: July 30, 2021

The State has notified us that we have two highway issues related to our highway mileage and, in one case, E911. Both can be resolved easily by a formal discontinuance process.

In the first instance, a private drive to a single family residence now owned by Trisha Mahar was designated a Town highway (TH29) in March 1967 and named "the Foothills". It reportedly served 3 lots and may have been intended to serve a subdivision. The two lots at the end of the "road" were merged for the current residence, and it is used as a private drive, not maintained by the Town. It was never formally discontinued and has remained as a Town highway on our highway mileage maps to this day. It is 0.11 miles (580') in length and approximately 25' in width. It is not of sufficient width to be a Town highway and should be formally discontinued.

In the second instance, the drive into the Brookside Apartments, originally a 50 unit elderly housing complex now mixed housing and still owned by the Housing Authority, was designated a Town highway and called "the road to the elderly housing project". It is a 50' right of way and 0.11 miles in length (580'). The Town plows it and may provide minor maintenance assistance. In this case, we have been notified by E911 that each unit must have an E911 address, not just the complex. Imagine the chaos this would create for our staff who must provide the numbering and for each tenant who would need to change their address. If the road becomes a private drive, that is no longer necessary. I have discussed this with Sharyn Brush of the Housing Authority Board. We can still plow it in winter as a service to the Authority. I recommend discontinuance.


COREY LN
COREY LN
TH 29
REGWOOD DR
SEE INSET
51
The Foothills
FEET
0 20 60 100
SCALE 1:1250
METERS
0 6 12 20
SCALE 1:1250
TOWN OF BENNINGTON
1749
INFORMATION & VISUALIZATION SERVICES
Map 48
Bennington, VT
Orthophoto No. 092040

OFFICE OF THE
COMMISSIONER

STATE OF VERMONT
DEPARTMENT OF HIGHWAYS
MONTPELIER
05602

Highway Planning Division

January 2, 1968

Board of Selectmen
Town of Bennington
Bennington, Vermont 05201

Attention of Chairman

Gentlemen:

Due to construction projects BF 019-1-6608 and BF 019-1-6612 on US 7, State Highway mileage in your town decreased 0.006 mile in 1967.

In addition, we are adding 1.27 miles to your Town Highway mileage. This includes the following sections which were not included last year, due to the late receipt of the necessary documentation.

| | |
|---|---|
| Sharon Street | 0.08 mile |
| Woodland Road | 0.01 mile |
| Birch Drive | 0.08 mile |
| Harbor Road | 0.36 mile |
| Cyr Court | 0.11 mile |
| Rutter Road | 0.27 mile |
| The Foothills | 0.11 mile |
| Unnamed #1 | 0.15 mile |
| Unnamed #2 | 0.10 mile |

We have entered these changes on the enclosed 1968 Highway Mileage Certificates and will appreciate your entering any other changes in Town Highway mileage processed in accordance with the Statutes during the past year.

Please return the signed Certificates prior to March 15, 1968.

Sincerely yours,

R. J. Nicholls
Highway Planning Engineer

RJN/JEB/ala
Enc.

FOOTHILLS

CERTIFICATE OF COMPLETING AND OPENING

HIGHWAY FOR PUBLIC TRAVEL

Mary Hodeck, Town Clerk
Town of Bennington
Bennington, Vermont

Pursuant to Title 19, V.S.A. Section 15, this is to certify that the following described sections of highway in the Town of Bennington are completed and open for public travel.

Being all that part of the lands laid out for streets on a Plan of Land belonging to Josephine S. Buzzell by Burton L. Winslow, Engineer, dated May 8, 1964, superseding an earlier Plan dated July 22, 1957, which is now on record in the Bennington Town Clerk's Office and described as follows:

Being 50 feet in width and running from Monument Avenue, so-called, to the southerly lines of Lots 4 and 8 ofsaid Plan and the westerly line of Lot 6. Reference is hereby made to said Plan and the record thereof for a further and more particular description of the lands herein conveyed.

This conveyance is for highway and other public purposes only, including but not limited to sewer, water, power and telephone easements.

The above conveyed lands shall be known as "The Foothills."

and as shown on a Highway Map of the Town of Bennington, dated March 14, 1967 and filed in Book 3 of the Road Survey Records of the Town of Bennington by the Town Clerk of said Town, incorporated herein by reference andattested to on said map by said Town Clerk.

Dated at Bennington, County of Bennington, and State of Vermont, this 14th day of March A.D., 1967

BOARD OF SELECTMEN:

Joseph Eggins

Louis Sansville

Richard Van Santvoord

Bennington, Vermont
March 14, 1967

The above is a true copy of description of sections of highway, completed and opened for public travel, recorded in Book 3 on Page 54 of Road Surveys Records of the Town of Bennington on the 23rd day of November, 1966 at 11:45 AM

ATTEST:

Mary Hodeck, Town Clerk of Bennington, Vermont

TOWN
OF
BENNINGTON

TEL. 802-442-2626

OFFICE OF THE SELECTMEN
OFFICE OF THE TOWN MANAGER

205 SOUTH STREET, BENNINGTON, VERMONT 05201

cc: EJF 6/11/75

June 9, 1975

Department of Highways
Montpelier, Vermont 05602

Gentlemen:

I am enclosing Certificates of Completion and Opening of a Highway for Public Travel for four streets in the town of Bennington, three being in the Greenberg Development, so-called, and one at the Housing for the Elderly. Those in the Greenberg Development run 825', 329' and 459' each or a total of 1613', and the one at the Housing for the Elderly is a short stretch not more than 580'

Very truly yours,

H. R. Saunders

Harold R. Saunders
Town Manager

HRS/fhb
enclosures

ending at . . approach to BR US 7. . . . . .

No. 8. . 1.910. . miles

Bennington Police Department
Manager Packet – September 2021

**Policies and Procedures**

Chief Paul Doucette, Lieutenant Camillo Grande and Administrative Assistant Michelle Farrar have completed revisions to the first batch of policies and procedures during a working session last week. Administrative Assistant Farrar now has the final drafts and will complete the project when she returns to work. We anticipate releasing the final policies and procedures to the working group no later than the week of August 30, 2021.

**Hiring**

Staffing levels are at a critical level at the Bennington Police Department including sworn law enforcement and communications. Four vacant law enforcement positions, of six, have been filled by four people that have successfully completed the hiring process. They will be sworn in by Town Manager Stuart Hurd on August 26, 2021. They will attend Level I training at the Vermont Police Academy in September. Following this training, they will begin Level III training at the Vermont Police Academy in **OCTOBER 2021**. This is a change as the Vermont Police Academy realized the need for municipal and state law enforcement Officers and moved the February 2022 Level III training course start date up to October 2021.

Employment opportunities are listed on the Bennington Police Department website as well as the Vermont Criminal Justice Council website. There are MANY law enforcement officer positions listed on the Vermont Criminal Justice Council website and various other sites. We are competing against municipal agencies and state agencies that offer better benefits, salaries and retirement packages. We encourage all individuals to apply with the Bennington Police Department.

**The closure of Southern Vermont College was a loss to our Department and our recruitment abilities.

CURRENT LISTING:

*Police Officer*

*The Bennington Police Department is currently accepting applications for an aspiring police officer looking for a rewarding career that combines an excellent work environment with a community rich in family-oriented activities. Bennington offers excellent benefits, provides all uniforms and police equipment. We have, or participate in, special units such as B.C.I. (Detective Division), bicycle patrol, snowmobile patrol and School Resource Officer. We are in the process of developing a mental health crisis response team. The Department also actively participates in many community-oriented events utilizing the staff and members of the Bennington Police Association.*

*This is a Union position with starting wage, after probationary period is complete, in the area of $50,000 and enters a step system per the working agreement. Pay is augmented by occasional overtime and special-duty opportunities. In addition, those holding EMT certification, Associate, Bachelor or Master's degrees in law enforcement are eligible for an additional yearly stipend of up to $750. The Town of Bennington offers four personal holidays, vacation time increasing to six weeks depending on years of service, participation in the Vermont Municipal Employees Retirement System Plan C, life insurance,*

*twelve paid sick days, eleven paid holidays, short term and long-term disability. Employees may also select to participate in a variety of plans which include an excellent BCBS health insurance program, 457 Deferred Compensation Plan, and a dental and vision plan as well as several other programs. In addition, for full-time officers participating in the health care plan, the Town offers the opportunity for those retiring at 50 with 20 years of service to continue coverage with the Town contributing up to 80% of the cost of a single person plan (with certain stipulations) until reaching the age of 65.*

*Requirements: U.S. citizen, minimum age of 21; must have a valid driver's license; high school diploma (college degree preferred). Applicant must be able to perform all the essential functions involved with police duties. Police testing, including a physical fitness examination, polygraph, oral board, medical exam, fingerprint check and extensive background check will be required of applicants selected for hire. All shifts, weekends and holiday work is a must when scheduled.*

**Law Enforcement jurisdiction in Bennington and surrounding communities**

Level III sworn law enforcement officers at the Bennington Police Department have enforcement authority throughout the State of Vermont. Members of the Department are authorized to work in Bennington and surrounding communities when needed. Generally, we patrol Bennington, North Bennington and Old Bennington. In the event mutual is requested from another law enforcement agency or there isn't an officer/deputy/trooper available, a Bennington Police Officer may travel outside of the area to assist. We also utilize grant funding and will work in other areas as part of a task force or special unit.

**LAW ENFORCEMENT OATH OF HONOR**



On August 15, Chief Doucette administered the Law Enforcement Oath of Honor to sworn members of the Department.

Prepared 08-18-2021

# Town of Bennington Bike/Ped Projects Update August 2021

## Orchard Village (formerly Applegate) to Willowbrook Path

**Project Description**: Pathway to connect Orchard Village, Willowbrook Apartments and Molly Stark Elementary School.
**Status:** Construction of the pathway is nearing completion. It appears that the boardwalk section will be complete by August 25th and punch list items will be completed soon thereafter.

## Ninja Trail

**Project Description**: The proposed path is 2.12 miles. It begins on Hicks Avenue at the existing pedestrian bridge and ends at the intersection of VT Route 67A/College Drive/Silk Road/Matteson Road. From there, pedestrians and cyclists can reach the Village of North Bennington via Bennington College's paths and low-speed roads. The path varies between wooded areas, open fields, and roadside facilities. It crosses streams, goes under an overpass, and crosses a highway.
**Status**: $1 Million in State/Federal Grants have been secured. An update of the cost estimate using current pricing indicates that significant additional funding will need to be secured. Additional grant opportunities are being explored. Segments of paved path between Hicks Avenue and Harmon Road (behind Walmart) and between Bennington College entrance and the Hampton Inn have been constructed. Interim path (dirt and gravel) between the two completed segments is open for use. Preliminary plans for the construction of the remainder of the paved path have been approved by the State. The Town has now obtained all of the easements required for the project. Construction is scheduled for 2022 subject to State permits being issued in a timely fashion.

## Bennington Pathway – Rail/Trail

**Project Description**: Shared use path (bike path) along Railroad Right-of-Way from Bennington Station to Emma Street (off of Northside Drive). The portion of the path from Bennington Station to Orchard Road will be paved. The remainder of the path will be gravel.
**Status**: State/Federal Grant for 90% of cost has been secured. A local match of $100,000 is being held in a reserve account. An additional $80,000 match is necessary and will impact the FY 22 budget. The Town has contracted with Markowski Excavating to construct the project. A

preliminary construction schedule will be developed soon. Construction will likely begin in September and will likely conclude in September of 2022.

## Benmont Avenue Bike/Ped Improvements

**Project Description**: Improvements to make Benmont Avenue safer and more attractive for pedestrians, cyclists, and drivers, including significant changes to the Hunt Street intersection. The improvements will act as an extension of the Ninja Trail into Downtown Bennington.
**Status**: A total of $559,000 in State/Federal Grants have been awarded. The Town match will be approximately $140,000. All easements have been obtained. Additional funds may need to be sought. The Town DPW will likely construct the planned improvements to the Hunt Street intersection to keep costs down. Grant funds will be used to construct the remainder of the project. Final plans are scheduled to be completed by Fall of 2021. Project scheduled to be put out to bid in Spring of 22. Construction is scheduled for 2022-23.