

1 **BENNINGTON SELECT BOARD**

2 **MEETING HELD REMOTELY VIA ZOOM**

3 **BENNINGTON, VERMONT 05201**

4 **NOVEMBER 23, 2020**

5 **MINUTES**

6 **SELECT BOARD MEMBERS PRESENT BY VIDEOCONFERENCE:** Donald Campbell-Chair; Jeannie Jenkins-Vice  
7 Chair; Jeanne Conner; Jim Carroll; Bruce Lee-Clark; and Sarah Perrin.

8 **SELECT BOARD MEMBERS ABSENT:** None.

9 **ALSO PRESENT BY VIDEOCONFERENCE:** Stuart Hurd-Town Manager; Daniel Monks-Assistant Town Manager  
10 and Planning Director and Director of the COVID-19 Response; Josh Boucher-CAT-TV; and Nancy H. Lively-  
11 Secretary.

12 **PUBLIC CALL INS:** Sam Restino and Lynn Mazza.

13 At 6:01pm, Chair Donald Campbell called the meeting to order and explained that, due to the COVID-  
14 19 Pandemic State of Emergency declared by Governor Scott, and pursuant to Addendum 6 to Executive Order  
15 01-20, Act 92, this public body is authorized to meet electronically. There is no physical location to attend this  
16 meeting, however, the public may view it on CAT-TV and call in at 1-646-558-8656 and enter the meeting ID,  
17 83307439977, when prompted to do so. The call in information will be periodically posted on the screen and  
18 the process for calling in was explained. If technology fails us, the meeting will be continued at a time and  
19 place to be determined and all votes that are not unanimous will be done with a roll call vote in accordance  
20 with the law.

21 **1. CONSENT AGENDA**

22 **A. MINUTES OF OCTOBER 29, NOVEMBER 9, AND NOVEMBER 16, 2020**

23 **B. WARRANTS**

24 *Jeannie Jenkins moved and Bruce Lee-Clark seconded to adopt the Consent Agenda as amended below:*

25 *Add "C. LIQUOR LICENSE" to the Agenda*

26 *The motion carried unanimously.*

27 **2. PUBLIC COMMENT**

28 None.

29 **3. COMMUNITY POLICING POLICY REVIEWS, 1<sup>ST</sup> READING**

30 **A. USE OF FORCE**

31 **B. DUTY TO INTERVENE**

32 **C. USE OF CONDUCTED ELECTRICAL WEAPONS**

33 Mr. Campbell explained that based on the IACP report and the Vermont Partnership for Fairness and  
34 Diversity, the Select Board formed the Community Policing Committee made up of Ms. Jenkins, Ms. Conner,

35 and Mr. Lee-Clark who developed a process to review, update, and create as necessary stated police policies.  
36 The Community Policy Committee included community members Peter Niles, Ricardo Wilson, Alison Levy, and  
37 Dan Merges with police officer Dan Ferrara, Assistant Town Manager Dan Monks, and Select Board member  
38 Bruce Lee-Clark. Following the Committees revision/creation of a policy, it was forwarded to Police Chief  
39 Doucette and Town Attorney Rob Woolmington. All materials relating to this committee can be found on the  
40 Town website under Community Policing and recording of the meetings can be viewed on CAT-TV. There will  
41 be two readings of the policies - the first with questions and suggestions to be brought back to the Committee,  
42 the police chief and Town Counsel - and the second where the Board will probably be voting on the revised  
43 policy. After the Board approves, procedures will be developed and the policy with the procedures will be on  
44 the Bennington Police website for availability to the public.

45 Mr. Lee-Clark added:

- 46 • The policies were not written from scratch and had model policies from the Vermont League of Cities  
47 and Towns (VLCT), the IACP, the Brattleboro Police Department, and the Vermont State Police.
- 48 • For the most part, the Committee didn't look at procedures although each policy has a procedure  
49 section that was forwarded to the Police Chief with suggestions for his consideration.
- 50 • The policies as presented were what the Committee put together with two major exceptions:
  - 51 ○ In Use of Force, we added "C. Prohibited restraint: The use of any maneuver on a person that  
52 applies pressure to the neck, throat, windpipe, or carotid artery that may prevent or hinder  
53 breathing, reduce intake of air, or impeded the flow of blood or oxygen to the brain. [Sec. 6.  
54 13 V.S.A. § 1032]"
  - 55 ○ In Use of Force, we added a sentence to the end of "J. Duty of care:....Officers shall provide or  
56 obtain medical attention for members of the public who are injured as a result of police  
57 involved actions, and make referrals for mental health services when such a referral is  
58 objectively reasonable from the perspective of a reasonable officer in the same  
59 circumstances."
- 60 • The Committee is working within a series of boundaries, such as, Police Practice, the community, and  
61 State Law. For example, the Use of Conducted Electrical Weapons (CEW) Policy has been dictated to us  
62 by the State Legislature.

63 *Board questions/comments:*

64 Ms. Jenkins:

- 65 ✓ Use of Force - noted the excellent discussion on Purpose and adding 'perceived' resistance. And, also  
66 how this perceived resistance may be due to mental health issues and not really be resistance.
- 67 ✓ Use of Force - Include a sentence to the role of de-escalation under Policy after "Officers will use only  
68 reasonable force to bring an incident or event under control."
- 69 ✓ Use of Force - Include some of the 'Special Populations' wording from the CEW Policy on how we think  
70 of force.
- 71 ✓ Use of Force - O. Active resistance: - We should use the verbiage in the CEW Policy from E. Active  
72 Resistance.
- 73 ✓ Duty to Intervene - II. POLICY: B. 1. Duty to Intervene: We have a definition of reasonable force so we  
74 should have a definition of "unreasonable force".

75 Mr. Lee-Clark:

- 76 ✓ The Definitions refer to the procedures which are an extension of the policy.
- 77 ✓ Agrees with adding a de-escalation statement under Policy - even though under Definitions: I. De-
- 78 escalation is defined.
- 79 ✓ Also agrees that the CEW Policy definition of Active Resistance should be used for O. Active resistance
- 80 in the Use of Force definitions.
- 81 ✓ The standard for reasonable force is what a reasonable officer would perceive in the same
- 82 circumstances. The Definitions carry through to all policies.

83 Mr. Carroll:

- 84 ✓ Clarified that these are not “dictated” to us by the Committee. They are suggestions for the Board to
- 85 approve or not.
- 86 ✓ Use of Conducted Electrical Weapons - K. Positional asphyxia: There should be additional clarification
- 87 to the word “cognizant” and do officers receive training in positional asphyxia? Mr. Hurd responded
- 88 that there is a mandatory annual training.

89 Ms. Conner:

- 90 ✓ Clarified that the State Legislature ended in October and not in December as had been stated earlier.
- 91 ✓ Use of Conducted Electrical Weapons - B. Special populations: d. Under 18 years of age and f. Over 65
- 92 years of age. Noted the difficulty in judging a person’s age, and Mr. Lee-Clark stated that we cannot
- 93 change this because this is a policy that was previously put into Statute Sec. 1. 20 V.S.A. § 2367. It is a
- 94 judgement call meant to narrow the use of when CEW’s can be used.
- 95 ✓ Use of Conducted Electrical Weapons - K. Positional asphyxia: Note the difficulty in judging the length
- 96 of “prolonged”. Mr. Lee-Clark stated that this is not a word in the Statute so he will bring it back to the
- 97 Committee to discuss if a different word could be used.

98 Ms. Perrin:

- 99 ✓ Do the CALEA Standards carry through all of the policies? Mr. Lee-Clark answered that this was on the
- 100 League of Cities and Towns policies and he did not delete them. We will find out if these, and others,
- 101 are useful to the Chief going forward. They currently are not on the Bennington Police policies but it is
- 102 a good idea to have a universal standard to meet. Ms. Perrin agreed.

103 *Public questions/comments:*

104 Sam Restino: Shared his personal experience and feels that the police should be aware of the situation that

105 they are being called to respond to. With today’s technology, the dispatcher can make them aware of the

106 history of those involved in the complaint.

107 Mr. Lee-Clark stated that the policy is to guide the police officers in their use of their necessary discretion

108 within certain boundaries that we are making public.

109 Mr. Carroll added that it is “absurd” to think that every officer is going to know the history of every situation

110 that they will be encountering.

111 \_\_\_\_\_

112 Lynn Mazza: How can the public access these policies, make comments on them, and how would those

113 comments be incorporated into the policies?

114 Mr. Lee-Clark: Tonight’s policies were in the Board packets, and therefore, on the Select Board section of the  
115 Town’s website - both the clean and marked up versions. Eventually, they could be put on the Community  
116 Policing section of the Town’s website and feedback can go to Mr. Lee-Clark’s Select Board e-mail address,  
117 [bleeclark@benningtonvt.org](mailto:bleeclark@benningtonvt.org) by December 7<sup>th</sup>. Any suggestions will be drafted by Mr. Lee-Clark, sent to the  
118 Committee to respond to within 48 hours, and to the Town Office by December 10<sup>th</sup> for inclusion in the Board  
119 Packet of December 14<sup>th</sup>. The model policies used from the VLCT are already on there.

120 Ms. Conner: Added that not all suggestions - either from the public or the Board - will automatically be added  
121 to the policy. There are limitations, including statute limitations, that not everyone may be aware of.

122 Lynn Mazza: Regardless of how the policies are written, we’re not going to see the changes we’re looking for  
123 without a “top down leadership change” and will need an independent citizen’s oversight committee to  
124 ensure that these policies are being followed.

#### 125 4. COMMUNITY POLICING UPDATE

126 Ms. Conner reported the following:

- 127 ❖ The fourth and final question will be up until Friday, November 27<sup>th</sup>.
- 128 ❖ The question is “How can the community and the Bennington Police Department better engage with  
129 each other?”
- 130 ❖ As of today, we have 95 comments from all four questions and expect to be over 100 by the end of the  
131 week.
- 132 ❖ Board locations are at GBICS, St. Peter’s Church, the Rec Center, the Town Office, and Powers Market.

133 Mr. Lee-Clark reported the following:

- 134 ❖ On December 2<sup>nd</sup>, the Committee will be looking at their last policy which is The Investigation of  
135 Domestic Violence Incidents.
- 136 ❖ Thanks to all of those who have participated on the Committee.

#### 137 5. MANAGER’S REPORT

138 Mr. Hurd reported as follows:

- 139 ▪ Ladder Truck Hearing Notice Validation - Bond counsel, Paul Guiliani felt that the warnings posted for  
140 the ladder truck purchase did not fully comply with the law because the entire Annual Meeting  
141 Warning was not posted. We followed the process that we have used for years. The statutes provide  
142 the Board an opportunity to correct this mistake by passing the attached Resolution.

143 ***Bruce Lee-Clark moved and Sarah Perrin seconded to adopt the Validation Resolution and to***  
144 ***authorize the Town Clerk to sign. The motion carried unanimously.***

- 145 ▪ DPW Union Contract Ratification - The Town and the DPW Union have agreed to a one year extension  
146 of the Working Agreement with the following changes - wage increase to \$23.08/hr. (3.53%); add \$125  
147 to the annual stipend (new total \$1,000) for Confined Space Entry Team; and employees to pay 16% of  
148 the employee’s applicable annual healthcare premium for the designated plan in year one. The Union  
149 has already voted to ratify.

150 ***Sarah Perrin moved and Jeannie Jenkins seconded to ratify the DPW Union Contract one year***  
151 ***extension as presented. The motion carried unanimously.***

- 152     ▪ COVID Update - We have stopped all face-to-face meetings, the policy committees will be meeting via  
153 Zoom or some other virtual format, multi-household gatherings are prohibited, and the Rec Center has  
154 suspended swim lessons, Marauders, and Masters swim team. The Bennington Police are not going to  
155 be enforcing multi-household gatherings in Bennington. The vaccine may be available to first  
156 responders by mid-December but not to others for at least another 4-6 months. We are hoping that  
157 our Town essential workers will be soon after the first responders but we don't know that at this time.
- 158     ▪ Tax Collections - It appears that the total delinquency is at the higher end of the normal 4% to 6%  
159 range at 6%. The delinquencies are among residents and hospitality businesses for the most part. It is  
160 too soon to know the effect on the budget, and we should have a better picture of any COVID impact  
161 by the first December meeting.
- 162     ▪ PFOA Construction - All but Contracts 8 and 9 will finish this year barring any unforeseen  
163 circumstances.
- 164     ▪ Additional Comments -  
165         ➤ An agency that normally asks for the same dollars as last year has chosen to ask for more this  
166 year and is concerned about having to petition to do this. The Secretary of State has no  
167 alternatives to petitioning. The only option is for the Board to just put the additional dollars on  
168 the ballot. Documentation was sent to the agencies on October 13<sup>th</sup> and the signatures are due  
169 early to the middle of January. We already have petitioned signatures for the mayoral question  
170 which is within the same time frame. More discussion will take place on this subject.  
171         ➤ We will more than likely be doing our Annual Meeting via Zoom. The Secretary of State has  
172 been contacted on this.

173 **7. UPCOMING AGENDA**

174         December 14, 2020 - Lead Line Bonding Loan Application

175         December 14, 2020 - State of Vermont Presentation on the Silk Road Roundabout

176         December 14, 2020 - Community Policing Policy Reviews - 2<sup>nd</sup> Reading

177         At A Later Date - Police Department Training Presentation

178         At A Later Date - SVC Update

179 **8. OTHER BUSINESS**

180 Mr. Lee-Clark: Reminded everyone that the Farmer's Market is now at the Old Middle School on Main Street  
181 two Saturdays/month with the next one being on December 5<sup>th</sup>.

182 Ms. Conner: The Bennington Library is now curbside only.

183 Ms. Jenkins: Noted how "lovely" the Downtown is looking.

184 Mr. Carroll: Feels good that he worked to get 101 Vermonters hazard pay when Pepsico and Frito-Lay did not.

185 **9. EXECUTIVE SESSION**

186 **A. PERSONNEL**

187         *At 7:40pm, Bruce Lee-Clark moved and Jeannie Jenkins seconded finding that an Executive Session be*  
188 *held on Personnel as premature public knowledge would place a person involved in the subject matter at a*  
189 *substantial disadvantage. No decision will be made this evening. The motion carried unanimously.*

190 Respectfully submitted,

191 Nancy H. Lively

192 Secretary

193