



Rochester Police Commission  
Rochester, NH 03867

Derek J. Peters, Commissioner  
David R. Stevens, Commissioner  
Lisa M. Stanley, Commissioner

## MINUTES OF THE POLICE COMMISSION MEETING

The Rochester Police Commission held their regular monthly meeting on Wednesday, January 6, 2021 at 7:00 P.M., via remote broadcast on TEAMS. Participants in this meeting: Comm. Peters, Comm. Stevens, Comm. Stanley, Chief Toussaint, Dep. Chief Boudreau, Capt. Pinkham, Chaplain Cilley and Secretary Warburton.

The meeting called to order at 7:00 P.M.

1. Preamble. Chairman Peters read the City's Preamble for accessing this meeting into the record. He further noted that the Commission will be meeting using the TEAMS method from January to April of 2021.

### City of Rochester, NH Preamble

Good Evening, as Chairperson of the Police Commission, I'm declaring that an emergency exists and I am invoking the provisions of RSA 91-A:2, III (b). Federal, state, and local officials have determined that gatherings of 10 or more people pose a substantial risk to our community in its continuing efforts to combat the spread of COVID-19. In concurring with their determination, I also find that this meeting is imperative to the continued operation of City government and services, which are vital to public safety and confidence during this emergency. As such, this meeting will be conducted without a quorum of this body physically present in the same location.

a.) **Public Input:** Due to the ongoing situation with COVID-19, the City of Rochester will be taking extra steps to allow for public input, while still ensuring participant safety and social distancing. In lieu of attending the meeting, those wishing to share comments, when permitted, with the Police Commission are encouraged to do so by the following methods:

- **Mail:** Becky Warburton/Public Input, 23 Wakefield Street, Rochester, NH 03867 (*must be received at least three full days prior to the anticipated meeting date*)
- **Email** [becky.warburton@rochesternh.net](mailto:becky.warburton@rochesternh.net) (*must be received no later than 4:00 pm of meeting date*)
- **Voicemail** 603-330-7131 (*must be received no later than 12:00 pm on said meeting date in order to be transcribed*)

Please include with your correspondence the intended meeting date for which you are submitting. *All correspondence will be included with the corresponding meeting packet (Addendum).*

In addition to the above listed public access information, the Police Commission will be allowing the public to enter Council Chambers and speak in person during the Public Input portion of this meeting.

In an effort to adhere to CDC guidelines: enter only at the front Wakefield Street entrance and exit on the side closest to the police department and adhere to 6-foot social distancing while inside. Hand sanitizer and facemasks will be available at the Wakefield Street entrance.

Participants will be admitted into Council Chambers one at a time to speak, and will exit directly thereafter. Please note; the seating in Council Chambers will not be available for the public during meetings.

At this time, I also welcome members of the public accessing this meeting by phone. The public can call-in to the below number using the conference code. This meeting will be set to allow the public to “listen-in” only, and there will be no public comment taken via conference line during the meeting.

Phone number: 857-444-0744      Conference code: 843095

B. Prayer. Chaplain Cilley delivered the opening prayer.

C. Roll Call. The clerk called the roll marking Commissioner Peters, Commissioner Stevens and Commissioner Stanley present.

## 2. PUBLIC COMMENT:

No public comment.

## 3. ACCEPTANCE OF MINUTES:

A. December 7, 2020 regular meeting.

**Comm. Stevens MOVED to accept the minutes of the December 7, 2020 meeting as presented. Comm. Stanley SECONDED the motion. The motion to accept the minutes PASSED 3 – 0.**

## 4. OLD AND UNFINISHED BUSINESS:

A. Policy Standard 26.1.1.2 Uniform Appearance. This is a housekeeping change. We put in policy taking out wearing of the turtle neck for winter uniform and made it specific what color t-shirts are acceptable with the uniform. The other change we implemented is an “officer choice” month for the beginning and end of the uniform change over period due to weather, i.e., warm in the day and cold at night. An evening officer wants to wear winter uniform but day shift wants to wear a summer uniform in November, and the reverse in April. Those are the changes to the policy as we discussed last month.

**Comm. Stevens MOVED to place Policy Standard 26.1.1.2 Uniform Appearance into a second reading. SECOND by Comm. Stanley and open for discussion.**

Comm. Stanley said we need to clarify this. The way the policy is currently written in part 3, “the summer uniform will be worn between April 1 and October 31” is a declarative and definitive statement, which is contradicted by the change in the paragraph below it. Better wording would be that the wearing of the summer uniform will be mandatory, except as described in F below. And to do the same wording for the winter uniform in Part 4.

**The motion place the policy into second reading for adoption, as amended, was approved unanimously.**

**Comm. Peters MOVED to adopt the Policy Standard 26.1.1.2 Uniform Appearance, as amended. SECOND by Comm. Stanley and PASSED unanimously.**

## **5. NEW BUSINESS**

A. Policy Updates. Chief Toussaint said there has been a call for law enforcement reform in the County. The Governor created a task force to address this very issue, with specific recommendations to use of force policies in the State of NH. I did a comprehensive review of our Use of Force and found for the most part our policies to be adequate with the requirements we need to be an effective law enforcement agency in this day and age.

During the review there were three areas that required additional attention. There was a specific prohibition of chokeholds, specifically referred to in NH State law under use of force by law enforcement. So one of the changes you will see is banning of chokeholds unless it is deadly force.

Another recommendation for change is the duty to intervene when an officer sees behavior by another officer of any agency crossing the line legally, or violating policy. We did have that already in policy, but it wasn't strong enough. It required officers to report any violation of policy witnessed.

The third addresses no knock search warrants. We also did have this in policy, but it was not overly strong.

Chief Toussaint said with that in mind, I'd like to go through each of these.

**1. Policy Standard 1.2.4 Search and Seizure: First reading.** Chief Toussaint said that on Page 7 we added language regarding the knock and announce rule.

### **SEARCH WARRANTS**

All searches that do not fall within the exceptions noted above must be conducted using a search warrant. When a Search Warrant is used, officer's shall "knock and announce" their presence. ~~unless a "no knock and announce" warrant has been issued by the justice.~~ *The "knock and announce" rule requires that officers knock and identify themselves and their purpose before demanding entry to execute a search warrant. After doing so, the police must wait a reasonable period of time for an occupant to respond before entering the premises. The purpose of this rule is protect people's rights to privacy in their homes and to prevent unnecessary violence that could result from unannounced entries*

**2. Policy Standard 1.3.1 Use of Force to Accomplish Lawful Objectives/Non Deadly Force: First reading.** Chief Toussaint said that parts of this are housekeeping, such as adding some of the non-deadly force options that were not specifically listed previously. They reflect the options we have at this point.

In Section B is the requirement that only those less lethal weapons issued by the Department will be authorized.

In Section C addresses situations in a fight for life and the use of improvised weapons, such as a flashlight being used in a non-traditional manner, or other things, but only in dire situations that is justified and documented.

Lastly we address when force must end, which is strengthened with the duty to intervene. This would cover a situation also if out with the SWAT Team on or a mutual aid call.

A. When force is authorized, officers will assess the incident to determine which non-deadly technique, or weapon will best de-escalate the incident and bring it under control safely. Less lethal weapons such as batons, oleoresin capsicum spray, *Taser, pepper ball launcher, less lethal shotguns*, handcuffs, etc., that are issued by the department, after adequate training in their use, may be used or displayed under the following conditions.

*B. Only those less-lethal weapons that are issued by the department are authorized for carry either on or off-duty. No other less-lethal weapon will be authorized for carry.*

*C. When circumstances necessitate, Rochester Police Officers may use whatever tools, weapons, objects or other non-traditional means of defense when department issued tools or weapons are unavailable for whatever reason, unable to be deployed, fail to operate, or are found to be ineffective in the defense of themselves or a third person against the use of force. If used, the officer must complete a report and clearly articulate the need to use the tool as a defensive weapon. (from Less Lethal Policy)*

## **WHEN FORCE MUST END**

*C. Officers of the Rochester Police Department shall utilize only the amount of force that is reasonably considered as necessary to achieve the lawful objective of the officer. The use of excessive or inappropriate force will not be tolerated. All department personnel shall intervene when they witness or are aware of another officer using excessive, unauthorized, or unjustified force and shall notify their direct supervisor as soon as reasonably possible.*

*D. Members of the Rochester Police Department also have the duty to intervene and report any uses of excessive, unauthorized or unjustified force by members of other criminal justice organizations.*

3. Policy Standard 1.3.1.1 Use of Force Definitions: First reading. Chief Toussaint said this policy outlines the definitions with regard to use of force. Added was #16, the definition of Chokehold and the corresponding RSA.

*16. "Chokehold" the application of any pressure to the throat, windpipe, or neck, which prevents or reduces intake of air, or oxygen to the brain. (NH RSA 627:5)*

4. Policy Standard 1.3.12 Use of Deadly Force: First Reading. Chief Toussaint said to this policy in section C we added the prohibited use of Chokeholds. In Section D it discusses the duty to intervene and report action by members of other criminal justice organizations. Specifically:

*3. The use of "chokehold" as defined in Policy #1.3.1.1 Use of Force Definitions is considered deadly force and is strictly prohibited by officers of the Rochester Police Department except in circumstances where the application of deadly force would be lawful and authorized by department policy.*

*C. Officers of the Rochester Police Department shall utilize only the amount of force that is reasonably considered as necessary to achieve the lawful objective of the officer. The use of excessive or inappropriate force will not be tolerated. All department personnel shall intervene when they witness or are aware of another officer using excessive, unauthorized, or unjustified force and shall notify their direct supervisor as soon as reasonably possible.*

*D. Members of the Rochester Police Department also have the duty to intervene and report any uses of excessive, unauthorized or unjustified force by members of other criminal justice organizations.*

Chief Toussaint said in our policies we have several important points that are repeated in multiple policies so it is seen, over and over. It is important to repeat and emphasize.

Comm. Stanley commented on the duty to intervene. I'm glad to see you included that.

Chief Toussaint said I agree, it is important. I would like to think that officers would intervene. I know there have been instances of it. Making it part of the policy is important.

5. Policy Standard 42.1.1.4 Investigations; Willful Concealment (Shoplifting) Complaints: First Reading. Chief Toussaint said this policy change is separate from the LEACT group mandates. This was a policy change to reflect how we are doing things these days with regard to shoplifting. We deal with shoplifting a lot. Previously the policy said we had to take people into custody, and bail them. Most all B misdemeanor offenses permit officers to release a person on a hand summons to appear in court. However, they are required to check the criminal record prior to do so, which could elevate the charge to an A misdemeanor or a felony.

Comm. Stevens said this change would save officers time.

Chief Toussaint said we've been doing it this way for a while. We are legally justified. The policy just caught up to us. Shoplifting complaints are a time drain for the officers; so our go to is to release on a summons if possible.

Comm. Peters said these will all come back next month for a second reading and adoption.

B. Three-Year PT Test Requirement: Discussion. The current contract has a clause that officers taking the 3-Year physical fitness test required by PSTC to maintain certification passing at greater than 50% will receive a day off, once every three years. There are only a few of our members who are grandfathered and do not have to take it. Almost the entire command staff, and future command staffs will have to take this test. We wanted to seek the temperature of the Commission, if these members pass this test could they do the same as for the union personnel and receive a day off. There is no cost to us but it is an incentive to maintain and promote unity in the Department.

Comm. Stevens commented that he has no issues with this. If we are doing it for others it is fair, and he has no objection.

Comm. Stanley said the rationale for the union employees was to make up for the day of taking the test. It makes sense to apply to all who take it.

Comm. Peters agreed.

### C. Monthly Reports

1. Operations: There have been no RUN or WARD meetings, which will continue during the pandemic; there have been no honor guard events either.

**K-9**: The K9 team did have five call outs. Four were tracks and one was a drug search. All were in Rochester.

**COMPSTAT**: Our traffic stops increased this month, and have also increased year to date. Our proactive efforts seem to be increasing as well as we see improved staffing. We may see a dip in this activity with upcoming deployments.

We had a large increase in property crimes, mainly due to shoplifting and thefts from stores. We had hired details for Walmart. One month they had an officer every day. They have a very proactive loss prevention team. This is the main reason for this large increase. That being said, property crimes year to date numbers are still down, and looking good, even with the dramatic increase in shoplifting.

Overall violent crimes are down year to date. We are pleased with our results so far at this point.

Comm. Stanley commented in general on violent crimes, particularly the homicides, we know a couple of them were vehicular. We are showing zero arrests. I thought there was an arrest in at least one of those.

Capt. Pinkham said not all of them get listed as a homicide. It depends on how the computer codes that crime. But we did make arrests in one of those fatal accidents.

Comm. Stanley said the report shows four homicides with zero arrests. I know the report lags so it could be timing. Are you suggesting that the arrest might have been for something other than homicide? It would be good if those matched up.

Capt. Pinkham said that some codes can change between the initial report and the arrest. We work hard to make sure those codes do match.

Chief Toussaint said I do believe it is an issue with the lag on this. We did make an arrest on two of the motor vehicle fatalities, one on Chestnut Hill Road and one on Washington Street. With the reports being behind this should show next month.

The Investigations Bureau has had a busy couple of months. They currently have 82 cases under investigation. There were four call outs this period. There was one back ground. The property taken in and returned in evidence, those numbers are normal.

### **COMMUNITY ENGAGEMENT OFFICER/PROBLEM ORIENTED POLICING UNIT:**

The Community Engagement and Problem Oriented Policing unit has been active, dealing with the thefts we have had. They have proactively gone to different businesses and parking lots where these incidents have been occurring. They are active in the homeless community providing resources and services when locating people, finding who is staying where. There was some proactive work being

completed such as food boxes to housing residents, gifts and a tree to a struggling family. A lot of this had been on the decline due to Covid, but we are doing as much as we can and assisting when we can.

As soon as the POP unit was formed the pandemic hit. So we haven't fully developed the program as we foresee it to be. There has been a lot of good work. They have addressed land lord and property issues, quality of life issues, working cooperatively with area agencies, task forces, drug units or other POP units. They are doing good work and learning a lot, even with current restrictions.

**COMMUNICATIONS:** Communications the radio cut over went well. We conducted interviews and a background is underway for the open dispatch position.

**SCHOOL RESOURCE OFFICERS:** The schools are in remote learning for the majority of students. Sgt. Deluca and Off. Jackson had remained in the schools as there are still students in the schools who are unable to effectively work remotely. This has been a benefit and helpful to the schools. Off. Porfido has been assigned to patrol. With the reduced class sizes Off. Jackson has now transitioned over to patrol to help them out.

**HOUSING** had a decrease in calls for service. Officer Mundy and Sgt. Babine have been proactive, adjusting the hours and days worked monitoring issues, such as trespasses and non-tenants sleeping in stairwells.

Comm. Stanley commented that Sgt. Babine deserves a big Atta-boy for his work in distributing the food boxes. This likely would not have happened without him pushing for it.

Capt. Pinkham said it was greatly appreciated by housing and the residents. The staff all took part in delivering the boxes to those we could. It was a good thing.

Comm. Peters concurred. Rotary and Gather put this together it was a team effort and appreciated by all.

2. Administrative. Dep. Chief Boudreau advised that in relation to the earlier question of statistics showing for homicide, those will show on next month's report. The arrests took place on the 7<sup>th</sup> and the 9<sup>th</sup> of December, so it is just a timing issue of when the comp stat report is released.

Two of our three vehicles have been delivered. We are waiting for our trade vehicle to be stripped of equipment. 2-Way is dealing with a Covid-exposure shutdown which will push back the timing of the work by at least a week.

The renovations in the investigations bureau were completed. The original cubicles were 2<sup>nd</sup> hand from Cabletron. We got the project back on line last month after being pushed off due to Covid and the City spending freeze. The room was stripped to the walls, and Public Buildings painted, replaced carpets, added electrical and data cables for the new work stations. This is all very state of the art. We will buy some new cork boards for their walls.

The radio replacement project cut over was done on December 16. We were already on line for most of it. The Fire side was more involved because they were still using an analog radio system. This is a big change for them which includes a huge reprogramming of all their radios and the mutual aid departments they work with. We are still waiting on some small gear for fire station alerts which will turn on lights and set off tones for calls.

We still have gear for three additional tower sites. The foundation for the tower at the new DPW site can't be poured until spring. That site will probably be brought on line in the fall of 2021. We are still working with Dover for the Long Hill Road tower, and a to-be-built city water tower at Highfields Commons at the top of Dry Hill. This location is the highest point in the City, so we will have good coverage.

We are over the major parts of this project and now it is just smaller things and finish work. The Fire Department is already seeing improvements. They can hear and talk on the portables in Dover where they couldn't before.

Comm. Peters asked if the project is still on track for being finished by the end of the year.

Dep. Chief Boudreau said not by the end of the year, based on the Highfields tower. We have the gear, it will simply be an install once that tower is ready to go.

The mobile dispatch trailer is on order, and it should be arriving soon. We are working with 2-Way and Motorola on interior pricing. We are told that we would be able to park that vehicle in Concord and control the equipment as if we were sitting on top of it. This will have more capability radio-wise than some of the larger command vehicles in the state. It will be impressive to bring this together.

Comm. Stevens asked how many work stations would be in the unit.

Dep. Chief Boudreau said there will be two dispatch consoles. The front of the unit, where a bedroom typically would be will house two custom consoles. The back half will have phones and gear and be used as a mobile command unit. We anticipate being able to dispatch major events such as fireworks and the fair from that unit.

The majority of the month has been dedicated to inputting data for the FY22 budget for O&M and CIP. The City Manager's mandate was 2%; which equates to just over \$13,000.00 for our O&M lines. We are finishing up our CIP entries and will have some issues and options to present to the City Manager. All in all we are expected to meet the mandate. The budget is due to the City Manager by Friday, December 8, 2020.

Comm. Peters asked that we share a copy of our budget submission with the Commission.

**HIRING:** Officer Duche` Romeus started on December 7. He completed his academy entrance exam and made the cut for the 184<sup>th</sup> session. The first 8 weeks of this academy will be remote due to the pandemic. We have set him up in his own space with a door to minimize distractions. We hope the second 8 weeks will be in person. That is to be determined.

**TRAINING:** There is essentially no training because of Covid. We have completed all of the annual training required by Police Standards. Officer Rummo graduated from his academy courses on December 18. Unfortunately there was no ceremony to celebrate that accomplishment. He is completing some in house training and will be moving to field training next week.

## **6. CORRESPONDENCE:**

The following correspondence was received this period: Off. Gantert is thanked for his attention to a welfare check. Off. Colson is thanked for his attention to a welfare check. Capt. Thomas is thanked for providing assistance to resident who fell sustaining minor injury.

Comm. Stevens said each month we receive position recognition for our people in the field.

## **7. INFORMATION:**

A. Other. Comm. Peters said it's been a very tough 10 months and I want to thank the men and women of the Rochester Police Department and the command staff. We have had to work through a lot of adversities and continue to still function and maintain our professionalism. On behalf of the Police Commission I want to thank the Department for what you do every day and the fine job you do. I do get a lot of calls and comments from people and I also follow Face Book to see what is happening. It's a lot of positive things. Kudos to the men and women of the Department for doing the right things at the right time, all the time.

## **8. NON-PUBLIC SESSION: (Pursuant to: RSA 91-A:3)**

**Commissioner Stanley MOVED to enter a nonpublic session at 7:58 P.M. pursuant to RSA 91-A: 3, paragraph II, section A (personnel) and section E (legal.) Comm. Stevens SECONDED the motion. The motion PASSED by roll call vote 3 - 0 with Comm. Peters, Comm. Stevens and Comm. Stanley voting in the affirmative.**

**The non-public session closed at 8:21 P.M. on a MOTION by Comm. Stevens, SECOND by Comm. Stanley SECONDED the motion. The motion PASSED by roll call vote 3 - 0 with Comm. Peters, Comm. Stevens and Comm. Stanley voting in the affirmative**

**Comm. Stevens MOVED to seal the minutes indefinitely. Comm. Stanley SECONDED the motion. The motion PASSED by roll call vote 3 - 0 with Comm. Peters, Comm. Stevens and Comm. Stanley voting in the affirmative**

## **9. MISCELLANOUS:**

**Comm. Stevens MOVED to accept the evaluations as presented and to award merit increases for Lt. Aucoin [3.85%], Lt. Bossi [3.85%], Lt. Swanberry [3.8%], Capt. Pinkham [3.65%], Capt. Thomas [3.95%] and Dep. Chief Boudreau [3.85%]. Comm. Peters SECONDED the motion. The motion PASSED by roll call vote 3 - 0 with Comm. Peters, Comm. Stevens and Comm. Stanley voting in the affirmative.**

**Comm. Stanley MOVED to award the merit change as discussed for Sgt. Cost and award a merit of [3.85%]. Comm. Stevens SECONDED the motion. The motion PASSED by roll call vote 3 - 0 with Comm. Peters, Comm. Stevens and Comm. Stanley voting in the affirmative.**

## **10. ADJOURNMENT:**

**Comm. Stevens MOVED to adjourn. SECOND by Comm. Stanley at 8:23 P.M.**

Respectfully Submitted

Rebecca J. Warburton  
Secretary