

**CITY OF MONTPELIER  
CAPITAL CITY OF VERMONT**

**City Manager's Weekly Report – 7/08/2016**

**UPCOMING MEETINGS ...**

- |                   |  |
|-------------------|--|
| Monday, July 11   | Parking Committee Meeting, 1:30 P.M. in the City Manager's Conference Room         |
|                   | Planning Commission, 5:30 P.M. in the City Council Chambers                        |
| Tuesday, July 12  | Montpelier Community Fund Board, 4:30 P.M. in the City Manager's Conference Room   |
|                   | Transportation Advisory Committee, 6:00 P.M. in the City Manager's Conference Room |
| Thursday, July 14 | Conservation Commission, 7:00 P.M. in the City Council Chambers                    |

You can also click on the following link for a listing of the Montpelier Senior Activity Center's upcoming events: <http://www.montpelier-vt.org/calendar.aspx?CID=30,36>

**UPDATED LIST OF CITY COUNCIL MEETINGS ...**

- |                                    |   |
|------------------------------------|---|
| Wednesday, July 13 <sup>th</sup>   | Only regular meeting in July.   |
| Wednesday, July 27 <sup>th</sup>   | Possible Consent Agenda only meeting                                    |
| Wednesday, August 3 <sup>rd</sup>  | Rescheduled Eminent Domain Hearing for the Jacobs Property at 5:30 P.M. |
| Wednesday, August 10 <sup>th</sup> | Regular City Council Meeting  |

**ATTACHMENTS ...**

-  Montpelier Police Department's Current Policing Policy

## **CITY MANAGER'S WEEKLY REPORT**

**July 8, 2016**

**Page 2**

### **CITY MANAGER'S REPORT ...**

#### **Community Services Process**

If you would like to participate but were unable to attend last week's meeting, visit us at the Farmers' Market on July 9<sup>th</sup> or complete the on-line survey available here: <http://www.montpelier-vt.org/859/Community-Services-Department>. The recommendations will be presented to the public on October 11<sup>th</sup> at 6:30 P.M. at the Senior Activity Center.

#### **Economic Development Strategic Plan Implementation**

This item was originally scheduled for the July 13<sup>th</sup> meeting. After meeting with the Mayor and Montpelier Alive reps, it was decided to hold this until August 10<sup>th</sup> until we get more feedback from potential partners. You will receive a draft outline well in advance of that meeting in order for you to provide comments to Jessie or me. As you can see, the funding proposal remains on this agenda.

#### **Possible Eminent Domain hearing**

As you know, the hearing scheduled for this week has been moved to August 3<sup>rd</sup>. This was due to confusion about required timing of notices to abutters. The date was changed in order to be certain that all requirements were met. In the meantime, discussions continue in hopes of a negotiated agreement.

#### **Legal**

*Illuzzi vs City, et al:* On June 22<sup>nd</sup>, Defendant (Montpelier) issued a reply to Plaintiff's untimely opposition to Defendant's motion for summary judgement. Plaintiff released Renaud Bros, Inc. from case. Awaiting court ruling on various motions. Represented by Constance Tyron Bell through VLCT

*Police Investigation:* I will have an update after July 12.

*VCFA vs. City, Tax Appeal:* Notice was received that Vermont College of Fine Arts has appealed the recent judgment from Vermont Superior Court, Washington Unit, to the Vermont Supreme Court. The Superior Court judgment upheld the City's determination that Schulmaier Hall is taxable due to its lease for "a general commercial purpose".

Represented by Robert Fletcher.

# CITY MANAGER'S WEEKLY REPORT

July 8, 2016

Page 3

## WEEKLY UPDATES FROM DEPARTMENT HEADS ...

### Public Works Department

Multiple “in-house” DPW projects are now underway and a revised tentative street paving schedule will be published to the City’s web site. In addition to reconstructing the street in preparation for a new sidewalk and paving, the DPW crew installed a new storm water culvert on Cedar Street and is currently in the process of completing a new culvert on Towne Street. In addition to replacing very old systems, both culverts are part of an ongoing effort to remove storm water from the sewer mains to reduce and ultimately eliminate combined sewer overflow (CSO) discharges to the rivers. Another separation project is planned for upper North Street later this summer.

The City’s paving contractor, Engineer’s Construction, Inc. (ECI), has begun work on the eleven (11) streets planned for rehabilitation or resurfacing this season. With the new water main complete on Gaylord Drive, ECI paved the street on Tuesday the 5<sup>th</sup>. Reclamation work has now begun on Clarendon Avenue and they’ll move over to Dairy Lane next. The rest of the schedule is as follows with all work planned for completion by September 30<sup>th</sup>. Note that all dates shown are tentative and subject to change based on weather conditions and other factors that may occur throughout the project:

- **Bailey Avenue (Clarendon – Sunnyside)** - July 11 through July 22
- **Cedar Street** - July 18 through July 29
- **Clarendon Avenue (Jordan – Dairy Lane)** - July 5 through July 22
- **Dairy Lane**- July 11 through July 22
- **Gaylord Drive** - Paving Complete (Shoulder Work Remaining)
- **Heaton Street** - July 25 through July 29
- **North College Street** - August 1 through August 19
- **Sunnyside Terrace** - July 11 through July 22
- **Sunset Avenue** - August 1 through August 19
- **Terrace Street (Bailey – Dairy Lane)** - July 11 through July 22
- **Towne Street** - August 1 through August 19

Below is a brief summary of the status of the design work funded through the Clean Water State Revolving Loan Fund (CWSRLF)

## CITY MANAGER'S WEEKLY REPORT

July 8, 2016

Page 4

### *Northfield Street Reconstruction ...*

The Northfield Reconstruction Project design work is now underway. Soil borings were conducted at the end of June in order to determine the depth to bedrock and the condition of the roadway subbase. Next week, the City's consultant engineer, Dufresne-Group (DG) plans to survey in the soil boring locations and to do some additional survey to locate the building corners within the project limits which will extend from the intersection of Memorial Drive to Freedom Drive. The project will include new water and sewer systems in addition to sidewalk and roadway improvements. The week of 7/18, DG plans to conduct sewer service elevation surveys in the buildings along Northfield Street. This will require access to the basements. DPW will send out property owner notification letters on Monday. Construction is anticipated to begin in April of 2017, with base pavement expected to be installed in late fall of 2017. Final paving will be performed by the State of Vermont in the summer of 2018.

### *East State Street CSO ...*

The City's consultant engineer, Green Mountain Engineering (GME), has completed a survey of all of the adjacent outfalls to the North Branch. They are currently evaluating the condition of the existing piping to determine the best route to separate the stormwater from the sanitary sewer system at the intersection of Main Street and East State Street. Construction is anticipated to start in April of 2017.

### *Water Resource Recovery Facility Upgrade ...*

The City held it's kickoff meeting with the consultant engineer, Aldridge & Elliot (A&E), on Thursday, July 7<sup>th</sup>, to review the scope of work. The project will primarily consist of refurbishing or replacing aging equipment at the facility. A&E is compiling and digitizing the existing plans to generate a comprehensive existing conditions site plan. Construction is anticipated to start in the spring of 2018.

## **Police Department**

### **Update on 21<sup>st</sup> Century Policing:**

- ✓ Chief Facos participated in a panel discussion with Mark Hughes (Justice for All) and Allen Gilbert (ACLU) on the militarization of policing in America. This took place immediately after viewing the film: *Peace Officer*. The film and conversation took place at the Kellogg-Hubbard Library on May 11, 2016 and it was part of a VT PBS series. <http://www.orcamedia.net/show/peace-officer>

## CITY MANAGER'S WEEKLY REPORT

July 8, 2016

Page 5

- ✓ Chief Facos and Judy Gibson from the MCJC attended the panel discussion with Washington County's four senate candidates on social and procedural justice. June 22, 2016. <http://www.orcamedia.net/show/candidate-social-justice-review>
- ✓ On June 10<sup>th</sup>, the Chief and Captain Martel attended a day-long presentation at the Capitol Plaza on the President's Task Force Report on 21<sup>st</sup> Century Policing which was put on by the Vermont Leagues of Cities and Towns.
- ✓ Last month, a diverse mix of advocates, law enforcement, trainers, and the Attorney General's Office finalized a model policy on Fair and Impartial Policing that meets the latest legislative mandates and operational requirements of all of those impacted. Attached is a copy of MPD's current policy.
- ✓ MPD's race data on car stops and searches has been submitted to both Vermont Public Radio, as well as the University of Vermont in response to public records requests. An internal review of that data did not indicate any discriminatory policing patterns or red flags. It is important that this and other related data be reviewed on a regular basis and by others outside of law enforcement as well. The Chief has been working with "Justice for All" on data collection, policing transparency, and issues of police accountability.
- ✓ On July 22, both Chief Facos and South Burlington Police Chief, Trevor Whipple, will be in Washington DC to attend a White House policy briefing on the implementation of the 21<sup>st</sup> Century Policing Report.
- ✓ Blanchard Park Update: There were concerns expressed to The Bridge newspaper and relayed to the Police Department regarding a host of safety concerns. These concerns included suspicious activity between an adult and a minor (not reported to MPD), drug dealing and usage, and alcohol consumption. Officers have randomly walked through the park in recent weeks, but other than some miscellaneous garbage, one beer can, and one beer bottle, no criminal conduct was substantiated or investigated. That said, due to the secluded nature of the park and its proximity to downtown, the Montpelier Police Department does recommend that juveniles in the park be supervised by responsible adults as a general, common sense precaution.

### TOPICS FOR UPCOMING COUNCIL MEETINGS ...

July 27

Possible Consent Agenda only meeting

# CITY MANAGER'S WEEKLY REPORT

July 8, 2016

Page 6

August 3 Eminent Domain Hearing – Overlake Park, LLC

August 10 Zoning Part 3  
French Block Update and MOU approval  
Personnel Policy Revisions  
Goal: Safe Community  
Street Closure Policy and Fees  
EDSP Implementation Plan  
Possible Tax Stabilization application  
Dog Ordinance - 2<sup>nd</sup> Reading  
Non Profit Board Policy  
Junkyard Ordinance -1st Reading

September 14 Zoning Part 3  
Goal: Housing/Economic Development  
Tax Stabilization Policy  
Bike Path Easements  
Junkyard Ordinance – 2<sup>nd</sup> Reading

September 28 Zoning Parts 4 & 5  
Goal: Clean Environment  
Storm Water Master Plan  
Water Source Protection Plan

October 12 Zoning Wrap Up  
Housing Strategies Plan



William J. Fraser  
City Manager

# MONTPELIER POLICE DEPARTMENT

<b>Fair and Impartial Policing</b>	Related Policies: Stop, Arrest and Search of Persons; Motor Vehicle Stops/Searches; Limited English Proficiency
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable Vermont Statutes:	
CALEA Standard: 1.2.9	
Date Implemented: June 26, 2016	Review Date: June 26, 2016

**I. Purpose:** The purpose of this policy is to communicate the requirement that all Montpelier Police Department personnel conduct policing in a fair and impartial manner, to clarify the circumstances in which officers can consider personal characteristics when making law enforcement decisions and to reinforce processes and procedures that enable us to provide services and enforce laws in an equitable and impartial way.

**II. Policy:** Employees are prohibited from engaging in biased policing. This means no member of this department shall take actions based on any personal characteristics, except as described below, in the services our employees provide to the community in connection with our law enforcement activities. To achieve this objective the department will implement a combination of best practices including but not limited to: hiring, in-service training, policy development, supervision, reporting and investigative processes, appropriate discipline, and community outreach/partnerships.

**III. Definitions:**

**A.** “Biased policing” is conduct by law enforcement officers motivated by an individual’s actual or perceived or self-identified personal characteristics.

**B.** “Personal characteristics”: May include but is not limited to actual or perceived identity, race, ethnicity, national origin, color, gender, sexual orientation, gender identity, marital status, mental or physical disability, age, religion and socio-economic status.

**C.** “Immigration status”: Refers to an individual’s lawful or unlawful presence in this country.

**D.** “Reasonable suspicion”: Suspicion, for which an officer can articulate factual reasons, does not need to rise to the level of probable cause.

E. "Probable cause": Facts or circumstances that would lead a reasonable person to believe that a crime has been committed, or is being committed, or is about to occur.

F. "Member" or "employee": any employee employed by [agency/department], regardless of their assigned tasks or duties.

#### **IV. Policing Impartially:**

A. As required by statutes, Chapter I, Article 11 of the Vermont Constitution and Amendment IV of the United States Constitution, all enforcement actions by law enforcement officers, such as investigation, detentions, traffic stops, arrests, searches and seizures, etc. must be based on reasonable suspicion, probable cause or other required legal standards.

B. Officers must be able to articulate specific facts, circumstances, and conclusions which support the required standard for a given enforcement action.

C. Officers may take into account reported race, ethnicity or other personal characteristics of persons based on credible, reliable, locally relevant information that links a person of specific description to particular criminal incidents.

D. Officers should comply with Title VI of the 1964 Civil Rights Act and utilize professional interpreter services either in person or telephonically when necessary to speak with a person with limited English proficiency.

E. Under federal and state law, law enforcement agencies are required to provide qualified interpretation services to any person in need of it. Officers shall not contact federal authorities for interpretation services, unless a clear emergency requires it and licensed interpretation services are not available through any other means. Unless one of the exceptions included in Section VIII applies, the [agency member] shall not ask about the immigration status of the person for whom interpretation is required.

#### **V. Community Relations:**

To cultivate and foster transparency and trust, each officer shall do the following when conducting pedestrian and vehicle stops or otherwise interacting with the public:

A. Be courteous and professional;

B. Introduce him/herself to person (providing name and agency affiliation), and state the reason for the stop as soon as practical unless providing this information will compromise officer or public safety;

C. Ensure that the detention is no longer than necessary to take appropriate action for the known or suspected offense and that the person understands the purpose of reasonable delays;

D. Provide officer's name verbally when requested. Officers may also provide the information in writing or on a business card.

In addition to the above, officers should answer relevant questions the person may have if doing so will not compromise safety and/or the investigation.

## **VI. Responding to Bias-Based Reports or Reports Regarding Bias from the Community:**

- A. If any department employee receives a call for service that appears to be based solely on an individual's perceived personal characteristics or immigration status, the employee will attempt to ascertain if there are other circumstances or facts that would constitute reasonable suspicion or probable cause. If the complainant can offer no further information, the complainant will be advised that the shift supervisor will be in contact at the first opportunity.
- B. The shift supervisor should attempt to familiarize the caller with the department's Fair and Impartial Policing policy. If the caller is concerned about the person's perceived immigration status, the caller should be referred to federal authorities.
- C. At the conclusion of the call, the shift supervisor will document the contact using the department's incident report system.
- D. If an employee receives a report of a potentially biased or hate-motivated incident, the department shall either dispatch an officer to evaluate the complaint or refer the caller to the officer in charge.

## **VII. Due Process and Immigration Enforcement:**

- A. Building trust between police and all residents is vital to the public safety mission of the Montpelier Police Department. Policing in a fair and impartial manner is essential to building such trust. Therefore, officers shall not use an individual's personal characteristics as a reason to ask about, or investigate, a person's immigration status. Officers may inquire about immigration status only when it is necessary to the ongoing investigation of a criminal offense.
- B. Immigration is a federal policy issue between the United States government and other countries, not local or state entities and other countries. Federal law does not grant local and state agencies authority to enforce immigration law. Similarly, state law does not grant local and state agencies authority to enforce immigration laws. Officers shall not dedicate department time or resources to the enforcement of federal immigration law where the only violation of law is presence in the United States without authorization or documentation.
- C. The Constitution's 4th Amendment Right against unreasonable search and seizure applies equally to all individuals residing in the United States. Therefore, officers shall not initiate or prolong stops based on civil immigration matters (overstaying a visa is the only solely civil immigration matter), such as suspicion of undocumented status. Similarly, officers shall not facilitate the detention of undocumented individuals or individuals suspected of being undocumented by federal immigration authorities for suspected civil immigration violations.
- D. "Administrative warrants," "immigration detainers," and "requests for notification" issued by Immigration and Customs Enforcement (ICE) have not been reviewed by a neutral magistrate and do not have the authority of a judicial warrant. Therefore, officer shall not comply with such requests.

## **VIII. Training and Compliance:**

- A. The department will ensure that, at a minimum, all members and employees are compliant with Council and legislative requirements regarding fair and impartial policing training.

- B. Additional trainings may include but not be limited to instruction on anti-bias, power and privilege, non-English speaking communities, undocumented communities, and victim/witness services.
- C. Violations of the policy shall result in appropriate disciplinary action as set forth in the department's rules and regulations.

**IX. Accountability and Supervision:**

- A. Accountability is a vital element of policing. Police agencies are better able to achieve the goals of protecting the public safety, enhancing the quality of neighborhood life, and serving community needs if the communities they serve trust them. The process for making a complaint shall be readily available to the public.
- B. All members of this agency are required to promptly report allegations, complaints or knowledge of biased policing or suspected violations of this policy to their supervisor and the department's internal investigation function. Where appropriate, employees are required to intervene at the time the biased policing incident occurs.
- C. Shift supervisors will accept any complaint from the public regarding any provision of this policy and shall follow the agency's procedure for handling citizen's complaints.
- D. Supervisors shall ensure that all employees in their command are familiar and in compliance with the content of this policy. Supervisors will be alert and respond to indications of potential biased policing.

**X. Additional Guidance Regarding Due Process and Immigration Enforcement:**

The following guidelines are based on best practices and offer guidance on how to best support crime victims/witnesses and to ensure procedural justice and enhance trust between the police and the community.

- A. Federal law does not require law enforcement agencies to ask about the immigration status of crime victims/witnesses. It is essential to the mission of the department that victims report crimes and fully cooperate in investigations; that witnesses come forward and provide testimonial evidence; that persons report suspicious activity and other information to reduce crime and disorder; and that help is summoned when needed. These activities must be undertaken without hesitation and without fear that the victim, witness, or reporting person will be subject to prosecution or deportation for no reason other than immigration status.
- B. To effectively serve immigrant communities and to ensure trust and cooperation of all victims/witnesses, officers will not ask about, or investigate, immigration status of crime victims/witnesses unless the victim/witness is also a crime suspect and immigration status is necessary to the criminal investigation. Officers will ensure that individual immigrants and immigrant communities understand that full victim services are available to documented and undocumented victims/witnesses. Officers should communicate that they are there to provide assistance and to ensure safety, and not to deport victims/witnesses and that the Montpelier Police Department personnel do not ask victims/witnesses about their immigration status nor will they report immigrants or the immigration status of victims/witnesses to the Department of Homeland Security.
- C. Therefore, department personnel will act first and foremost in the best interests of our community and our mission when dealing with undocumented foreign nationals who come to

the department for help or to make reports, giving full priority to public safety and justice concerns.

#### **XI. IMMIGRATION STATUS:**

A. Officer suspicion about any person's civil immigration status shall not be used as a basis to initiate contact, detain, or arrest that person. The exception to this would be in those instances where the agency member is working with Federal partners in the Stone Garden program or similar Federal initiatives.

B. Department personnel may not inquire about a person's immigration status unless immigration status is necessary to the ongoing investigation of a criminal offense. It is important to emphasize that officers should not use a person's characteristics as a reason to ask about immigration status.

C. Officers shall not make warrantless arrests or detain individuals on suspicion of "unlawful entry," unless the suspect is apprehended in the process of entering the United States without inspection. Arrest for "unlawful entry" after a person is already within the United States is outside the arrest authority of Vermont officers.

#### **XII. ESTABLISHING IDENTITY:**

A. Officers may make attempts to identify any person they detain, arrest, or who come into the custody of the department.

B. Acceptable forms of identification, which must include a photograph of the individual, include, but are not limited to driver's licenses from any U.S. state or foreign country, government-issued IDs by a U.S. jurisdiction, foreign passports, and consular ID cards. An individual should not be stopped or detained solely for the purpose of establishing his or her identity. Department personnel may utilize federal databases in attempts to establish an individual's identity. Department personnel shall utilize federal databases in attempts to establish an individual's identity only when all other attempts to identify the person have failed. Contact with federal authorities made to determine an individual's identity is restricted to the purpose of determining his or her identity.

#### **XIII. CIVIL IMMIGRATION WARRANTS:**

A. Officers shall not arrest or detain any individual based on a civil immigration warrant, including DHS Forms I-200, I-203, I-205, and any administrative warrants listed in the National Crime Information Center Database (NCIC). These federal administrative warrants are not valid warrants for Fourth Amendment purposes because they are not reviewed by a judge or any neutral magistrate. Moreover, federal regulations direct that only federal immigration officers can execute said warrants. Finally, Vermont law enforcement agencies do not have any authority to enforce civil immigration law.

#### **XIV. RESTRICTIONS ON COLLABORATION WITH FEDERAL IMMIGRATION OFFICERS:**

A. Department personnel shall not contact CBP or ICE for assistance on the basis of a suspect's or arrestee's race, ethnicity, national origin, or actual or suspected immigration status.

B. Officers shall not prolong any stop in order to investigate immigration status or to allow CBP or ICE to investigate immigration status.

C. Sweeps intended solely to locate and detain undocumented immigrants shall not be conducted unless acting in partnership with a Federal agency as part of a formal partnership. Department personnel are not permitted to accept requests by ICE or other agencies to support or assist in operations that are primarily for immigration enforcement.

**XV. USE OF RESOURCES:**

A. Department personnel shall not hold for or transfer people to federal immigration agents unless the federal agents provide a judicial warrant for arrest. An immigration detainer (Form I-247, I-247D, I-247N, or I-247X) is not a warrant and is not reviewed by a judge, and therefore not a lawful basis to arrest or detain anyone. Valid criminal warrants of arrest, regardless of crime, shall not be confused with immigration detainers. This General Order does not affect the proper handling of arrests and detentions associated with criminal arrest warrants.

B. Unless ICE or Customs and Border Patrol (CBP) agents have a criminal warrant, or [Agency members] have a legitimate law enforcement purpose exclusive to the enforcement of immigration laws, ICE or CBP agents shall not be given access to [individuals in Montpelier Police Department custody, and department personnel shall not expend public time or resources responding to ICE or CBP inquiries or communicating with ICE or CBP by providing information beyond what is available to the general public under open records laws.

C. Citizenship, immigration status, national origin, race, and ethnicity should have no bearing on an individual's treatment in Montpelier Police Department custody. Immigration status or perceived immigration status, including the existence of an immigration detainer, shall not affect the detainee's ability to participate in pre-charge or police-initiated pre-court processes. Furthermore, immigration status or perceived immigration status shall not be used as a criteria for citation, arrest, or continued custody under Rule 3 of the Vermont Rules of Criminal Procedure.