

Richmond Fair and Impartial Policing Policy (FIPP) Working Group – Status Report for December 7, 2020

Members:

Town Government: Josh Arneson (Town Manager), Roger Brown (Selectboard Member), Kyle Kapitanski (Acting Chief of Police)

Richmond Racial Equity (RRE) Community Group: Ann Naumann, Wafic Faour, Cody Quattrocci, Connie van Eeghen

Migrant Justice of Burlington VT: Will Lambert (also: Enrique Balcazar, Madeline Sharrow)

On September 9, 2020, the Richmond Selectboard asked this working group to review a proposed FIPP and discuss the proposed revisions before returning to the Selectboard for discussion and consideration. The working group met four times: Sept 30, Nov 4, Nov 11, and Nov 25. The group found areas of agreement and other areas in which group members, with the information we had, have not been able to come to an agreement. A summary of the group's discussion follows for presentation to the Richmond Selectboard on December 7, 2020.

1. Our purpose and expectations as a working group

- a. We want to help our community be safe and equitable in accessing services and resources for all who live in Richmond or travel through our town.
- b. We believe that immigration policy is not a part of what our police force does.
- c. We believe that policing policy is important to our town and Selectboard.
- d. We strive to work towards changing Richmond's current FIPP with mutual civility and to listen to all voices respectfully.

2. Background

- a. The Town of Richmond's FIPP dates back to 2011. In 2016 the Criminal Justice Training Council created a unitary model policy with robust protections for immigrant rights after input from Migrant Justice, ACLU and other stakeholders. Richmond revised its FIPP to adopt the CJTC model policy as per state law.
- b. In 2017, CJTC weakened its model policy after threats from Trump Administration to withdraw DOJ funding. Richmond amended its FIPP to conform to this weaker state model policy. This model policy references new federal law that prohibit towns from restricting or prohibiting town employees from communicating with federal agencies such as ICE.
- c. Since that time, four towns/cities in VT have revised their local policies to guide the circumstances in which police officers may and may not contact federal agencies (Winooski, Burlington, Hartford, Norfolk). Winooski's policy, on which the others were modeled, was approved by the VT Office of the Attorney General as complying with Vermont FIP statute. The Winooski policy contains most of the Model Policy language but does not include references to the new federal laws enacted in 2017.
- d. The RRE reviewed the State's Model Policy (i.e. the Town of Richmond's current policy) and recommended changes based on the Winooski FIPP.
- e. The VT Office of the Chittenden County State's Attorney issued a memorandum dated 11/20/20 declaring that the state policy is the "floor not the ceiling" for town FIPPs and provides a "call to action" to Vermont municipalities to strengthen and make more protective their local policies.

3. A summary of what the proposed FIPP includes follows. (Note: this summary is solely to aid discussion of the issues identified in the next section. This summary does not replace policy language and is incomplete in areas that the Working Group's discussion did not focus on.)

- a. **Purpose:** Support our Richmond Police Department-RPD (in continuing) to provide services in an equitable and impartial way, with clarification of when officers can consider immigration status in their work without violating state or federal law or Richmond Policies.

- b. **Introduction:** The Police Department depends on a relationship based on partnership and trust with all town residents. It will use good hiring practices, training, policy development, and community outreach/partnerships, among other strategies, to achieve this.
- c. I. **Definitions** of policy terms
- d. II. **Policing Impartiality:** supports existing legal requirements placed on the conduct of officers in upholding the law. Officers may use race and other personal characteristics in doing so if it links a person to a specific criminal incident that is “based on reasonable suspicion, probable cause or other relevant exigent circumstances, supported by articulable facts, circumstances, and conclusions that support the given action, and also is combined with other identifying information.”
- e. III. **Community Relations:** be courteous and professional, with guidance on how to detain a person
- f. IV. **Bias-Based Reports:** how to respond to phone calls based on racism
- g. V. **Training:** all officers will receive FIPP training
- h. VI. **Accountability and Compliance:** how complaints will be handled
- i. VII. **Establishing Identity:** officers may, in the conduct of their work, ask for acceptable forms of ID but cannot detain someone solely for this purpose. They can use federal resources to establish identity as long as they do not conduct immigration enforcement. The RPD serves everyone, including immigrants¹.*
- j. VIII. **Federal civil immigration law, including stops, detention, and arrests:** Officers do not have authority to enforce federal civil immigration law. Officers will not ask about immigration status unless part of conducting a criminal investigation which is based on reasonable suspicion, probable cause or other relevant exigent circumstances, supported by articulable facts, circumstances, and conclusions that support the given action, and also is combined with other identifying information. Nor will they detain undocumented people suspected of violating federal civil immigration law. * The only reason to hold for/transfer to federal agents is a judicial warrant for arrest.
- k. IX. **Border Crossings:** Officers shall not arrest/detain individuals on suspicion of “unlawful entry” (usually a federal misdemeanor or, if repeated, a federal felony) unless the person is apprehended in the act of unlawful entry. *
- l. X. **Victim and Witness Interaction:** The cooperation of immigrant communities is very important. Officers will support crime victims and witnesses and enhance their trust in the police by not asking about or investigating immigration status unless immigration status is an essential element of the crime. *
- m. XI. **Collaboration with Federal Immigration Officers:** officers will not share information with ICE about a person unless as part of the investigation of a felony which is **not** related to enforcement of federal civil immigration law. * Officers will not accept help from ICE to support or assist in operations for civil immigration enforcement. * Officers will grant access to individuals in RPD custody to ICE if those agents have a judicial criminal warrant or the officer/s have a reason that is not related to enforcing civil immigration law. The proposed FIPP removes the “Savings Clause” from the Model Policy which states that the RPD will not prohibit or restrict its officers from sending to or receiving from federal immigration authorities information about citizenship or immigration status of individuals.*

¹ * Indicates the proposed FIPP’s exclusion of one of the phrases from Model Policy relating to not prohibiting or not limiting communications governed by 8 USC sections 1373 and 1644. These federal statutes provide that local agencies may not prevent/restrict employees from communicating with government officials such as ICE. The proposed FIPP does not mention these sections at all, whereas the Model Policy does reference them, thereby reinforcing that towns may not prevent or restrict employees from communicating with ICE in any way.

NOTE: The Working Group agrees that the proposed FIPP returns Town policy to the language it established and used from 2011-2017, with some wording changes and these specific exceptions:

- Addition of section IX on Border Crossings
- Restatement of section XI on Collaboration with Federal Immigration Officers to broaden the identification of which agencies are included and specify what information shall not be shared
- Reordering of some of the sections listed above
- The original policy did not make a statement that it does not intend to violate federal law. The proposed FIPP adds this language (see Purpose, above).

4. Working Group discussion points:

a. Purpose of the proposed FIPP NOTE: not all members of the group felt that they could speak on this topic

- i. Make a difference in the lives of migrants, esp. not to cause migrants to interact with federal agents due to interactions with the local police – operations
- ii. Publicize this intention and action: so that the migrant community will know that local police will not interact with federal agents; so to increase confidence in this community – specifically communicate our Town’s priorities about public safety; and so that other towns can reflect on Richmond’s example.
- iii. Ultimately, make farms and Richmond Town more welcoming to migrants who support food production for our community

b. Avoid unintentional harm: We are open to any information that the proposed FIPP could hurt a community member, instead of help, and will respond as soon as we are aware.

c. Understand the governance of the FIPP: who authorizes it and who can revise it

- i. Vermont law establishes that it is the municipal law enforcement agency leadership (in our case, the Richmond Chief of Police) who adopts a FIPP, which was required of each town by March 1, 2018.
- ii. According to an attorney speaking for the Vermont League of Cities and Towns, the Selectboard can suggest/recommend changes to the town FIPP to the Police Chief, as it has supervisory authority over its police department and chief (within the bounds of any union contract or other agreement). Attorney Susan Senning advised, “it may be wise to collaborate between employer and employee in these situations.”
- iii. Attorney Senning also noted, regarding any article voted on at town meeting, that it “would be non-binding but could be worthwhile to consider as it (the police department) reflects the feelings of the community it will serve. I think the bottom line is to work cooperatively in developing an appropriate policy that serves the town, but ensuring the police chief formally adopts it on behalf of the department.”
 1. **NEED MORE INFORMATION:** According to Attorney Kira Kelley from the VT chapter of the National Lawyers Guild: towns “regulate the health, safety, and welfare of their communities, and the primary example of this is by regulating the police.” Therefore, RRE should address comments and requests to the Selectboard to make a decision about changes in the town’s FIPP.
- iv. In the case of a town in which the police chief did not formally adopt a proposed revision to the State Model policy (Hartford), the town voted in an ordinance to accomplish the same action as the Winooski FIPP.

1. NEED MORE INFORMATION: Per Attorney Kelley: “towns are allowed to pass ordinances or policies that regulate the police, who then have to update their own internal policies so that those policies do not violate the town ordinance or policy.”

d. Ensure that the language is clear and supports the purpose

- i. The proposed FIPP removes language from the Model Policy that disallows prohibiting employee communications with ICE, governed by 8 USC sections 1373 and 1644, and replaces language in section XI (see 3.m above) to prohibit sharing information with federal immigration authorities unless certain conditions are met. This language directly contradicts federal law (8 U.S.C. §1373 and 1644). If a Town policy contradicts federal law, can the Police Department carry out its role as enforcer of the law in operationalizing the FIPP?
 1. WE AGREED: It is not the police department that would be violating the federal law, it is the town that would be violating the federal law.
- ii. According to VT Chittenden County States Attorney memorandum, 11/20/20, if the town believes that part of a federal law is unconstitutional, it is “compelled to comply only with the ‘lawful requirements’ of federal statute.”
 1. NEED MORE INFORMATION: Who, exactly is at risk, the town or the police chief or both? And how likely is the risk? We have all agreed that the current culture of the town police department, to the best of our knowledge, already supports and guides behavior consistent with that of the proposed policy. If we already hire, train, mentor, and reinforce the behavior and culture we are seeking, and we continue to do so, are we likely to unintentionally harm those who are enforcing our laws?
- iii. Resources for the Selectboard:
 1. Letter from Migrant Legal Resource Center indicating past rulings stating that the federal law is in violation of Constitutional Amendment 10 (pg 1)
 2. David Scherr (VT State AG Office) certifying Winooski’s FIPP (pgs 2-3)
 3. ACLU memo summarizing case law finding the federal law unconstitutional (pgs 4-6)
 4. VT State Chittenden County AG Office memorandum “Call to Action” supporting FIPPs like that of Winooski. (pgs 7-26)
 5. State statutes related to the responsibility of public officers and the criminality of not carrying out their prescribed duties (for police officers: to uphold the law) and statutes related to town governance. (pg 27)
- iv. Additional resources provided by Town Administration that the group did not have the opportunity to review:
 1. Email to Town from VLCT about risk of lawsuit (pg 28-29)
 2. Email to Town from VLCT about FIPP and insurance coverage (pgs 30-31)
- v. Does the new language in the proposed policy, “Nothing in the Richmond Police Department Fair and Impartial Policing policy is intended to violate federal law,” mean that later statements that contradict federal law can be ignored by a police officer?
 1. Yes, a police officer can choose to violate town policy and would then engage in supervision and oversight based on human resources policy. Is this likely to happen?
- vi. Does the language of the proposed FIPP provide migrant workers in Richmond with greater safety and security, and does it decrease their fear and distress and allow them to participate in town life?
 1. Yes, according to several Migrant Justice spokespersons.
- vii. Does the proposed FIPP put the Town at risk because the League of Cities and Towns (insurance administrator for the Town) may decide that, in the circumstance of a lawsuit related to the policy, insurance protection would be withheld?

1. Several cities/towns in Vermont have done this without reported problems to date.
 2. If the Town's insurance purchaser and administrator, League of Cities and Towns, were to withhold related coverage, does that influence the Town's decision related to the proposed FIPP?
- viii. Is the FIPP language as strong and directive as it could be to protect migrants as much as possible?
1. Yes, per Migrant Justice spokespersons. However, this is the Town's policy and the Town could make it stronger and more specific. Note that orientation and training programs can accomplish that as well, and be updated more readily.

e. How might police culture be affected by the FIPP?

- i. Does moving the FIPP forward detract from or impede maintaining a fair and impartial policing culture, which may be a stronger guide to police behavior than policy?
 1. The policy and the culture, both of which are in support of FIPP, are not in conflict. How to move this proposed policy forward is a Selectboard decision, with Town residents providing input.
- ii. If culture is a stronger guide to police behavior than policy, what are the structures/systems we need to provide accountability?
 1. NOT YET DETERMINED. Oversight is an issue deferred to another policy discussion. This includes discussions on informing the community about what police culture is, how the results of police culture are measured and reported, and responsiveness to our current national climate around policing and community engagement.