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# COMMUNITY SAFETY WORKING GROUP (CSWG)

## REPORT PART B

Tashina Bowman  
Darius Cage  
Débora Ferreira  
Pat Ononibaku  
Brianna Owen, Co-Chair  
Russ Vernon-Jones  
Elisha Walker, Co-Chair

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PART B  
October 18, 2021**

**EXECUTIVE SUMMARY**

The Community Safety Working Group (CSWG) has met weekly for almost a year to examine community safety services in Amherst and propose alternatives and changes that will make our community safer and more equitable. BIPOC community members have shared with us that many of them have experienced disrespect and inequitable treatment by the Amherst Police Department (APD) and that the BIPOC community in general has a high level of fear and distrust of the APD. This situation is both harmful to the BIPOC community and makes our entire community less safe and less unified.

The CSWG has consistently searched for ways to address this situation in Amherst. We have engaged in extensive research into how other municipalities are addressing issues of racism and inequity in safety services and retained the services of three different consulting groups to assist us in our work. In our May 2021 report (Part A) we recommended the Community Responders for Equity, Safety, and Service (CRESS) program. This program has been approved and is currently being developed with an expectation that it will become operational this coming Spring. It will provide skilled, unarmed responders to calls for service that involve mental health, substance abuse, homelessness, trespass, wellness checks, youth, and/or the need for de-escalation, and will reduce unwanted contact between the APD and BIPOC community.

The Department of Diversity, Equity, and Inclusion (DEI) that we recommended is also being created and a new Director for this department will be advertised for soon. Recommendations that we made to create a BIPOC-led Youth Center and BIPOC Cultural Center have not been approved, but are still to be considered. We recommended reducing the size of the APD. A reduction of 2 positions was made; we believe more substantial reductions are necessary and will become easier as CRESS and other of our recommendations are implemented.

This new report (Part B) contains many new and more detailed recommendations for action by the Town Council, the Town Manager, and the APD. Each recommendation is designed to improve equity, transparency, accountability for the APD, and safety, and/or reduce unwanted contact between the APD and BIPOC community members.

We recommend the creation of a new, ongoing Community Safety and Social Justice Committee (CSSJC) for the Town. This committee will continue the work of the CSWG and also assist all elements of Town government in becoming more pro-actively anti-racist. It will work closely with the new DEI Director. The Town is already seeking members for this new committee.

We recommend the creation of a Resident Oversight Board to provide oversight to the Amherst Police Department. Our recommendation specifies that this Board be majority BIPOC and be empowered to investigate complaints about the APD, recommend discipline of police officers, review and make recommendations about APD policy and practices, and invite community input about policing in Amherst.

Following the lead of other progressive municipalities (and the entire state of Virginia) we recommend that the APD be prohibited from making so-called “consent” searches of vehicles and from making any “low-level or pretextual” traffic stops. This will significantly reduce traffic stops altogether and will end the practice of police stopping a vehicle for a broken tail light or expired tags and then searching the driver or vehicle for other purposes. Police would focus only on traffic violations that clearly endanger the public or situations involving serious crime. We also recommend re-writing the APD “Use of Force” policy and revising some other APD policies. In some cases we offer a model policy and/or a by-law proposal.

We recommend creating an on-line dashboard which enables the public to have easy access to monthly data about APD traffic stops, broken down by race and other factors.

As we have explored many alternatives and continued to listen to the voices of marginalized people and communities in Amherst, we have again and again confronted how much pain and distrust exists, especially for BIPOC community members. This extends far beyond the APD to many aspects of life in Amherst. As a result, we recommend that Amherst engage in an extended process of racial healing and visioning. This process should engage people of all identities, and include residents of all ages, committees and groups, those working or serving in town government, etc. Skilled facilitators will engage all of us in envisioning a town free of white supremacy, in healing processes, in identifying action steps to interrupt and eliminate white supremacy, and in developing a shared liberatory consciousness. This process can inform and support work on racial justice that is going on in other areas of our life as a town, not just public safety.

Our report also includes other recommendations regarding traffic enforcement, professional development for the APD in areas related to racial justice, contract negotiations, etc. We also reaffirm the recommendations in our first report. The two reports (Part A – May 2021, and Part B – this document) build on each other and together constitute the findings and recommendations of the CSWG.

The term of the CSWG expires on November 1, 2021. Responsibility for implementing our recommendations will pass to the Town Council, the Town Manager, the APD, the new Community Safety and Social Justice Committee, and all the members of the Amherst community. We are grateful for the opportunity to do this work and very appreciative of the support we have received from so many Amherst residents. This has been a community effort, and it will need to continue to be a community effort.

We believe that full implementation of our recommendations can be a vital turning point in the history of our town. These recommendations provide important steps toward dismantling white supremacy in Amherst. We all have an interest in creating a community that is racially just, inclusive, and safe for everyone.



## INTRODUCTION

The Community Safety Working Group (CSWG) has worked diligently for almost a year to understand how the ways in which community safety services are provided can create a town which is safe, equitable, and inclusive for all community members, and can contribute to the larger goal of dismantling systemic racism in Amherst. We have engaged with community members and leaders, with the Amherst Police Department (APD), and with other service providers. We have researched what other municipalities across the country are doing to address issues of racial justice in community safety services. We have developed recommendations which we believe are consistent with cutting-edge best practices across the nation and are specific to the unique characteristics of our town of Amherst.

While the term of the CSWG is ending, the work of creating community safety and racial justice has new momentum which must be maintained and accelerated in the coming years. The responsibility for continuing to move this work forward now passes to the Town Council, the Town Manager, and, in some cases, the Amherst Police Department. In a larger sense, the entire community has a role to play in supporting, encouraging, and participating in envisioning and building a social fabric of justice, interconnectedness, and care that extends to all aspects of our town. Our recommendations include some steps that should be taken promptly, including the creation of new entities that can lead and guide the work in the future, and a process for broader, longer-term engagement together.

Moving toward racial justice and inclusion requires both boldness and persistence. There is no set course of immediate action that will solve everything. There is no set number of boxes to check and then be done. Only a combination of immediate action, long-term commitment, regular attention, openness to change, and a willingness to learn and grow together—on the part of our leaders and our community members-- can enable us to realize our vision of a town that works for everyone.

The first report of the CSWG<sup>1</sup> was released in May 2021 and our recommendations focused on Part A of our charge—“make recommendations on alternative ways of providing public safety services to the community”. This is our second report, which addresses Part B of our charge. It is built on the findings reported in our Part A report, extends our Part A recommendations, and makes recommendations for Part B—“make recommendations on reforms to the current organizational and oversight structures of the Amherst Police Department.” The two reports build on each other and together constitute the findings and recommendations of the CSWG.

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<sup>1</sup> <https://www.amherstma.gov/DocumentCenter/View/56163/CSWG-Final-Report-Part-A>



## **CONTEXT AND GOALS**

As we have worked to understand community safety in Amherst we have identified both strengths and needs in the Amherst Police Department. The APD is a professional department, with many dedicated and conscientious officers. The APD is an accredited police department in Massachusetts--one of only 98 out of 351 departments that meet the rigorous criteria for this recognition. It has a meaningful anti-bias policy and collects racial data regarding traffic stops. The APD has been very open in sharing information with us, providing data, explaining their operations, and answering our questions.

The APD participated a few years ago in the development and implementation of the Sanctuary Community By-Law. The Chief participated actively in the dedication of the Black Lives Matter banner when it was first hung across S. Pleasant St by the Coming Together Anti-Racism Project. The APD has no military equipment and has decided not to accept any if offered. Each police car is equipped with a video recording camera that comes on automatically when the blue lights are turned on for every traffic stop. The APD generally stays out of sight during social justice protests in town. Some residents have had courteous, respectful, and/or helpful interactions with members of the APD as they carry out their responsibilities in Amherst.

At the same time, as we detailed in our Part A report, the APD has not gained the confidence of the BIPOC communities of Amherst. Many BIPOC community members shared with us their fear of the APD and their experiences of being treated

with disrespect and treated unequally by officers of the APD. BIPOC community members shared with us that they experience over-surveillance and being over-policed. They shared incidents of being treated with suspicion when they sought to report a crime. Others said their fear would prevent them from ever filing a complaint against a police officer.<sup>2</sup>

The CSWG acknowledges that some of the feelings that BIPOC residents in Amherst have about the police are the result of the horrible incidents of police violence and racial profiling reported in the news about police departments in other parts of the country, combined with the historically racist role of policing throughout our nation's history--violently oppressing BIPOC communities. That, however, is not a full explanation of the situation in Amherst. The CSWG Working Group has heard too many stories of inappropriate police behavior in Amherst; we have experienced it ourselves; and we have seen it substantiated in our review of the APD traffic stop data.

This situation is a serious problem because of its impact on BIPOC community members; and also because our community is less safe when BIPOC members are too fearful to report a crime or come forward as witnesses; police officers' jobs are made more difficult and less rewarding; and all community members lives are diminished through racial separation and mistrust.

There is no magic remedy or cure-all for this situation. However we are confident that the recommendations that we make in this report, if implemented together, can make a significant difference and move us toward greater trust, respect, and community safety. They have been crafted to address the issues of fear, distrust, and division we've found in Amherst. We recommend that they be seen as parts of synergistic whole, each part contributing to a dynamic increase in racial justice and unity.

They provide for greater accountability, transparency, reduce potentially conflictual contact between police and BIPOC community members, call for engaging in a community process of healing and visioning, and creating a more intentionally, explicitly anti-racism culture both in the APD and in our town as a whole.

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<sup>2</sup> Please see the Findings in our [Part A report](#) and in the report from 7Generations Movement Collective that is included as an Appendix to that report.



## **PART B RECOMMENDATIONS**

After almost a year of weekly meetings, community outreach, extensive research, and vigorous debate and consultation, we make new detailed recommendations in the following areas:

1. Community Safety and Social Justice Committee
2. Resident Oversight Board
3. Amherst Police Department policies
4. Transparent, easy public access to data on APD vehicle stops by race
5. Traffic control and enforcement
6. An extended process of community racial healing and visioning
7. Developing an anti-racism culture on the police force
8. Reaffirming other previous recommendations

### **1. CREATE AN ONGOING, RESIDENT, STANDING “COMMUNITY SAFETY AND SOCIAL JUSTICE COMMITTEE”**

In our first report we recommended that the CSWG be made an ongoing group with responsibility for overseeing and supporting the implementation of the recommendations made in Part A of our report as well as the recommendations we are making in this report--which explores other means of enhancing equity and community safety for all residents of Amherst. With support from the Town Council, the Town Manager extended our term of office to November 1, 2021. The Town



Manager, Paul Bockelman, rejected our recommendation that the CSWG continue as an ongoing group, but indicated his support for creating a standing committee with a new charge. Accordingly, we recommend that the Town Council create a resident, standing “Community Safety and Social Justice Committee.”

We envision this committee serving as an advisory committee to the new Director of Diversity, Equity and Inclusion-- providing support, advice and assistance. It will help articulate viewpoints of residents, especially BIPOC members of our community. It will help monitor the implementation of the recommendations of the CSWG, but will also have a broader responsibility to advance diversity, equity, inclusion and community safety in Amherst.

While it is important that the Town Council, the Town Manager and all other staff, committees, and boards continually work on these issues, it will be useful to have an active committee whose focus, at all times, is this critical work. We envision this committee serving as a resource to all other entities in town, helping the Town of Amherst stay focused on our social justice goals amid the many competing issues and interests that inevitably arise in the affairs of the Town.

We recommend that the Town adopt the following composition, purpose, and charge in creating this vital committee.

Submitted by CSWG

## **Committee Charge**

### **Community Safety and Social Justice Committee**

**Name:** Community Safety and Social Justice Committee (CSSJC)  
**Type:** Standing  
**Authority:** Amherst Home Rule Charter Section 2.5  
**Appointing Authority:** Town Manager per Amherst Charter Section 3.3(c)  
**Number of voting members:** Seven (7)  
**Number of Liaison:** One (1)  
**Term of Appointment:** Three (3) years<sup>3</sup>  
**Special Municipal Employee:** Yes [if voted by Town Council]  
**Staff Support:** Town Manager or Designee

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<sup>3</sup> Note: Initial appointments shall be staggered as follows: 2 members for one-year terms; 2 members for two-year terms; and 3 members for three-year terms.

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**Composition:**

Seven (7) voting members:

- No fewer than five (5) of the seven (7) voting members shall represent Black, Indigenous, People of Color, or other historically marginalized communities.
- Two (2) of the initial appointments shall have been members of the Community Safety Working Group (CSWG).
- Appointments shall strive to represent a broad range of the Town's socio-economic diversity.

**Selection Committee:**

Should be comprised of diverse residents who have social justice/diversity, equity and inclusion experience should be appointed by the Town Manager to assist in selecting the CSSJC members.

**Purpose:**

The Community Safety and Social Justice Committee will work to advance diversity, equity, inclusion, and community safety in Amherst. The Committee may provide advice and support to all Town government entities including the Town Council, Town Manager, and Town Committees to fully realize the resolution "Affirming the Town of Amherst's Commitment to End Structural Racism and Achieve Racial Equity for Black Residents" adopted by the Town Council, December 2020. The Committee shall work to support all members of the Amherst community to understand and enjoy the benefits of a community that is truly diverse, equitable, and inclusive of all and shall serve as a voice to marginalized and underrepresented residents.

**Charge:**

The CSSJC shall:

- Incorporate and continue the work done by CSWG for systemic change.
- Ensure the implementation of all CSWG recommendations adopted by the Town Council and/or the Town Manager<sup>4</sup> and track progress such as the Community Responders for Safety and Service (CRESS) program, the Diversity, Equity & Inclusion Department (DEI), the Youth Empowerment Center, and the BIPOC Multi-Cultural Center.
- Support the work of the DEI department and CRESS program and employees that address the needs of BIPOC and other marginalized groups including the disabled, immigrants, LGBTQIA.
- Assist the Town in exploring resources such as buildings for the Youth Empowerment Center and BIPOC Multi-Cultural Center.

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<sup>4</sup> There should be at least two (2) members of the CSSJC members in implementation meetings held by the Town to put in place CSWG's recommendations.



- Recommend funding sources including grants focused on targeted priorities for marginalized residents with the most impactful and sustainable projects.
  - Ensure that the Town implements a robust translation service.
  - Provide input to the Town Manager during the budget process.
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## 2. CREATE A RESIDENT OVERSIGHT BOARD

### Introduction

“The President’s Task Force on 21<sup>st</sup> Century Policing” (2015) recommends civilian oversight of law enforcement. “Civilian oversight alone is not sufficient to gain legitimacy; without it, however, it is difficult, if not impossible, for the police to maintain the public’s trust.” (p26).

“Mutual trust and respect between police and communities are critical to effective law enforcement. Civilian oversight increases public trust in police by assuring the public that investigations have been done fairly, thoroughly, and objectively. This improved trust leads to greater public cooperation with law enforcement and in turn, improves public safety.” ([National Association for Civilian Oversight of Law Enforcement](#) (NACOLE))

Resident<sup>5</sup> oversight is beneficial to the police because it strengthens the relationship between a police department and its community and creates greater trust in the police. Oversight is beneficial to the community because it protects the civil rights of all members of the community, holds police accountable, ensures that community voices are heard and taken seriously, ensures that complaints will be heard and investigated fairly, and increases safety for all members of the community. In Amherst, resident oversight will also specifically address issues of bias, distrust and fear that are currently present in the relationship between the APD and local BIPOC communities.

Oversight boards are most successful where the Board and the police department develop a strong working relationship based on mutual respect, shared goals of unbiased policing, and a shared commitment to strengthening the relationship between the police and the community based on accountability, transparency, and service. The Board and the APD must work together to make this a reality in Amherst.

The goal of the oversight process is to improve the quality and equity of policing in Amherst. While the Board has the authority to recommend punitive consequences when it deems them necessary, it is also charged with working with the APD to assist officers to grow, become more community oriented, and bring greater depth of understanding and awareness to their interactions, especially interactions with BIPOC members of our community. The Board can also assist in amplifying community voices (especially BIPOC voices) and participation at all levels of police operations. The Board is expected to be forceful, firm, and sometimes creative in its recommendations and responses to situations in which racial bias has occurred.

### **Mission**

The mission of the Resident Oversight Board (Board) shall be to provide accountability and consultation so that equitable and effective public safety services are provided by the APD and that these services are provided in a way that contributes to eliminating systemic racism and white domination in Amherst.

### **Scope of Responsibilities**

The responsibilities and authority of the Board include, but are not limited to:

- Receiving complaints from members of the public. (Complaint procedures are detailed below.)
- Conducting hearings related to complaints.
- Hiring professional investigators as needed and supervising their work.
- Recommending discipline, supervision, and/or training for APD officers whose behavior has not conformed to the standards and expectations for the APD.

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<sup>5</sup> We prefer “resident” oversight to “civilian” because “civilian” is so often seen as signifying what is distinct from military. The police in Amherst will be armed, but that should not be their primary identifying characteristic.

- Recommending mediation for complainants and officers when deemed appropriate. (This alternative shall be used only when both the complainant and the officer(s) choose to participate voluntarily.)
- Any APD initiated internal review of police misconduct with any member of the public shall be reported to the Board and is subject to review by the Board.
- The Board also performs an audit role, examining the overall performance of the Department's policies, practices, programs, training, and complaint procedures; and the quality of police-community interactions (including empowering and engaging community voices--especially BIPOC voices-- and problem-solving engaging the community and APD together), making appropriate recommendations for revisions in policies, practices, programs, and training consistent with the mission of the Board.
- Assessing and making recommendations with regard to the prevailing departmental culture of the APD, with a goal of developing a departmental culture which promotes the APD playing a positive role in dismantling systemic racism in Amherst.
- The Board shall have the authority to subpoena witnesses and documents, if necessary, but it is expected that requested information, documents, and interviews will be provided voluntarily.
- The Board shall be represented on the interview committees that are part of the process for selecting new hires and choosing officers to promote to positions of Lieutenant, Captain and Chief.
- The Board shall be consulted:
  - Prior to and during negotiations of contracts with police bargaining units. (Board members will not participate directly in negotiation meetings.)
  - Prior to the adoption of new policies, practices, and programs by the APD

The Board may also:

- Request that additional data be collected and reported by the APD for a reasonable purpose
- Initiate investigations and conduct research, without a complaint having been filed, when deemed appropriate for the accomplishment of its mission
- Seek legal advice as needed
- Engage in outreach to the community for the purpose of assisting community members to know their rights, and be aware of the availability of the Board.
- Invite public input regarding the performance of the APD and recommendations for revision of APD policies, practices, and procedures through public forums and other means
- Explore and recommend alternatives to policing in addition to the CRESS program
- Make recommendations re: the APD budget, staffing levels, and organization

### **Membership**

The Board shall consist of :

5 members, at least 4 of whom are BIPOC, including at least 2 Black members.

The Board shall be nominated by the Town Manager and appointed by the Town Council.<sup>6</sup> The Town Manager shall select a majority-BIPOC screening committee to screen and recommend nominees from those who apply to serve on the Board. Board members shall serve staggered 3 year terms and are eligible for reappointment.

If vacancies exist on the Board such that the BIPOC members have less than 4 votes, then votes of the remaining BIPOC members shall be weighted to give them 80% of the voting power. The Board may not function if it has no BIPOC members.

### **Complaint procedures**

1. All complaints received regarding the APD, regardless of who receives them, will be forwarded to the Board (unless the complainant requests in writing that the complaint not be sent to the Board). Complaints may be filed in person or online.
2. Complaints received by the Board will be shared with the APD (unless the complainant requests in writing that the complaint not be shared with the APD).
3. The Board will normally hear the complaint directly from the complainant in person in executive session. When deemed necessary by the Board, the Board may hear complainants virtually, via a digital video platform such as Zoom. (If after being heard, the complainant requests confidentiality and wishes to remain anonymous, then the complaint may inform policy and practice discussions/recommendations with the APD, but cannot result in a discipline recommendation against an officer by the Board, nor be discussed in a way that reveals the identity of the complainant.)
4. The Board will normally interview the officer(s) named in the complaint in executive session. (The officer may appear voluntarily, may be directed by the Chief of Police to appear, or may be subpoenaed.)
5. The Board will then do one or more of the following:
  - a. Seek more information
  - b. Hire a professional investigator (The Board will have a list of vetted, impartial professional investigators to choose from. Investigations may include interviewing witnesses and other officers, reviewing documents (including the records of the officers involved), and hearing from their supervisors.
  - c. Offer mediation. Mediation will only occur if both the complainant and the officer(s) involved voluntarily choose to participate.
  - d. Issue a finding and/or recommendation

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<sup>6</sup> In order to attract a diverse group of volunteers, win the confidence of marginalized community members, and avoid creating even an appearance of a potential conflict of interest, all Board members shall be residents without prior experience as police officers.

6. The Board may recommend disciplinary action, training, supervision, or mediation for the officer(s) involved.
7. The Board will normally then meet with the Chief of Police.
  - a. If the Chief and the Board can agree upon the action to be taken, then that action is implemented.
  - b. If the Board and the Chief disagree because they cannot agree on the facts of what happened, then the Board may hire an investigator (if it has not already done so) to determine the facts and make recommendations.
  - c. If there is disagreement between the Board and the Chief about the appropriate response to the incident/complaint, then the Board will make its recommendation(s) in writing to the Chief of Police and the Town Manager. If the Chief and/or Town Manager is unwilling to take the action recommended by the Board, the Chief and/or Town Manager must reply in writing within 10 days stating the reasons for not following the recommendation(s) of the Board. The Board will generally then report their recommendations and the Chief's or Town Manager's response to Town Council and to the public. (Such a report will generally avoid identifying any of the parties involved in the incident.)
8. If an investigator is retained by the Board, when the investigator's report is received, the Board will again meet with the Chief and proceed as above.
9. If a complaint is filed against the Chief of Police, the authority of the Board is unchanged, and recommendations regarding discipline will be communicated directly to the Town Manager.

### **Referral to District Attorney**

Cases in which an APD officer is believed to have committed a criminal violation will be referred directly to the District Attorney's office.

### **Ban on Retaliation**

Any retaliation, harassment, or intimidation by officers of the APD of a member of the Board, a member's family members, a complainant, or anyone who supports a complainant, or serves as a witness for a complaint shall result in immediate discipline, up to and including termination, of any and all APD officers responsible for the offense.

### **Contracts**

The authority of the Board may not be reduced via negotiated contracts with any APD units or individuals.

### **Details**

The Board has the authority to design and revise its own internal procedures, set appropriate timelines, and recommend other changes consistent with its mission.

## **Funding**

The Board must be adequately funded to provide stipends for members, significant training for the Board, the capacity to hire professional investigators as needed, and possibly, funds to support further research and community outreach as needed. When necessary, the Board will consult an independent attorney for advice, with costs borne by the Town.

## **Meetings**

The Board may meet as often as it deems necessary to fulfill its responsibilities, but must meet at least once a month (except that the Board may waive meeting in July and August if there is no pressing business). Meetings without other agenda items will be used to further develop relationships and deepen the Board's understanding of policing, police reform, policies and practices of the APD, relationships between the communities of Amherst and the APD, and dismantling systemic racism.

The Chief of Police and/or the Chief's designee will be expected to attend Board meetings when so requested by the Board.

The Board will invite representatives of the police unions to at least one meeting of the Board per year for the purpose of dialogue and building understanding and collaboration in moving toward solutions that work for all.

## **Confidentiality**

All Board members are required to maintain strict confidentiality with regard to the contents of executive sessions, confidential documents and testimony, and matters agreed to be kept confidential. This is a requirement for serving on the Board.

## **Training**

Board members shall be required to undergo significant training at the beginning of their terms of office and participate in ongoing training as well. Board members shall be compensated for the time they spend in required trainings. The Town shall pay for professional training for Board members.

We have not attempted a full description of the training nor to determine its length. (One small city (Cedar Rapids, IA) requires new Board members to participate in 30 hours of training.) The National Association for Civilian Oversight of Law Enforcement ([NACOLE](#)) provides recommendations about training and may be helpful in identifying qualified trainers. Board members must develop an understanding of police policies, practices and procedures; investigatory procedures; anti-bias policing; public meeting and records laws; the role of the Board and appropriate relationships with other Town entities; legal requirements affecting both police work and the work of the Board; and develop constructive working relationships with the Chief of Police and other relevant stakeholders.

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**We strongly recommend that the Resident Oversight Board be created immediately and go into operation as soon as is feasible. Once it is functioning, we recommend that a Town by-law be developed to establish it as a legal entity.**

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### **Early Agenda Items for the Resident Oversight Board**

We recommend that the Resident Oversight Board be tasked with investigating and working with the APD (and others) to address the following issues with the APD soon after their creation and training:

- Implementing policy changes recommended elsewhere in this report.
- Eliminating over-surveillance and over-policing of BIPOC neighborhoods. This is a high priority recommendation.
- Officer workload and overtime
- Scale of response – policies governing the number of police vehicles sent to an incident (Numerous community members have raised questions about what sometimes appears to be an intimidating and inefficient over-response.)

### **Why a majority BIPOC Resident Oversight Board?**

The CSWG is strongly recommending that Amherst have a Resident Oversight Board for the APD on which a majority of the members are BIPOC. There are several reasons for this. The first is that it is appropriate to the problem we are trying to solve. The CSWG did not find that the APD is corrupt, or inexperienced, or riddled with nepotism; we found that the APD has failed to build relationships of trust, respect and safety with the BIPOC community of Amherst. This sense of fear, mistrust, and lack of safety must be addressed because of its effect on BIPOC residents of Amherst, and also because it limits the APD in fulfilling its law enforcement responsibilities. A majority BIPOC Board will offer the greatest chance of success in addressing this serious problem because of the lived experiences and perspectives of the BIPOC members.

Secondly, a majority BIPOC board will make it more likely that BIPOC community members who have complaints, grievances, and suggestions for the APD will come forward and feel safe to share their concerns. Amherst has many spaces that are predominately white. Many BIPOC residents are more willing and able to share their experiences, be open and honest, and function at their best in majority-BIPOC spaces.

BIPOC individuals will likely not find it easy to step forward to serve on a board that will at times, necessarily, challenge the police. Yet without BIPOC participation the Board will have no chance of solving the problem we seek to address. Many BIPOC

will find it easier to imagine serving on such a board and will be more likely to be able to sustain their service on the Board if it is majority BIPOC.

Finally, the creation of the Resident Oversight Board is part of a larger effort in our Town to dismantle systemic racism and white supremacy. Many have called for this effort and the Town Council has endorsed it. It will not be possible to achieve this if the vast majority of the power in the town and in Town government continues to be held by white officeholders and majority white councils, boards and committees. In order to have an equitable and inclusive community, power must be shared. A group charged with, among other things, eliminating racial bias in policing, is a logical place for a BIPOC majority.

### **Why stipends for the Resident Oversight Board?**

Amherst has a great many boards, committees, and commissions. With the exception of the elected Town Council, residents who serve on these bodies have most often not received any financial compensation. A strong sense of public service and/or commitment to particular issues has characterized those serving on these groups.

While this arrangement has obvious strengths, it also has resulted in boards and committees that are predominantly white and most often resulted in members who have above average income levels and members who are older than the median age of adults in town. A Resident Oversight Board with such a composition would not be able to fulfill its mission of giving voice to the BIPOC community and other marginalized groups and beginning to build a greater sense of trust, mutual respect, and accountability between the Amherst Police Department and the communities currently most fearful and mistrusting of the police.

BIPOC residents, especially lower-income BIPOC, have no less a commitment to public service than white residents in Amherst. However, they may have a greater need for compensation for babysitters, transportation, and takeout meals (required because the time in meetings can eliminate preparation time for family meals). More importantly, asking BIPOC and other marginalized individuals to take on the task of providing community oversight of a group as powerful as the police is asking them to step through fear, skepticism, and mistrust to perform an unprecedented public function. A stipend will not only make it economically and physically possible for BIPOC community members to fulfill this role, it will constitute a statement of commitment and backing by the Town to the vital importance of the work of the Resident Oversight Board.

Many boards and committees in Amherst work very hard and some put in long hours. We do not mean to compare the time commitments required for these various bodies. We do want to be clear, though, that the Resident Oversight Board will be a very significant undertaking for those who agree to serve. Each member of the Board will need to undergo roughly 30 hours of training when they join the

Board and participate in ongoing annual training beyond that. We don't know how many complaints the Board can expect, but we do expect residents to come forward with concerns more often once they know their complaints will be heard respectfully and taken seriously by a group outside the APD. The Board members will need to spend time building a positive relationship with the APD and its leadership. They will also be engaged in continuing research of best practices and extensive review of how APD policies and procedures can best be shaped to enable the APD to be a force for dismantling the systemic racism which is endemic in even the best police departments in the nation.

Our Part A consultants, in their report, recommended a \$10,000 annual stipend for each member of the Resident Oversight Board. We believe there are good reasons for such a recommendation, but also obvious difficulties. We are now recommending a \$3,000 per year stipend for each of the 5 members of the ROB. This figure represents our best judgment of a figure that we hope will be high enough to accomplish its purpose and low enough to be feasible for town leaders and the budget to support.

Note: Some academic research suggests that stipends can be effective in recruiting more diverse committees and groups of volunteers while maintaining the quality of service and level of altruism. Please see <https://onlinelibrary.wiley.com/doi/10.1111/j.1540-6210.2011.02419.x>



### **3. REVISE AND UPDATE SELECTED POLICIES AND CONTRACT PROVISIONS OF THE APD**

This section of our report draws on the “Amherst Police Department Policy Review” conducted by the Law Enforcement Action Project (LEAP) as consultants to the CSWG. They researched police policies in Amherst and across the nation and made appropriate recommendations in areas identified by the CSWG. Their team includes a former municipal attorney, a former chief of police, and researchers who have studied community safety and police issues and actions across the country. Their full report to the CSWG on APD policies is at

<https://docs.google.com/document/d/1KwEtGiObhgUv0NbRui1gESnmAl9uPZLmaUjp0cxoDBQ/edit?usp=sharing> and also in the Appendix to this document. We strongly encourage readers of this document to read their full report.

**The CSWG recommends prompt revision of APD policies as detailed in Sections A – E below.**

- A. Use of force** - rewrite policy
- B. Consent searches** – eliminate and prohibit
- C. Low-level and pretextual vehicle stops** – eliminate and prohibit
- D. APD contract issues to be addressed in the next negotiations**
- E. Other policies** – revise other existing policies

#### **A. Amherst Police Policies – Use of Force:**

(Here we include the full text of this section of the LEAP report. The CSWG fully endorses this analysis and recommends that these recommendations be implemented promptly in Amherst.)

#### **Use of Force: Concerns**

Amherst Police Department - General Order Index III Policy #12, May 8, 2020

#### **Clarity**

The Use of Force policy is difficult for officers and the public to understand, does not make clear what actions are allowed and which are not, and lacks language to secure the public trust.

First, the policy is unnecessarily complicated. The Use of Force Policy should offer clear guidance on when to use force and when not to, as much as is practicable, and how much force should be used in various situations. While policies alone are a limited tool to guide officers facing complex real life situations, in order to be useful, they must be written in plain language. The APD policy is written in “legalese.” For example, the following is the definition of Probable Cause from the Use of Force Policy:

Probable cause for arrest exists if, at the time of the arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and are sufficient to warrant a person of

reasonable caution and prudence to believe that the person being arrested has committed or is committing the crime for which the arrest is being made. Simpler language would help officers actually use the policy as a tool to determine whether or not there is probable cause. For example, clearer language might be:

1. For an arrest: Is there a reasonable basis for believing that a crime may have been committed?
2. For a search: Is the evidence of the crime present in the place to be searched?<sup>7</sup>

In addition to legalese, the justification for use of force is made via a complicated decision tree. This decision tree is ill-suited to a real life situation, reducing the usefulness of the policy.

### **Goals**

Second, the current policy lacks language that could help build public trust. Most modern use of force policies are written from the viewpoint that force should be a tool of last resort, to protect the public. For example, the Camden County Police Department's policy (see [Attachments](#)) states,

In exercising this authority, officers must respect the sanctity of all human life, act in all possible respects to preserve human life, do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public.

A Use of Force policy should include not just what is allowable under the law, which is often broad and ambiguous, but also what will best serve the community. The policy should clarify that legal standards serve as the floor for police behavior, not the ceiling. The policy from Camden County explains:

This Department aspires to go beyond [the Constitution] and its minimum requirements. Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision making in the broad range of possible use of force situations.

By contrast, APD's Use of Force Policy does not articulate these goals of protecting the public. The APD policy focuses on asserting the rights of police officers to use force to control and gain compliance in a situation. Adding a community-focused perspective can reaffirm broader principles and help reassure the public, because while these policies are generally considered internal, they are public documents.

### **Report Delay**

Third, the Use of Force policy also allows up to four days for an officer involved in a Firearms Discharge to complete a report. It requests that it be done as soon as possible but gives an unnecessarily long time frame in which to complete it. This delay serves no public safety purpose and can reduce the accuracy of the report and create significant public distrust. Police agencies across the country are updating their policies to ensure that officers are giving contemporaneous accounts in the event of a firearms discharge.

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<sup>7</sup> From the Cornell Legal Information Institute [https://www.law.cornell.edu/wex/probable\\_cause](https://www.law.cornell.edu/wex/probable_cause)

## **Firing Into a Vehicle**

Fourth, the policy should exclude firing into a vehicle under almost all circumstances, rather than the broad list of exceptions it contains now. In 1972, the New York City Police Department adopted a prohibition on officers shooting at or from a moving vehicle, unless a person in the vehicle is using or threatening deadly force by means other than the vehicle itself. That policy resulted in an immediate, sharp reduction in uses of lethal force in New York City.<sup>8</sup> Other agencies have since adopted similar policies, some including narrow exceptions if the vehicle is being used as a deadly weapon.

## **Use of Force: Recommendations**

### **1. Rewrite or adopt new policy**

The Use of Force policy should at the very least be rewritten to address the issues articulated above. LEAP recommends that Amherst replace the policy with a new version based on the model policy from Camden County, New Jersey<sup>9</sup> (see [Attachments](#)). In addition to addressing the issues above, this model policy would bring APD in line with the new Massachusetts police reform bill's requirement of a duty to intervene.

LEAP recommends one addition to the Camden County policy, which is to prohibit shooting at or from moving vehicles in almost all circumstances. Sample language for such a policy could be:

#### **MOVING VEHICLES.**

- Unless such action is necessary for self-defense or to protect another person from immediate and serious injury, officers shall not discharge a firearm at or into a moving vehicle; officers shall not intentionally place themselves in the path of, or reach inside, a moving vehicle; and officers shall attempt to move out of the path of a moving vehicle. Being in the path of a moving vehicle, whether deliberate or inadvertent, shall not be justification for discharging a firearm at the vehicle or any of its occupants, unless the officer is physically unable to move out of its path or is protecting another person from immediate and serious injury.
- Unless such action is necessary for self-defense or to protect another person from immediate and serious injury, officers shall not discharge a firearm from a moving vehicle or shoot at any part of a vehicle in an attempt to disable the vehicle.<sup>10</sup>

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<sup>8</sup> "Guiding Principles On Use of Force - Police Executive Research Forum" 16 Mar. 2016, p. 15. <https://www.policeforum.org/assets/30%20guiding%20principles.pdf>. Accessed 6 Oct. 2021.

<sup>9</sup>

[https://drive.google.com/file/d/1fw8PE4XX\\_BeSkbBIMuXNqmUOw\\_L4l0uZ/view?usp=sharing](https://drive.google.com/file/d/1fw8PE4XX_BeSkbBIMuXNqmUOw_L4l0uZ/view?usp=sharing)

<sup>10</sup> Some language borrowed from Campaign Zero, Model Use of Force Policy "Motor Vehicles" <https://campaignzero.org/force>



## **2. Share data with FBI National Use-Of-Force Data Collection**

In 2019, the Federal Bureau of Investigation (FBI) launched a National Use-Of-Force Data Collection. However, participation cannot be forced by the FBI and is only encouraged. Thus, their database lacks information as many police departments opt not to participate.<sup>11</sup> We recommend that APD participate, if they are not already, in sharing data on a monthly basis with the FBI, so that it may be analyzed for larger context and help prevent and address use of force issues nation-wide. As noted on the FBI's website, the program's stated goal is "not to offer insight into single use-of-force incidents but to provide an aggregate view of the incidents reported and the circumstances, subjects, and officers involved." It would be advantageous for law enforcement, generally, if APD participated.

### **B. Amherst Police Policies – Consent Searches**

(Again, we include the text of the LEAP report. The CSWG fully endorses this analysis and recommends that these recommendations be implemented promptly in Amherst.)

#### **Consent Searches: Concerns**

The APD policy on consent searches are contained in General Order Index: III Policy #3 at page 13 "Search by Lawful Consent".

The APD policy on consent searches is consistent with the law. Consent search broadly applies to an agreement by a person to give police consent to search anything, whether a domicile, a vehicle, or their person.

As the APD policy correctly warns, consent searches should not be heavily relied upon. A warrant is the proper way to effectuate a search, as consent searches can be easily scrutinized by the court and found lacking, jeopardizing the entirety of a case that is built on a consent search. Proper training is essential to ensure that any consent search respects the Constitution and holds up in court.<sup>12</sup>

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<sup>11</sup> Data-Smart City Solutions "How Can Data Increase Police Accountability" Betsy Gardner June 11, 2020 Harvard Kennedy School of Government, Ash Center for Democratic Governance and Innovation <https://datasmart.ash.harvard.edu/news/article/how-can-data-increase-police-accountability>

<sup>12</sup> The two factor requirement for a consent search should be something all officers are knowledgeable of as a matter of course: 1. The consenting party must have the required authority to give consent to the area being searched and 2. Consent must be freely and voluntarily given.

Though the two-factor test is straightforward, the nuances of who can give consent to a particular search, in order to make such search valid, and what can be searched (the scope of the search) are more complex. For example, a person from whom the police are seeking consent must be informed that they have the right to decline to give consent. Also, except for when something relevant to the case has already been found, consent can be revoked at any time. These points should be emphasized in any training on consent.

More significantly, consent searches are a major source of racial disparities that destroy community trust, which is crucial to protect public safety. A report out of Maryland found:

African American and Hispanic males were significantly more likely to be searched than any other race. More troubling however, is the ‘hit rate,’ or the rate at which contraband is found during search. Based on the 2015 Race-based Traffic Stop report, consensual searches have the lowest "hit rate" across the board (for any type of property or contraband.) Three fourths of the time that police conducted consensual searches, they came up completely empty. Additionally, motorists identified as Black or Latinx have, on average, even lower "hit rates" for consent searches than white motorists—just over 23%, compared to 28%.<sup>13</sup>

As a result, many jurisdictions are stopping consent searches altogether. In 2004, Rhode Island banned the practice of consent searches in vehicle stops completely.<sup>14</sup> The California Highway Patrol, in response to a class-action lawsuit alleging racial profiling in consent searches, has prohibited them for almost two decades.<sup>15</sup>

## **Consent Searches: Recommendations**

### **1. Discontinue consent searches**

While the APD policy is consistent with law, LEAP believes that the Town would benefit from a prohibition on consent searches, in particular consent searches of vehicles. Ending consent searches on vehicles would be a concrete way for the APD to conform with the Massachusetts police reform bill’s mandate to stop racial profiling. It would help build trust within the community, improving officers’ ability to protect public safety.

Specifically, Amherst could follow the lead of the Providence Police Department’s policy language:

No operator or owner-passenger of a motor vehicle shall be requested to consent to a search by a law enforcement officer of his or her motor vehicle which is stopped solely for a traffic violation, unless there exists reasonable suspicion or probable cause of criminal activity.<sup>16</sup>

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<sup>13</sup> Governor’s Office of Crime Control and Prevention, 2015 Race-based Traffic Stop Data Analysis (2016), p. 13. Available at <https://goccp.maryland.gov/wp-content/uploads/traffic-stop-report2016.pdf>

<sup>14</sup>Title 31, General Laws entitled "Motor and Other Vehicles," 31-21.2-5  
<http://webserver.rilin.state.ri.us/billtext15/housetext15/h5819.htm>

<sup>15</sup> *Rodriguez v. California Highway Patrol*, 89 F. Supp. 2d 1131 (N.D. Cal. 2000)

<sup>16</sup> <http://www.providenceri.com/sites/default/files/ppd-directives/330.03%20-%20Search%20and%20Seizure.pdf#page=6> The Providence policy states that the definition of “reasonable suspicion” means “that a person is dangerous and might access the vehicle to gain immediate control of weapons.” That definition of “reasonable suspicion” should be made clear throughout any adopted policy.

To address the extremely rare case in which a consent search could help stop a serious crime in progress, Amherst could borrow the exception language in Section I, Part 2(d) of the Policing Project’s model pretextual stops statute (see [Attachments](#)).

## **2. Consent form for consent searches**

Additionally, it does not appear from the documents shared with LEAP that APD has a “right to consent to search” form, documenting in writing that consent has been given for specific purposes at a specific place. Such a form should be required for all consent searches if APD continues the practice for persons and homes. It would benefit the APD and limit the department’s liability, as well as strengthen judicial notice of consent, to implement the use of such a form. An example is included in the [attachment packet](#) from the New Orleans Police Department, along with that department’s search and seizure policy outlining the justification for such a form.



### **C. Amherst Police Policies – Low-level and Pretextual Stops**

Generally, no one likes being stopped by the police when they are driving. There is a certain level of nervousness that the experience entails. However, a traffic stop of a BIPOC driver is a highly charged situation. A BIPOC driver stopped by the police is very likely to believe that they are in a potentially life

and death situation. There have simply been too many incidents across the country where BIPOC drivers have been stopped for trivial reasons and ended up being shot and killed by police. While this has not happened in Amherst, this is something we want to avoid at all costs from happening in the future. Knowing that there are racial disproportionalities in the traffic stops made by the APD, a BIPOC driver most often suspects that they are being stopped due to racial profiling.

Given that a routine traffic stop can become dangerous, police officers are trained to treat all traffic stops as though they are more dangerous than they actually are. As a result, traffic stops do not lead to improved relationships between police officers and the BIPOC community, and are likely to make them worse. Especially since traffic stops hold the potential to lead to unwanted violence.

Recognizing this, a number of municipalities across the country have made a distinction between traffic stops that are absolutely necessary for public safety and those that are not. They have directed their police departments to stop making “low-level” stops and to focus on situations where the public is being endangered by such violations as driving at high speed, reckless driving, driving while intoxicated, fleeing an accident, etc.

- In February 2021 the Berkeley, California city council voted unanimously to deprioritize traffic stops in Berkeley for “low-level” offenses, such as a broken taillight or having expired registration tags, and focus police efforts instead on driving violations related to traffic safety. One of the council members, speaking in favor of the proposal said, “There is a chasm of mistrust between communities of color and law enforcement. Repairing the mistrust is going to take a lot of work.”<sup>17</sup>
- In Minneapolis the Mayor and Police Chief recently announced that police officers have been directed to no longer make stops for minor violations such as expired tabs, items dangling from a rearview mirror, or not having a working license plate light, but will focus instead on stopping motorists for offenses that are a threat to public safety, such as reckless driving or speeding.<sup>18</sup>
- A more longstanding program with a successful track record is the one in Oakland, California. An award-winning university social

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<sup>17</sup> <https://www.berkeleyside.org/2021/02/24/berkeley-police-reform-traffic-stops-racial-disparities>

<sup>18</sup> <https://www.washingtonpost.com/nation/2021/08/13/minneapolis-police-traffic-stops/>

psychologist worked with the Oakland Police Department for a number of years, “to analyze racial profiling data and help mitigate officers acting on their unconscious bias.” They wanted to reduce the number of stops for minor traffic violations such as a broken taillight and focus on serious crime. They added a check box to the form officers are required to fill out on every traffic stop which asked whether the stop was “intelligence led” – i.e. “whether the officer had evidence the person had been involved in specific criminal activity.” Officers were told to prioritize such stops and deprioritize minor violations. As a result of the checkbox, traffic stops dropped 40% from 2017 to 2018. Our Working Group encourages all readers of this report to view the 3 1/2 minute video about this at the link in the footnote below.<sup>19</sup>

- Not making low-level traffic stops is now the law in the entire state of Virginia. The legislature passed and the governor signed a new law which states: “no law-enforcement officer may lawfully stop a motor vehicle for operating (i) without a light illuminating a license plate, (ii) with defective and unsafe equipment, (iii) without brake lights or a high mount stop light, (iv) without an exhaust system that prevents excessive or unusual levels of noise, (v) with certain sun-shading materials and tinting films, and (vi) with certain objects suspended in the vehicle. No evidence discovered or obtained as a result of such unlawful stop shall be admissible in any trial, hearing, or other proceeding.”<sup>20</sup> The law became effective July 1, 2021.

We note that in some cases police chiefs have supported or personally ordered these new policies and in some cases they have opposed them. In virtually every case the police unions have opposed them. The policies have been enacted by courageous municipal legislative bodies, acting to increase racial justice and to improve safety by improving the trust between BIPOC communities and police departments.

We include next the LEAP discussion and recommendations on Low-level and Pretextual Stops. The LEAP recommendations exactly mirror the recommendations the CSWG drafted prior to receiving their report. They also add a model policy/by-law from the Policing Project which is included in

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<sup>19</sup> [https://www.yahoo.com/now/how-the-oakland-police-cut-traffic-stop-numbers-by-40-with-a-simple-checkbox-070000004.html?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce\\_referrer\\_sig=AQAAAGPn3QEZzSA69shN-Egc5po-GT5Qzk74okg9VtbBAX\\_ntV7GzNMr0cJF4TOALjcbk\\_vU10Efa7\\_L4H02DqxGBE0cryp7XtGMbwp86\\_d6dvVtnYISawcsnUUW4y34Dc7Z4qisrfmYDQGur\\_K8rdFNM6fxiT3AmiWI1DktDJaYBf0E](https://www.yahoo.com/now/how-the-oakland-police-cut-traffic-stop-numbers-by-40-with-a-simple-checkbox-070000004.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAGPn3QEZzSA69shN-Egc5po-GT5Qzk74okg9VtbBAX_ntV7GzNMr0cJF4TOALjcbk_vU10Efa7_L4H02DqxGBE0cryp7XtGMbwp86_d6dvVtnYISawcsnUUW4y34Dc7Z4qisrfmYDQGur_K8rdFNM6fxiT3AmiWI1DktDJaYBf0E)

<sup>20</sup> Bill summary at: <https://www.billtrack50.com/BillDetail/1240824>



the Appendix to this document and which we recommend be adopted in Amherst. The CSWG fully endorses this analysis and recommends that these recommendations be implemented promptly in Amherst.

## **LEAP Report and Recommendations on Low-Level and Pretextual Stops**

### **Low-Level and Pretextual Stops: Concerns**

The APD policies related to pretextual stops are contained in General Order Index: III Policy #3 Searches and Seizures at page 15 “Motor Vehicle Searches” and Policy #35 on Stop, Frisk, and Threshold Inquiries at page 5 under “Motor Vehicles.”

The APD policy is consistent with the law. It also underscores that a warrant is the best means to search a vehicle. Unfortunately, it creates wide carve outs that lead to police using pretextual vehicle stops to conduct controversial searches. These pretextual stops rely on a minor offense like expired registration or a broken taillight as an excuse to pull over a car that the officer wants to investigate but does not have cause to stop. The officer then visually inspects the car for any evidence that would justify a search, or simply asks for consent to search the vehicle.

As with consent searches, pretextual stops cause damaging racial disparities. A 2021 article in the *Stanford Law Review* provides evidence that pretextual stops disproportionately impact people of color.<sup>21</sup> They create negative interactions with police, which often cause fear and deepen distrust in law enforcement. They also particularly target people in the community who cannot afford basic car maintenance or the fees imposed on them. Minor citations can greatly impact less affluent community members, since an unpaid ticket can lead to a bench warrant, arrest, and job loss.

In order to reduce disparities and rebuild trust, several communities have prohibited pretextual stops. Officers can only make stops if combined with another, more legitimate law enforcement purpose or if the violation is greatly impacting the safety of the community (e.g. reckless driving). In 2020, the state of Virginia banned pretext stops.<sup>22</sup> The cities of Portland, Oakland, Philadelphia, and Minneapolis have also discontinued pretext stops.<sup>23</sup> These jurisdictions are benefiting officers by improving public trust and reducing disparities.

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<sup>21</sup> An Empirical Assessment of Pretextual Stops and Racial Profiling 73 *Stanford Law Review* 637 (2021) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3506876](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3506876)

<sup>22</sup> Virginia SB 5029 <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=sb5029>

<sup>23</sup> <https://www.kgw.com/article/news/local/portland-mayor-police-chief-news-conference-policing-changes/283-7c4e2427-d844-440e-acad-ed0e46e68a8d>,  
<https://www.sfchronicle.com/bayarea/article/To-curb-racial-bias-Oakland-police-are-pulling-14839567.php>  
<https://www.startribune.com/minneapolis-police-to-scale-back-low-level-traffic-stops/600087423/?refresh=true>  
<https://www.inquirer.com/news/philadelphia-city-council-isaiah-thomas-police-driving-while-black-20211014.html>



## **Low-Level and Pretextual Stops: Recommendations**

### **1. Discontinue Low-Level and Pretextual Stops**

Due to the limited usefulness and significant cost of pretextual stops mentioned above, LEAP recommends that APD implement a policy based on the model statute from the Policing Project (see the Appendix to this report and/or [Attachments](#)). The stated approach of their policy is:

This statute is designed to curtail the use of pretextual traffic stops—focusing in particular on low-level stops that do not otherwise have a close nexus to public safety. The statute takes a four-pronged approach: (1) It prohibits officers from making stops for certain low-level offenses (thereby relegating them to “secondary offense” status; (2) Limits fishing expeditions during lawful stops; (3) Reduces reliance on outstanding warrants for low-level offenses and first-time failures to appear, thereby ensuring that lawful stops do not lead to unnecessary custodial arrests and the associated potential for physical altercation; and (4) Requires agencies to collect demographic stop and arrest data to facilitate public oversight of agency enforcement practices.

### **2. Documentation**

In addition to implementing the Policing Project model policy, we recommend that APD consider adding a simple reporting innovation. The Oakland Police Department added a check box to forms related to traffic stops asking “Was this stop intelligence-led? Yes or No.” This question cut down significantly on stops related to minor offenses such as broken taillights and expired registration and ensured that pretext stops were only being used to help curb serious criminal activity.<sup>24</sup>

### **3. Data collection**

It was unclear from the APD-provided documents what data APD collects during traffic stops and field interviews. APD should begin or continue collecting data that will:

- be disaggregated by race, ethnicity, and gender;
- include the date, time, and location of such investigatory activities;
- provide justification for the stop and for a search, if conducted; and
- provide the outcomes, including if a search was conducted, if contraband or evidence was found, and if a warning or citation were issued or an arrest made.

Many states already require police agencies to collect this data, including Virginia and Florida, and the Congressional Research Service has recommended to Congress that this

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<sup>24</sup> *How Oakland police cut traffic stop numbers by 40% with a simple checkbox* Yahoo! Finance Lara O'Reilly July 1, 2019 <https://www.yahoo.com/now/how-the-oakland-police-cut-traffic-stop-numbers-by-40-with-a-simple-checkbox-070000004.html>

data be collected at a federal level.<sup>25</sup> We recommend that APD get out in front of such state and federal legislation in order to build public trust. The model statute language from the Policing Project (see [Attachments](#)) provides detailed guidance on data points that should be included.

APD could use this data to ensure that traffic stops and other actions do not demonstrate racial bias. In particular, this traffic stop analysis could focus on the three key indicators noted by the Congressional Research Service:

[The Federal Government] would be required to analyze the data for disparities in the percentage of drivers or pedestrians stopped relative to the proportion of the population passing through the neighborhood; hit rates (i.e., the rate at which contraband was found during a search); and the frequency of searches performed on drivers who are people of color relative to White drivers.<sup>26</sup>

While there is some evidence that APD is collecting data related to stops,<sup>27</sup> it is unclear whether this data is being analyzed, at what level that analysis is happening, and what is being done with the results of that data analysis. LEAP recommends that APD regularly analyze the data and amend policy and procedures to be consistent with unbiased policing goals informed by that data.

#### **D. Amherst Police Policies – APD Contract**

[This section is comprised entirely of the LEAP review and recommendations about the Amherst Police Contract. The CSWG fully endorses this analysis and recommends that these recommendations be accomplished in the negotiation of the next contract with the Amherst Police League.]

#### **Review of Amherst Police Contract**

The Amherst Police Contract (Agreement Between The Town of Amherst and the Amherst Police League MassCOP Local 431) went into effect July 1, 2019 and is set to expire June 30, 2022. A majority of the policy discusses payment, pay schedules, overtime, holiday pay, and similar details. Our analysis focuses on potential issues of concern and related recommendations.

#### **Arbitration**

Under the contract's Grievance Policy, if an officer commits misconduct and is suspended or fired by the police chief, the officer can appeal this decision to an outside arbitrator, who is approved by both the town and the police union. Studies show that arbitrators reverse the chief's disciplinary decision in about [half of all cases](#), usually on the grounds that the [punishment was too harsh](#). While these cases often involve serious issues such as

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<sup>25</sup>*Programs to Collect Data on Law Enforcement Activities: Overview and Issues* page 4  
Congressional Research Service R46443 Updated March 11, 2021.

<https://crsreports.congress.gov/product/pdf/R/R46443/3#page=7>

<sup>26</sup> *ibid.*

<sup>27</sup> See June 30, 2020 APD letter Subject: Racial Profiling Documentation for Verbal Warning Motor Vehicle Stops, Effective July 1, 2020 at 0000 hours.

excessive use of force or professional dishonesty, the arbitrator focuses on what punishment officers have received in the past for a similar offense and the impact it would have on the officer. They do not focus on the impact that misconduct will have upon community trust in police. In the APD CBA, the arbitrator's decision is binding and cannot be reversed, even if it makes clear errors in judgment or facts, or if new information comes to light.<sup>28</sup>

Unlike the Use of Force policy above, the Town cannot simply dictate the terms of the police union contract -- it currently must be negotiated between the Town and the police union. The Town should view the current arbitration process as an important concession to the police. Here are possible alternatives to balance officers' right to due process with the Town's responsibility to ensure accountability, trust, and safety:

1. Instead of appealing the case to an outside arbitrator, the appeal could be heard by the Town Manager or Town Council. This approach is taken in Murrieta, California and other jurisdictions.<sup>29</sup>
2. The arbitrator's opinion could be made nonbinding, and either the union or the Town could appeal the decision to the Town Manager or Town Council. This approach is taken in Delano, California (see [Attachments](#)).<sup>30</sup>
3. Instead of giving the police union veto power over the choice of arbitrator, the arbitrator could be randomly chosen from a pre-approved panel of arbitrators. This would remove the arbitrator's incentive to side with the police in order to be chosen again in the future. This approach is taken in Minnesota.<sup>31</sup>
4. Instead of giving the arbitrator unchecked power to reverse the decision, the Town could create a disciplinary matrix that specifies a range of punishment acceptable for serious types of misconduct. The arbitrator could rule that misconduct did not occur or alter the punishment within the range, but they could not move outside the range. This approach is taken in Oregon.<sup>32</sup>

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<sup>28</sup> "480 Mass. 634." 7 May. 2018, <http://masscases.com/cases/sjc/480/480mass634.html>. Accessed 18 Oct. 2021.

<sup>29</sup> 1036 VANDERBILT LAW REVIEW Vol. 74:4:1023

<sup>30</sup> JULY 01, 2020 TO JUNE 30, 2024 AGREEMENT BETWEEN CITY OF DELANO AND DELANO POLICE OFFICERS ASSOCIATION, 19(E). Effect of Decision:

The decision of the Arbitrator shall be binding on both parties unless the City Council overrules the decision of the Arbitrator within thirty (30) days from the date of the decision. In order for the City Council to overrule the decision, it is required that at least four (4) Council members (if five members are present) or three (3) Council members (if three or four are present) must vote in favor of the motion to overrule. The Council's decision shall be final and binding.

<sup>31</sup> 1036 VANDERBILT LAW REVIEW Vol. 74:4:1023

<sup>32</sup> *Ibid.*

## **Record Sunset**

The grievance process also covers employee discipline in Article XXIII. This article states that “Any record of discipline older than one (1) year from the date issued shall not be used or considered in future discipline.” This language should be removed, in order to ensure appropriate accountability based on patterns of behavior. This language should be removed from future CBAs by the Town’s labor negotiation team. Any updated discipline policy should include language that allows the Town to consider the entirety of a police officer’s performance record, particularly serious issues, when determining discipline.

## **Grievance Dismissal**

One area of concern in the Amherst Police Contract is the complexity of the Grievance Policy, which is outlined at Article VIII. If any of the multiple layers or steps are not completed or the Town does not respond in a timely fashion, the grievance is dismissed. These time frames protect officers and their families from being kept in limbo unnecessarily, but if they are too short, they can result in the unwarranted dismissal of legitimate grievances. The steps and time frames should be scrutinized to ensure that they are not resulting in inappropriate dismissal of grievances.

## **Transparency**

APD policies on contracts and bargaining would benefit from added public transparency. While labor negotiations themselves are closed according to Massachusetts law,<sup>33</sup> the draft contract should be made available to the public prior to adoption.<sup>34</sup> Any future oversight board should pay special attention to the terms of that agreement and offer comments where appropriate.

## **E. Amherst Police Policies – Other Policies**

[This section is taken directly from the LEAP report and is fully endorsed by the CSWG for implementation in the APD.]

### **1. APD Discipline Policy**

APD - General Order Index III, Policy #63

The goals of any new civilian oversight board should be supported by statutory language that gives it the authority to subpoena, interview, and recommend discipline for officers as necessary. Nothing in the APD Discipline Policy or Police Contract should prohibit these activities. Current APD policies are silent on this issue but should incorporate cooperative language once such an oversight board is formed.

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<sup>33</sup> See G.L. c. 30A, § 21(a)(2)–(3).

<sup>34</sup> This step is required by law in California under the Brown Act: see Walter Katz, “Police Union Collective Bargaining and Participatory Democracy.” SMU Law Review Vol. 74, p. 440. <https://scholar.smu.edu/cgi/viewcontent.cgi?article=4886&context=smulr#page=23>. Accessed 18 Oct. 2021.

The current APD policy allows an officer who has used force to wait for four days before filing a report. In order to ensure accurate reporting and avoid unnecessary delays, Amherst should follow other police departments in requiring the report to be filed by the end of their shift, or at most within 48 hours, unless there is an emergency medical issue (see the New Orleans Police Department policy in [Attachments](#)).

Current APD policy does not distinguish between a minor incident involving use of force, such as an accidental discharge, and a major incident like an officer-involved shooting. The APD policy should be edited to clarify the requirements for more serious incidents. This new language should make clear that officers are required to meet with the investigators as soon as possible for an interview (see for example the New Orleans Police Department policy in [Attachments](#))

In addition, it should be clarified that any evidence of additional wrongdoing uncovered during an investigation can result in an independent investigation. This issue is not currently addressed by APD policy, but it should be made explicit.

## **2. Personnel Information Release**

A separate letter titled “ASO-55 Release of Personnel Information,” dated February 9, 2010, appears to require APD personnel to have signed a document allowing their personnel information to be released, in order for such information to be made available. It is not clear to what exact information and to what extent this policy applies, but if it prevents the release of information that should be available to the public, this policy should be amended.

## **General Recommendations for APD Policies**

1. Gendered language should be removed to make the policies more modern. (i.e. eliminating ‘he/she’ in favor of ‘officer’ or ‘police’.)
2. General Orders policies should be reviewed and trained on regularly, if that is not already occurring, to make sure that they are actually understood and able to be put into practice by APD officers. The APD may want to consider an internal policy review committee to make sure that they have the most modern, accurate, clearly understood policies available. A policy that sits unused in a binder is of little good to the department or the community.



#### **4. CREATE AN ONLINE DASHBOARD THAT PROVIDES TRANSPARENT, EASY PUBLIC ACCESS TO DATA ON APD VEHICLE STOPS BY RACE**

Thorough research has repeatedly demonstrated that nationally, BIPOC drivers, and specifically Black drivers, are stopped, searched, and detained by police at significantly higher rates than their proportion of the population, despite the fact that BIPOC drivers have fewer accidents, and are less likely to be found with contraband when searched than are white drivers.<sup>35</sup>

As we reported in our Part A report, there are racial disproportionalities in the 2010-2020 traffic stop data from the APD as well. (Please see pages 9-10 in the CSWG Part A report.) We think it is important that these disproportionalities be eliminated in the future. We believe this is completely possible through a combination of implementing the recommendations of Part A and Part B of our report and a renewed, good-faith effort by the officers and leaders of the APD.

If the APD succeeds in eliminating racial disproportionalities in traffic stops, then it is important that the public be aware of this and able to see the numbers themselves, clearly presented. This can help our efforts to develop greater mutual trust between the APD and our BIPOC communities. It also will be encouraging to everyone in town working on racial equity. If the disproportionalities are not eliminated, then we need to know that too, so further steps can be taken. What gets measured, gets attention. What gets attention, can be changed for the better.

The APD is already collecting most, if not all, of the raw data needed to calculate the relevant events, percentages and proportionalities. We recommend that the needed

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<sup>35</sup> <https://www.nbcnews.com/news/us-news/inside-100-million-police-traffic-stops-new-evidence-racial-bias-n980556>



funds be expended to have someone with the appropriate computer expertise create an attractive, easily accessible dashboard that will enable the public to view this data at any time. Other police departments are doing this and finding considerable public interest in it. We have not found a model that we believe precisely fits our needs, but two interesting examples of online interactive dashboards are those in Baltimore, MD<sup>36</sup>, and Asheville, NC.<sup>37</sup>

We understand that the APD may be contracting with a new data management system within a few years. We want this new dashboard to be compatible with the new system. We do not believe this requires delaying the development of the dashboard. This dashboard can be designed now in order to be compatible with most data management systems. (This can most likely be accomplished by having the dashboard draw its data from an Excel spreadsheet. Any new police software should be able to export data to Excel, so the dashboard would be compatible with any new software in the future.)

We believe having this dashboard is a very tangible, visible effort on the part of the APD and Town to be transparent about this aspect of policing and race. It will have immediate benefits and should not wait. It should be possible to contract to have a developer create the dashboard so it can be easily maintained by the APD and the Town tech department.

We think the Asheville, NC commitment--to post data monthly, no later than 30 days following the completion of each month--is one that we should emulate.

We recommend that data be included for each month, with each category broken down by race. A viewer should be able to see the last month, the last year, previous years, and how those numbers have been going up or down over the preceding twelve months. Some of the models we have seen are interactive in the sense that viewers can sort the data in various ways as they think about their own questions.

The most relevant categories are:

- a. number of vehicle stops
- b. number of stops that result in searches
- c. number of searches that result in "nothing found"
- d. number of stops that result in arrest, citation, warning
- e. number of stops where the driver is detained more than 30 minutes
- f. number stops made for the following reasons:

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<sup>36</sup> <https://app.powerbigov.us/view?r=eyJrIjoiMzM3YzVhMzktN2M4OS00NjBiLWFjMTctOTBjNzBhN2QwNGRmIiwidCI6Ijlk0NGZhOWJhLTg0NTQtNDEzZC1iOWU2LWJmNDBhZjFkNmE5YjI9>

<sup>37</sup> <https://police-transparency-avl.hub.arcgis.com/apps/16c3bd28bb2c451eb61637b7172a6b60/explore>

- a. “intelligence driven” vs not “intelligence driven”<sup>38</sup>
- b. faulty equipment
- c. out of date registration or inspection
- d. traffic violation
- e. speeding
- f. reckless driving
- g. investigatory
- h. probable cause vs. reasonable suspicion

These categories can be adjusted somewhat to correspond to the categories on the recording forms/software already being used by officers when they report a stop. Percentages should also be presented for each of the above numbers. Most results should be presented graphically, most often in colorful, easy to decipher, pie charts or bar graphs.

Please refer to the LEAP recommendations re data collection and analysis included earlier in this report as part of the “Low-level and pretextual stops” recommendations.

## **5. TRAFFIC CONTROL AND ENFORCEMENT**

### **A. Move traffic control from the Amherst Police Department to a separate Traffic Control division under the CRESS Department leaving only jailable traffic offenses to the APD**

The vast majority of traffic enforcement does not require armed officers. We recommend that the Town move promptly toward creating an unarmed division of traffic enforcement under the Department of CRESS to ensure the safety of people in town who identify as of Black, Indigenous, People of Color (BIPOC). It is critical that such a division exist within the Department of CRESS due to the recent history of the foundation of CRESS being rooted in anti-racism and created through strong community engagement.

National and local level data illustrate how BIPOC community members are victims of traffic stops that often go wrong. The 7Generations Movement Collective provided us with national data which stated, “The BIPOC population, in particular Black Americans, are 2.5 times more likely than whites to be killed by police (statistica.com) and for example in 2019, 24% of all police killings were of Black Americans, who make up only 13% of the U.S. population. Data shows that in

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<sup>38</sup> “Intelligence driven” is the term used in Oakland, CA to describe stops where “the officer had evidence the person had been involved in specific criminal activity.” This is explained in the brief [video](#) we recommend to readers of this report.

addition to experiencing violence or death by police, BIPOC are targeted and are more likely to be pulled over by police while driving (Baumgartner, Epp, and Shoub (2018) examined the trends in traffic stops in North Carolina).”

While this gives us a picture of what is happening nationally, similar experiences exist in Amherst. These experiences can be expressed through data and lived experiences.

In our previous report, Amherst data revolving around traffic stops illustrated that:

- Black drivers in Amherst stopped by police were 1.45 times more likely to be searched, and 1.5 times more likely to be arrested, than White drivers.
- When Black drivers were stopped by police, they were about 1.25 times more likely than White drivers to be stopped for over 30 minutes.
- When Black drivers were searched by police, the reason given was 20% less likely to be the higher threshold of “probable cause”, and nearly twice as likely to be “reasonable suspicion,” compared with White drivers.
- These statistics, which represent a decade of policing in Amherst, indicate that Black drivers speed less and are involved in fewer car accidents, but are stopped, searched, and arrested disproportionately relative to White drivers. When they are searched, the search is slightly more likely to result in a finding of “nothing found” than searches of vehicles owned by white people (61% of searches of Black drivers, versus 57% for White drivers). And Black drivers were significantly more likely than White drivers to be stopped, searched, and arrested by Amherst Police for an “investigatory reason,” and under the auspices of “reasonable suspicion”, rather than for “probable cause.”

The chart below shows that 11.4 percent of the traffic stops the APD made in 2019 involved a Black person even though according to the Census, Black people only make up about 6.4 percent of the town population. Black people were nearly twice as likely to be pulled over by police than would be indicated by their proportion of the Town population.

<i>RACE</i>	<i>2019 STOPS</i>	<i>2019 % OF STOPS</i>	<i>2010 Census</i>	<i>2018 % OF STOPS</i>	<i>2017% OF STOPS</i>	<i>2016 % OF STOPS</i>	<i>2015 % OF STOPS</i>	<i>2014 % OF STOPS</i>
ASIAN	137	7.2%	12.3%	6.2%	6.88%	5.42%	6.04%	7.19%
BLACK	217	11.4%	6.4%	9.6%	9.87%	10.01%	8.58%	7.94%
HISPANIC	92	4.8%	7.59%	6.5%	5.24%	5.7%	5.43%	4.19%
AM- INDIAN- ALASKAN	0	0%	0.50%	< 1%	.16%	.16%	.15%	.26%
MIDDLE EAST	50	2.6%	1%	1.9%	1.24%	1.4%	2.15%	.84%
WHITE	1409	74%	69.59%	75.7%	76.57%	77.23%	77.45%	79%
Census "other race"			2.7%					

Alongside this data, the 7Generations Movement Collective was also able to capture the lived experiences of BIPOC community members in Amherst. During their participatory action research a resident interviewed reported “The first question he asked me [upon approaching me after a traffic stop] was if my car was mine.”

As municipalities have become more conscious of the harm these police stops have caused and the impact on the BIPOC community they have had, places such as Berkeley, California<sup>39</sup> and Brooklyn Center, Minnesota<sup>40</sup> have voted (but have not yet achieved implementation) to move traffic control from the police to unarmed, traffic agencies. Even New York has been recommended by Transportation Alternatives to reallocate funds to address racial bias. In New York this means investing in automating policing, investing in fixing and designing safer roads, and reforming functions of the NYPD that have not had a history of being efficient<sup>41</sup>.

We find Amherst unique from New York, from Oakland, and other places, but, we find this recommendation fits our community best and is critical to move on to ensure the safety of BIPOC community members.

**Recommendations:**

- Create an office of Traffic Control under the Department of CRESS.

<sup>39</sup> <https://theappeal.org/traffic-enforcement-without-police/>

<sup>40</sup> <https://www.kare11.com/article/news/local/daunte-wright/brooklyn-center-passes-mayor-elliotts-resolution-to-overhaul-citys-public-safety/89-c5fe157c-9f24-4ce1-956c-a6aecd7141e>

<sup>41</sup> <https://static1.squarespace.com/static/5cab9d9b65a707a9b36f4b6c/t/5eec1235fe73d720da412589/1592529462229/CaseForSelfEnforcingStreets.pdf>

- Eliminate issuing of traffic tickets permanently as BIPOC and marginalized people are often targeted for ticketing to generate revenue for the government.
- Offer alternatives to ticketing such as volunteer service at local non- profit organizations, or financial donation to charities.
- Recruit unarmed Traffic Control Agents to reduce police interaction with BIPOC motorists.
- Parking enforcement agents must be unarmed and cannot be police officers.
- The Town could contract with local BIPOC owned repair shops to handle minor auto repairs relating to vehicle violation enforcement.

### **B. Informing drivers who have been stopped**

Enact a requirement that at each vehicle stop initiated by a police officer, the officer will inform the driver of the reason for the stop (the real reason, not a pretext) and give the driver a card that informs the driver of their rights with regard to the stop and includes information about how to file a commendation of the officer and how to file a complaint about the stop and/or the officer. This has also been implemented in Berkeley.

### **C. Pilot confirmation of racial identification**

Currently police officers are required to record their best estimate of the racial identity of any driver they stop. This obviously creates doubts about the accuracy of racial data collected. Some municipalities are considering having police officers inform persons who have been stopped of the racial identity the officer has indicated in their report and invite the person to voluntarily correct their racial identity if they so choose. We recommend that the APD implement this on a trial basis and report to the Town Manager and the Resident Oversight Board their experience with this pilot and its apparent effects.

### **D. Pedestrian Safety Committee**

We recommend that the Town Council consider forming a pedestrian safety committee to address the safety of people cycling, walking, and jogging on the streets of Amherst. A good example of such a committee is the Seattle Neighborhood Greenways is a grassroots coalition of neighborhood groups,

formed in August 2011, that plan and advocate for safe and comfortable streets for all<sup>42</sup>.

Given the large population that utilize public transportation, the nearby bike paths, and side walks we believe something similar would benefit the safety of pedestrians in Amherst. In Seattle, WA this group has engaged 15 different neighborhoods to critically address different topics such as:

1. Designing their city so necessities are within a 15 min walk or roll from home
2. Closing streets to vehicle traffic and opening them to businesses and for community use
3. Providing safe routes to school for K-12 students walking or biking to school
4. Engaging folks in a BIPOC workgroup reimaging traffic enforcement without police
5. Vision Zero: a project aimed to end traffic deaths and serious injuries on the streets



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<sup>42</sup> [https://seattlegreenways.org/?s=about+us&search\\_404=1](https://seattlegreenways.org/?s=about+us&search_404=1)



## **6. ENGAGE OUR TOWN IN AN EXTENDED PROCESS OF COMMUNITY RACIAL HEALING AND VISIONING**

Throughout the work of the CSWG we continued to come face to face with the pain that racism and white supremacy have caused, and continue to cause, to the members of the BIPOC community in Amherst; we continued to encounter white supremacy in action; we encountered white people not understanding the lived experience of BIPOC community members; and we found that there is not a shared vision for our town with regard to racial justice and equity. As we looked at the question of how to improve relationships between the police and the BIPOC community, we came firmly to the conclusion that a process of healing must occur before we can take other steps that engage police officers and community members together.

As we gathered input from community members, longtime Amherst resident Dr. Barbara Love proposed to us that racial healing and community-wide racial justice visioning should be combined in a process that engages the entire town over many months. As we went about our work and talked about the details of the other proposals you find in this report and in our Part A report, we kept coming back to this idea. **We strongly recommend that the town engage a process of racial healing and visioning.** We believe this is fundamental to the success of all other efforts the town is making toward racial justice and to the success of each of our other recommendations.

We asked Dr. Love to write a brief description of such a process and we include her summary here as an integral part of our Working Group report. We strongly recommend that this process be facilitated in Amherst by Dr Barbara Love.

### **Liberatory Visioning for Town of Amherst**

**This is an abbreviated description of a liberatory visioning process for the Town of Amherst that provides the barebones of a process that would be more fully developed in conversation with the CSWG, or its successor committee.**

#### **Dismantling and Healing White Supremacy in Amherst and Creating a Community of Liberatory Consciousness**

**The vision:** Dismantling white supremacy in Amherst, healing the harm caused by white supremacy, and creating a community characterized by equity, fairness, justice and liberation. This is a draft statement, to be more fully developed by the Committee, and then elaborated on during the visioning process with the Town.

The Call for Vision can identify constitutive elements of the vision, that is it can define the area to be covered. This is a **vision for racial justice, repair and healing**, not a vision for green spaces or for economic development, etc.

**Goals:**

1. Engage the Town of Amherst in a liberatory visioning process.
2. Engage the Town of Amherst in a process to describe and develop a community racial healing process.
3. Develop a process that includes the participation of many segments of the Town of Amherst in creating a vision and a racial healing process for the Town.

**Objectives**

- Identify and analyze manifestations of white supremacy.
- Describe strategies for interrupting white supremacy..
- Describe an environment that is free of white supremacy..
- Reflect on their vision of a liberatory society
- Identify and describe actions that can be taken to transform society and eliminate white supremacy.
- Discuss the elements of a liberatory consciousness and how this might be applied to the elimination of white supremacy.
- Develop a personal action plan aimed toward increasing participants’ capacity and readiness to take action to eliminate white supremacy.

**Process:**

1. A robust organizing effort to identify, contact and be in communication with many segments of the community (beyond sending out notices).
2. An organizing effort that includes organizers developing relationships with varied segments of the community, engaging their interest, enlisting their participation in the process, and ensuring their inclusion in the development of final outcomes.
3. Ensure that this process concludes with specific strategies for implementing the vision.
4. Multiple strategies including cross racial dialogue groups, listening sessions, Forums, Webinars, information sessions, training programs, and healing sessions.
5. A series of iterative rounds to develop and elaborate on the vision and the healing process

Round 1	Visioning	Call to the community to participate in a visioning process for a liberatory community
Round 2	Coming together	Many components of the community creating and sharing their vision

Round 3	Sharing	Many components of the community sharing their vision with other components of the community
Round 4	Collective Vision	Sharing the collective vision composed in the many vision components pulled together from across the community. Community response to Collective vision; refinements to the collective vision
Round 5	Strategy development	Community recommendations for implementing the vision: <ul style="list-style-type: none"> <li>• Healing work needed</li> <li>• Consciousness raising needed</li> <li>• Information needed</li> <li>• Dialogue session</li> <li>• Webinars</li> <li>• Forums</li> </ul>
Round 6	Strategy implementation	

### Procedures

1. Include many segments of the community in the discussion.
2. Include several iterative rounds of discussions to create the vision and involve broad segments of the community in thinking through and re-crafting the vision.
3. The process should elicit many different versions of that vision and be durable enough to bring those different versions of a vision into congruence.
4. Be prepared to hear without judgment, varied versions of this vision that do not match your version of this vision.
5. Give many different segments of the community - many different people - the chance to think about what that a liberatory vision and racial healing process might mean for them personally, professionally, politically, economically and socially as members of the Amherst community.
6. That visioning process should include business, higher education, public education system, philanthropy, social services, chamber of commerce, civic groups, community members, media, public health, faith communities, Town government, including all aspects of the community.

### Developing Liberatory Consciousness

See, Love, B.J., "Developing Liberatory Consciousness"  
[BJLove Developing Liberatory Consciousness.pdf](#)

Vision	
Awareness	
Analysis	
Action	
Accountability	
Allyship	

**Questions:**

**Liberatory Vision for Town of Amherst**

1. What does a liberatory community mean to you?
2. What are the elements of a liberatory community?
3. What does a liberatory community look like?
4. What needs to happen in order for Amherst to become a liberatory community

**Healing the Hurts of White Supremacy in the Town of Amherst**

5. What would it mean to dismantle white supremacy in the Town of Amherst
6. What are forms that white supremacy takes in the Town Amherst
7. What is needed to repair harm caused by white supremacy in the Town of Amherst?
8. How can different segments of the community be engaged in repairing the harm done by white supremacy?
9. What are healing mechanisms and systems that might be engaged in the healing process?

**BIPOC Community**

- Black Community
- Indigenous Community
- Asian Community
- Latinx Community

Muslim Community

Jewish Community

GLBTQ Community

Immigrant Community

Police

Fire Department

Public works

NAACP  
Amherst Reparations -  
Amherst Neighbors  
Racial Justice Network (LWV initiated)  
Others

\* \* \*

### Discussion of “Community Policing”

Our Working Group has had multiple discussions of “community policing”. Community policing is intended to build positive relationships between police and the communities they serve. However well-intentioned, the way community policing has been implemented in Amherst has not had that effect. On the contrary—it has been experienced as police being inappropriately intrusive into BIPOC communities and lives. After considerable examination and discussion, our Working Group has concluded that a community-wide process of healing and visioning must occur before police and the BIPOC community as a whole can engage with each other to design programs and policies that will build positive relationships. Programs that seek to increase contact between BIPOC community members and the police should be put on hold until this healing and visions process occurs. In the mean time, it may be useful to have some opportunity for BIPOC community members who are interested in having constructive contact with police officers to do so, but only in situations that are initiated by community members and in which community members play a lead role in designing and voicing what occurs. [Nothing in this statement should be construed to imply that there is any reason to wait on implementing the other recommendations in this report. ]



## **7. DEVELOP AN ANTI-RACISM DEPARTMENTAL CULTURE IN THE AMHERST POLICE DEPARTMENT**

Before we get to the details of this recommendation, first a brief discussion about institutional cultures and on their perspectives on race and racism. Every institution has a culture—whether it’s a school, an agency, a police department , a religious congregation, or a civic organization. The policies, rules, organizational structure, and mission statements all have some relationship to the institutional culture, but the culture also goes far beyond anything written down. The culture includes the prevailing values and norms of the people who are part of the organization. It includes expectations for behavior -- what is considered “normal” and what is considered “unusual” or “unacceptable”. It includes what’s considered important, what’s considered unworthy of much attention, what’s required to be part of the in-crowd, what puts you on the outside. While leadership plays a significant role in shaping the culture of an organization, in reality every member of an organization can play a role in maintaining or shifting the organizational culture.

Organizational cultures also include norms on race and racism. In some organizations race is a taboo topic. In other organizations race is talked about a lot. In some organizations a certain level of racist joking is considered normal and in others telling a racist joke would be almost universally considered crude and insensitive. In some organizations the shared goal is to be colorblind, while in others not noticing and paying attention to race would be considered unaware or uneducated.

Organizational cultures around race may be 1) blatantly racist, or 2) quietly racist, or 3) attempting to be non-racist (not do anything racist), or 4) actively anti-racist (taking initiative to eliminate white domination and seeking to understand more deeply how contemporary racism operates and affects people).

Amherst as a town, and a great many white people in Amherst, have often tried to be non-racist. But there really is no such thing as non-racist in a society as racialized as this one. Attempting to be non-racist leaves the status quo in place and the status quo has been designed to benefit white people at the expense of people of color. Either you are challenging the status quo and helping to dismantle racism, or you are colluding with it and therefore perpetuating racism. The real question is how do we make all town services pro-actively anti-racist, not just non-racist.

We have not investigated the culture of the APD around race and cannot fairly describe or characterize it. We have, however, had enough conversations with the leadership of the department, and heard enough accounts police behavior, to be able to say with confidence that the APD does not have a pro-actively anti-racism culture. Nor does the APD have a high level of awareness and understanding about race and racism. This is not to say that there aren’t individual officers who have considerable knowledge and commitment in this area, but it doesn’t characterize the culture of the APD.



This is entirely understandable. Police officer training does not provide this kind of understanding. Police departments may have been expected to avoid acting out racism, but they have not been expected to take responsibility for helping to dismantle systemic racism in their municipalities. Historically police have been assigned the duty to control black and brown bodies for the comfort, convenience and safety of white people.

However, we are now in a new era of expectations around race and racism. Particularly in Amherst, we are seeking to redress the wrongs of the past and dismantle systemic racism. The APD should not be left out of this. Time, energy, and resources must be allocated to enable the APD to play a significant role in helping to eliminate racial bias, disparities, exclusion, mistreatment and distrust in our town, and especially in relationships between police and members of the BIPOC community.

This is a complex undertaking and will take time. It will be important for police officers themselves to be involved in planning the strategies that will shift the culture of the APD toward a more actively anti-racism stance. We cannot, from the outside, say all that needs to happen. We can, however indicate some steps, goals, and strategies that may be helpful.

- Engage the leaders of the APD, the union leaders, and other selected opinion leaders in the APD in planning and developing a plan to move the culture of the APD to a more actively anti-racism culture.
- Provide the APD with trainers, consultants, and those who can help them in this work. We recommend that eventually the APD have a resident anti-racism trainer who is part of the APD, provides ongoing training, and allows officers to look at their own biases on a daily and continual basis—debriefing situations they've encountered, planning how to handle difficult situations, etc.
- Ensure that all officers are knowledgeable about the historical role racism has played in policing and the historical role of policing in enforcing racism. Officers should also know about the history and impact of racism on the experiences of BIPOC people in Amherst. This knowledge should inform police practices in Amherst.
- Enable all officers to be continuous learners in the area of race and racism. This need not overshadow other things they need to know and learn, but it should be frequent and ongoing enough to affect their daily mindset and how they do their job.
- Enable all officers to develop a deep enough understanding of “unconscious bias” and “microaggressions” and strategies for countering them, that their understanding informs their daily police work.
- Eliminate efforts to be “colorblind” and replace them with efforts to notice race, think about it awarely, and interrupt the operation of racism at every opportunity.

- Expect mistakes as normal parts of the learning process, and develop a culture in which correcting racial mistakes and repairing any damage done is considered routine and expected.
- Consider “Active Bystandership for Law Enforcement”<sup>43</sup> (ABLE) training for the APD. It is based on work by Ervin Staub of Amherst.
- Develop the habit of thinking about anti-racism in the process of every decision made in the APD, including policies, hiring, practices, and handling situations.
- Develop supervisory routines that lead officers to reflect on the racial dynamics of their work each week and reward positive anti-racism behavior.
- Develop a culture in which white police officers approach every situation with the intention to contribute to anti-racism and are committed to earning more trust and confidence in the APD among BIPOC community members.

We recommend that the Town Council endorse this idea and that the Town Manager and the leadership of the APD (including the police union leadership) meet with an anti-racism consultant who is a BIPOC person, to make a plan to begin this work together.

## 8. REAFFIRMING OTHER PREVIOUS RECOMMENDATIONS

- A. Reduce the size of the APD** We made this recommendation in our Part A report and we repeat it here, with some further clarification. As we stated in our Part A report, we believe the appropriate size for the APD is to have only the number of officers needed to adequately fulfill its remaining responsibilities after CRESS and our other recommendations are fully implemented. It is impossible currently to know what size that is, but it is certainly smaller than the number of sworn officers currently budgeted for the APD. **We continue to recommend that the Town stop filling vacancies in the APD and have no new hires** while the Town and the APD determine how many officers will be needed as these other programs become fully operational.

We do believe that the combination of the CRESS program, ending low-level traffic stops, ending over-surveillance of BIPOC communities, strengthening positive community relationships, the decriminalization of marijuana, and increasing culturally sensitive social services will reduce the number of officers needed on the APD. In any case we hope that reducing the APD to the needed size can be accomplished through normal attrition, retirements, and voluntary transfers, without involuntary terminations.

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<sup>43</sup> <https://www.law.georgetown.edu/innovative-policing-program/active-bystandership-for-law-enforcement/>

**B. Create a BIPOC-led Amherst Youth Empowerment Center and Amherst BIPOC Cultural Center** Please see page 15 of our Part A report. We are pleased that the Town Manger has announced that these proposals will be “assigned as a priority for the new DEI Director with a goal of having viable options by December 2021 so they can be considered in the capital and/or operating budgets.”<sup>44</sup>

**C. Create a Community Responders for Equity, Safety, and Service (CRESS) program for Amherst** Implementation of this recommendation is underway. Town Council voted to endorse the program, but voted inadequate funding. They did direct the Town Manager to find the funds to begin the program with at least 8 responders. We expect that CRESS will become operational in the Spring. It will be vital that the Town support this program fully next year and on an ongoing basis. We recommend that this program provide services 24/7 in order to ensure maximum community trust.

**D. Create a well-staffed and well-funded Department of Diversity, Equity, and Inclusion.** Implementation of this proposal is underway with funds budgeted for a full-time DEI Director and an Asst. Director and \$80,000 of additional funds for anti-racism initiatives. Creating such a department is an important step, but will only make a difference if all of Town government is responsive and cooperative with this Office as they make recommendations and proposals in the future.

**Note:**

In our Part A report<sup>45</sup> in May 2021 (page 20) we indicated some areas that we expected to address in our Part B report. In June 2021 we requested resources to obtain the assistance of consultants to help us address these issues. We did not receive adequate resources to address all of the identified issues and what resources we did receive were not made available until September. As a result we have not addressed the issues listed below. We believe they are still important areas to address. We also want to advocate strongly that in the future the Town support groups such as the CSWG in a more timely and thorough manner as they work to dismantle white supremacy.

- APD hiring practices
- Racial diversity at the APD
- Recommended policies and practices for the APD regarding police overtime and workload
- Policies guiding the UMass Police Department while providing mutual aid in Amherst—granting precedence to Town of Amherst/APD policies

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<sup>44</sup> Town Manager’s PowerPoint presentation to Town Council in May 2021

<sup>45</sup> <https://www.amherstma.gov/DocumentCenter/View/56163/CSWG-Final-Report-Part-A>

- Use of funds saved if CRESS proves a more economical way of providing safety services than policing

We hope that the new Resident Oversight Board and the new Community Safety and Social Justice Committee can address these issues.

## **SUMMARY OF RECOMMENDATIONS**

- 1. Create “Community Safety and Social Justice Committee”**
- 2. Establish “Resident Oversight Board”, and after it is operational codify it in a town by-law**
- 3. Rewrite the APD “use of force” policy**
- 4. Prohibit APD consent searches of vehicles, either by rewriting APD policy or by town by-law**
- 5. Prohibit APD “low-level and pretextual” traffic stops, either by rewriting APD policy or by town by-law**
- 6. Add “check-box” to vehicle stop report form – “Was this stop ‘intelligence-led’?”**
- 7. Make other recommended updates and revisions in APD policies**
- 8. Negotiate recommended changes in the APD officers’ contract in the next contract negotiation**
- 9. Create an online “dashboard” to give the public access to monthly data on APD traffic stops by race**
- 10. Create an unarmed, non-police, division of traffic control and enforcement, leaving only arrestable traffic offenses to the APD**
- 11. Engage the community in an extended process of racial healing and visioning**
- 12. Develop an anti-racism departmental culture in the APD**
- 13. Implement all recommendations from the CWSG Part A report**

## CONCLUSION

We thank the Town for the opportunity that has been given our Community Safety Working Group to investigate new forms of community safety services, oversight and policy for the Amherst Police Department, and related recommendations for building a safe and equitable community. We also value the opportunities we have had to lift up the voices of too-often marginalized portions of the Amherst community. We appreciate all of the input we have received from members of the community, the APD, and others. We believe that full implementation of our recommendations can be a vital turning point toward having a community that works for everyone.

Building trust is possible if the community, the Town government, and the APD work together to help dismantle systemic racism. We all have an interest in creating a community that is racially just, inclusive, and safe for everyone.

### *Community Safety Working Group*

Tashina Bowman  
Darius Cage  
Débora Ferreira  
Pat Ononibaku  
Brianna Owen Co-Chair,  
Russ Vernon-Jones  
Elisha Walker, Co-Chair

### *Staff Liaison*

Jennifer Moyston

**APPENDIX**

- **LEAP Report for the Amherst Community Safety Working Group (October 18, 2021)**
- **Model Policy on Low-level and Pretextual Traffic Stops**

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**LEAP Report for the Amherst Community Safety Working Group**

October 18, 2021

Amherst Police Department Policy Review

This document offers a review of Amherst Police Department Policies. It is of the utmost importance to review and amend these policies regularly to ensure that the policies are clear enough to be practical, useful tools for officers, that they can earn the community’s approval as upholding the department’s and the community’s values, and that they are carefully crafted to maximize public safety, officer safety, and police-community trust.

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## **Executive Summary**

### **1. Use of Force**

*Explanation:* A Use of Force Policy outlines when police can use force on another person, which includes everything from grabbing someone’s arm to firing a gun. The goal is to prevent a situation from becoming harmful to that person, to police, or the public. A Use of Force policy is usually set up like a decision tree to guide an officer in an unpredictable real-life situation to use only the lowest level of force necessary to safely handle that situation.

*Issue:* The current APD Use of Force Policy is not easy to understand, clear in its guidance to officers, or reflective of the police and community’s goals. It leaves the Town open to liability and negative outcomes if officers use force.

*Solution:* We recommend that APD adopt an entirely new Use of Force policy (an example from another agency is provided) and regularly review the policy to ensure that it is applying modern and thoughtful policing best practices.

## **2. Consent Searches**

*Explanation:* When police pull over a driver, they can only legally search the car if they can point to a specific reason that the car is likely to contain evidence of a crime. Otherwise, they have to get the driver's permission to search the vehicle, known as a "consent search."

*Issue:* Police disproportionately ask people of color for permission to conduct consent searches, and many people only give consent because they do not feel free to say "no." These searches create distrust in police without any clear benefit to public safety.

*Solution:* We recommend that APD discontinue using consent searches for all vehicle stops. If officers want to conduct a consent search of a home, they should have to get the resident to sign a form to verify that the person is aware of their right to refuse the search.

## **3. Low-Level and Pretextual Stops**

*Explanation:* When police see a driver commit a minor violation of the law, such as turning without a signal or driving with a broken taillight, they may stop the vehicle not because they think the driver will get in an accident but because they want to pull over the driver to look for evidence of a more serious crime and they need a legal reason to do so.

*Issue:* As with consent searches, police are more likely to make these "pretextual stops" on people of color, with a severe impact on community trust. These stops also have a disproportionate impact on people who cannot afford traffic fines and can even lose their job if they have to go to court.

*Solution:* We recommend that APD discontinue all vehicle stops for low-level violations, unless the violation poses a clear risk to road safety. If an officer does make a stop, they should be required to document the public safety reason on a form. APD should regularly review this traffic stop data to continue to improve service to the Amherst community.

## **4. Police Union Contract**

*Explanation:* Like other jurisdictions, the Town of Amherst signs a contract, or collective bargaining agreement (CBA), with the local police union. The CBA defines the pay scale, hours, working conditions, and other employment protections that the town commits to provide for officers. The Amherst CBA went into effect at the beginning of the 2020 fiscal year and is set to expire at the end of the 2022 fiscal year.

*Issues:* The current Amherst CBA includes a complex grievance procedure for any complaint that could prevent the Town from holding police accountable for misconduct. For example, grievances can be dismissed for missing numerous deadlines, and discipline older than a year is erased from an officer's record.

*Solutions:* Any future oversight board should review the existing CBA and make recommendations to the Town Manager, or other bargaining unit staff, about concerns and issues they do not want negotiated away at the bargaining table in order to protect not just the Town's financial interests but

also the Town's values of equity, fairness, and responsibility. The Town should begin this conversation soon, because it is negotiating a new CBA by mid-2022. We suggest several potential changes to the CBA, including:

1. ensuring that disciplinary issues older than a year can be considered in future discipline cases,
2. confirming that grievance process deadlines are reasonable,
3. revisiting the arbitration process to protect justified disciplinary decisions, , and
4. making the CBA process as transparent as possible, with time for the oversight board to weigh in on it prior to adoption by the Town Council.

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## **Review of Massachusetts Police Reform Bill**

### **Massachusetts S.2963: An Act relative to justice, equity, and accountability in law enforcement in the Commonwealth**

The above bill was reviewed in its entirety. Below is a summary of the main takeaways regarding what that bill will mean for the Amherst Police Department.

#### **1. Duty to Intervene**

Beginning at Section 14, page 57 the bill lays out the state use of force policy. It includes a duty to intervene, meaning that it requires fellow officers to step in if they see an officer using excessive force, and to report such behavior. APD policy does not currently contain a duty to intervene and should be amended accordingly. See General Order III, Policy #12 Use of Force.

#### **2. Limitation on no-knock warrants**

Section 2D, page 97 of the bill states that no-knock warrants shall not be allowed unless issued as such by a judge based on an affidavit explaining why it is a necessity. The current APD policy is inconsistent with this update and should be amended accordingly. See page 6 of General Order III, Policy #3 on Searches and Seizure.

#### **3. POST Commission Oversight and Data Transparency**

The newly created Police Officer Standards and Training commission<sup>46</sup> has the ability to credential and strip a police officer or an agency of the credential to be employed or offer services in that profession.<sup>47</sup> The scope of the statute, (items 1-29), gives the POST

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<sup>46</sup> Chapter 6E, S.2963 The Massachusetts Police Reform Bill  
<https://malegislature.gov/Bills/191/S2963>

<sup>47</sup> *Ibid* at Section 3

commission broad oversight of the operation, licensing, and qualifications of both officers and agencies in the Commonwealth.

The POST commission is made up of 9 members. Three are appointed by the governor and are required to include a police chief, a retired superior court judge, and a social worker. Three are appointed by the state's attorney general and must include a police officer below the rank of sergeant, a police officer from a list provided by the Massachusetts Association of Minority Law Enforcement Officers, and an attorney from the state bar's civil rights and social justice section.

The three remaining members are appointed jointly by the governor and attorney general, and one of them must be a nominee from the Massachusetts Commission Against Discrimination.

The bill also requires the commission to be as diverse in gender and ethnicity as the state itself and to include geographically diverse members. The state has already appointed the POST commission members and their biographies can be found at <https://www.mass.gov/orgs/post-commission>.

In addition, under POST shall be a division on police standards.<sup>48</sup> This division will be charged with all misconduct oversight of police officers. The commission has broad authority to investigate, review, and adjudicate for a number of misconduct and failure to adhere to standards and guidelines issues<sup>49</sup>. The statute creates public databases and reports based on the findings of this commission, enhancing, state-wide, transparency in police conduct.

Section 99, page 100 requires each law enforcement agency to have provided by June 21, 2021 a record, containing certain specific information related to every police officer's personnel record, specifically any complaints against the officer or any discipline they've received, to the commission. The commission will then be providing each agency with a list of all officers on or before December 21, 2021, and the agency will have to respond with the required information regarding discipline of all officers previously employed by the agency. No specific date is listed in the statute regarding response time.

#### **4. Racial Profiling**

Section 83 at page 91 prohibits racial profiling and allows for the state attorney general to bring action against a police department for such behavior. There is no clear guidance on how to avoid such racial profiling in the bill. There is also no additional information on how the attorney general's office will be handling such complaints. The attorney general's website does currently include a place to file civil rights complaints, which include biased policing. If issues related to racial bias in policing arise, we recommend reaching out directly to the attorney general's office.<sup>50</sup>

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<sup>48</sup> *Ibid* at Section 8

<sup>49</sup> *Ibid* Section 8-16

<sup>50</sup> <https://www.mass.gov/how-to/file-a-civil-rights-complaint>

## 5. New Commissions Established

The bill establishes commissions to provide input regarding police interactions with specific groups (i.e. Black, Latino, people with disabilities) and to report back regularly to the state legislature on their recommendations.

The bill establishes a committee on police training and certification. In operation, it seems to be tasked with setting up a curriculum that will be in addition to and provide guidance on what POST standards cover. The committee is tasked with establishing curriculum for:

1. De-escalation and disengagement tactics when dealing with minor children
2. Handling of interactions with victims, witnesses, and suspects who have mental health or substance abuse issues through the least intrusive means while reducing or preventing harm, but while maintaining officer safety
3. Response to mass gatherings that emphasize de-escalation and minimize necessity for use of force
4. Cultural competency (this term is not defined and there is no further explanation on what this is expected to address)

The committee is also charged with establishing training rubric, with robust requirements, for school officers and interactions with people on the autism spectrum or with other intellectual and developmental disabilities.

The committee is charged with creating minimum certification standards on a broad range of topics from background checks to moral character. The committee has the oversight to revoke the accreditation of any police training academies or schools.

The committee also has purview over in-service training. Such requirements are for the most part not articulated but will include 2 hours annually of mental wellness and suicide prevention for police officers in coping with the stresses of the job.

The report creates several study committees to make additional recommendations:

- A body worn camera task force for best use and procurement (p. 106 (b))
- A task force on the use of facial recognition (p. 110)
- A special legislative commission on the use of emergency hospitalization and how that is used by law enforcement (p 111, section 106)
- A special legislative commission on structural bias in the parole process (p 120, section 111)
- A special legislative commission on structural bias in probation (p 120, section 112)
- A special legislative commission to investigate qualified immunity and its application (p 124, Section 116)

- A community policing and behavioral health advisory council to make recommendations regarding creating a crisis response and continuity of care for alternatives to traditional policing, throughout the commonwealth and reflecting the diverse makeup of the commonwealth (p 125, Section 117)

While the bill establishes many new committees and bodies, it requires little of local law enforcement at this stage. Many future changes will likely come from the work of these committees. Therefore, LEAP recommends that whatever body comes after the CSWG continues to monitor the work of these committees and other bodies to oversee and modernize policing. Additionally, if given the opportunity, that body should seek to provide input on best practices to inform the work of these committees.

## **Review of Amherst Police Policies**

### **Use of Force: Concerns**

#### General Order Index III Policy #12, May 8, 2020

#### **Clarity**

The Use of Force policy is difficult for officers and the public to understand, does not make clear what actions are allowed and which are not, and lacks language to secure the public trust.

First, the policy is unnecessarily complicated. The Use of Force Policy should offer clear guidance on when to use force and when not to, as much as is practicable, and how much force should be used in various situations. While policies alone are a limited tool to guide officers facing complex real life situations, in order to be useful, they must be written in plain language. The APD policy is written in “legalese.” For example, the following is the definition of Probable Cause from the Use of Force Policy:

Probable cause for arrest exists if, at the time of the arrest, the facts within the knowledge of the arresting officer (or within the collective knowledge of the police) are reasonably trustworthy and are sufficient to warrant a person of reasonable caution and prudence to believe that the person being arrested has committed or is committing the crime for which the arrest is being made.

Simpler language would help officers actually use the policy as a tool to determine whether or not there is probable cause. For example, clearer language might be:

3. For an arrest: Is there a reasonable basis for believing that a crime may have been committed?
4. For a search: Is the evidence of the crime present in the place to be searched?<sup>51</sup>

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<sup>51</sup> From the Cornell Legal Information Institute [https://www.law.cornell.edu/wex/probable\\_cause](https://www.law.cornell.edu/wex/probable_cause)

In addition to legalese, the justification for use of force is made via a complicated decision tree. This decision tree is ill-suited to a real life situation, reducing the usefulness of the policy.

### **Goals**

Second, the current policy lacks language that could help build public trust. Most modern use of force policies are written from the viewpoint that force should be a tool of last resort, to protect the public. For example, the Camden County Police Department's policy (see [Attachments](#)) states,

In exercising this authority, officers must respect the sanctity of all human life, act in all possible respects to preserve human life, do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public.

A Use of Force policy should include not just what is allowable under the law, which is often broad and ambiguous, but also what will best serve the community. The policy should clarify that legal standards serve as the floor for police behavior, not the ceiling. The policy from Camden County explains:

This Department aspires to go beyond [the Constitution] and its minimum requirements. Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision making in the broad range of possible use of force situations.

By contrast, APD's Use of Force Policy does not articulate these goals of protecting the public. The APD policy focuses on asserting the rights of police officers to use force to control and gain compliance in a situation. Adding a community-focused perspective can reaffirm broader principles and help reassure the public, because while these policies are generally considered internal, they are public documents.

### **Report Delay**

Third, the Use of Force policy also allows up to four days for an officer involved in a Firearms Discharge to complete a report. It requests that it be done as soon as possible but gives an unnecessarily long time frame in which to complete it. This delay serves no public safety purpose and can reduce the accuracy of the report and create significant public distrust. Police agencies across the country are updating their policies to ensure that officers are giving contemporaneous accounts in the event of a firearms discharge.

### **Firing Into a Vehicle**

Fourth, the policy should exclude firing into a vehicle under almost all circumstances, rather than the broad list of exceptions it contains now. In 1972, the New York City Police Department adopted a prohibition on officers shooting at or from a moving vehicle, unless a person in the vehicle is using or threatening deadly force by means other than the vehicle itself. That policy resulted in an immediate, sharp reduction in uses of lethal force in New York City.<sup>52</sup> Other agencies have since adopted similar policies, some including narrow exceptions if the vehicle is being used as a deadly weapon.

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<sup>52</sup> "Guiding Principles On Use of Force - Police Executive Research Forum" 16 Mar. 2016, p. 15. <https://www.policeforum.org/assets/30%20guiding%20principles.pdf>. Accessed 6 Oct. 2021.



## Use of Force: Recommendations

### 3. Rewrite or adopt new policy

The Use of Force policy should at the very least be rewritten to address the issues articulated above. LEAP recommends that Amherst replace the policy with a new version based on the model policy from Camden County, New Jersey<sup>53</sup> (see [Attachments](#)). In addition to addressing the issues above, this model policy would bring APD in line with the new Massachusetts police reform bill's requirement of a duty to intervene.

LEAP recommends one addition to the Camden County policy, which is to prohibit shooting at or from moving vehicles in almost all circumstances. Sample language for such a policy could be:

#### MOVING VEHICLES.

- Unless such action is necessary for self-defense or to protect another person from immediate and serious injury, officers shall not discharge a firearm at or into a moving vehicle; officers shall not intentionally place themselves in the path of, or reach inside, a moving vehicle; and officers shall attempt to move out of the path of a moving vehicle. Being in the path of a moving vehicle, whether deliberate or inadvertent, shall not be justification for discharging a firearm at the vehicle or any of its occupants, unless the officer is physically unable to move out of its path or is protecting another person from immediate and serious injury.
- Unless such action is necessary for self-defense or to protect another person from immediate and serious injury, officers shall not discharge a firearm from a moving vehicle or shoot at any part of a vehicle in an attempt to disable the vehicle.<sup>54</sup>

### 4. Share data with FBI National Use-Of-Force Data Collection

In 2019, the Federal Bureau of Investigation (FBI) launched a National Use-Of-Force Data Collection. However, participation cannot be forced by the FBI and is only encouraged. Thus, their database lacks information as many police departments opt not to participate.<sup>55</sup> We recommend that APD participate, if they are not already, in sharing data on a monthly basis with the FBI, so that it may be analyzed for larger context and help prevent and address use of force issues nation-wide. As noted on the FBI's website, the program's stated goal is "not to offer insight into single use-of-force incidents but to provide an aggregate view of the incidents reported and the circumstances, subjects, and

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[https://drive.google.com/file/d/1fw8PE4XX\\_BeSkbBIMuXNqmUOw\\_L4l0uZ/view?usp=sharing](https://drive.google.com/file/d/1fw8PE4XX_BeSkbBIMuXNqmUOw_L4l0uZ/view?usp=sharing)

<sup>54</sup> Some language borrowed from Campaign Zero, Model Use of Force Policy "Motor Vehicles"  
<https://campaignzero.org/force>

<sup>55</sup> Data-Smart City Solutions "How Can Data Increase Police Accountability" Betsy Gardner June 11, 2020 Harvard Kennedy School of Government, Ash Center for Democratic Governance and Innovation <https://datasmart.ash.harvard.edu/news/article/how-can-data-increase-police-accountability>

officers involved.” It would be advantageous for law enforcement, generally, if APD participated.

### **Consent Searches: Concerns**

The APD policy on consent searches are contained in General Order Index: III Policy #3 at page 13 “Search by Lawful Consent”.

The APD policy on consent searches is consistent with the law. Consent search broadly applies to an agreement by a person to give police consent to search anything, whether a domicile, a vehicle, or their person.

As the APD policy correctly warns, consent searches should not be heavily relied upon. A warrant is the proper way to effectuate a search, as consent searches can be easily scrutinized by the court and found lacking, jeopardizing the entirety of a case that is built on a consent search. Proper training is essential to ensure that any consent search respects the Constitution and holds up in court.<sup>56</sup>

More significantly, consent searches are a major source of racial disparities that destroy community trust, which is crucial to protect public safety. A report out of Maryland found:

African American and Hispanic males were significantly more likely to be searched than any other race. More troubling however, is the ‘hit rate,’ or the rate at which contraband is found during search. Based on the 2015 Race-based Traffic Stop report, consensual searches have the lowest "hit rate" across the board (for any type of property or contraband.) Three fourths of the time that police conducted consensual searches, they came up completely empty. Additionally, motorists identified as Black or Latinx have, on average, even lower "hit rates" for consent searches than white motorists—just over 23%, compared to 28%.<sup>57</sup>

As a result, many jurisdictions are stopping consent searches altogether. In 2004, Rhode Island banned the practice of consent searches in vehicle stops completely.<sup>58</sup> The

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<sup>56</sup> The two factor requirement for a consent search should be something all officers are knowledgeable of as a matter of course: 1. The consenting party must have the required authority to give consent to the area being searched and 2. Consent must be freely and voluntarily given.

Though the two-factor test is straightforward, the nuances of who can give consent to a particular search, in order to make such search valid, and what can be searched (the scope of the search) are more complex. For example, a person from whom the police are seeking consent must be informed that they have the right to decline to give consent. Also, except for when something relevant to the case has already been found, consent can be revoked at any time. These points should be emphasized in any training on consent.

<sup>57</sup> Governor’s Office of Crime Control and Prevention, 2015 Race-based Traffic Stop Data Analysis (2016), p. 13. Available at <https://goccp.maryland.gov/wp-content/uploads/traffic-stop-report2016.pdf>

<sup>58</sup> Title 31, General Laws entitled "Motor and Other Vehicles," 31-21.2-5 <http://webserver.rilin.state.ri.us/billtext15/housetext15/h5819.htm>

California Highway Patrol, in response to a class-action lawsuit alleging racial profiling in consent searches, has prohibited them for almost two decades.<sup>59</sup>

## **Consent Searches: Recommendations**

### **3. Discontinue consent searches**

While the APD policy is consistent with law, LEAP believes that the Town would benefit from a prohibition on consent searches, in particular consent searches of vehicles. Ending consent searches on vehicles would be a concrete way for the APD to conform with the Massachusetts police reform bill's mandate to stop racial profiling. It would help build trust within the community, improving officers' ability to protect public safety.

Specifically, Amherst could follow the lead of the Providence Police Department's policy language:

No operator or owner-passenger of a motor vehicle shall be requested to consent to a search by a law enforcement officer of his or her motor vehicle which is stopped solely for a traffic violation, unless there exists reasonable suspicion or probable cause of criminal activity.<sup>60</sup>

To address the extremely rare case in which a consent search could help stop a serious crime in progress, Amherst could borrow the exception language in Section I, Part 2(d) of the Policing Project's model pretextual stops statute (see [Attachments](#)).

### **4. Consent Form for Consent Searches**

Additionally, it does not appear from the documents shared with LEAP that APD has a "right to consent to search" form, documenting in writing that consent has been given for specific purposes at a specific place. Such a form should be required for all consent searches if APD continues the practice for persons and homes. It would benefit the APD and limit the department's liability, as well as strengthen judicial notice of consent, to implement the use of such a form. An example is included in the [attachment packet](#) from the New Orleans Police Department, along with that department's search and seizure policy outlining the justification for such a form.

## **Low-Level and Pretextual Stops: Concerns**

The policies related to pretextual stops are contained in General Order Index: III Policy #3 Searches and Seizures at page 15 "Motor Vehicle Searches" and Policy #35 on Stop, Frisk, and Threshold Inquiries at page 5 under "Motor Vehicles."

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<sup>59</sup> *Rodriguez v. California Highway Patrol*, 89 F. Supp. 2d 1131 (N.D. Cal. 2000)

<sup>60</sup> <http://www.providenceri.com/sites/default/files/ppd-directives/330.03%20-%20Search%20and%20Seizure.pdf#page=6> The Providence policy states that the definition of "reasonable suspicion" means "that a person is dangerous and might access the vehicle to gain immediate control of weapons." That definition of "reasonable suspicion" should be made clear throughout any adopted policy.

The APD policy is consistent with the law. It also underscores that a warrant is the best means to search a vehicle. Unfortunately, it creates wide carve outs that lead to police using pretextual vehicle stops to conduct controversial searches. These pretextual stops rely on a minor offense like expired registration or a broken taillight as an excuse to pull over a car that the officer wants to investigate but does not have cause to stop. The officer then visually inspects the car for any evidence that would justify a search, or simply asks for consent to search the vehicle.

As with consent searches, pretextual stops cause damaging racial disparities. A 2021 article in the *Stanford Law Review* provides evidence that pretextual stops disproportionately impact people of color.<sup>61</sup> They create negative interactions with police, which often cause fear and deepen distrust in law enforcement. They also particularly target people in the community who cannot afford basic car maintenance or the fees imposed on them. Minor citations can greatly impact less affluent community members, since an unpaid ticket can lead to a bench warrant, arrest, and job loss.

In order to reduce disparities and rebuild trust, several communities have prohibited pretextual stops. Officers can only make stops if combined with another, more legitimate law enforcement purpose or if the violation is greatly impacting the safety of the community (e.g. reckless driving). In 2020, the state of Virginia banned pretext stops.<sup>62</sup> The cities of Portland, Oakland, Philadelphia, and Minneapolis have also discontinued pretext stops.<sup>63</sup> These jurisdictions are benefiting officers by improving public trust and reducing disparities.

## **Low-Level and Pretextual Stops: Recommendations**

### **4. Discontinue Low-Level and Pretextual Stops**

Due to the limited usefulness and significant cost of pretextual stops mentioned above, LEAP recommends that APD implement a policy based on the model statute from the Policing Project (see [Attachments](#)). The stated approach of their policy is:

This statute is designed to curtail the use of pretextual traffic stops—focusing in particular on low-level stops that do not otherwise have a close nexus to public safety. The statute takes a four-pronged approach: (1) It prohibits officers from making stops for certain low-level offenses (thereby relegating them to

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<sup>61</sup> An Empirical Assessment of Pretextual Stops and Racial Profiling 73 *Stanford Law Review* 637 (2021) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3506876](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3506876)

<sup>62</sup> Virginia SB 5029 <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=202&typ=bil&val=sb5029>

<sup>63</sup> <https://www.kgw.com/article/news/local/portland-mayor-police-chief-news-conference-policing-changes/283-7c4e2427-d844-440e-acad-ed0e46e68a8d>,  
<https://www.sfchronicle.com/bayarea/article/To-curb-racial-bias-Oakland-police-are-pulling-14839567.php>  
<https://www.startribune.com/minneapolis-police-to-scale-back-low-level-traffic-stops/600087423/?refresh=true>  
<https://www.inquirer.com/news/philadelphia-city-council-isaiah-thomas-police-driving-while-black-20211014.html>

“secondary offense” status; (2) Limits fishing expeditions during lawful stops; (3) Reduces reliance on outstanding warrants for low-level offenses and first-time failures to appear, thereby ensuring that lawful stops do not lead to unnecessary custodial arrests and the associated potential for physical altercation; and (4) Requires agencies to collect demographic stop and arrest data to facilitate public oversight of agency enforcement practices.

## 5. Documentation

In addition to implementing the Policing Project model policy, we recommend that APD consider adding a simple reporting innovation. The Oakland Police Department added a check box to forms related to traffic stops asking “Was this stop intelligence-led? Yes or No.” This question cut down significantly on stops related to minor offenses such as broken taillights and expired registration and ensured that pretext stops were only being used to help curb serious criminal activity.<sup>64</sup>

## 6. Data collection

It was unclear from the APD-provided documents what data APD collects during traffic stops and field interviews. APD should begin or continue collecting data that will:

- be disaggregated by race, ethnicity, and gender;
- include the date, time, and location of such investigatory activities;
- provide justification for the stop and for a search, if conducted; and
- provide the outcomes, including if a search was conducted, if contraband or evidence was found, and if a warning or citation were issued or an arrest made.

Many states already require police agencies to collect this data, including Virginia and Florida, and the Congressional Research Service has recommended to Congress that this data be collected at a federal level.<sup>65</sup> We recommend that APD get out in front of such state and federal legislation in order to build public trust. The model statute language from the Policing Project (see [Attachments](#)) provides detailed guidance on data points that should be included.

APD could use this data to ensure that traffic stops and other actions do not demonstrate racial bias. In particular, this traffic stop analysis could focus on the three key indicators noted by the Congressional Research Service:

[The Federal Government] would be required to analyze the data for disparities in the percentage of drivers or pedestrians stopped relative to the proportion of the population passing through the neighborhood; hit rates (i.e., the rate at which

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<sup>64</sup> *How Oakland police cut traffic stop numbers by 40% with a simple checkbox* Yahoo! Finance Lara O’Reilly July 1, 2019 <https://www.yahoo.com/now/how-the-oakland-police-cut-traffic-stop-numbers-by-40-with-a-simple-checkbox-070000004.html>

<sup>65</sup> *Programs to Collect Data on Law Enforcement Activities: Overview and Issues* page 4 Congressional Research Service R46443 Updated March 11, 2021. <https://crsreports.congress.gov/product/pdf/R/R46443/3#page=7>

contraband was found during a search); and the frequency of searches performed on drivers who are people of color relative to White drivers.<sup>66</sup> While there is some evidence that APD is collecting data related to stops,<sup>67</sup> it is unclear whether this data is being analyzed, at what level that analysis is happening, and what is being done with the results of that data analysis. LEAP recommends that APD regularly analyze the data and amend policy and procedures to be consistent with unbiased policing goals informed by that data.

## **Review of Amherst Police Contract**

The Amherst Police Contract (Agreement Between The Town of Amherst and the Amherst Police League MassCOP Local 431) went into effect July 1, 2019 and is set to expire June 30, 2022. A majority of the policy discusses payment, pay schedules, overtime, holiday pay, and similar details. Our analysis focuses on potential issues of concern and related recommendations.

### **Arbitration**

Under the contract's Grievance Policy, if an officer commits misconduct and is suspended or fired by the police chief, the officer can appeal this decision to an outside arbitrator, who is approved by both the town and the police union. Studies show that arbitrators reverse the chief's disciplinary decision in about [half of all cases](#), usually on the grounds that the [punishment was too harsh](#). While these cases often involve serious issues such as [excessive use of force or professional dishonesty](#), the arbitrator focuses on what punishment officers have received in the past for a similar offense and the impact it would have on the officer. They do not focus on the impact that misconduct will have upon community trust in police. In the APD CBA, the arbitrator's decision is binding and cannot be reversed, even if it makes clear errors in judgment or facts, or if new information comes to light.<sup>68</sup>

Unlike the Use of Force policy above, the Town cannot simply dictate the terms of the police union contract -- it currently must be negotiated between the Town and the police union. The Town should view the current arbitration process as an important concession to the police. Here are possible alternatives to balance officers' right to due process with the Town's responsibility to ensure accountability, trust, and safety:

5. Instead of appealing the case to an outside arbitrator, the appeal could be heard by the Town Manager or Town Council. This approach is taken in Murrieta, California and other jurisdictions.<sup>69</sup>

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<sup>66</sup> *ibid.*

<sup>67</sup> See June 30, 2020 APD letter Subject: Racial Profiling Documentation for Verbal Warning Motor Vehicle Stops, Effective July 1, 2020 at 0000 hours.

<sup>68</sup> "480 Mass. 634." 7 May. 2018, <http://masscases.com/cases/sjc/480/480mass634.html>. Accessed 18 Oct. 2021.

<sup>69</sup> 1036 VANDERBILT LAW REVIEW Vol. 74:4:1023

6. The arbitrator's opinion could be made nonbinding, and either the union or the Town could appeal the decision to the Town Manager or Town Council. This approach is taken in Delano, California (see [Attachments](#)).<sup>70</sup>
7. Instead of giving the police union veto power over the choice of arbitrator, the arbitrator could be randomly chosen from a pre-approved panel of arbitrators. This would remove the arbitrator's incentive to side with the police in order to be chosen again in the future. This approach is taken in Minnesota.<sup>71</sup>
8. Instead of giving the arbitrator unchecked power to reverse the decision, the Town could create a disciplinary matrix that specifies a range of punishment acceptable for serious types of misconduct. The arbitrator could rule that misconduct did not occur or alter the punishment within the range, but they could not move outside the range. This approach is taken in Oregon.<sup>72</sup>

### **Record Sunset**

The grievance process also covers employee discipline in Article XXIII. This article states that “Any record of discipline older than one (1) year from the date issued shall not be used or considered in future discipline.” This language should be removed, in order to ensure appropriate accountability based on patterns of behavior. This language should be removed from future CBAs by the Town’s labor negotiation team. Any updated discipline policy should include language that allows the Town to consider the entirety of a police officer’s performance record, particularly serious issues, when determining discipline.

### **Grievance Dismissal**

One area of concern in the Amherst Police Contract is the complexity of the Grievance Policy, which is outlined at Article VIII. If any of the multiple layers or steps are not completed or the Town does not respond in a timely fashion, the grievance is dismissed. These time frames protect officers and their families from being kept in limbo unnecessarily, but if they are too short, they can result in the unwarranted dismissal of legitimate grievances. The steps and time frames should be scrutinized to ensure that they are not resulting in inappropriate dismissal of grievances.

### **Transparency**

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<sup>70</sup> JULY 01, 2020 TO JUNE 30, 2024 AGREEMENT BETWEEN CITY OF DELANO AND DELANO POLICE OFFICERS ASSOCIATION, 19(E). Effect of Decision:

The decision of the Arbitrator shall be binding on both parties unless the City Council overrules the decision of the Arbitrator within thirty (30) days from the date of the decision. In order for the City Council to overrule the decision, it is required that at least four (4) Council members (if five members are present) or three (3) Council members (if three or four are present) must vote in favor of the motion to overrule. The Council’s decision shall be final and binding.

<sup>71</sup> 1036 VANDERBILT LAW REVIEW Vol. 74:4:1023

<sup>72</sup> *Ibid.*



APD policies on contracts and bargaining would benefit from added public transparency. While labor negotiations themselves are closed according to Massachusetts law,<sup>73</sup> the draft contract should be made available to the public prior to adoption.<sup>74</sup> Any future oversight board should pay special attention to the terms of that agreement and offer comments where appropriate.

## **Other Policies**

### **3. APD Discipline Policy**

General Order Index III, Policy #63

The goals of any new civilian oversight board should be supported by statutory language that gives it the authority to subpoena, interview, and recommend discipline for officers as necessary. Nothing in the APD Discipline Policy or Police Contract should prohibit these activities. Current APD policies are silent on this issue but should incorporate cooperative language once such an oversight board is formed.

The current APD policy allows an officer who has used force to wait for four days before filing a report. In order to ensure accurate reporting and avoid unnecessary delays, Amherst should follow other police departments in requiring the report to be filed by the end of their shift, or at most within 48 hours, unless there is an emergency medical issue (see the New Orleans Police Department policy in [Attachments](#)).

Current APD policy does not distinguish between a minor incident involving use of force, such as an accidental discharge, and a major incident like an officer-involved shooting. The APD policy should be edited to clarify the requirements for more serious incidents. This new language should make clear that officers are required to meet with the investigators as soon as possible for an interview (see for example the New Orleans Police Department policy in [Attachments](#))

In addition, it should be clarified that any evidence of additional wrongdoing uncovered during an investigation can result in an independent investigation. This issue is not currently addressed by APD policy, but it should be made explicit.

### **4. Personnel Information Release**

A separate letter titled “ASO-55 Release of Personnel Information,” dated February 9, 2010, appears to require APD personnel to have signed a document allowing their personnel information to be released, in order for such information to be made available. It is not clear to what exact information and to what extent this policy applies, but if it

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<sup>73</sup> See G.L. c. 30A, § 21(a)(2)–(3).

<sup>74</sup> This step is required by law in California under the Brown Act: see Walter Katz, “Police Union Collective Bargaining and Participatory Democracy.” *SMU Law Review* Vol. 74, p. 440. <https://scholar.smu.edu/cgi/viewcontent.cgi?article=4886&context=smulr#page=23>. Accessed 18 Oct. 2021.

prevents the release of information that should be available to the public, this policy should be amended.

### **General Recommendations for APD Policies**

3. Gendered language should be removed to make the policies more modern. (i.e. eliminating ‘he/she’ in favor of ‘officer’ or ‘police’.)
4. General Orders policies should be reviewed and trained on regularly, if that is not already occurring, to make sure that they are actually understood and able to be put into practice by APD officers. The APD may want to consider an internal policy review committee to make sure that they have the most modern, accurate, clearly understood policies available. A policy that sits unused in a binder is of little good to the department or the community.

### **Attachments**

See [this Google drive link](#) to access the following policies and documents:

1. S.2963 aka The Massachusetts Police Reform Bill
2. Camden County Use of Force Policy
3. NOPD Consent Search Form
4. NOPD Search and Seizure Policy
5. Policing Project Model Policy on Pretextual Stops
6. Delano Police Department Memorandum of Understanding

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### **Model Policy on Low-level and Pretextual Traffic Stops**

[This model bill from the Policing Project at NYU School of Law is drafted for state level legislation and will need minor editing to be appropriate for the municipal level and to be converted to a policy for the APD. We recommend that all of the features of this model be promptly incorporated into APD policy. If the APD is unwilling to make this change, it should be adopted, with minor editing, by Amherst Town Council as a Town by-law.]

#### **AN ACT TO CURTAIL PRETEXTUAL TRAFFIC STOPS**

*One of the longstanding problems in policing has been the pretextual use of low-level traffic and pedestrian stops as a strategy to address more serious crime. Although there may be some limited role for pretextual enforcement to investigate specific serious crimes, there is a fair bit of evidence to suggest that its over-use has exacerbated racial*

*disparities in policing, unnecessarily pulled individuals into the criminal justice system for very minor misconduct, generated a great deal of distrust between police and communities, and done very little to actually address serious violent crime.*

*This statute is designed to curtail the use of pretextual traffic stops—focusing in particular on low-level stops that do not otherwise have a close nexus to public safety. The statute takes a four-pronged approach: (1) It prohibits officers from making stops for certain low-level offenses (thereby relegating them to “secondary offense” status; (2) Limits fishing expeditions during lawful stops; (3) Reduces reliance on outstanding warrants for low-level offenses and first-time failures to appear, thereby ensuring that lawful stops do not lead to unnecessary custodial arrests and the associated potential for physical altercation; and (4) Requires agencies to collect demographic stop and arrest data to facilitate public oversight of agency enforcement practices.*

## **SECTION I: CERTAIN TRAFFIC STOPS PROHIBITED**

(1) Except as provided in subsection (2), an officer may not stop, arrest, or detain the operator of a motor vehicle, or issue a citation for any of the following offenses:

Equipment violations:

- (a) Failure to display registration tags, or driving with expired registration tags;
- (b) Failure to illuminate license plate;
- (c) Rim or frame obscuring lettering or decal on license plate;
- (d) Driving without a functioning headlight, or failure to turn on headlights, unless the sun has set and both headlights are out;
- (e) Driving without functioning brake lights, unless both brake lights are out;
- (f) Driving without functioning taillights, unless the sun has set and both taillights are out;
- (g) Driving with a missing or damaged sideview mirror, unless both sideview mirrors are missing or damaged;
- (h) Driving without a rearview mirror, or with the rearview mirror obstructed, unless one or both of the sideview mirrors are missing or damaged as well;
- (i) Driving without working windshield wipers;
- (j) Affixing an object or material that obstructs the driver’s view through the windshield, rear window, or side windows, unless the driver’s view is so obstructed as to create a condition that substantially increases the likelihood of injury or death
- (k) Cracked windshield unless the driver’s view is so obstructed so as to create a condition that substantially increases the likelihood of injury or death
- (l) Window tint does not comply with [inert cite to applicable state laws];

(m) *[Optional: Any other equipment violation listed in sections [x.xxx to x.xxx] unless it creates a condition that makes it reasonably likely that injury or death would result..]*

Low-level traffic violations:

- (n) Exceeding the speed limit by less than 5MPH on any roadway where the speed limit is under 40MPH, or by less than 10MPH on any roadway where the speed limit 40MPH or greater;
- (o) Making an illegal U-turn from the far-left lane, unless the U-turn was executed in a manner that creates a condition that substantially increases the likelihood of injury or death;
- (p) Failure to have a seatbelt fastened, other than an improperly restrained minor under the age of 14;
- (q) Failing to signal while turning or switching lanes;
- (r) Failure to dim headlights;
- (s) Excessive noise;
- (t) Littering, unless an object is thrown from a vehicle in a manner that creates a condition that substantially increases the likelihood of injury or death;
- (u) Any parking infraction, unless the car is unoccupied;

Low-Level Warrants:

- (v) Based on reasonable suspicion or probable cause to believe that the driver or passengers in the vehicle has an outstanding warrant for any of the following:
    - i. Failure to pay an outstanding fine or fee;
    - ii. Failure to appear in court for [insert here the applicable state classifications for violations, infractions, and misdemeanors, other than assaultive offenses or crimes of violence].
- (2) An officer may stop or detain the operator of a motor vehicle, or issue a citation for an offense enumerated in section (1) if:
- (a) the officer lawfully stopped or detained the operator of the motor vehicle for an offense not enumerated in section (1); or
  - (b) the operator is driving a commercial vehicle; or
  - (c) the motor vehicle is unoccupied; or
  - (d) the motor vehicle matches the description of a motor vehicle suspected of having been involved in kidnapping, human trafficking, or any other crime for which failure to immediately apprehend the suspect is

reasonably likely to result in death or serious bodily injury to a person other than the suspect.

*[Note: This last provision is designed to address the (very) rare case where traffic stops may be used to investigate very serious offenses that involve an immediate threat to public safety. A classic example would be a kidnapping case where the police have a general description of a vehicle (“white van”) that may not be enough to justify stopping any particular vehicle—but whether the risk of harm is sufficiently grave as to justify the use of any constitutional means to apprehend the suspect.]*

- (3) If an officer does not have grounds to stop a vehicle or detain the operator of a motor vehicle, and the officer can identify the owner of the vehicle, the officer’s agency may mail a citation to the owner of the vehicle, or send a warning letter identifying the violation and instructing the owner to correct the defect or otherwise remedy the violation.

## **SECTION II: LIMITING SEARCHES**

- (1) No officer conducting a traffic stop of a motor vehicle may ask an occupant or operator of the motor vehicle for permission to conduct a search of the motor vehicle, the contents of the motor vehicle, or an occupant’s or operator’s person unless:
  - (a) the officer stopped the operator for a non-motor vehicle offense; or
  - (b) the officer has [probable cause / reasonable suspicion] to believe that the motor vehicle, the contents of the motor vehicle, the operator’s person, or a passenger’s person contain evidence of a non-motor vehicle offense;
- (2) An officer’s perception of the odor of marijuana shall not serve as a basis to search a motor vehicle, or to search the driver, occupants, or any of the contents of a motor vehicle.
- (3) An officer may not use a drug-detection canine on a stopped motor vehicle unless the officer has reasonable suspicion to believe either that the motor vehicle contains illegal narcotics [*other than marijuana*], or that a driver or an occupant of the motor vehicle possesses illegal narcotics [*other than marijuana*].

## **SECTION III: WARRANT REFORM**

[The draft statute will also ultimately include a number of provisions designed to reduce reliance on outstanding warrants, including: (1) prohibiting the issuance of warrants for failure to pay fines and fees, as well as certain low-level offenses; (2) limiting substantially the use of warrants to compel appearance in court after an initial failure to appear.]

#### SECTION IV: DATA COLLECTION

- (1) No later than [insert date], each law enforcement agency shall collect incident-level data on all traffic stops conducted by officers employed by the agency.

*States may wish to stagger the rollout, requiring larger agencies to report first, in order to work out potential wrinkles before expanding to smaller agencies.*

- (2) No later than [insert date], each law enforcement agency shall furnish annually to the [State Reporting Agency], in a manner defined and prescribed by the [State Reporting Agency], a report of all stops conducted in the prior year by officers employed by the agency.

- (3) Each report required under paragraph (2) shall include, at a minimum, the following information for each stop or arrest:

- (a) The time, date, duration, and location of the stop;
- (b) The reason for the stop;
- (c) The result of the stop, such as no action, warning, citation, search, or arrest;
- (d) The perceived race or ethnicity, gender, and age of the person stopped.  
This information need only be provided for the driver, unless a passenger is searched, cited, arrested, or has physical force used against them;
- (e) Whether the person stopped appeared to be experiencing a mental or other behavioral crisis;
- (f) Actions taken by the officer during the stop, including, but not limited to, the following:
  - (i) Whether the officer searched the person, vehicle, or any property, and, if so, the type of search (e.g., pat-down), the basis for the search, and the type of contraband or evidence discovered, if any;
  - (ii) Whether the officer asked for consent to search the person or any property, and, if so, whether consent was provided;
  - (iii) Whether the officer seized any property and, if so, the type and amount of property that was seized and the basis for the seizure;
  - (iv) Whether the officer used physical force against any person, and if so, the type of force used;
  - (v) Whether the officer pointed a firearm or a conducted an energy device at any person;
  - (vi) Whether a police dog performed a sniff; and if so, whether or not the dog alerted to the presence of contraband.
  - (vii) *Optional: Whether the officer ordered any person to exit the vehicle;*
  - (viii) *Optional: Whether the officer handcuffed or otherwise physically restrained any person during the stop, such as by placing a person in a police vehicle;*

(ix) *Optional: Whether the officer checked, or asked dispatch to check, for any outstanding warrants for the person.*

(g) If a citation was issued, the violation(s) cited;

(h) If an arrest was made, the offense charged;

(i) The following information about the officer conducting the stop: (1) Officer's unique identification number, (2) type of assignment, (3) *Optional: years of experience*, (4) *Optional: Officer's race*

(4) The [State Reporting Agency] shall make the information obtained from law enforcement agencies, other than the unique identification number of the officer making the stop, publicly available on the State Reporting Agency website, classified by law enforcement agency, in a manner that is clear, understandable, analyzable, and accessible to the public.

(5) State and local agencies subject to this section shall not report or make publicly available the name, address, social security number, or other unique personal identifying information of the persons stopped, searched, or subjected to a property seizure. Law enforcement agencies are solely responsible for ensuring that personally identifying information of the individual stopped is not transmitted to the [state agency] or otherwise released to the public.

(6) Each agency covered by this section shall develop and make publicly available a policy governing review and auditing of stop data collected to ensure officer compliance with the requirements of this statute.

#### **SECTION V: REMEDIES FOR VIOLATIONS OF THIS ACT**

(1) Any evidence recovered during a stop, arrest, detention, or search made in violation of this Act, or recovered as a result of such a stop, arrest, or detention, shall be inadmissible in any criminal proceeding.

(2) Nothing in this section shall be construed to preempt or limit existing remedies or causes of action that may be triggered by violations this Act.

(3) *Optional: An officer's mistake of fact, whether or not it is reasonable or in good faith, that a stop of a motor vehicle is permissible under Section I shall have no bearing on whether evidence recovered during the stop is admissible in a subsequent criminal proceeding.*

#### **SECTION VI: PREEMPTION OF LOCAL LAW**

It is the intent of the Legislature to preempt any local law that would:



- (1) expand the bases for an officer to engage in a stop, search, citation, detention, arrest, or questioning beyond those specifically enumerated in Sections I and II of this Act; or
- (2) expand the bases for issuing a warrant beyond those specifically enumerated in Section III of this Act; or
- (3) otherwise conflict with or frustrate the purpose of any provision of this Act.

*This language may need to be amended in light of the particulars of each State's preemption doctrine.*