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2 **Resolution Relating to**

RESOLUTION
Sponsor(s): Councilors Siegel,
Ayres, Blais
Introduced: _____
Referred to: _____
Action: _____
Date: _____
Signed by Mayor: _____

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6 CHARTER CHANGES CONCERNING POLICE SEIZURE
7 OF FIREARMS DURING DOMESTIC ABUSE INCIDENT
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12 **CITY OF BURLINGTON**

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14 In the year Two Thousand Thirteen.....

15 Resolved by the City Council of the City of Burlington, as follows:

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17 That WHEREAS, a 1997 study found that when there were one or more guns in the home, the risk of
18 homicide at the hands of a spouse, intimate acquaintance, or close relative increased more than three
19 times¹; and

20 WHEREAS, national data suggest that firearms are the most common weapon used in intimate
21 partner homicides; and

22 WHEREAS, domestic abuse is a persistent problem in our society; and

23 WHEREAS, federal law prohibits people convicted of domestic violence from access to firearms;
24 and

25 WHEREAS, the immediate removal of firearms in a domestic situation for a short period of time
26 would assist in the prevention of homicide arising out of domestic abuse; and

27 WHEREAS, laws forbidding the carrying of firearms in certain places, particularly outside of the
28 home where the need for defense of self, family, and property is most acute, are consistent with the U.S.
29 Supreme Court’s interpretation of the Second Amendment, as noted in the 2008 case of *District of*
30 *Columbia v. Heller*²; and

31 WHEREAS, Vermont law, 24 V.S.A. §2295, currently limits the power of a city to directly
32 regulate the possession of firearms, thus necessitating action by the state general assembly to amend the
33 City of Burlington’s charter to permit such regulation; and

34 WHEREAS, the City Council of Burlington has determined that the presence of firearms during a
35 domestic abuse situation for a short term is a serious risk to public health and safety, particularly within
36 the concentrated, urban population of the City of Burlington;

37 NOW, THEREFORE, BE IT RESOLVED that the City Council of Burlington hereby authorizes
38 the Charter Change Committee, with the assistance of the City Attorney and Chief Administrative

¹ James E. Bailey, MD, MPH, et al., "Risk Factors for Violence Death of Women in the Home," *Archives of Internal Medicine* 157, no. 7 (1997): 777-782.
² *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

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CHARTER CHANGES CONCERNING POLICE SEIZURE
OF FIREARMS DURING DOMESTIC ABUSE INCIDENT

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Officer, to prepare a proposal to amend the municipal charter of the City of Burlington to add to the City Charter a section entitled “Article 99 § 511 Police Seizure During Incident,” consistent with the document attached hereto; and

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BE IT FURTHER RESOLVED that the Charter Change Committee shall bring that final ballot language back to this Council no later than the second Council meeting in November, so that public hearings may be held in sufficient time for consideration by the legal voters of the City of Burlington at the Annual City Meeting in March, 2014.

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lb/EBlackwood/c: Resolutions 2013/Charter Changes Concerning Police Seizure of Firearms During Domestic Abuse Incident
10/17/13

Changes to City of Burlington Charter

Notwithstanding the provisions of 24 V.S.A. §2295 and 24 V.S.A. §2291(8), which to the extent they are inconsistent with the following provisions are superseded, the City of Burlington Charter is hereby amended to add the following to Article 99 General Weapons Requirements:

§ 511. Police Seizure During Incident.

(a) Whenever, within the City of Burlington, a police officer has probable cause to believe that a person has been the victim of domestic abuse, as defined in Chapter 21 of Title 15 of the Vermont Statutes Annotated, the officer may confiscate any firearm, ammunition, or deadly or dangerous weapon, as defined in 13 V.S.A. §4601, in the immediate control or possession of the person alleged to be the abuser.

(b) A person whose property has been seized may request its return, and the police shall return the property within five (5) days of receiving the request, except in the following circumstances:

(1) if the property is being held as evidence for a legal proceeding connected with the domestic violence complaint; or

(2) after a hearing, a court order is issued denying the request or prohibiting the owner from possessing such property.

(c) The penalty for any violation of this section shall be as follows:

(1) Criminal Offense. Any violation of this Article shall be considered a criminal offense, which shall be punishable by a fine of no more than \$1,000 and/or by imprisonment for not more than ninety (90) days.

(2) Civil Offense. Any violation of this Article shall also be considered a civil ordinance violation punishable by a fine of no less than \$200 and no more than \$500 and civil forfeiture of the weapon as provided below.

(3) Forfeiture. Upon probable cause that a person is in violation of this provision, a law enforcement officer may seize the weapon involved in the violation. The person from whom the weapon is seized, or the owner of the weapon (if different), may appeal the forfeiture of the weapon within thirty (30) days of the seizure to the Vermont Superior Court, Civil Division, pursuant to Chapter 102 of Title 12 of the Vermont Rules of Civil Procedure or Rule 74 of the Vermont Rules of Civil Procedure. In any appeal, the burden of proof shall rest upon the City to establish the violation by a preponderance of the evidence. If the City fails to establish the required burden of proof, the items shall be returned to the person from whom they were seized. If no appeal is taken within thirty days, or if the City prevails in the superior court proceedings, the items so seized shall become the property of the City of Burlington.