

Ordinance Committee
Thursday, May 16, 2024 at 2:00PM
Public Works Front Conference Room and Remote via Zoom

DRAFT MINUTES

Members Present: Councilor Shannon (Chair), Councilor Bergman, Councilor Brown McKnight

Staff Present: Kim Sturtevant (Assistant City Attorney), Jon Murad (Chief of Police), Erik Ramakrishnan (Assistant City Attorney)

Public Present: Colin Hilliard, Jeff Nick

Meeting called to order at 2:07 PM.

1. Adopt the Agenda

1.01 Adopt the Agenda

Motion to Adopt Agenda as drafted.

Motion by Councilor Bergman, seconded by Councilor Brown McKnight.

Final Resolution: Motion Passes

Yes: Unanimous

2. Adopt Draft Minutes from May 2, 2024

2.01 Adopt Draft Minutes from May 2, 2024

Motion to Adopt Minutes from January 24, 2024.

Motion by Councilor Bergman, seconded by Councilor Brown McKnight.

Final Resolution: Motion Passes

Yes: Unanimous

3. Public Comment

Colin Hilliard: I am the Deputy Director of the Burlington Business Association (BBA). I wanted to thank the Committee for working on the trespass ordinance. I am supportive of adding retail theft as a reason for a trespass for the entire marketplace and would like to know if that will be considered. There are individuals that steal from multiple retail stores on the marketplace on the same day. I think allowing more City officials to issue trespass notices is a great idea.

Jeff Nick: I agree with what Colin Hilliard has just said. Retail theft is the biggest issue for retail stores on the Marketplace. The process for trespassing has always been complex. As an example, some people were drinking and hanging around and I called BPD to remove them. BPD said I would need to trespass them in order to do so. I was confused by this. I had a similar issue in Williston and the police simply removed them and did whatever paperwork was necessary by themselves. I am hoping this difference in policies between towns can be clarified. I am also interested in knowing what the threshold will be for trespassing for retail theft.

4.0 Trespass Ordinance Discussion

Councilor Shannon asked Chief Murad to speak on the current state of the trespass system. Chief Murad said there are multiple kinds of trespass. There are some laid out in state statute for different property types. BPD deals with trespasses from public places and assists in enforcing trespasses for private property.

Chief Murad said that the current policy says that BPD will not issue trespass orders for private property. The authorized representative of the property must issue the trespass order. This could be a store owner or employee. BPD assumes that employees of a business have been delegated the authority to trespass. BPD has a form to fill out that requires the person to state they are in lawful possession of the property. It is preferable to have a name and birth date, but the form can also be issued just with a description or photo. BPD keeps the forms on file. Generally, if there is only a vague description of an individual then BPD requires that the person identifying the trespassed individual has to be the one to point them out during enforcement. In the moment officers have to make a decision on making an arrest or just ejecting the person and they use their best judgment.

Councilor Brown McKnight asked what an employee of a business has to do to properly trespass someone. Chief Murad said that a person would print at least two copies of the form, one to give to the person being trespassed and another to submit to BPD. BPD does not need a copy to enforce an existing order assuming that the employee or owner can produce the existing notice. Giving a copy of the notice to the trespassed person is not very important, but the effort to make a verbal or written notice is important.

Councilor Bergman asked when the last time BPD revisited its internal policy on serving trespass notices. Chief Murad said it has been some time since it was looked at, at least since his tenure began in 2018. He said he knows the policy for trespassing on public lands (like parks) is the result of an agreement with the ACLU. The policy regarding trespassing on private property is the result of the City's choice. Sworn officers could, according to state statute, issue trespass notices on private property and Chief Murad would be supportive of that change. There were programs in New York City that allowed officers to eject or arrest people for trespassing based on standing affidavits filed with the NYPD. There were questions about bias in those programs, but Chief Murad said he is confident that BPD would be able to avoid such biases.

Councilor Bergman asked for the City Attorney's Office and BPD to work together to put together all of the documents related to the current trespass policy. He would like there to be a policy discussion about having BPD officers issue trespass notices on private property.

Councilor Brown McKnight agreed that employees are often uncomfortable trespassing individuals themselves. Councilor Shannon also agreed and added that property owners or individuals do not want to be confrontational and the current policy requires them to be confrontational.

Councilor Bergman added that state statute allows notices of trespass to be issued by agents of an owner and that agent could temporarily be a CSO or other non-sworn officer.

Chief Murad then shifted to trespassing on public property. The previous Church Street Marketplace (CSM) trespass ordinance was deemed too restrictive by the Vermont Superior Court. Currently, BPD can trespass in City Hall Park and the CSM for criminal behavior, open container violations, or disorderly conduct. The library has a separate ordinance and separate system. Calls for service of trespass in public places went from 762 in 2022 to 1159 in 2023.

Chief Murad said it would be a good idea to expand the criteria for issuing trespass notices on the CSM, in particular adding retail theft. The courts have said sleeping in a park or on a sidewalk is not sufficient to warrant a trespass notice from a public place. As long as the person isn't taking up the entire sidewalk they can't be removed. Having something like a tent or a bed is not permitted, however.

Chief Murad added that the Supreme Court has a case in front of it regarding sleeping on public land and that decision could change things. He said it is important to note the difference between the trespass policy and the encampment policy. Chief Murad said the encampment policy is thorough and has been used a number of times since the encampment at Sear's Lane.

Chief Murad said as of April there is an agreement with the Burlington Housing Authority (BHA) for BPD officers to trespass individuals at Decker Towers. The MOU with BHA gives BPD the authority to trespass on behalf of BHA.

Councilor Bergman said expanding such an idea to many buildings or businesses would require a new policy.

Attorney Sturtevant shared the proposed draft trespass ordinance changes with the Committee. *The draft trespass ordinance changes are available in the meeting packet.* Attorney Sturtevant said the proposed changes may need to be further adjusted to align with state statute. The intent is for certain non-sworn City employees to be able to issue notices of trespass, but not enforce them like an officer would.

Councilor Bergman raised an issue he found with having contracted security issue trespass notices as under state statute only municipal employees can issue tickets on behalf of the city.

Attorney Sturtevant went on to explain the changes to Sec. 21-48 are to simplify the language and refer back to previous sections rather than restate definitions. It would also add graffiti and defacement of property as a reason for trespass for Sec. 21-48. Similarly, graffiti and defacement of property would also be a new reason for trespass under Sec. 21-49. Retail theft would be a second novel reason to trespass under Sec. 21-49.

Councilor Brown McKnight asked if the retail theft trespass reason could be extended to the city at-large rather than just the CSM. Chief Murad said a private entity can already trespass someone for theft, but the CSM is a special case because it is a public space with many private businesses and no other location like it exists in Burlington.

Councilor Shannon suggested adding public urination or defecation as another reason to trespass on the marketplace. Chief Murad said that such an inclusion would be more appropriate now that there are publicly available restrooms by the marketplace.

Councilor Shannon asked Attorney Sturtevant if she could reach out to Library Director Mary Danko and Director of Business and Workforce Development Kara Alnasrawi to see if they had any comments. Councilor Shannon wanted to see a second draft of the ordinance changes with the changes decided on in this meeting.

5.0 Graffiti Ordinance Discussion

Attorney Sturtevant shared the proposed changes to the graffiti ordinance. *The proposed changes to the graffiti ordinance are available in the meeting packet.* Chief Murad said that BPD tracks graffiti within the category of vandalism. He said every case of vandalism he knows of has been referred to the Community Justice Center (CJC). Chief Murad said he is not sure if all graffiti is a crime since the state statute requires damage, but the City can have civil penalties associated with graffiti.

Councilor Bergman said the City can create criminal violations of ordinance, but can also just use civil penalties. He added that judges did not like seeing the City prosecute criminal violations of City ordinances. Councilor Bergman said that the State's Attorney cannot prosecute City criminal violations and the City has to prosecute the case itself. He suggested having a meeting with the administrative judges and the State's Attorney if the City decides to start prosecuting cases to make sure everyone is on the same page.

Attorney Ramakrishnan said that the language in the proposed changes to the graffiti ordinance is based on a Washington State Supreme Court case. The conclusion was that a criminal enhancement for graffiti designed to intimidate or harass someone was acceptable and not a violation of the first amendment.

Councilor Shannon said that councilors receive photos of individuals committing acts of graffiti, but there is limited enforcement. Chief Murad said this was due to a staff shortage. In the case of the stickers there were many complaints from the public, but it took months for the BPD to receive actionable information.

Councilor Brown McKnight asked what other cities have done to address graffiti. Chief Murad said that NYC changed their policy in the 1990s to repaint tagged train cars immediately and to prosecute graffiti more aggressively. This policy of addressing small issues aggressively came to be known as "broken windows policing." He continued that officers in the BPD usually do not have time to respond to a graffiti call when there are so many other higher-importance issues happening at any given time.

Attorney Ramakrishnan said that the proposed language does not criminalize the speech itself, but rather enhances the already existing graffiti penalty if the graffiti was intended to intimidate or harass a person or group. It is the intent to harm or harass rather than the speech itself that incurs a further penalty.

Councilor Shannon wondered if the Department of Permitting and Inspections (DPI) could help in the enforcement of the existing ordinance and the proposed one.

Chief Murad suggested adding military service as one of the protected classes listed in the proposed changes.

6.0 Any Other Committee Business

Councilor Bergman said the Committee needs to get to the Gross Receipts Ordinance so it can be referred back to the Council as quickly as possible. An adjustment to that ordinance is necessary for the next budget.

The next meeting will be on May 23rd from 11:00 to 12:00.

7.0 Adjournment

Motion to adjourn by Councilor Shannon, without objection.

Final Resolution: Motion Passes

Meeting was adjourned at 3:53PM.