Ordinance Committee
Monday, July 1, 2024 at 11:00AM
Bushor Conference Room in City Hall or Remote via Zoom

DRAFT MINUTES

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

Staff Present: Kimberlee Sturtevant (Assistant City Attorney), Erik Ramakrishnan (Assistant City Attorney), Bill Ward (Director of DPI), Jon Murad (Chief of Police), Brian Pine (Director of CEDO)

Public Present: Todd Deluca, Jeff Nick, Chris Haessly (Marketplace Commission), Sharon Bushor, Ryan Nick, Christina Hernsdof, Asah Lauren

Meeting called to order at 11:03 AM.

1.0 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

2.0 Adopt Draft Minutes from May 23, 2024

2.01 Adopt Draft Minutes from May 23, 2024

Motion to Adopt the Draft Minutes from May 23, 2024.
Motion by Councilor Bergman, seconded by Councilor Brown McKnight.
Final Resolution: Motion Passes
Yes: Unanimous

3.0 Public Comment

Jeff Nick: I am a property owner on Church Street. The trespass ordinance as it currently stands is very complex and some people don't want to use it. We can't use the old Midtown Motel location as parking now so people are camping there. I have been chasing people away myself because the police said I would have to identify the person and have them sign a form. In Williston, they call me and ask me if I want to trespass someone who is camping on my property. Williston's system is much more efficient. This system should be changed.

Todd Deluca: I live in Ward Four. I want to speak about the graffiti ordinance. At the last meeting there were some conversations that were silenced because of some ongoing litigation or something. I would like to hear about the prosecution that happened and if there is a civil rights lawsuit happening. The condemnation in 2023 makes it clear the City wants to target speech and this draft ordinance is a response to that resolution. That seems problematic from a liability

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prospective. The draft ordinance is responding to stickers that the City called transphobic. The stickers seem to me like political speech and not hate speech. I am not sure what the purpose of this draft ordinance is in that case. The specific groups that are protected under the draft ordinance do not include people like fascists. Are fascists a group that is protected from this violent language? Are landlords a protected class? I have seen things targeting capitalists and many other groups. This ordinance seems to focusing on protecting people under the LGBT umbrella. There has been no one who has been targeted more than Councilor Shannon. I would love for us to have more tolerance for freedom of speech.

Chris Haessly: I live downtown and serve on the Marketplace Commission. I have spoken individually with other Commissioners and business owners in the downtown and there is interest in coordinating City departments to create a shoplifter to graffiti removal technician jobs program. People engaged in retail crime could do community service instead of being incarcerated.

4.0 Trespass Ordinance Discussion (45 Minutes)

Attorney Sturtevant shared the latest changes to the trespass ordinance. The draft ordinance is available in the agenda packet.

Councilor Shannon asked what in ordinance requires the property owner to sign a notice and show the trespassed person that notice. Attorney Sturtevant said that is part of the form that is available on the BPD website.

Councilor Brown McKnight asked how businesses or other groups can designate agents that can trespass individuals from their place of work or other locations. Attorney Sturtevant said that agents can be designated through the draft process on lines 46-49 of the draft resolution. Councilor Bergman added that agency is usually defined through case law.

Attorney Sturtevant continued that the new draft process is based on a system that exists in Seattle.

Jon Murad (Chief of Police) said that agency can be a tricky issue and BPD has had issues just recently with a renter wanting a person removed that was an allowed guest of a roommate. Extending the agency to every renter could put people at risk because the renter does not know everything their roommates are doing. He added that it is difficult for the police to assess who is allowed to be in a particular place.

Councilor Bergman asked if existing ordinances and policies would allow the police department to create a trespass system like this even without the draft change to the ordinance. Attorney Sturtevant said she didn't think there was anything prohibiting it.

Chief Murad said such a system could be difficult to enforce fairly and without any bias because it empowers commercial property owners and leaves more discretion to officers. Currently, the property owner has to fill out the form themselves and that leaves little room for discretion on the officer's side. He said that if there are standing agreements to remove people from a place

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between set hours or some other criteria, then officers have discretion to enforce that agreement and that discretion will subject officers to concerns about their bias.

Councilor Bergman said he agreed with the Chief and would want to strike the draft language in lines 46-49.

Councilor Brown McKnight said she would like to keep the language since local business owners need a clear course of action.

Councilor Bergman said there will be unexpected issues and the public should not expect the system as drafted to be the magic bullet that deals with all problems. He continued that the policy regarding the draft system should follow normal police policy creation procedures and not be a separate process. He said there is already a policy creation process and every policy should be drafted through the same process.

Councilor Bergman said he would like to see police policy to address the trespass issue but that the current draft language won't address the issue like it should.

Councilor Shannon said the Council wants to create a policy and solution that will allow an owner to trespass without having to have further interaction with the trespassing individual. She continued that the Council could direct the department through resolution rather than by ordinance.

Attorney Sturtevant said she could draft a resolution for the Council that gives direction to the department on this issue.

Councilor Bergman said the other issue he had with the current drafted ordinance is that the City's private security should not be empowered to enforce trespass orders. He said the City's private security should be able to issue notices or ask someone to leave but not issue municipal tickets.

Motion to remove the words "the city's contracted private security" from lines 42-43 of the draft ordinance.
Motion by Councilor Bergman, no second.

Councilor Bergman clarified that he will vote against sending the current draft ordinance to the Council with private security language still included.

Councilor Brown McKnight said she thinks that the City's private security needs more authority to accomplish their work rather than less.

There was unanimous support for the changes to lines 18-19 of the draft ordinance.

Councilor Shannon asked the City Attorney's Office to draft some brief language that will explain the fact that how the City trespasses individuals will be established through policy of the BPD.

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There was unanimous support for the changes to lines 59-64 of the draft ordinance.

Attorney Sturtevant said the changes to the criteria for trespass from certain parks was to make reference to other sections to ensure all definitions are identical.

Councilor Shannon asked for members of the Marketplace Commission to be invited to provide their input on the current draft changes.

5.0 Graffiti Ordinance Discussion (30 Minutes)

Councilor Shannon asked for more detail on the current graffiti lawsuit. Attorney Sturtevant explained there was never a lawsuit filed. There was a letter sent about municipal tickets that were issued about stickering.

Councilor Shannon said it may be helpful to have an executive session on this issue.

Motion to find that premature public knowledge of attorney-client communications clearly places the city at a substantial disadvantage by disclosing confidential attorney-client communications.
Motion by Councilor Bergman, seconded by Councilor Brown McKnight.
Final Resolution: Motion Passes
Yes: Unanimous

Motion to move into executive session to communicate with counsel pursuant to 1. V.S.A. 313 (a)(1)(f).
Motion by Councilor Bergman, seconded by Councilor Brown McKnight.
Final Resolution: Motion Passes
Yes: Unanimous

The Committee entered executive session at 12:27PM. The Committee left executive session at 12:39PM.

Attorney Ramakrishnan said the intent behind the current draft ordinance changes was around long before any of the issues about the municipal tickets. He continued that the courts have found that there can be enhanced penalties for activities that are already illegal if they are done with malicious intent. He said that the City does have the authority to define a public nuisance. The drafted language allows the City to define graffiti with malicious intent as a public nuisance and approach the issue that way.

Attorney Ramakrishnan said the second change to the ordinance dealt with allowing the public to electronically report graffiti and have a policy to handle such reports. This would be separate from SeeClickFix as that is a public dashboard and it would be better for the police if it were a private submission.

Councilor Bergman clarified that the City can declare things public nuisances. Through the change the City or a private person can go to court to stop the person from doing an activity.

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This strategy would apply to other ordinances like the noise ordinance as well. In effect it would enhance the financial penalty for malicious graffiti or noise by having both a ticket and having to pay the court fees and costs for the party bringing the suit.

Attorney Ramakrishnan said that people always have a private right of action if their building or business is vandalized, but the courts have found previously that malicious intent against a protected class does effect the public at-large.

Councilor Shannon said she wanted more information on these changes before approving them.

6.0 Condo Conversion Introductory Discussion (15 Minutes)

Adjourned due to time constraints.

7.0 Any Other Committee Business

Adjourned due to time constraints.

8.0 Adjournment

Motion to adjourn by Councilor Bergman, seconded by Councilor Brown McKnight.
Final Resolution: Motion Passes
Yes: Unanimous

Meeting was adjourned at 1:01 PM.

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