



Thursday, July 18, 2024, 10:00 AM, Spark Space at the Burlington Electric Department, 585 Pine St.

When: Jul 18, 2024 10:00 AM Eastern Time (US and Canada)
Topic: Ordinance Committee Meeting

Please click the link below to join the webinar:

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1. Agenda

Subject	1.1. Motion to amend/adopt agenda
Meeting	July 18, 2024 - Ordinance Committee Meeting - Thursday, July 18, 2024, 10:00 AM, Spark Space at the Burlington Electric Department, 585 Pine St.
Category	1. Agenda
Department	
Type	
Recommended Action	

2. Adopt Draft Minutes from July 1

Subject	2.1. Adopt Draft Minutes from July 1
Meeting	July 18, 2024 - Ordinance Committee Meeting - Thursday, July 18, 2024, 10:00 AM, Spark Space at the Burlington Electric Department, 585 Pine St.
Category	2. Adopt Draft Minutes from July 1
Department	Council and Board
Type	
Recommended Action	

3. Public Forum

Subject	3.1. Verbal Comments
Meeting	July 18, 2024 - Ordinance Committee Meeting - Thursday, July 18, 2024, 10:00 AM, Spark Space at the Burlington Electric Department, 585 Pine St.
Category	3. Public Forum
Department	Council and Board
Type	

4. Condo Conversion Discussion

Subject	4.1. Condo Conversion Ordinance Discussion
Meeting	July 18, 2024 - Ordinance Committee Meeting - Thursday, July 18, 2024, 10:00 AM, Spark Space at the Burlington Electric Department, 585 Pine St.
Category	4. Condo Conversion Discussion
Department	Council and Board
Type	
Recommended Action	

5. Trespass Ordinance Discussion

Subject	5.1. Trespass Ordinance Discussion
Meeting	July 18, 2024 - Ordinance Committee Meeting - Thursday, July 18, 2024, 10:00 AM, Spark Space at the Burlington Electric Department, 585 Pine St.
Category	5. Trespass Ordinance Discussion
Department	Council and Board
Type	
Recommended Action	

6. Graffiti Ordinance Discussion

Subject	6.1. Graffiti Ordinance Discussion
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Meeting	July 18, 2024 - Ordinance Committee Meeting - Thursday, July 18, 2024, 10:00 AM, Spark Space at the Burlington Electric Department, 585 Pine St.
Category	6. Graffiti Ordinance Discussion
Department	Council and Board
Type	
Recommended Action	

7. Any Other Committee Business

Subject	7.1. Any Other Committee Business
Meeting	July 18, 2024 - Ordinance Committee Meeting - Thursday, July 18, 2024, 10:00 AM, Spark Space at the Burlington Electric Department, 585 Pine St.
Category	7. Any Other Committee Business
Department	Council and Board
Type	
Recommended Action	

8. Adjournment

Subject	8.1. Motion to adjourn
Meeting	July 18, 2024 - Ordinance Committee Meeting - Thursday, July 18, 2024, 10:00 AM, Spark Space at the Burlington Electric Department, 585 Pine St.
Category	8. Adjournment
Department	Council and Board
Type	
Recommended Action	

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

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

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.

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.

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.

CITY OF BURLINGTON

ORDINANCE 6.06

Sponsor: Councilors Shannon,
Traverse, Brown McKnight
Public Hearing Dates: _____

In the Year Two Thousand Twenty-Four

First reading: 06/03/24
Referred to: Ordinance Committee

An Ordinance in Relation to

CHAPTER 18 HOUSING ARTICLE V. REGULATION OF
CONVERSION OF RENTAL HOUSING TO CONDOMINIUMS
OR COOPERATIVES

Rules suspended and placed in all
stages of passage: _____
Second reading: _____
Action: _____
Date: _____
Signed by Mayor: _____
Published: _____
Effective: _____

It is hereby Ordained by the City Council of the City of Burlington as follows:

That Chapter 18, Article V, of the Code of Ordinances of the City of Burlington be and hereby is amended
by amending Section 18-300, Statement of purpose; 18-303, Definitions; 18-304, Notice to tenants; deleting
Section 18-306, Application fee; and Section 18-307, Condominium conversion fee, thereof to read as
follows:

18-300 Statement of purpose.

The intent and purpose of this article is as follows:

- (1) To support the retention of rental housing in the city;
- (2) To prevent large scale displacement of low-and moderate-income persons;
- (3) To mitigate the impact on tenants displaced or threatened by displacement by the conversion of rental housing to condominiums or cooperatives;
- (4) To mitigate the impact of such displacement on the city's housing market;
- (5) To provide opportunities for tenants and/or public entities to purchase rental housing in order to maintain perpetual affordability of that housing;
- (6) To provide broad opportunities for persons to rent or own housing that will be perpetually affordable;
- ~~(7) To provide funds to replace low-and moderate-income housing lost through conversion of rental housing to condominiums and cooperatives;~~
- ~~(7)~~ (8) To promote the rehabilitation and construction of housing for low-and moderate-income persons; and
- ~~(9)~~ (8) To follow recommendations of the Burlington Affordable Housing Task Force regarding the problems created by the conversion of rental housing to condominiums or cooperatives; and
- ~~(9)~~ (10) To expand on existing Vermont law related to conversions to address specific concerns of the city and its citizens and provide special benefits to existing tenants, especially elderly and disabled people.

(Ord. of 3-30-87)

18-301 Authority and applicability.

This article is enacted under the specific authority granted to Vermont towns and cities by 24 V.S.A. § 2293 and is applicable to the conversion of rental housing in the City of Burlington.

(Ord. of 3-30-87)

18-302 Exemptions.

(a) This article shall not be applicable to single-family homes and duplexes.

(b) This article shall not be applicable to properties that meet all of the following requirements:

(1) land tract with ten (10) or fewer housing units;

(2) a deed restriction making at least twenty-five (25) per cent of the housing units affordable to low income tenant households; and

(3) located in United States Census Bureau tract that contains less than fifty (50) per cent home ownership.

(c) This article shall not be applicable to short term rentals.

(Ord. of 3-30-87; Amend. of 1-8-07, eff. 2-14-07; Ord. of 6-27-22)

18-303 Definitions.

The following definitions shall apply in the interpretation and enforcement of this article:

~~Application fee means a fee of twenty-five dollars (\$25.00) per residential rental unit proposed to be converted to a condominium or cooperative. The application fee shall be paid to the city, and the proceeds from this fee shall be used by the city for the specific purpose of administering this article. The amount paid as the application fee shall be deductible from the amount due as the impact fee if the conversion actually takes place.~~

Certified tenant organization means a bona fide association of resident tenants of a rental property, as certified by the community and economic development office. To receive such certification, the tenant organization of a property having three (3) to ten (10) rental units must represent at least fifty (50) per cent of the units occupied by tenants who have lived in their unit for more than ninety (90) days; the tenant organization of a property having more than ten (10) units must represent at least thirty (30) per cent of the units occupied by tenants who have lived in their unit for more than ninety (90) days.

~~Condominium conversion fee means a four (4) per cent fee on the actual sale price of residential units converted from rental housing to condominium or cooperative ownership. The condominium conversion fee is due at the time of property transfer of each individual residential unit prior to the recording of the deed or the proprietary lease for the transfer with the city clerk. The condominium conversion fee applies only at the time of the original conversion of the residential unit to a condominium or cooperative and not to any subsequent sale or transfer of the condominium or cooperative unit.~~

Conversion means a change in character of residential real property from a rental to an ownership basis. A condominium, stock cooperative or similar arrangement shall be deemed such a change in character of ownership.

Designated housing agency means a public entity or a 501 (c)(3) tax-exempt, nonprofit corporation whose purpose is creating or preserving housing for low-and moderate-income persons. The city's designated housing agency or agencies shall be designated by the city council.

Disabled tenant means a tenant who has a physical or mental impairment which restricts one or more major life activities, including functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning or working.

Elderly tenant means a tenant who is sixty-two (62) years of age or older or the surviving spouse of such a tenant who is at least fifty (50) years of age.

CHAPTER 18 HOUSING ARTICLE V. REGULATION OF
CONVERSION OF RENTAL HOUSING TO CONDOMINIUMS OR
COOPERATIVES

Low-income tenant household means a household having an income not exceeding eighty (80) per cent of median income for area of residence as set forth in regulations promulgated from time-to-time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. section 1437 et seq.

Moderate-income tenant household means a household having an income not exceeding one hundred ten (110) per cent of median income for area of residence as set forth in regulations promulgated from time-to-time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. section 1437 et seq.

Notice to tenants means the written notice to vacate or purchase a residential unit that a landlord is required to send by certified and regular mail to the current tenants of any rental property that is slated for conversion.

(Ord. of 3-30-87; Amend. of 1-8-07, eff. 2-14-07)

18-304 Notice to tenants.

(a) When an owner of rental housing decides to convert that housing to condominium or cooperative ownership, the owner shall give to each tenant the following minimum written notice to vacate or purchase the unit: ~~Four-Two (24)~~ years to elderly and disabled tenants; ~~two-one (12)~~ years to all other tenants. The burden shall be on the tenant to prove that ~~he or she~~ they ~~qualifies~~ qualify as meeting the definition of "elderly" or "disabled" as defined in this article.

(b) The notice shall state that the rental housing is to be converted to condominium or cooperative ownership. It shall set forth generally the rights of tenants and certified tenant organizations under this article and the Vermont statute related to conversions (27 V.S.A. section 1331 et seq.). The notice shall be given by certified mail, return receipt requested, at the address of the housing unit or any other mailing address provided by the tenant. A copy of the notice shall also be sent by regular mail to the address of the housing unit or any other mailing address provided by the tenant. Failure to give notice as required by this article and the Vermont statute is a defense to an action for possession.

(c) During the notice period, a ~~tenan~~ cy ~~t~~ may not be ~~required to vacate~~ terminated except for a reason specified in subsection (a) or (b) of Section 4467 of Title 9 of Vermont Statutes Annotated.

(d) During the notice period, rent increases shall be limited to an amount which reflects reasonable profits, actual increased costs of maintenance and operation of the housing unit subject to conversion. Costs associated with the proposed conversion are not a permissible basis for a rent increase.

(e) After receipt of the notice, prescribed in paragraph (a) above, a tenant may terminate the rental agreement upon thirty (30) days' written notice to the owner.

(f) Nothing in this section permits termination of a written lease by an owner in violation of its terms.

(g) The notice requirements imposed by this article shall not affect the right of an owner to transfer ownership interests in housing units which are not subject to those requirements or as to which the notice period has expired.

(h) The notice period shall end ~~four-two (24)~~ years after the receipt of the written notice for elderly tenants, or ~~two-one (12)~~ years after the receipt of the notice for all other tenants, or when the existing lease ends, whichever is later.

(Ord. of 3-30-87; Amend. of 1-8-07, eff. 2-14-07)

18-305 Right of tenant organizations, public entities, nonprofit corporations, and individual tenants to purchase.

(a) A certified tenant organization or the City of Burlington or the city's designated housing agency shall have the first right to purchase any rental housing that is proposed to be converted to condominium or cooperative ownership.

(b) This first right to purchase in a certified tenant organization, the city or its designee goes into effect at the time the first notice to tenants required by this article is issued by the owner. A copy of all such notices shall be sent to the certified tenant organization, the city and the city's designated housing agency or agencies. This first right to purchase shall be a prior right to the right of an individual tenant to purchase his or her individual unit described in paragraph (i) below.

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CONVERSION OF RENTAL HOUSING TO CONDOMINIUMS OR
COOPERATIVES

(c) At the request of the certified tenant organization, the city or the city's designated housing agency, the owner shall provide within seven (7) working days of the request the following materials:

(1) A copy of any bona fide contract for sale which already exists between the owner and a third party;

(2) A rent schedule for the housing units;

(3) Operating expenses and income for the property for the previous two (2) years;

(4) List of capital expenditures for the previous five (5) years;

(5) Floor plans of the housing units and any common areas, if available; and

(6) A list of any outstanding mortgages or liens against the property.

(d) The parties which have a first right to purchase the property have ninety (90) days to sign a purchase and sale agreement with the owner, contingent upon the prospective buyer's ability to obtain financing. If the owner has not provided the information listed in paragraph (c) above to the certified tenant organization, the city or the city's designated housing agency within the specified seven (7) working days, each day's delay shall be added to this ninety-day period. The city or its designated housing agency may enter into such an agreement if and only if a certified tenant organization does not choose to do so.

(e) The sale price of the property shall be set either by a bona fide contract of sale which already exists with a third party at the time of the notice to tenants or by an appraisal process which has both the owner and prospective buyer commissioning an independent appraisal and a third appraiser reviewing the two (2) appraisals if the two (2) parties cannot agree on a price or the two (2) original appraisals are more than ten (10) per cent apart.

(f) As part of a purchase and sale agreement, an owner may require a deposit of earnest money by the certified tenant organization, the city or its designated housing agency. The owner shall not require an earnest money deposit which is more than five (5) per cent of the total purchase price, nor can the owner require this deposit to be nonrefundable.

(g) After signing the purchase and sale agreement, the prospective buyer shall have an additional one hundred eighty (180) days to obtain financing and to settle.

(h) If the first right to purchase the rental housing is not exercised by the certified tenant organization, the city or the city's designated housing agency, the owner is free to proceed with the conversion of the property to condominium or cooperative ownership subject to the provisions of this article, the city's zoning ordinance and Vermont statutes.

(i) After the time period for the certified tenant organization, the city or the city's designated housing agency to exercise its first right to purchase expires, individual tenants in housing units proposed to be converted to condominiums or cooperatives shall have the ninety-day exclusive right to purchase their individual unit, the right to be offered and to accept comparable housing, and the right to receive relocation costs as provided in 27 V.S.A. sections 1334, 1335 and 1336. The additional protections offered to tenants by 27 V.S.A. sections 1337, 1338 and 1339 are also specifically protected by this article.

(Ord. of 3-30-87)

~~18-306 Application fee.~~

~~(a) An application fee of twenty-five dollars (\$25.00) per rental unit proposed to be converted by an owner to condominium or cooperative ownership shall be payable to the city at the time the original notices to tenants are issued by the owner. The amount of the application fee may be adjusted as necessary by the city council.~~

~~(b) This fee is for the specific purpose of covering the cost of administering this article by the city.~~

~~(c) The application fee shall be nonrefundable, but shall be deductible from any impact fee which shall be due if the conversion takes place.~~

~~(Ord. of 3-30-87)~~

~~18-307 Condominium conversion fee.~~

~~(a) If a conversion of rental housing to condominium or cooperative ownership occurs, the seller of the units shall pay to the city a condominium conversion fee of four (4) per cent of the actual purchase price of each unit, assuming this purchase price is based upon the fair market value of the unit as determined by a certified appraiser. There shall be no reduction in this fee for closing or rehabilitation costs.~~

~~(b) The condominium conversion fee shall be paid prior to the recording of the deeds or proprietary leases for the transfer of the housing units.~~

~~(c) Prior to the recording of the deeds or proprietary leases for any transfer of the housing units, the seller shall provide documentation to the city that the notice requirements have been met, and that the first right of purchase processes set out in this article have been followed.~~

~~(d) The city shall certify that the article has been complied with and that the condominium conversion fee has been received prior to the recording of the deed or proprietary lease for the transfer of the property.~~

~~(e) The condominium conversion fee applies to the conversion from rental housing to condominium or cooperative ownership only and not to any subsequent sale(s) of the condominium or cooperative unit.~~

~~(f) The proceeds from the condominium conversion fee shall be paid into a trust fund established by the city council for the promotion, retention and creation of low and moderate income housing in the city and for the accomplishment of the goals set out in the statement of purpose of this article.~~

~~(g) The condominium conversion fee provision shall not apply to the acquisition of and conversion to condominium or cooperative ownership of rental housing by the certified tenant association, the city or the city's designated housing agency. Also, the condominium conversion fee provision shall not apply to sales of individual condominium or cooperative units to the tenant who resided in such unit at the time that the notice required by section 18-304(a) was given.~~

~~(Ord. of 3-30-87; Amend. of 1-8-07, eff. 2-14-07)~~

18-3068 Circumventing of this article.

An owner shall not attempt to circumvent the provisions of this article; nor shall any person willfully cause a tenant to vacate a dwelling unit or to be evicted from the unit without good cause in contemplation of conversion before the issuance of the notice prescribed in section 18-304(a).

(Ord. of 3-30-87)

18-3079 Penalty; civil remedies.

(a) It is hereby declared that any person who is found guilty of violating any provision of this article shall be deemed to have committed a civil ordinance violation which shall be punishable by a fine of not less than two hundred (\$200.00) dollars and not more than five hundred (\$500.00) dollars, and such violation shall be abated as a nuisance. Each day of such violation shall constitute a separate offense.

(b) In addition, any person who is injured as a result of a violation of this article may seek to recover damages and other just relief as contemplated by Section 54 of the Charter of the City of Burlington. Also, the City of Burlington may bring an action for equitable relief in the Chittenden Superior Court to restrain actual or threatened violations of this article as contemplated by Section 49 of the Charter of the City of Burlington.

(Ord. of 3-30-87; Amend. of 1-8-07, eff. 2-14-07)

18-30810 Severability.

The provisions of this article shall be regarded as severable and should any portion thereof be held invalid, such invalidity shall not affect any other portion of such article.

(Ord. of 3-30-87)

CHAPTER 18 HOUSING ARTICLE V. REGULATION OF
CONVERSION OF RENTAL HOUSING TO CONDOMINIUMS OR
COOPERATIVES

~~18-30911~~ Additional regulations to administer this article.

The city council shall have the authority to promulgate additional regulations if necessary to administer the provisions of this article.

(Ord. of 3-30-87)

18-3102 Relocation costs.

(a) The owner shall pay the actual documented cost of relocation, not to exceed ~~one-two~~ thousand dollars (\$~~21~~,000.00), to any tenant entitled to receive notice under section 18-304 who does not purchase the unit which he or she occupies or another unit in the same building or buildings.

(b) Relocation costs shall be payable within ten days after the date the tenant vacates the unit; provided, however, that no tenant is eligible for relocation costs unless:

(1) all rent due and payable has been paid by the tenant prior to the date on which the unit is vacated; and

(2) the tenant has voluntarily vacated the unit on or before the expiration of half the applicable notice period.

(Amend. of 1-8-07, eff. 2-14-07)

18-3113—18-399 Reserved.

* Material stricken out deleted.

** Material underlined added.

JS/KS/Ordinances 2024/Article V. Regulation of Conversion of Rental Housing to Condominiums or Cooperatives
June 3, 2024



OFFICE OF THE CLERK/TREASURER

City of Burlington

City Hall, Room 20, 149 Church Street, Burlington, VT 05401

Voice (802) 865-7000

Fax (802) 865-7014

TTY (802) 865-7142

MEMORANDUM

TO: Ordinance Committee Members

FROM: Lori Olberg, Licensing and Records Coordinator

DATE: December 19, 2023

SUBJECT: 12/18/23 City Council Ordinance: Burlington Code of Ordinances-Sections 21-45 – 21-49 Trespass

Enclosed please find a copy of the ordinance that was referred to your Committee for further review to include, but not be limited to, consideration of the list of parties authorized to issue no trespass orders, balancing no trespass orders with proactive harm reduction efforts and to evaluate expanding the ability to enforce the trespass ordinance on private property. Please keep this as part of your records.

Thank you.

CITY OF BURLINGTON

ORDINANCE

8.5.

Sponsor: Councilors Paul and

Traverse

Public Hearing Dates: _____

In the Year Two Thousand Twenty-Three

An Ordinance in Relation to

BURLINGTON CODE OF ORDINANCES-

Sections 21-45 – 21-49

Trespass

First reading: _____

Referred to: Ordinance Committee *

Rules suspended and placed in all

Stages of passage: _____

Second reading: _____

Action: _____

Date: _____

Signed by Mayor: _____

Published: _____

Effective: _____

It is hereby Ordained by the City Council of the City of Burlington as follows:

That Chapter 21, Offenses and Miscellaneous Provisions, Article I, In General, of the Code of Ordinances of the City of Burlington be and hereby is amended to read as follows:

ARTICLE I. In General

Secs. 21-1 – 21-44 As written.

Sec. 21-45 Unlawful trespass.

It shall be unlawful for a person who, without legal authority or the consent of the person in lawful possession, enters or remains on any land or in any place as to which notice against trespass is given by:

(a) Actual communication by the person in lawful possession or his agent or by a law enforcement officer, community service officer, community support liason, urban park rangers, parks patrol, or the city's contracted private security acting on behalf of such person or his agent; or

(b) Signs or placards so designed and situated as to give reasonable notice.

A violation of this section shall be a civil matter and enforced in accordance with the provisions of 24 V.S.A. section 1974a and section 1977 et seq. A civil penalty of not more than five hundred dollars (\$500.00) may be imposed for a violation of this section. The civil penalty may, at the discretion of the prosecuting official, be eliminated or reduced upon the successful completion of a restorative or reparative justice program through the community justice program. In lieu of further process and prosecution, persons ticketed for violations of this section may pay a waiver penalty under the schedule set out below:

Waiver Penalty:

First offense: The waiver penalty shall be two hundred fifty dollars (\$250.00).

Second offense, within a six-month period: The waiver penalty shall be three hundred dollars (\$300.00).

32 Third offense or more, within a twelve-month period: The waiver penalty shall be four hundred dollars
33 (\$400.00).

34
35 Each time that the violation occurs will constitute a separate violation of this section. Any law enforcement
36 officer, community service officer, community support liason, urban park rangers, parks patrol, or the city's
37 contracted private security can enforce this section.

38
39 **Sec. 21-45A Notice of trespass on city property.**
40

41 (a) Purpose. The purpose of this section is to enable a city official in charge of city property to issue a
42 notice of trespass and enforce that notice against an individual whose behavior is dangerous, illegal, or
43 unreasonably disruptive, while recognizing the rights of individuals to engage in constitutionally protected
44 activities on public or city-owned property.

45
46 (b) City official/officers authorized to issue notice of trespass. The city council hereby expressly delegates
47 its authority to issue a notice of trespass to any city official who is in charge, at the time of issuance, of the
48 city property for which the notice of trespass is issued and to any sworn officer, community service officer,
49 or community support liason of the Burlington police department or the City's urban park rangers, parks
50 patrol, or contracted private security in the exercise of their official duties (hereinafter "official/officer").
51

52 (c) Issuance of notice of trespass – Initial conference. If an individual violates any city ordinance, rule or
53 regulation, or State law, or within a public building fails to follow the lawful directive of a city official/~~or~~
54 ~~police~~ officer authorized under subsection (b) of this section, that official/officer may issue a notice of
55 trespass for a violation which was committed while on or within a city facility, building, or outdoor area,
56 including a municipal park, for the specific property where the violation occurred, excluding a right-of-way.
57 Prior to issuance of the notice of trespass, the issuing official/officer must ensure that the person to whom a
58 notice of trespass will be issued has been informed of the basis for the notice of trespass and has been given
59 an opportunity and reasonable amount of time to change or address the underlying conduct – that is, a verbal
60 warning must have been issued. No verbal warning is required if the reason for the trespass is an accusation
61 of serious harmful conduct such as arson, assault, harassment or a threat of such conduct. Notices of trespass
62 may be issued at the Fletcher Free Library as provided in Section 21-43.
63

64 (d) Service of notice – Content. In most cases, the notice of trespass must be hand-delivered to the person
65 to whom it is issued by an authorized city official/~~or a law enforcement~~ officer; however, if the
66 circumstances do not permit safe delivery of the notice in person, in the discretion of the authorized city
67 official/~~or law enforcement~~ officer, it may be mailed to the individual's legal address. The written notice of
68 trespass shall detail the basis for which the notice of trespass was issued, the length of time for which the
69 notice of trespass remains in effect, and the consequences for violating the terms of the notice of trespass; it
70 shall also advise the recipient of the right to contest the notice of trespass and the location at which to file the
71 appeal.
72

73 (e) Length of notice of trespass.
74

(1) Generally. For minor, first-time violations, such as having an open container of alcohol, the notice may be issued for up to one (1) day. For moderate violations, such as other nonviolent disorderly conduct, or for a second offense within thirty (30) days, the notice may be issued for up to thirty (30) days. For more serious violations or a third offense within sixty (60) days, the notice may be issued for up to one hundred eighty (180) days. Generally, it is expected that the length of time should reflect the severity or repetitiveness of the underlying conduct. Only for more serious offenses such as conduct that involves violence, harassment, or threats of physical harm to an individual may a notice be issued for over one hundred eighty (180) days, and in any event, a notice of trespass may not be issued for more than one (1) year.

(2) Fletcher Free Library. Due to the nature and character of the Fletcher Free Library, the following durations apply to violations made under the library ordinance. For a violation of Section 21-43(a)(1), a notice of trespass may be issued for up to one hundred eighty (180) days. For a violation of Section 21-43(a)(2), a notice of trespass may be issued for a period up to sixty (60) days. For a violation of Section 21-43(a)(3), a notice of trespass may be issued for a period of one (1) day.

(f) Appeal.

(1) Process. The recipient of a notice of trespass may appeal the notice of trespass by filing an appeal, in writing, within seven (7) calendar days of the issuance of the notice. The written appeal shall include the appellant's name, address, phone number, and indicate whether a hearing is requested. No fee shall be charged for filing the appeal. The appeal shall be filed at the location designated in the notice of trespass. Except for in exigent circumstances, any such appeal shall stay the operation of the notice of trespass beyond the day the appeal is filed, pending a hearing and/or written decision.

(2) Exigent circumstances. For purposes of this chapter, "exigent circumstances" means any situation in which the issuing city official/~~or~~ officer determines that a person presents an immediate and substantial threat or danger to the health, safety, or welfare of another person. In such circumstances, an appeal shall not stay the operation of the notice of trespass.

(3) Designated hearing panels. All appeals made under this chapter shall be heard by the public safety committee of the city council, which will make an annual report to the city council on the number of appeals.

(4) Procedure. When an appeal is filed, the designated hearing panel shall meet within ten (10) business days to consider the appeal. If no hearing is requested, the designated hearing panel may consider any written submissions as part of its decision. If a hearing is requested, the appellant must be provided at least three (3) business days' written notice of the date, time, and location of the hearing. The designated hearing panel shall allow oral and/or written testimony and evidence from the appellant and the issuing city official/~~or~~ officer. In reviewing the notice of trespass, the panel will utilize the preponderance of the evidence standard with the burden of proof on the charging official/~~officer~~ or their representative. The designated hearing panel shall issue a written decision within ten (10) business days of the hearing. The designated hearing panel may extend the time period for hearing if the operation of the notice of trespass is stayed or if the appellant consents.

(5) Waiver requests. An individual who has received a notice of trespass may request a waiver from the issuing official/officer (or in the absence of that official/officer from another city official/officer authorized to issue the notice) in order to access the property for which the notice of trespass was issued for purpose of work, residence, access to government services, or the exercise of constitutionally protected activities. If that waiver is denied, an appeal may be made to the designated hearing panel. In addition, in the context of any appeal of a notice of trespass, the designated hearing panel shall also consider any waiver request from the individual appealing.

(g) Enforcement. Once a notice of trespass has been issued, unless the notice has been stayed by receipt of an appeal or the notice has been overturned by a decision on appeal, a violation of the notice may be enforced pursuant to Section 21-45 (a civil violation) or 13 V.S.A. § 3705 (a criminal violation). Unless the notice of trespass was issued for conduct involving violence, harassment, or threats of physical harm to an individual, enforcement pursuant to 13 V.S.A. § 3705 may only commence with issuance of a citation and a request to leave the premises; however, arrest is permissible for refusal to leave the premises within a reasonable period after issuance of the citation.

Sec. 21-46 Disorderly conduct.

It shall be unlawful for a person who, with the intent to cause public inconvenience, or annoyance or recklessly creating a risk thereof:

- (a) Engages in fighting or in violent, tumultuous or threatening behavior; or
- (b) Makes unreasonable noise; or
- (c) In a public place uses abusive or obscene language; or
- (d) Without lawful authority, disturbs any lawful assembly or meeting or persons; or
- (e) Obstructs vehicular or pedestrian traffic.

A violation of this section shall be a civil matter and enforced in accordance with the provisions of 24 V.S.A. section 1974a and section 1977 et seq. A civil penalty of not more than five hundred dollars (\$500.00) may be imposed for a violation of this section. The civil penalty may, at the discretion of the prosecuting official/officer, be eliminated or reduced upon the successful completion of a restorative or reparative justice program through the community justice program. In lieu of further process and prosecution, persons ticketed for violations of this section may pay a waiver penalty under the schedule set out below:

Waiver Penalty:

First offense: The waiver penalty shall be two hundred fifty dollars (\$250.00).

Second offense, within a six-month period: The waiver penalty shall be three hundred dollars (\$300.00).

Third offense or more, within a twelve-month period: The waiver penalty shall be four hundred dollars (\$400.00).

Each time that the violation occurs will constitute a separate violation of this section. Any city official/~~law enforcement~~-officer can enforce this section.

Sec. 21-47 Unlawful mischief.

It shall be unlawful for a person who, having no right to do so or any reasonable ground to believe that he has such a right, intentionally does damage to property of any value not exceeding two hundred fifty dollars (\$250.00).

A violation of this section shall be a civil matter and enforced in accordance with the provisions of 24 V.S.A. section 1974a and section 1977 et seq. A civil penalty of not more than five hundred dollars (\$500.00) may be imposed for a violation of this section. The civil penalty may, at the discretion of the prosecuting official/officer, be eliminated or reduced upon the successful completion of a restorative or reparative justice program through the community justice program. In lieu of further process and prosecution, persons ticketed for violations of this section may pay a waiver penalty under the schedule set out below:

Waiver Penalty:

First offense: The waiver penalty shall be two hundred fifty dollars (\$250.00).

Second offense, within a six-month period: The waiver penalty shall be three hundred dollars (\$300.00).

Third offense or more, within a twelve-month period: The waiver penalty shall be four hundred dollars (\$400.00).

Each time that the violation occurs will constitute a separate violation of this section. Any city official/~~law enforcement~~-officer can enforce this section.

Sec. 21-48 City Hall Park.

(a) Prohibited activities. Notwithstanding other rules and regulations, the following activities are prohibited at City Hall Park and may be ticketed under this section.

(1) Disorderly conduct as defined by Section 21-46; ~~Any person who, with the intent to cause public inconvenience, or annoyance or recklessly creating a risk thereof;~~

~~a. Engages in fighting or in violent, tumultuous or threatening behavior; or~~

~~b. Makes unreasonable noise; or~~

~~e. — In a public place uses abusive or obscene language; or~~

~~d. — Without lawful authority, disturbs any lawful assembly or meeting or persons; or~~

~~e. — Obstructs vehicular or pedestrian traffic.~~

(2) Unlawful mischief as defined by Section 21-47; ~~— Any person who, having no right to do so or any reasonable ground to believe that he has such a right, intentionally does damage to property, private or public.~~

(3) Graffiti and defacement of property as defined by Section 21-29;

(4) Possession of open or opened intoxicating liquor as defined in 23 V.S.A. § 1200(4), except as permitted pursuant to a valid liquor license and/or an outdoor consumption permit for properly organized and supervised activities or events held within the limits of City Hall Park.

(45) Possession of a regulated drug as defined in 18 V.S.A. § 4201(29).

(b) Enforcement.

(1) First offense. Any violation of any provision of subsection (a) above shall be deemed a civil offense and shall be punishable by a penalty of a minimum fine of two hundred dollars (\$200.00) to a maximum fine of five hundred dollars (\$500.00). The waiver penalty for purposes of the municipal complaint (civil ticket) shall be two hundred dollars (\$200.00). The recipient of a municipal complaint for violation of this section (first offense) shall not be permitted within the City Hall Park for the balance of the day on which the alleged offense occurred.

(2) Second offense. Any violation of any provision of subsection (a) above by an individual who has previously violated any provision of subsection (a) above shall be deemed a civil offense and shall be punishable by a penalty of a minimum fine of three hundred dollars (\$300.00) to maximum fine of five hundred dollars (\$500.00). In addition, the recipient of a municipal complaint for violation of this section (second offense) may be issued an order of no trespass prohibiting the recipient from entering the City Hall Park for a period of up to 90 days commencing immediately upon said issuance. The waiver penalty for purposes of the municipal complaint (civil ticket) second offense shall be three hundred dollars (\$300.00); payment of which shall also be deemed acceptance of the no trespass order. Both the fine and the no trespass order may, at the discretion of the prosecuting official/~~officer~~, be waived in whole or in part upon the successful completion of a restorative or reparative justice program through the community justice program.

(3) Third and subsequent offense. Any violation of any provision of subsection (a) above by an individual who has on two (2) or more occasions violated any provision of subsection (a) above shall be deemed a civil offense and shall be punishable by a penalty of from four hundred dollars (\$400.00) to five hundred dollars (\$500.00). In addition, the recipient of a municipal complaint for violation of this section (third and subsequent offense) may be issued an order of no trespass prohibiting the recipient from

entering the City Hall Park for a period of up to one (1) year commencing immediately upon said issuance. The waiver penalty for purposes of the municipal complaint (civil ticket) third or subsequent offense shall be four hundred dollars (\$400.00); payment of which shall also be deemed acceptance of the no trespass order. Both the fine and the no trespass order may, at the discretion of the prosecuting official/officer, be waived in whole or in part upon the successful completion of a restorative or reparative justice program through the community justice program.

Sec. 21-49 Church Street Marketplace District trespass authority.

(a) Purpose. The Burlington city council finds and declares that the following substantial government interests will be advanced by the ability to issue a no trespass order created by this section, based on conditions the police department and the Church Street Marketplace District commission have identified and confront in the Church Street Marketplace District on a regular basis:

- (1) The abatement or removal of nuisances determined to be against the public health, safety or welfare of citizens;
- (2) The protection of citizens from physical threats or injury and from damage to property;
- (3) The prevention of harassment and intimidation of any member of the public;
- (4) The prevention of violent crime;
- (5) The orderly control and safety of pedestrian, car and cart traffic on Church Street; and
- (6) The provision and maintenance of a safe, attractive environment in areas designed to attract tourist revenue.

(b) Findings. The substantial government interests identified in subsection (a) of this section are undermined by unlawful and inappropriate behavior in the Church Street Marketplace District. Such behaviors include, but are not limited to, disorderly conduct, unlawful mischief, the possession and consumption of intoxicating liquor, and the possession and use of regulated drugs.

Specifically:

- (1) Unlawful behavior within the Church Street Marketplace District diminishes this public asset and deprives citizens and visitors of its full use and enjoyment;
- (2) In addition to more serious criminal acts that threaten personal injury and property damage, a wide range of illegal disorderly behaviors can and often do transform the Church Street Marketplace District into an unwelcoming, unattractive and ultimately unsafe public space requiring increased expenditures for public safety and maintenance;

(3) Laws intended to preserve and protect public spaces like the Church Street Marketplace District for the benefit of all people are effective only if those present on the space obey the law. The current criminal and civil penalties for violating these types of laws are frequently inadequate to deter the illegal behavior, to prevent its recurrence, or to provide for the removal of offenders from the public space;

(4) Compliance with behavior laws within the Church Street Marketplace District will be enhanced by the immediate administrative sanction of removing offenders from the Church Street Marketplace District in addition to issuing tickets to them. For repeat offenders and for more serious offenses, exclusion for extended periods will further provide a necessary additional remedy to protect the public;

(5) The failure to comply with these and other laws creates a public nuisance.

(c) Prohibited activities. Notwithstanding other laws, ordinances, rules and regulations, the following activities are prohibited within the Church Street Marketplace District and may result in a no trespass order authorized under this section.

(1) Disorderly conduct as defined by Section 21-46;

(2) Unlawful mischief as defined by Section 21-47;

(3) Graffiti and defacement of property as defined by Section 21-29;

(4) Possession of open or opened intoxicating liquor as defined by 23 V.S.A. § 1200(4), except as permitted pursuant to a valid liquor license and/or an outdoor consumption permit for properly organized and supervised activities or events held within the limits of the Church Street Marketplace District;

(45) Possession of a regulated drug as defined in 18 V.S.A. § 4201(29).

(6) Offense of retail theft as defined by 23 V.S.A. §2575 from a business in the Church Street Marketplace District.

(d) Enforcement.

(1) First offense. Any person ticketed for a prohibited activity noted in subsection (c) of this section as a first offense may also be issued an order of no trespass, and will not be permitted within the Church Street Marketplace District for the balance of the day on which the alleged offense occurred.

(2) Second offense. Any person ticketed for a prohibited activity noted in subsection (c) of this section as a second offense may also be issued an order of no trespass prohibiting the recipient from entering the Church Street Marketplace District for a period of up to ninety (90) days, commencing immediately upon said issuance.

(3) Third and subsequent offense. Any person ticketed for a prohibited activity noted in subsection (c) of this section as a third or subsequent offense may also be issued an order of no trespass prohibiting the

recipient from entering the Church Street Marketplace District for a period of up to one (1) year commencing immediately upon said issuance.

(4) Hearing procedure and staying of order of no trespass.

a. Recipients of an order of no trespass issued pursuant to subsections (d)(2) and (3) of this section may appeal said order to a hearing panel designated by the Church Street Marketplace commission pursuant to the procedure detailed below. Any such appeal shall stay the order of no trespass pending the hearing and written decision of the hearing panel.

b. Any individual subject to the trespass provisions of subsection (d)(1), (2), or (3) of this section may request in writing that a hearing panel of the Church Street Marketplace commission hold a public hearing for the purpose of challenging the issuance of the order of no trespass and/or to request a waiver to access the Church Street Marketplace District for purpose of work, residence, access to government services, the exercise of constitutionally protected activities, and/or for any other good reason as determined by a hearing panel.

c. Recipients shall have thirty (30) days from the date of issuance of an order of no trespass to request a hearing. Requests shall be sent to the executive director of the marketplace commission at 2 Church Street, Suite 2A, Burlington, VT 05401-4457.

d. If a hearing is requested, the hearing shall be scheduled within ten (10) calendar days of receipt of the request, and a written notice of the hearing shall be sent to the recipient at least seven (7) calendar days prior to the hearing.

e. The hearing panel shall consist of three (3) people designated by the Church Street Marketplace commission or its designee, and be comprised of one (1) representative from the business community, one (1) representative from the social services community, and one (1) representative from the general public.

f. The hearing panel shall allow for oral and/or written testimony and evidence from the recipient of the order of no trespass, the issuing ~~city official/police~~-officer, and any other witnesses requesting to be heard.

g. The hearing panel shall issue a written decision within ten (10) calendar days of the hearing.



Move to waive the reading and refer the proposed to the ordinance committee for further review to include, but not be limited to, consideration of the list of parties authorized to issue no trespass orders, balancing no trespass orders with proactive harm reduction efforts and to evaluate expanding the ability to enforce the trespass ordinance on private property.

CITY OF BURLINGTON

In the Year Two Thousand Twenty-Four

An Ordinance in Relation to

BURLINGTON CODE OF ORDINANCES-
Sections 21-45 – 21-49
Trespass

ORDINANCE _____
Sponsor: (Department or Councilor) _____
Public Hearing Dates: _____
First reading: _____
Referred to: _____
Rules suspended and placed in all
stages of passage: _____
Second reading: _____
Action: _____
Date: _____
Signed by Mayor: _____
Published: _____
Effective: _____

It is hereby Ordained by the City Council of the City of Burlington as follows:

That Chapter 21, Offenses and Miscellaneous Provisions, Article I, In General, of the Code of Ordinances of the City of Burlington be and hereby is amended to read as follows:

ARTICLE I. In General

Secs. 21-1 – 21-44 As written.

Sec. 21-45 Unlawful trespass.

It shall be unlawful for a person who, without legal authority or the consent of the person in lawful possession, enters or remains on any land or in any place as to which notice against trespass is given by:

(a) Actual communication by the person in lawful possession or his agent or by a law enforcement officer, community service officer, community support liaison, urban park ranger, parks patrol, the city's contracted private security, or any other city official authorized to enforce the city's ordinances, acting on behalf of such person or his agent pursuant to protocols established by the police department; or

(b) Signs or placards so designed and situated as to give reasonable notice.

A violation of this section shall be a civil matter and enforced in accordance with the provisions of 24 V.S.A. section 1974a and section 1977 et seq. A civil penalty of not more than five hundred dollars (\$500.00) may be imposed for a violation of this section. The civil penalty may, at the discretion of the prosecuting official, be eliminated or reduced upon the successful completion of a restorative or reparative justice program through the community justice program. In lieu of further process and prosecution, persons ticketed for violations of this section may pay a waiver penalty under the schedule set out below:

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33
34 Third offense or more, within a twelve-month period: The waiver penalty shall be four hundred dollars
35 (\$400.00).
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37 Each time that the violation occurs will constitute a separate violation of this section. Any law enforcement
38 officer, community service officer, community support liaison, urban park rangers, parks patrol, the city's
39 contracted private security, or any other city official authorized to enforce the city's ordinances, can enforce
40 this section.
41

42 **Sec. 21-45A Notice of trespass on city property.**
43

- 44 (a) Purpose. The purpose of this section is to enable a city official in charge of city property to issue a
45 notice of trespass and enforce that notice against an individual whose behavior is dangerous, illegal, or
46 unreasonably disruptive, while recognizing the rights of individuals to engage in constitutionally
47 protected activities on public or city-owned property.
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- 49 (b) City official/officers authorized to issue notice of trespass. The city council hereby expressly delegates
50 its authority to issue a notice of trespass to any city official who is in charge, at the time of issuance, of
51 the city property for which the notice of trespass is issued and to any sworn officer, community service
52 officer, or community support liaison of the Burlington police department or the City's urban park
53 rangers, parks patrol, contracted private security, or any other city official authorized to enforce the
54 city's ordinances, in the exercise of their official duties (hereinafter "official/officer").
55
- 56 (c) Issuance of notice of trespass – Initial conference. If an individual violates any city ordinance, rule or
57 regulation, or State law, or within a public building fails to follow the lawful directive of a city official/
58 ~~or police~~-officer authorized under subsection (b) of this section, that official/officer may issue a notice
59 of trespass for a violation which was committed while on or within a city facility, building, or outdoor
60 area, including a municipal park, for the specific property where the violation occurred, excluding a
61 right-of-way. Prior to issuance of the notice of trespass, the issuing official/officer must ensure that the
62 person to whom a notice of trespass will be issued has been informed of the basis for the notice of
63 trespass and has been given an opportunity and reasonable amount of time to change or address the
64 underlying conduct – that is, a verbal warning must have been issued. No verbal warning is required if
65 the reason for the trespass is an accusation of serious harmful conduct such as arson, assault,
66 harassment or a threat of such conduct. Notices of trespass may be issued at the Fletcher Free Library
67 as provided in Section 21-43.
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- 69 (d) Service of notice – Content. In most cases, the notice of trespass must be hand-delivered to the person
70 to whom it is issued by an authorized city official/~~or a law enforcement~~-officer; however, if the
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72 official/~~or law enforcement~~-officer, it may be mailed to the individual's legal address. The written
73 notice of trespass shall detail the basis for which the notice of trespass was issued, the length of time for

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76 at which to file the appeal.
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78 (e) Length of notice of trespass.
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80 (1) Generally. For minor, first-time violations, such as having an open container of alcohol, the notice
81 may be issued for up to one (1) day. For moderate violations, such as other nonviolent disorderly conduct,
82 or for a second offense within thirty (30) days, the notice may be issued for up to thirty (30) days. For
83 more serious violations or a third offense within sixty (60) days, the notice may be issued for up to one
84 hundred eighty (180) days. Generally, it is expected that the length of time should reflect the severity or
85 repetitiveness of the underlying conduct. Only for more serious offenses such as conduct that involves
86 violence, harassment, or threats of physical harm to an individual may a notice be issued for over one
87 hundred eighty (180) days, and in any event, a notice of trespass may not be issued for more than one (1)
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92 notice of trespass may be issued for up to one hundred eighty (180) days. For a violation of Section
93 21-43(a)(2), a notice of trespass may be issued for a period up to sixty (60) days. For a violation of Section
94 21-43(a)(3), a notice of trespass may be issued for a period of one (1) day.
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96 (f) Appeal.
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98 (1) Process. The recipient of a notice of trespass may appeal the notice of trespass by filing an appeal, in
99 writing, within seven (7) calendar days of the issuance of the notice. The written appeal shall include the
100 appellant's name, address, phone number, and indicate whether a hearing is requested. No fee shall be
101 charged for filing the appeal. The appeal shall be filed at the location designated in the notice of trespass.
102 Except for in exigent circumstances, any such appeal shall stay the operation of the notice of trespass
103 beyond the day the appeal is filed, pending a hearing and/or written decision.
104

105 (2) Exigent circumstances. For purposes of this chapter, "exigent circumstances" means any situation in
106 which the issuing city official/~~or~~ officer determines that a person presents an immediate and substantial
107 threat or danger to the health, safety, or welfare of another person. In such circumstances, an appeal shall
108 not stay the operation of the notice of trespass.
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110 (3) Designated hearing panels. All appeals made under this chapter shall be heard by the public safety
111 committee of the city council, which will make an annual report to the city council on the number of
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114 (4) Procedure. When an appeal is filed, the designated hearing panel shall meet within ten (10) business
115 days to consider the appeal. If no hearing is requested, the designated hearing panel may consider any

written submissions as part of its decision. If a hearing is requested, the appellant must be provided at least three (3) business days' written notice of the date, time, and location of the hearing. The designated hearing panel shall allow oral and/or written testimony and evidence from the appellant and the issuing city official/~~or~~ officer. In reviewing the notice of trespass, the panel will utilize the preponderance of the evidence standard with the burden of proof on the charging official/officer or their representative. The designated hearing panel shall issue a written decision within ten (10) business days of the hearing. The designated hearing panel may extend the time period for hearing if the operation of the notice of trespass is stayed or if the appellant consents.

(5) Waiver requests. An individual who has received a notice of trespass may request a waiver from the issuing official/officer (or in the absence of that official/officer, from another city official/officer authorized to issue the notice) in order to access the property for which the notice of trespass was issued for purpose of work, residence, access to government services, or the exercise of constitutionally protected activities. If that waiver is denied, an appeal may be made to the designated hearing panel. In addition, in the context of any appeal of a notice of trespass, the designated hearing panel shall also consider any waiver request from the individual appealing.

- (g) Enforcement. Once a notice of trespass has been issued, unless the notice has been stayed by receipt of an appeal or the notice has been overturned by a decision on appeal, a violation of the notice may be enforced pursuant to Section 21-45 (a civil violation) or 13 V.S.A. § 3705 (a criminal violation). Unless the notice of trespass was issued for conduct involving violence, harassment, or threats of physical harm to an individual, enforcement pursuant to 13 V.S.A. § 3705 may only commence with issuance of a citation and a request to leave the premises; however, arrest is permissible for refusal to leave the premises within a reasonable period after issuance of the citation.

Sec. 21-46 Disorderly conduct.

It shall be unlawful for a person who, with the intent to cause public inconvenience, or annoyance or recklessly creating a risk thereof:

- (a) Engages in fighting or in violent, tumultuous or threatening behavior; or
- (b) Makes unreasonable noise; or
- (c) In a public place uses abusive or obscene language; or
- (d) Without lawful authority, disturbs any lawful assembly or meeting or persons; or
- (e) Obstructs vehicular or pedestrian traffic.

A violation of this section shall be a civil matter and enforced in accordance with the provisions of 24 V.S.A. section 1974a and section 1977 et seq. A civil penalty of not more than five hundred dollars (\$500.00) may

be imposed for a violation of this section. The civil penalty may, at the discretion of the prosecuting official/~~officer~~, be eliminated or reduced upon the successful completion of a restorative or reparative justice program through the community justice program. In lieu of further process and prosecution, persons ticketed for violations of this section may pay a waiver penalty under the schedule set out below:

Waiver Penalty:

First offense: The waiver penalty shall be two hundred fifty dollars (\$250.00).

Second offense, within a six-month period: The waiver penalty shall be three hundred dollars (\$300.00).

Third offense or more, within a twelve-month period: The waiver penalty shall be four hundred dollars (\$400.00).

Each time that the violation occurs will constitute a separate violation of this section. Any city official/~~law enforcement~~-officer can enforce this section.

Sec. 21-47 Unlawful mischief.

It shall be unlawful for a person who, having no right to do so or any reasonable ground to believe that he has such a right, intentionally does damage to property of any value not exceeding two hundred fifty dollars (\$250.00).

A violation of this section shall be a civil matter and enforced in accordance with the provisions of 24 V.S.A. section 1974a and section 1977 et seq. A civil penalty of not more than five hundred dollars (\$500.00) may be imposed for a violation of this section. The civil penalty may, at the discretion of the prosecuting official/~~officer~~, be eliminated or reduced upon the successful completion of a restorative or reparative justice program through the community justice program. In lieu of further process and prosecution, persons ticketed for violations of this section may pay a waiver penalty under the schedule set out below:

Waiver Penalty:

First offense: The waiver penalty shall be two hundred fifty dollars (\$250.00).

Second offense, within a six-month period: The waiver penalty shall be three hundred dollars (\$300.00).

Third offense or more, within a twelve-month period: The waiver penalty shall be four hundred dollars (\$400.00).

Each time that the violation occurs will constitute a separate violation of this section. Any city official/~~law enforcement~~-officer can enforce this section.

Sec. 21-48 City Hall Park.

(a) Prohibited activities. Notwithstanding other rules and regulations, the following activities are prohibited at City Hall Park and may be ticketed under this section.

(1) Disorderly conduct as defined by Section 21-46; ~~Any person who, with the intent to cause public inconvenience, or annoyance or recklessly creating a risk thereof:~~

~~a. Engages in fighting or in violent, tumultuous or threatening behavior; or~~

~~b. Makes unreasonable noise; or~~

~~c. In a public place uses abusive or obscene language; or~~

~~d. Without lawful authority, disturbs any lawful assembly or meeting or persons; or~~

~~e. Obstructs vehicular or pedestrian traffic.~~

(2) Unlawful mischief as defined by Section 21-47; ~~Any person who, having no right to do so or any reasonable ground to believe that he has such a right, intentionally does damage to property, private or public.~~

(3) Graffiti and defacement of property as defined by Section 21-29;

(4) Possession of open or opened intoxicating liquor as defined in 23 V.S.A. § 1200(4), except as permitted pursuant to a valid liquor license and/or an outdoor consumption permit for properly organized and supervised activities or events held within the limits of City Hall Park;

~~(45)~~ Possession of a regulated drug as defined in 18 V.S.A. § 4201(29);

(6) Public urination and/or defecation as defined by Section 21-24.

(b) Enforcement.

(1) First offense. Any violation of any provision of subsection (a) above shall be deemed a civil offense and shall be punishable by a penalty of a minimum fine of two hundred dollars (\$200.00) to a maximum fine of five hundred dollars (\$500.00). The waiver penalty for purposes of the municipal complaint (civil ticket) shall be two hundred dollars (\$200.00). The recipient of a municipal complaint for violation of this section (first offense) shall not be permitted within the City Hall Park for the balance of the day on which the alleged offense occurred.

(2) Second offense. Any violation of any provision of subsection (a) above by an individual who has previously violated any provision of subsection (a) above shall be deemed a civil offense and shall be punishable by a penalty of a minimum fine of three hundred dollars (\$300.00) to maximum fine of five hundred dollars (\$500.00). In addition, the recipient of a municipal complaint for violation of this section (second offense) may be issued an order of no trespass prohibiting the recipient from entering the City Hall Park for a period of up to 90 days commencing immediately upon said issuance. The waiver penalty for purposes of the municipal complaint (civil ticket) second offense shall be three hundred dollars (\$300.00); payment of which shall also be deemed acceptance of the no trespass order. Both the fine and the no trespass order may, at the discretion of the prosecuting official/officer, be waived in whole or in part upon the successful completion of a restorative or reparative justice program through the community justice program.

(3) Third and subsequent offense. Any violation of any provision of subsection (a) above by an individual who has on two (2) or more occasions violated any provision of subsection (a) above shall be deemed a civil offense and shall be punishable by a penalty of from four hundred dollars (\$400.00) to five hundred dollars (\$500.00). In addition, the recipient of a municipal complaint for violation of this section (third and subsequent offense) may be issued an order of no trespass prohibiting the recipient from entering the City Hall Park for a period of up to one (1) year commencing immediately upon said issuance. The waiver penalty for purposes of the municipal complaint (civil ticket) third or subsequent offense shall be four hundred dollars (\$400.00); payment of which shall also be deemed acceptance of the no trespass order. Both the fine and the no trespass order may, at the discretion of the prosecuting official/officer, be waived in whole or in part upon the successful completion of a restorative or reparative justice program through the community justice program.

Sec. 21-49 Church Street Marketplace District trespass authority.

(a) Purpose. The Burlington city council finds and declares that the following substantial government interests will be advanced by the ability to issue a no trespass order created by this section, based on conditions the police department and the Church Street Marketplace District commission have identified and confront in the Church Street Marketplace District on a regular basis:

- (1) The abatement or removal of nuisances determined to be against the public health, safety or welfare of citizens;
- (2) The protection of citizens from physical threats or injury and from damage to property;
- (3) The prevention of harassment and intimidation of any member of the public;
- (4) The prevention of violent crime;
- (5) The orderly control and safety of pedestrian, car and cart traffic on Church Street; and

(6) The provision and maintenance of a safe, attractive environment in areas designed to attract tourist revenue.

(b) Findings. The substantial government interests identified in subsection (a) of this section are undermined by unlawful and inappropriate behavior in the Church Street Marketplace District. Such behaviors include, but are not limited to, disorderly conduct, unlawful mischief, the possession and consumption of intoxicating liquor, and the possession and use of regulated drugs.

Specifically:

(1) Unlawful behavior within the Church Street Marketplace District diminishes this public asset and deprives citizens and visitors of its full use and enjoyment;

(2) In addition to more serious criminal acts that threaten personal injury and property damage, a wide range of illegal disorderly behaviors can and often do transform the Church Street Marketplace District into an unwelcoming, unattractive and ultimately unsafe public space requiring increased expenditures for public safety and maintenance;

(3) Laws intended to preserve and protect public spaces like the Church Street Marketplace District for the benefit of all people are effective only if those present on the space obey the law. The current criminal and civil penalties for violating these types of laws are frequently inadequate to deter the illegal behavior, to prevent its recurrence, or to provide for the removal of offenders from the public space;

(4) Compliance with behavior laws within the Church Street Marketplace District will be enhanced by the immediate administrative sanction of removing offenders from the Church Street Marketplace District in addition to issuing tickets to them. For repeat offenders and for more serious offenses, exclusion for extended periods will further provide a necessary additional remedy to protect the public;

(5) The failure to comply with these and other laws creates a public nuisance.

(c) Prohibited activities. Notwithstanding other laws, ordinances, rules and regulations, the following activities are prohibited within the Church Street Marketplace District and may result in a no trespass order authorized under this section.

(1) Disorderly conduct as defined by Section 21-46;

(2) Unlawful mischief as defined by Section 21-47;

(3) Graffiti and defacement of property as defined by Section 21-29;

(4) Possession of open or opened intoxicating liquor as defined by 23 V.S.A. § 1200(4), except as permitted pursuant to a valid liquor license and/or an outdoor consumption permit for properly organized and supervised activities or events held within the limits of the Church Street Marketplace District;

~~(45)~~ Possession of a regulated drug as defined in 18 V.S.A. § 4201(29);

~~(6) Offense of retail theft as defined by 13 V.S.A. §2575 from a business in the Church Street Marketplace District;~~

~~(7) Public urination and/or defecation as defined by Section 21-24.~~

(d) Enforcement.

(1) First offense. Any person ticketed for a prohibited activity noted in subsection (c) of this section as a first offense may also be issued an order of no trespass, and will not be permitted within the Church Street Marketplace District for the balance of the day on which the alleged offense occurred.

(2) Second offense. Any person ticketed for a prohibited activity noted in subsection (c) of this section as a second offense may also be issued an order of no trespass prohibiting the recipient from entering the Church Street Marketplace District for a period of up to ninety (90) days, commencing immediately upon said issuance.

(3) Third and subsequent offense. Any person ticketed for a prohibited activity noted in subsection (c) of this section as a third or subsequent offense may also be issued an order of no trespass prohibiting the recipient from entering the Church Street Marketplace District for a period of up to one (1) year commencing immediately upon said issuance.

(4) Hearing procedure and staying of order of no trespass.

a. Recipients of an order of no trespass issued pursuant to subsections (d)(2) and (3) of this section may appeal said order to a hearing panel designated by the Church Street Marketplace commission pursuant to the procedure detailed below. Any such appeal shall stay the order of no trespass pending the hearing and written decision of the hearing panel.

b. Any individual subject to the trespass provisions of subsection (d)(1), (2), or (3) of this section may request in writing that a hearing panel of the Church Street Marketplace commission hold a public hearing for the purpose of challenging the issuance of the order of no trespass and/or to request a waiver to access the Church Street Marketplace District for purpose of work, residence, access to government services, the exercise of constitutionally protected activities, and/or for any other good reason as determined by a hearing panel.

- 368
- 369 c. Recipients shall have thirty (30) days from the date of issuance of an order of no trespass to
- 370 request a hearing. Requests shall be sent to the executive director of the marketplace commission
- 371 at 2 Church Street, Suite 2A, Burlington, VT 05401-4457.
- 372
- 373 d. If a hearing is requested, the hearing shall be scheduled within ten (10) calendar days of receipt
- 374 of the request, and a written notice of the hearing shall be sent to the recipient at least seven (7)
- 375 calendar days prior to the hearing.
- 376
- 377 e. The hearing panel shall consist of three (3) people designated by the Church Street Marketplace
- 378 commission or its designee, and be comprised of one (1) representative from the business
- 379 community, one (1) representative from the social services community, and one (1)
- 380 representative from the general public.
- 381
- 382 f. The hearing panel shall allow for oral and/or written testimony and evidence from the recipient
- 383 of the order of no trespass, the issuing city official/~~police~~-officer, and any other witnesses
- 384 requesting to be heard.
- 385
- 386 g. The hearing panel shall issue a written decision within ten (10) calendar days of the hearing.

Resolution Relating to

SUPPORTING LGBTQIA+ COMMUNITY MEMBERS AND CONDEMNING TRANSPHOBIA

RESOLUTION 5.07

Sponsor(s): Councilors Magee, Paul,
Barlow, Carpenter, Traverse,
Bergman, Freeman, Hightower, Brandt
Introduced: 03/13/23
Referred to: _____

Action: adopted
Date: 03/13/23
Signed by Mayor: 06/27/23

CITY OF BURLINGTON

In the year Two Thousand Twenty-Three.....

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

1 That WHEREAS, violence and hate toward queer and transgender people is on the rise nationally and in
2 Vermont; and

3 WHEREAS, here in Burlington, a group of residents continues to target queer and transgender
4 community members, especially young people; and

5 WHEREAS, these residents spread hate through protests, aggressive stickering near our schools and
6 other public spaces, and on social media; and

7 WHEREAS, 378 anti-LGBTQIA+ bills have been introduced and are advancing in state legislatures
8 throughout the United States;¹ and

9 WHEREAS, across the country, these kinds of hateful acts are leading to a rise in violence toward the
10 LGBTQIA+ community, with higher rates of violence directed at trans community members; and

11 WHEREAS, in recent years, we have seen the tragic results of this kind of hate here in Vermont; and

12 WHEREAS, in 2022, Fern Feather, a transgender woman, was murdered in Central Vermont; and

13 WHEREAS, The Pride Center of Vermont had the front door of their office, a safe and welcoming
14 gathering space for all, smashed in a hateful act of vandalism and intimidation; and

15 WHEREAS, hate directed at LGBTQIA+ students and faculty in Burlington Schools poured in from
16 around the nation, when Fox News amplified hateful, transphobic messages related to a DEI presentation on
17 gender identity and pronouns; and

18 WHEREAS, hateful, transphobic protesters have targeted community events such as Burlington Pride
19 and the Outright Fire Truck pull, events that are meant to be welcoming, joyful, and supportive celebrations;
20 and

21 WHEREAS, in a show of solidarity, community members have come together to remove harmful,
22 transphobic stickers from public places; and

¹ <https://www.aclu.org/legislative-attacks-on-lgbtq-rights>

* * * * *

DISTRIBUTION:

I hereby certify that this resolution
has been sent to the following
department(s) on

ORIGINAL

RESOLUTION RELATING TO

.....
.....
.....

Adopted by the City Council

....., 20.....

..... Clerk

Approved....., 20.....

..... Mayor

Vol. Page

* * * * *

23 WHEREAS, Burlington Parks and Public Works staff has worked hard to come up with a plan for
24 addressing and tracking hateful stickers in our parks and on other City-owned property, including street signs;
25 and

26 WHEREAS, The Burlington School District has made a statement condemning these hateful acts and
27 pledging support to LGBTQIA+ students and staff; and

28 WHEREAS, the Burlington Community Justice Center has made a significant effort to bring
29 community members together and offer space to talk about the harms caused by these hateful acts; and

30 NOW, THEREFORE, BE IT RESOLVED that the City Council and the Mayor condemn these hateful
31 acts against trans community members; and

32 BE IT FURTHER RESOLVED that the City Council extends our unequivocal support to the
33 LGBTQIA+ community; and

34 BE IT FURTHER RESOLVED that the City Council expresses our gratitude for the work of those
35 community members who have come forward to support queer and transgender community members by
36 removing the harmful stickers; and

37 BE IT FURTHER RESOLVED that the City Council is committed to the City of Burlington's efforts
38 to begin observing Trans Day of Visibility annually on March 31st, through a city-wide, city-sponsored and
39 funded campaign, to include vocal support from the Mayor's Office affirming support for the LGBTQIA+
40 community, specifically the trans community; and

41 BE IT FURTHER RESOLVED that the City Council will work in collaboration with community
42 members and organizations and the City administration to develop a plan for ongoing activities to support and
43 amplify the voices of the LGBTQIA+ community, including days of action, flying pride flags on City
44 property, and organizing a speakers series; and

45 BE IT FURTHER RESOLVED that the City Council supports the continuation of tracking all
46 transphobic and other hate speech in an annually published report available to the public to ensure the ongoing
47 commitment to decreasing the amount of hate speech in our City; and

48 BE IT FURTHER RESOLVED that the City Councils urges Burlington's state legislative delegation to
49 look at current state hate crime statute to look to extend protections for schools and organizations that
50 advocate/support LGBTQ+ (and other minoritized communities) from hate motivated targeted crimes; and

51 BE IT FURTHER RESOLVED that the City Council's Ordinance Committee shall, in coordination
52 with the Burlington Police Department and the City Attorney's Office, examine Burlington's graffiti

* * * * *

DISTRIBUTION:

I hereby certify that this resolution
has been sent to the following
department(s) on

ORIGINAL

RESOLUTION RELATING TO

.....
.....
.....

Adopted by the City Council

....., 20.....

..... Clerk

Approved....., 20.....

..... Mayor

Vol. Page

Attest:

* * * * *

53 ordinance and consider changes that address continued defacement of public property, and graffiti that spreads
54 hateful and harmful messages.

55
56 JP/JD/Resolutions 2023/SUPPORTING LGBTQIA+ COMMUNITY MEMBERS AND CONDEMNING TRANSPHOBIA
57 March 9, 2023

* * * * *

DISTRIBUTION:

I hereby certify that this resolution
has been sent to the following
department(s) on

BPD
Ordinance Committee

ORIGINAL

RESOLUTION RELATING TO

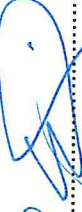
Supporting LGBTQIA + Community Members And Condemning Transphobia

Adopted by the City Council

March 13, 2023

 Clerk

Approved June 27, 2023

 Mayor

Attest:

Lori Olberg
Licensing, Voting and Records Coordinator

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* * * * *