



Monday, August 26, 2024, 7:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM

When: Aug 26, 2024 07:00 PM Eastern Time (US and Canada)
Topic: Ordinance Committee Meeting

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1. Agenda

Subject

1.1. Motion to amend/adopt agenda

Meeting

August 26, 2024 - Ordinance Committee Meeting - Monday, August 26, 2024, 7:00 PM,
Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM

Category

1. Agenda

Department

Type

Recommended Action

2. Adopt Draft Minutes

Subject	2.1. Adopt Draft Minutes from August 14
Meeting	August 26, 2024 - Ordinance Committee Meeting - Monday, August 26, 2024, 7:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	2. Adopt Draft Minutes
Department	Council and Board
Type	
Recommended Action	

3. Public Forum

Subject	3.1. Verbal Comments
Meeting	August 26, 2024 - Ordinance Committee Meeting - Monday, August 26, 2024, 7:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	3. Public Forum
Department	Council and Board
Type	

4. Condo Conversion Discussion

Subject	4.1. Condo Conversion Discussion
Meeting	August 26, 2024 - Ordinance Committee Meeting - Monday, August 26, 2024, 7:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	4. Condo Conversion Discussion
Department	Council and Board
Type	
Recommended Action	

5. Police Oversight Ordinance Discussion

Subject	5.1. Police Oversight Ordinance Discussion
Meeting	August 26, 2024 - Ordinance Committee Meeting - Monday, August 26, 2024, 7:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	5. Police Oversight Ordinance Discussion
Department	Council and Board
Type	
Recommended Action	

6. Trespass Ordinance Discussion

Subject	6.1. Trespass Ordinance Discussion
Meeting	August 26, 2024 - Ordinance Committee Meeting - Monday, August 26, 2024, 7:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM

Category	6. Trespass Ordinance Discussion
Department	Council and Board
Type	
Recommended Action	

7. Any Other Committee Business

Subject	7.1. Any Other Committee Business
Meeting	August 26, 2024 - Ordinance Committee Meeting - Monday, August 26, 2024, 7:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	7. Any Other Committee Business
Department	Council and Board
Type	
Recommended Action	

8. Adjournment

Subject	8.1. Motion to adjourn
Meeting	August 26, 2024 - Ordinance Committee Meeting - Monday, August 26, 2024, 7:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	8. Adjournment
Department	Council and Board
Type	
Recommended Action	

Ordinance Committee
Wednesday, August 14, 2024
Sharon Bushor Conference Room
at City Hall or Remote via Zoom. Burlington, Vermont
DRAFT MINUTES

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

Staff Present: Kim Sturtevant (Assistant City Attorney)

Public Present: Todd DeLuca, Sharon Bushor

Meeting called to order at 11:03 AM.

1. Adopt the Agenda
1.01 Adopt the Agenda

Motion to Adopt Agenda as is.

Motion by Councilor Brown McKnight, Seconded by Councilor Bergman

Final Resolution: Motion Passes

Yes: Unanimous

2. Adopt Draft Minutes
2.1 Adopt Draft Minutes from August 5

Motion to Adopt the Draft Minutes from August 5.

Motion by Councilor Bergman, Seconded by Councilor Shannon

Final Resolution: Motion Passes

Yes: Unanimous

3. Public Forum
3.1 Verbal Comments

Todd DeLuca: I live in Ward Four. I support the ordinance change regarding condo conversion. The ordinance was originally meant to slow conversion of rental apartments into condos. It is easier to build and finance rental buildings than condos. There can be other ways to help people from being displaced. The Housing Trust Fund gets much more funding from other sources than the conversion fees. We should lower the waiting periods and remove the fees.

Sharon Bushor: Michael Monte was very concerned about displacement. We need to bring balance back to have more home ownership. Northgate is a good and unique example of having a cooperative that maintains the affordability of rentals. We should find ways to emulate Northgate to provide people with continuously affordable housing. This ordinance change could be a good way to increase housing.

4. Police Oversight Ordinance Discussion

Attorney Sturtevant shared the brainstorming list from the August 5 meeting. This list is available in the August 5 minutes.

Councilor Brown McKnight said she believes one or two members of the independent panel could be City staff and so being a staff member should not be a disqualifying criterion. Councilor Shannon added that she believes members could be former board or commission members or even live outside of Burlington if necessary.

Councilor Bergman said the most important aspect for him is ensuring the panel represents the diverse nature of Burlington. He suggested that panel membership require some baseline qualifications but have a lot of focus on ensuring the panel as a whole is a diverse and appropriate group.

Councilor Shannon disagreed and said that having the City Council appoint these members is always a slow and political process.

Councilor Bergman said he is fine having either the Mayor or the Council President appoint the members on an ad-hoc basis.

Councilor Brown McKnight said she thinks members should have expertise in one of a few general areas: DEI/justice reform, professional policing, HR/employee discipline, criminal prosecution, or public legal defense.

Councilor Shannon said she likes the idea of having the HR Director, REIB Director, or CJC Director on the panel by virtue of their position. She added that there should be someone with at least ten years of experience in law enforcement or prosecution in addition to one member of the public appointed by the Mayor.

Councilor Bergman said he would include as a qualification expertise in social reform such as experience with the ACLU or Southern Poverty Law Center.

Councilor Brown McKnight said having someone with expertise in the context of the particular case, such as mental health expertise, depending on the facts of the case.

Councilor Bergman said each instance of the panel being used should have an independent attorney as counsel in addition to administrative and investigative support. Councilor Shannon asked the City Attorney's Office for a recommendation on how to best support the panel with hiring outside help.

Jon Murad (Chief of Police) said that the current directive for the BPD is to complete an investigation within 30 days and up to 90 if necessary. When the Police Commission is presented with the findings they have 14 days to make a decision, but can be longer depending on the incident and scheduling.

Councilor Shannon asked that the City Attorney's Office draft language regarding staffing and support for the new panel. Councilor Bergman asked that the entire process be written and clear, particularly with regards to availability of information and timing.

5. Condo Conversion Discussion

Attorney Sturtevant said the most recent conversions have been at Claire Pointe and 19 units have been converted to condos since 2022.

Councilor Brown McKnight said she would like a list of properties that the current ordinance effects.

Councilor Shannon said she would like to adjust 18-300 Statement of Purpose (1) to state that the City supports having a balanced combination of rental housing and home ownership. Councilor Bergman disagreed with changing the intent from supporting the retention of rental housing.

Councilor Bergman said changing the ordinance to favor ownership would lead to gentrification and the displacement of poor and working people.

Councilor Shannon said she would like the ordinance to favor ownership as a means to stabilize housing costs for lower income people since rents are going up much faster than taxes. She continued that the ordinance should include another section under 18-300 that reads: "To provide opportunities to stabilize housing costs through entry-level home ownership.;"

Councilor Bergman asked if the City Attorney's Office and CEDO could provide some clarity to the statements in 18-300 (9) and (10).

Councilor Bergman asked if the Assessor could provide information about potentially exempting triplexes and quads from the ordinance.

6. Any Other Committee Business

The next meeting is set for August 26th at 7:00PM.

7. Adjournment

Without objection, the meeting was adjourned at 1:00 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)

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

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.

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 tenant ~~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.

CHAPTER 18 HOUSING ARTICLE V. REGULATION OF
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

18-309~~11~~ 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)

18-31~~02~~ 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)

18-31~~13~~—18-399 Reserved.

* Material stricken out deleted.

** Material underlined added.



August 7, 2024

Ordinance Committee
City of Burlington

Re: Conversion of Rentals to Homeownership

Dear Ordinance Commtee:

Thank you for the opportunity to speak to the importance of the City of Burlington's Condo Conversion Ordinance.

The Champlain Housing Trust, through its predecessor the Bulington Community Land Trust (BCLT), was created in 1984 to provide permanently affordable housing through homeownership as a way to prevent displacement and gentrification. The Old North End, and the City of Burlington has been a key target area.

Soon after BCLT's creation, the City of Burlington's condo conversion ordinance was created in response to the potential massive displacement of low-income renters from Northgate in the late 1980's, which at the time would have displaced 330 families and over a thousand people. It was successful, and Northgate remains a stable, affordable resident owned rental property.

Unfortunately, displacement continues to occur unchecked due to higher rents and redevelopment of existing multi-family properties. The need for tenant protections, and the condo conversion ordinance, is greater than ever.

CHT has a long history of successfully converting rental housing into homeownership. We have done this on a single-family home basis and through the conversion of multi-family properties.

Here are some of our practices and lessons that we have learned:

- Any conversion that we undertake includes a long notification period, an opportunity for the tenant to purchase the home, relocation expenses, and assistance in finding an affordable apartment at another location.
- Most importantly, all of the homes we create through conversion are permanently affordable for generations to come, providing stability for a neighborhood while also providing opportunity for wealth creation.
- Many apartments do not have the amenities that a new homeowner is seeking. Typically, homeowners are looking for these standard features: two bedrooms or more, full sized kitchen and dining, adequate storage, some privacy.
- Our experience has been that most renters do not want to own the home that they are renting due to their individual preferences or they are not able to qualify for a mortgage due to credit or other reasons.

Much of Burlington's older rental housing stock has been created through conversions of larger single-family homes into multiple apartments. The cost of converting these back to single family homes would be very high, considering the base cost would be the purchase of two or more apartments, and the substantial cost of conversion back into a single-family home.

The best opportunity for conversion of rental property is with newer properties that are more updated and need less improvements. These properties often serve a higher income tenant who may be better positioned to purchase and therefore there would be less impact from displacement.

Any program that the City would adopt should consider the following:

- First right of refusal to a non-profit entity or for the tenants to form a coop to purchase the property, say 120 days.
- If not purchased by a non-profit or coop:
 - A two-year notice to tenants (eliminate 4 year notice for elderly or disabled)
 - Payment of relocation costs as a set stipend for the tenant (\$2,000 in 2024 dollars)
 - Payment of rent differential for low and moderate income tenants with consideration to create a system that is simple and less complicated than federal standards.
- The majority of the homes converted should be permanently affordable.
- Relocated tenants should be given the opportunity to relocate to an affordable apartment or there should be substantial payment into the Housing Trust Fund to support the creation of the home or replacement apartment.

Thank you for your time and consideration.

Sincerely,

Michael Monte

Michael Monte
Chief Executive Officer

Title 24 : Municipal and County Government

Chapter 061 : Regulatory Provisions; Police Power of Municipalities

Subchapter 011 : Miscellaneous Regulatory Powers

(Cite as: 24 V.S.A. § 2293)

- **§ 2293. Regulation of condominium conversion; referendum**

A town may adopt an ordinance governing the conversion of rental units to condominiums which is supplemental to and not inconsistent with the provisions of 27 V.S.A. chapter 15, subchapter 2. Such an ordinance shall be submitted to the voters and shall be adopted if approved by a majority of those present and voting. (Added 1985, No. 175 (Adj. Sess.), § 6.)

Resolution Relating to

**CHANGES TO CITY CHARTER ARTICLES 62, 63, AND 65
REGARDING POLICE OVERSIGHT**

RESOLUTION 7.5.

Sponsor(s): Charter Change
Committee

Introduced: 07/15/24

Referred to: _____

Action: adopted as amended

Date: 07/15/24

Signed by Mayor: 07/17/24

CITY OF BURLINGTON

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

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

1 That WHEREAS, over the past several years, as part of its continued commitment to oversight and
2 accountability, the City Council and the Administration have continued to take steps to revise Burlington's
3 police oversight, transparency, and accountability practices; and

4 WHEREAS, pursuant to a resolution adopted by the Council on February 6, 2023, the City Council
5 requested the Ordinance Committee and Charter Change Committee to hold joint meetings, allowing for
6 community and stakeholder input on the disciplinary authority of the Chief of Police, the oversight role of the
7 Police Commission, and the creation of a separate community oversight body independent from the
8 Burlington Police Department; and

9 WHEREAS, over a span of eight months, the Joint Ordinance and Charter Change Committee met
10 fourteen times, seeking and receiving community and stakeholder input on the issues; and

11 WHEREAS, the Joint Committee voted to move forward a proposed charter change for public
12 comment with the understanding it may be placed upon the ballot after a final vote of the Burlington City
13 Council; however, after the first public hearing before the City Council on January 16, 2024 it was referred to
14 the Police Commission for review and comment; and

15 WHEREAS, the Police Commission met over the span of three months and brought forth their
16 thoughts to the City Council prior to the proposed Charter Change being brought back up by the Charter
17 Change Committee who met substantively four times regarding police oversight between June 12, 2024 and
18 July 1, 2024; and

19 WHEREAS, the Charter Change Committee unanimously referred the proposed language below to the
20 full City Council for consideration and voted 2-1 to place the proposed language on the November 5, 2024
21 ballot and warn the language for public hearing;

* * * * *

DISTRIBUTION:

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RESOLUTION RELATING TO

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Adopted by the City Council

....., 20
..... Clerk

Approved....., 20

..... Mayor

Vol. Page

* * * * *

NOW, THEREFORE, BE IT RESOLVED that the City Council approves the amendments to the city charter recommended by the Charter Change Committee and requests the Mayor to place the following question on the ballot of the General Election to be held on November 5, 2024 and the City Clerk to set public hearings on the this question in accordance with Charter §303 and 17 V.S.A. § 2645:

"Shall the Charter of the City of Burlington, Acts of 1949, No. 298 as amended, be further amended to amend Article 62, Police Department; Article 63, Chief of Police and Captain; and Article 65, Removal or Suspension, thereto to read as follows:

ARTICLE 62. POLICE DEPARTMENT

183 Board of police commissioners; composition; terms.

The board of police commissioners shall consist of seven (7) legal voters and should represent the diverse nature of said city's constituents, including those from historically marginalized communities, to be appointed by the city council with mayor presiding to serve for three (3) years and until their successors are appointed and qualified.

184 Same-powers and duties.

(a) The city council shall make rules and regulations for the government of the entire police ~~foree-department~~ and shall fix the qualifications of applicants for positions and service on said ~~foree-department~~ and to the extent permitted by applicable law, the chief of police shall furnish the city council with any information they may require concerning the finances of the police department. The chief of police shall be responsible for all expenditures made by the police department and no expenditures shall be made by the department except in conformity with the standards promulgated by the city council.

(b) The board of police commissioners shall have such authority and responsibility relating to the management, auditing, or monitoring of the police department, its services and facilities, as may be delegated from time to time by resolution, ordinances, and orders of the city council. Said board shall notify the mayor, ~~and the~~ chief administrative officer, and city council, in writing, of any and all changes, modifications or additions to the rules and regulations of the department.

(c) Without limitation to the foregoing, the board of police commissioners and the chief of police may propose rules and regulations for the government of the entire police department in a manner not inconsistent with those established by the city council. Adoption of such proposed rules and regulations requires joint approval by the board of police commissioners and the chief of police. In the event joint approval is not provided by the board of police commissioners and the chief of police, either party may bring forward to the city council the proposed rule or regulation for the city council's consideration.

(d) The board of police commissioners shall have the authority to receive and review all civilian and internal allegations of misconduct by members of the police department. The mayor's proposed budget and the city council shall annually appropriate an amount necessary for the adequate support and facilitation of such review. To the greatest extent permitted by law, the chief of police shall provide the board of police commissioners timely updates of any review, investigation, or disposition of alleged misconduct. The board of police commissioners shall have the ability to request additional information from the chief of police and access to those documents or other evidence relied upon by the chief of police in reviewing allegations of misconduct as the city council shall designate by ordinance. For complaints of alleged misconduct that constitute an offense subject to an investigation of the Vermont Criminal Justice Training Council pursuant to 20 V.S.A 2401 et seq. or for which the chief of police intends

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to impose discipline constituting loss of pay, suspension, or termination, the complaint may not be disposed until the board of police commissioners is notified of the proposed disposition.

After receiving notice from the chief of police of the recommended or actual disposition relating to the review of alleged misconduct, the board of police commissioners shall have the authority to:

(i) recommend an alternative disposition to the chief of police within a time established by ordinance; or

(ii) independently investigate any allegation of misconduct by members of the police department upon a 2/3 majority vote. Such investigation or review shall be conducted by an independent investigator hired by the board of police commissioners, and approved by the city attorney's office, and completed within a time established by ordinance. Upon the conclusion of such an investigation, the board of police commissioners may make a recommendation per subsection (i). The board of police commissioners shall not have the authority to investigate or impose discipline upon the chief of police. Matters regarding the alleged misconduct of the chief of police shall be addressed in conformity with section 190(b) of this Charter and other relevant Vermont statutes.

(e) Upon receiving a recommendation by the board of police commissioners in subsection (d), the chief of police may accept the recommendation subject to the notice and hearing provisions in Article 62, section 190(a) or reject the recommendation. In the event the chief of police rejects the recommendation, the chief of police shall immediately notify the board of police commissioners. Upon receiving notice of the rejection, the board of police commissions may, upon a 2/3 majority vote, request that an independent panel decide the disposition of the matter within a time established by ordinance, subject to the notice and hearing provisions set forth in in Article 62, section 190(a). The disposition of the independent panel shall be final, subject to any applicable right of appeal or grievance process.

This independent panel shall consist of three (3) to five (5) persons appointed per ordinance.

ARTICLE 63. CHIEF OF POLICE AND CAPTAIN

185 Officers of police ~~foree~~department designated.

(a) The direction and control of the entire police ~~foree~~department, except as herein otherwise provided, shall be vested in a police officer who shall be called the chief of police, and such other ranking police officers as the city council shall authorize, subject to the ordinances, resolutions, and orders of the city council; and, provided that the mayor shall retain the powers and duties of chief executive officer pursuant to §116. The order of rank and succession within the police department shall be as designated by the city council by regulation.

(b) Except as herein otherwise provided, such officers shall have the powers and duties granted to police officers by Vermont law and assigned to them by regulations adopted under section 184 of this Charter.

ARTICLE 65. REMOVAL OR SUSPENSION

190 Chief of police may remove member for cause; hearing.

(a) Whenever it shall appear to the chief of police that any member of said ~~foree~~police department has become incompetent, inefficient or incapable from any cause, or is or has been negligent or derelict in his or her official duty, or is guilty of any misconduct in his or her private or official life, or whenever any well-grounded complaints or charges to such effect are made in writing to the chief of police by a responsible person against such member, the chief of police may investigate and, after appropriate notice and hearing, dismiss such member from the ~~foree~~police department, order a reduction in rank, or suspend the member without pay for a specified time period in excess of 14 days. In connection with any possible dismissal, demotion, or suspension for more than 14 days, the chief of police's notice to the member shall be given at least 48 hours prior to any hearing and shall include a description of the

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Vol. Page

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charges being considered. In connection therewith, the chief of police shall have the power to subpoena documents and witnesses and to administer the oath to such witnesses. Such a subpoena will be subject to enforcement or modification in conformity with the procedures set forth in 3 V.S.A. §§ 809a and 809b. The board of police commissioners, or in the case it has already offered an opinion on discipline pursuant to §184(d)(i), or in the case that the voting number of commissioners falls below four (4) due to declared actual or apparent conflict(s) of interest, an independent panel comprised as in §184(e) shall hear any appeal filed in a timely manner with respect to such actions of the police chief. The time of filing an appeal and the nature of the appellate process shall be as determined by such board of regulation. Following its consideration of any such appeal, the board may affirm, modify, or vacate the decision made by the police chief.

(b) Whenever it shall appear to the mayor that the chief has become incompetent, inefficient, or incapable from any cause, or has been negligent or derelict in his or her official duty, or is guilty of any misconduct in his or her private or official life, or whenever any well-grounded complaints or charges to such effect are made in writing to the mayor by a responsible person, the mayor may suspend the chief of police from duty pending a hearing thereon by the city council. The city council shall forth-with notify the chief of police of the charges preferred by them, or of the complaints or charges presented by such responsible person in writing, and shall thereupon proceed to consider and investigate the same. It shall appoint a time and place for the hearing of such complaints and charges so made, shall give the chief of police reasonable notice of the same, not less than 48 hours, and the city council shall have the power to subpoena documents and witnesses and to administer the oath to such witnesses. Such a subpoena will be subject to enforcement or modification in conformity with the procedures set forth in 3 V.S.A. §§ 809a and 809b.

(c) If, upon hearing, the city council shall find such complaints or charges to be well founded, it may dismiss the chief of police from the ~~free~~ police department, demote him or her in rank, or suspend him or her without pay for a period not to exceed 60 days. The procedures outlined in this section shall control in the event of any conflict with section 129 of this Charter as pertains to the removal of the chief of police.

(d) The chief of police may, without notice or hearing for any infraction, violation, or disobedience of any of the rules and regulations of the police department that may seem to the chief of police sufficient, suspend from duty without pay any member of the police ~~free-department~~ for a period not to exceed 14 days.

AND BE IT FURTHER RESOLVED, the Ordinance Committee shall prepare a draft ordinance outlining the composition of the independent panel authorized by §184(e) of the amended City Charter, if enacted, and shall transmit the draft ordinance to the City Council on or by its meeting on September 23, 2024.

*Materials underlined added

**Materials stricken deleted

KS/Resolutions 2024/Changes to City Charter Arts. 62, 63, & 65 Regarding Police Oversight
7/11/24

* * * * *

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RESOLUTION RELATING TO

Changes to City Charter Articles 62, 63, and 65 Regarding Police Oversight

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as amended
Adopted by the City Council

July 15....., 20 24.....

[Signature] Clerk

Approved..... July 17....., 20 27.....

[Signature] Mayor

Vol. Page

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Goals:

To create a committee that is trusted and perceived as fair by both the public and the police department to greatest extent possible.

Conceptual membership of panel:

- Members should be from outside of the community to limit bias
- Hired professionals-contract
- Should have a solid background in how policing works
- Take willing but random voters and ask to serve on panel—chosen like jurors from a pool
- Panel is a “binding” arbiter between police and commission so member should be agreed to by both (*GB concern not way panel set up*)
- Select from current Police Commissioners
- Members of Burlington general community
- Members who represent diversity of age, economic status, gender, areas of the city, ...
- Not come from a policing background

Who serves:

- Pay three independent arbiters \$1,000 per day
- Pay whoever serves
- Pay one individual contractor
- Representatives from business, crime victims
- Someone from police academy who is not from Burlington
- Representation from both police and social justice groups
- A retired police officer, retired public defender, or retired criminal court judge
- HR Director
- Subject matter expert
- Resident of City of Burlington regardless of immigration status
- Person with lived experiences—houseless, mental health issues, domestic violence, people who have had interactions with criminal justice system
- BIPOC or marginalized communities to have diversity of racial or national origin

- Gender diversity
- Representation from Church St. Marketplace Commission

Qualifications:

- City council president
- Politically neutral/balanced
- City resident
- Registered to vote in Burlington
- Have to be fair and have history that demonstrates that they can properly demonstrate discretion
- Some members from Burlington, not all
- In depth understanding of policing
- Support policing as part of a justice system
- Do not have strong political ideologies that would drive them in one or another direction
- Live in Burlington for at least 5 years
- Understanding how important and difficult a police officer's job is
- In depth knowledge of HR practices
- People who have been in police dept., mayor's office, commissions, city employees
- Demonstrated history of working to improve Burlington
- Subject matter expert

Disqualifications:

- Current law enforcement officials
- People who have been in police dept., mayor's office, commissions, city employees

Who should make appointments....

1

CITY OF BURLINGTON

ORDINANCE _____

Sponsor: _____

Public Hearing Dates: _____

In the Year Two Thousand Twenty-Four

An Ordinance in Relation to

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

First reading: _____

Referred to: _____

Rules suspended and placed in all

Stages of passage: _____

Second reading: _____

Action: _____

Date: _____

Signed by Mayor: _____

Published: _____

Effective: _____

2

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

4

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

7

8 ARTICLE I. In General

9

10 Secs. 21-1 – 21-44 As written.

11

12 Sec. 21-45 Unlawful trespass.

13

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

16

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

21

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

23

24 A violation of this section shall be a civil matter and enforced in accordance with the provisions of 24 V.S.A.
25 section 1974a and section 1977 et seq. A civil penalty of not more than five hundred dollars (\$500.00) may
26 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).

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 law enforcement officer, community service officer, community support liaison, urban park rangers, parks patrol, the city's contracted private security, or any other city official authorized to enforce the city's ordinances, can enforce this section.

The Chief of Police or their designee may enter into an agreement with individual commercial property owners and/or businesses leasing a commercial property regarding notice and enforcement of trespass. Such agreement shall be pursuant to a policy of the Police Department approved by the Police Chief and shall be subject to review and approval as to legal form by the City Attorney's Office.

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

- (a) Purpose. The purpose of this section is to enable a city official in charge of city property to issue a notice of trespass and enforce that notice against an individual whose behavior is dangerous, illegal, or unreasonably disruptive, while recognizing the rights of individuals to engage in constitutionally protected activities on public or city-owned property.
- (b) City official/officers authorized to issue notice of trespass. The city council hereby expressly delegates its authority to issue a notice of trespass to any city official who is in charge, at the time of issuance, of the city property for which the notice of trespass is issued and to any sworn officer, community service officer, or community support liaison of the Burlington police department or the City's urban park rangers, parks patrol, contracted private security, or any other city official authorized to enforce the city's ordinances, in the exercise of their official duties (hereinafter "official/officer").
- (c) Issuance of notice of trespass – Initial conference. If an individual violates any city ordinance, rule or regulation, or State law, or within a public building fails to follow the lawful directive of a city official/~~or police~~-officer authorized under subsection (b) of this section, that official/officer may issue a notice

of trespass for a violation which was committed while on or within a city facility, building, or outdoor area, including a municipal park, for the specific property where the violation occurred, excluding a right-of-way. Prior to issuance of the notice of trespass, the issuing official/officer must ensure that the person to whom a notice of trespass will be issued has been informed of the basis for the notice of trespass and has been given an opportunity and reasonable amount of time to change or address the underlying conduct – that is, a verbal warning must have been issued. No verbal warning is required if the reason for the trespass is an accusation of serious harmful conduct such as arson, assault, harassment or a threat of such conduct. Notices of trespass may be issued at the Fletcher Free Library as provided in Section 21-43.

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

(e) Length of notice of trespass.

(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~~

~~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.
 - 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.



**POLICE DEPARTMENT
CITY OF BURLINGTON**

TO: Chief of Staff Erin Jacobsen
FROM: Chief of Police Jon Murad
DATE: May 17, 2024
RE: Trespass

Trespass is a tool the Burlington Police Department uses frequently, but there are several stages and versions.

Generally, there is a court and prosecutorial expectation that a person who has, for the first time, made himself unwelcome in a place must be allowed an opportunity to leave before a person in lawful possession of a place (or his or her agent) issues a Notice of Trespass. Similarly, once a person has been trespassed, there is an expectation that the person be allowed an opportunity to leave before an officer issues a citation or makes an arrest. These expectations may not apply to particularly incorrigible recidivists, however.

Private Property

When it comes to private property, the police do not issue Notices of Trespass. This is a policy choice, because the statute, 13 V.S.A. § 3705 allows a law enforcement officer to act on behalf of a person in lawful possession of a place. The City of Burlington has chosen not to allow that, however. It is my understanding that this decision was made to disentangle police from the issue of whether bias plays a role in who does or does not get trespassed. There is a lot of history around this, some of which can be found in the local news stories that I've synopsized at the end of the memo. There are links to the online articles, as well. If you review only one, the most helpful is [Burlington's No-Trespass Ordinance Is Working, But Its Days May Be Numbered](#), published in Seven Days, on May7, 2014.

If a private property owner such as a shopkeeper calls because she wants to trespass someone, the BPD will instruct her to fill out the Notice of Trespass form, which is prominently linked on the [City of Burlington Police Department webpage](#). If the shopkeeper is concerned or fearful about issuing the Notice, and if officers are available, the BPD will send an officer to stand by and ensure everyone's safety as the Notice is issued. The officer will also ensure that the offender leaves the premises.

Once a Notice of Trespass is on file, if an offender violates the notice, police will respond and issue citations or makes arrests when there is a violation. Under the Priority Response Plan, “Trespass” is a Priority 2, meaning than an in-progress incident should be treated as a Priority 1 call for service.

The Ordinance Committee of the City Council is currently considering a resolution that would once again allow BPD officers to act on behalf of property owners and issue Notices of Trespass.

City Property

For city properties other than the parks or the Marketplace, the city’s preferred practice is that Notices of Trespass be issued by direct employees of the entity that administers the property— e.g., a DPW employee at 645 Pine Street, or a librarian at the Fletcher Free Library. In the case of the library this is good, because the rules there are uniquely complicated. (See Ordinance 21-43, which I’ve appended at the end of this memo.) Here, too, the rationale for the policy was to remove police from the decision-making process, and avoid concerns or claims that their actions might have been influenced by bias.

The Church Street Marketplace

Police frequently trespass people from the Marketplace, in accordance with Ordinance 21-49. (I’ve appended the relevant ordinances at the end of this memo.)

City Hall Park

Police frequently trespass people from City Hall Park, in accordance with Ordinance 21-48. (I’ve appended the relevant ordinances at the end of this memo.)

I hope this was helpful and got at what you were seeking (“a short write-up explaining enforcement of the trespass ordinance”). If not, I’m happy to meet and speak more at length.

Respectfully,



Jon Murad
Chief of Police

NEWS ARTICLES

Here are some articles tracking some of that history:

[Sidewalk Sitting Ban Nixed in Burlington—For Now](#), Seven Days, June 17 2010

“After a three-hour hearing, the Burlington City Council's Ordinance Committee shelved plans to ban sitting or lying down on select downtown city sidewalks. More than 50 people packed a City Hall conference room — almost double its legal capacity according to the city's fire code — to weigh in on the proposal. The three-member committee heard from Police Chief Michael Schirling, several business owners, homeless youth and residents. In the end, the committee agreed unanimously to craft a resolution asking the full City Council to have the police department educate people about the need to keep sidewalks clear for pedestrians, wheelchairs and strollers.”

[Burlington to reconsider trespass ordinance on the Church Street Marketplace](#), VTDigger, June 26 2013

“An ordinance designed to close the Church Street Marketplace to unruly visitors is about to get a second look. Burlington City Council will reconsider an ordinance that authorizes the removal of people from Church Street for unruly behavior after the public raised concerns over the city's no-trespass law. The council voted 11-3 this week to ask the Ordinance Committee to reconsider the ordinance's constitutionality, which was endorsed by Assistant City Attorney Gregg Meyer's legal analysis written last June. The memo can be seen below.”

[Burlington lawyers call for suspension of no-trespass ordinance](#), VTDigger, July 12, 2013

“Attorneys sent a letter to Burlington City Council members and Mayor Miro Weinberger claiming that the current enforcement of the city's no-trespass ordinance violates due process. The letter is a response to the Burlington Police Department's release of enforcement records from April 26 to June 9. The letter was written by John Franco, a private attorney and former assistant city attorney, along with Jared Carter and Sandy Baird of the Vermont Community Law Center. “In my view, one of the bedrock principles of our government is that everybody is entitled to due process of the law,” said Carter wrote. “What we think this ordinance does is totally eviscerate that.” First-time public-nuisance offenders receive a no-trespass citation, banishing them from Church Street for 24 hours. Because the Church Street Marketplace Commission is closed on weekends and holidays, appeals might not be possible until after the 24-hour ban has been served, according to the letter. According to the ordinance passed in February, the first offense is a 24-hour no-trespass notice, which increases to 90 days for the second offense and one year for a third.”

[\[Case dismissed for lack of standing](#), 2016]

[Despite Problems, Business Is Booming on Church Street](#), Seven Days, August 28 2013

“Even as they count their cash, Church Street merchants worry about troublemakers and panhandlers scaring away customers. Along similar lines, some shopkeepers are failing at “loss prevention” — the retailer’s euphemism for shoplifting. Curbing such unlawful behavior was the goal of the no-trespass ordinance the city council adopted earlier this year. It triggered controversy — but not among Church Street merchants. “There’s been a noticeable improvement since the ordinance took effect,” says marketplace director Ron Redmond. “Businesses generally say it’s working.” Police chief Mike Schirling agrees the ordinance is proving effective. He suggests that the threat and actual orders of banishment from the marketplace have made disruptive incidents less common. As of mid-August, Schirling reports, 35 persons have been exiled from Church Street for one day, four have been banned for one month, and one has been told to stay away for a full year. Local civil liberties attorney Sandy Baird has filed suit seeking suspension of the ordinance, partly on the grounds that it’s unconstitutional to ostracize persons who have only been charged with — not convicted of — offenses such as disorderly conduct, vandalism and possession of open containers of alcohol. Defenders of the ordinance argue that banishment is a necessary response to such behaviors because the courts are too clogged to impose timely punishments.”

[No-trespass trial begins in Burlington](#), Burlington Free Press, May 2 2014

“The constitutionality of a year-old no-trespass ordinance for Church Market Street in Burlington will not be determined in a day. Meanwhile, police may continue to add banishment to people cited for disorderly conduct, unlawful mischief, public drinking or illegal drug possession. The terms of exclusion range from 24 hours for the first violation; up to 90 days for the second offense, and up to one year for the third. Closing arguments Friday at Chittenden Superior Court led to yet more questions from Judge Dennis Pearson — who then gave lawyers in the lawsuit until May 30 to submit final written summaries. City officials contend that the graduated response to unacceptable, threatening or dangerous behavior has made the marketplace, on the whole, more inviting. ... None of the 66 people who have been “trespassed” in the past year (including the single recipient of a one-year term) testified at the trial.”

[\[Case dismissed in 2016\]](#)

[Burlington's No-Trespass Ordinance Is Working, But Its Days May Be Numbered](#), Seven Days, May 7 2014

“One year after Burlington implemented a no-trespass ordinance that allows police officers to banish repeat troublemakers from the Church Street Marketplace, two things are clear: The ordinance appears to have succeeded in its stated goal, and its existence has never been in greater jeopardy. Two recent legal challenges are testing the ban's constitutionality. Last Friday, civil court Judge Dennis Pearson listened to arguments about whether police were violating the First Amendment by barring people for up to a year from the length of a public street — a regulation that law-enforcement officers, as well as social workers and Church Street

merchants, say is badly needed in downtown Burlington. A ruling is expected soon. In a related but less publicized case, a criminal court Judge Michael Kupersmith last month threw out a trespassing charge against the ordinance's most frequent offender. In that decision, the judge deemed the ordinance "unconstitutional" and practically dared prosecutors to appeal his decision. They haven't. Detractors say they don't think the ordinance, which has forced at least one person to spend six days in prison, can survive the mounting legal pressure. "This is appalling. Talk about throwing the baby out with the bathwater. This thing is a stinker," said attorney John Franco, who represented the plaintiffs in the civil trial last Friday. But supporters warn that, without it, Church Street could see an influx of unruly people, and police would be forced to pursue more heavy-handed criminal charges to keep the peace. "This isn't barring people because we don't like them. All it's about is curbing behavior that adversely affects hundreds, if not thousands, of people," Burlington Police Chief Michael Schirling said. "Most of the people we are dealing with, all the efforts to change the behavior have failed. You have to work really hard to get a trespass notice. They are choosing not to engage in services that are offered to them again and again." The city ordinance is rooted in a dilemma that informs much of police activity in Burlington: how to address the volatile actions of addicts and the mentally ill, many of whom gravitate to the area to utilize services provided by agencies such as the HowardCenter and Fletcher Allen Health Care."

[Church Street smoking ban starts with 'soft' enforcement](#), Burlington Free Press, December 15 2014

"Church Street Marketplace has added "no smoking" signs to every light pole, swept the bricks clear of cigarette butts and moved ashtrays to side streets. Police will start enforcing the marketplace's new smoking ban Wednesday with warnings and tickets. Officials said at a news conference Monday, however, that they're also relying on community members to ask smokers to take their cigarettes and electronic cigarettes elsewhere. ... Among the ban's critics, some have been concerned that the new ordinance discriminates against smokers or lower-income residents. Three of 14 city councilors opposed the proposal in a November vote."

[ACLU Sues to Protect Homeless Encampments in Burlington](#), Seven Days, October 20 2017

"The American Civil Liberties Union of Vermont is seeking to stop Burlington's plan to evict three people from a homeless encampment along North Avenue. ACLU attorney Jay Diaz filed a class action lawsuit on Friday morning against the city of Burlington. A judge later on Friday issued a temporary restraining order that allows the campers to stay until the case is settled. The city has given the campers until Monday to leave; they can face prosecution or fines if they do not, Diaz said. Yesterday, city officials dismantled an encampment in Burlington's South End, arriving with dump trucks to clear out abandoned property. The 311 North Avenue encampment, located in the woods near the Stone House, is being dismantled for "environmental impact reasons," said Police Chief Brandon del Pozo."

[Burlington Settles Lawsuit Challenging No-Trespass Ordinance](#), Seven Days, July 16 2019

The City of Burlington will pay \$13,500 to a Queen City man and his attorneys who challenged the city's no-trespass ordinance last summer after he was barred from City Hall Park. The June 26 settlement with Jason Ploof also says the city will rewrite its trespass ordinance by year's end, according to the American Civil Liberties Union of Vermont, which represented Ploof along with attorney Justin Barnard of Dinse in Burlington. "Our parks, especially central parks like City Hall Park, are something that belongs to everybody," ACLU of Vermont staff attorney Jay Diaz told Seven Days. "We're glad that the city going forward is going to take that more seriously than they have in the past, applying due process of law whenever they attempt to revoke people's rights." In 2015, Burlington police ticketed and trespassed Ploof twice for having an open container in the park, the second time for 90 days. Police then arrested Ploof when they saw him conversing with friends near the fountain during that period, according to court documents. With the ACLU of Vermont's backing, Ploof contended that the banishment "unlawfully restricted [his] freedom to receive information and enter a traditional public forum, in violation of the First Amendment." The suit survived the city's attempts to dismiss it."

VERMONT STATUTE

13 V.S.A. § 3705. Unlawful trespass

(a)(1) A person shall be imprisoned for not more than three months or fined not more than \$500.00, or both, if, without legal authority or the consent of the person in lawful possession, he or she 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 or her agent or by a law enforcement officer acting on behalf of such person or his or her agent;

(B) signs or placards so designed and situated as to give reasonable notice; or

(C) in the case of abandoned property:

(i) signs or placards, posted by the owner, the owner's agent, or a law enforcement officer, and so designed and situated as to give reasonable notice; or

(ii) actual communication by a law enforcement officer.

(a)(2) As used in this subsection, "abandoned property" means:

(A) real property on which there is a vacant structure that for the previous 60 days has been continuously unoccupied by a person with the legal right to occupy it and with respect to which the municipality has by first-class mail to the owner's last known address provided the owner with notice and an opportunity to be heard; and

(i) property taxes have been delinquent for six months or more; or

(ii) one or more utility services have been disconnected; or

(B) a railroad car that for the previous 60 days has been unmoved and unoccupied by a person with the legal right to occupy it.

(b) Prosecutions for offenses under subsection (a) of this section shall be commenced within 60 days following the commission of the offense and not thereafter.

(c) A person who enters a building other than a residence, whose access is normally locked, whether or not the access is actually locked, or a residence in violation of an order of any

court of competent jurisdiction in this State shall be imprisoned for not more than one year or fined not more than \$500.00, or both.

(d) A person who enters a dwelling house, whether or not a person is actually present, knowing that he or she is not licensed or privileged to do so shall be imprisoned for not more than three years or fined not more than \$2,000.00, or both.

(e) A law enforcement officer shall not be prosecuted under subsection (a) of this section if he or she is authorized to serve civil or criminal process, including citations, summons, subpoenas, warrants, and other court orders, and the scope of his or her entrance onto the land or place of another is no more than necessary to effectuate the service of process.
(Added 1969, No. 156 (Adj. Sess.); amended 1971, No. 229 (Adj. Sess.), § 1; 1973, No. 109, § 7; 1979, No. 153 (Adj. Sess.), § 2; 1981, No. 223 (Adj. Sess.), §§ 17, 23; 2013, No. 49, § 3; 2013, No. 75, § 21.)

BURLINGTON ORDINANCES

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 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).

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 law enforcement officer can enforce this section.

(Ord. of 7-13-09(1); Ord. of 7-13-09(3))

21-45A Notice of trespass on city property.

- (a) Purpose. The purpose of this section is to enable a city official in charge of city property to issue a notice of trespass and enforce that notice against an individual whose behavior is dangerous, illegal, or unreasonably disruptive, while recognizing the rights of individuals to engage in constitutionally protected activities on public or city-owned property.
- (b) City official authorized to issue notice of trespass. The city council hereby expressly delegates its authority to issue a notice of trespass to any city official who is in charge, at the time of issuance, of the city property for which the notice of trespass is issued

and to any sworn officer of the Burlington police department in the exercise of their official duties.

- (c) Issuance of notice of trespass – Initial conference. If an individual violates any city ordinance, rule or regulation, or State law, or within a public building fails to follow the lawful directive of a city official or police officer authorized under subsection (b) of this section, that official may issue a notice of trespass for a violation which was committed while on or within a city facility, building, or outdoor area, including a municipal park, for the specific property where the violation occurred, excluding a right-of-way. Prior to issuance of the notice of trespass, the issuing official must ensure that the person to whom a notice of trespass will be issued has been informed of the basis for the notice of trespass and has been given an opportunity and reasonable amount of time to change or address the underlying conduct – that is, a verbal warning must have been issued. No verbal warning is required if the reason for the trespass is an accusation of serious harmful conduct such as arson, assault, harassment or a threat of such conduct. Notices of trespass may be issued at the Fletcher Free Library as provided in Section 21-43.
- (d) Service of notice – Content. In most cases, the notice of trespass must be hand-delivered to the person to whom it is issued by an authorized city official or a law enforcement officer; however, if the circumstances do not permit safe delivery of the notice in person, in the discretion of the authorized city official or law enforcement officer, it may be mailed to the individual's legal address. The written notice of trespass shall detail the basis for which the notice of trespass was issued, the length of time for which the notice of trespass remains in effect, and the consequences for violating the terms of the notice of trespass; it shall also advise the recipient of the right to contest the notice of trespass and the location at which to file the appeal.
- (e) Length of notice of trespass.
 - (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 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 (or in the absence of that official from another city official 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.

(Ord. of 10-5-20)

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. 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. 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) Possession of open or opened intoxicating liquor as defined in 23 V.S.A. § 1200(4), except as permitted pursuant to an outdoor consumption permit for

properly organized and supervised activities or events held within the limits of City Hall Park.

(4) 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, 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, be waived in whole or in

part upon the successful completion of a restorative or reparative justice program through the community justice program.

(Ord. of 11-22-10)

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

(Ord. of 2-11-13)

21-43 Fletcher Free Library.

- (a) Purpose. The purpose of this section is to provide a system of standards for use of the Fletcher Free Library to ensure a safe, secure, relaxing, and pleasing environment for all visitors, library patrons, and staff, while maintaining access to library materials and facilities in order to promote education, reading, research, and learning.
- (b) Scope. This section applies to all persons accessing, using, or otherwise located on, at, or within all buildings and interior or exterior grounds controlled or operating by the Fletcher Free Library.
- (c) Definitions. The following definitions shall apply to this section:
 - (1) "Commission" means the library commission.
 - (2) "Regulated drug" means any drug as defined in 18 V.S.A. § 4201(29) or any drug prohibited under federal law.
 - (3) "Library" means the Fletcher Free Library.
 - (4) "Library resources" means any library materials, equipment, furniture, fixtures, or buildings located within the library premises.
 - (5) "Library premises" means all buildings, interior portions of buildings, and exterior grounds connected to buildings that are controlled or operated by the Fletcher Free Library.
- (d) Prohibited acts—Class A. The following acts are designated as Class A acts that are prohibited on the library premises:
 - (1) Activities or behavior that may result in injury or harm to any other person, including challenging another person to fight or engaging another person to fight.
 - (2) Directing a specific threat of physical harm against an individual, group of individuals, or property.
 - (3) Engaging in sexual conduct or lewd behavior.
 - (4) Possession, use, selling, or distribution of any regulated drug.
 - (5) Destroying, abusing, or damaging library resources.
 - (6) Using library resources in a manner likely to cause personal injury or injury to other persons or property.
 - (7) Having been found liable for committing a Class B prohibited act three (3) or more times in any one (1) calendar year.

(e) Prohibited acts—Class B. The following acts are designated as Class B acts that are prohibited on the library premises:

- (1) Engaging in conduct that unreasonably disrupts or interferes with the normal operation of the library, or unreasonably disturbs library staff or patrons, including but not limited to, conduct that involves: (a) the use of abusive, threatening, or harassing language or gestures; (b) conduct that creates unreasonable noise; (c) conduct that consists of loud or boisterous physical behavior or talking; or (d) entering staff-only spaces without permission.
- (2) Using library resources in a manner inconsistent with their intended use.
- (3) Being under the influence of alcohol or a regulated drug.
- (4) Possessing an open or unsealed container which contains an alcoholic beverage, or consuming or attempting to consume any alcoholic beverage, except as allowed at a library-approved event.
- (5) Possessing marijuana unless the person is a registered patient in possession of a valid registration card under the provisions of the State of Vermont Therapeutic Use of Cannabis Act at 18 V.S.A. § 4201, et seq.
- (6) Consuming or otherwise using marijuana.
- (7) Smoking or vaping any substance of any kind.
- (8) Having been found liable for a Class C prohibited act three (3) or more times in any one (1) calendar year.

(f) Prohibited acts—Class C. The following acts are designated as Class C acts that are prohibited on the library premises:

- (1) Failing to abide by posted library rules, including rules for: (a) the acceptable use of the internet and library computers; (b) use of personal electronic equipment; (c) consumption of food or drinks; (d) use of designated library facilities; (e) use of restroom facilities; or (f) personal hygiene.
- (2) Failing to follow the reasonable direction of library staff related to a library rule or policy.
- (3) Use or preparation of tobacco products, bidis, beedies, or tobacco substitutes as those terms are defined in 7 V.S.A. § 1001.
- (4) Leaving personal belongings unattended in a manner that interferes with library staff or other persons on the library premises or placing personal belongings on library resources in a manner that interferes with library staff or use of the library.
- (5) Interfering with the free passage of library staff or visitors to the library.
- (6) Primarily making use of the library premises for sleeping.

(g) Prohibited acts—Class D. The following acts are designated as Class D acts that are prohibited on the library premises:

- (1) Bringing bicycles or other similar modes of transportation inside library buildings, including, but not limited to, vestibules or covered doorways except that bicycles may be placed on bicycle racks provided in those areas.
- (2) Bringing animals into library buildings, with the exception of service animals or animals brought to a library-approved event where animals are permitted. Animals brought into library buildings must always remain under the control of the owner and not create a disturbance.
- (3) Leaving animals tethered or otherwise unattended on the library premises.
- (4) Soliciting, petitioning, or canvassing unless the activity is part of a program in a space designated for or expressly permitting the activity.
- (5) Taking library resources into restrooms.
- (6) Using roller skates, skateboards, or other similar devices.
- (7) Leaving children under the age of nine (9) without the supervision of a person over the age of sixteen (16) who is taking an active role in attending to and supervising the child.
- (8) Entering or remaining in library buildings without proper footwear or clothing.
- (9) Storing or using personal materials such as bedrolls, sleeping bags, large bags, or suitcases.

(h) Enforcement. Penalties for violations of this section shall be as follows:

- (1) Class A prohibited acts. Any person that has committed a Class A prohibited act under this section shall have committed a civil offense and be subject to a fine of three hundred dollars (\$300.00) (with a two hundred fifty dollar (\$250.00) waiver penalty). The director of the library, or designee, is authorized to issue a Vermont municipal complaint for a violation of subsection (d) of this section.
- (2) Class B prohibited acts. Any person that has committed a Class B prohibited act under this section shall have committed a civil offense and be subject to a fine of one hundred fifty dollars (\$150.00) (with a one hundred twenty-five dollar (\$125.00) waiver penalty). The director of the library, or designee, is authorized to issue a Vermont municipal complaint for a violation of subsection (e) of this section.
- (3) Class C prohibited acts. Any person that has committed a Class C prohibited act under this section shall have committed a civil offense and be subject to a fine of fifty dollars (\$50.00) (with a thirty dollar (\$30.00) waiver penalty). The director of the library, or designee, is authorized to issue a Vermont municipal complaint for a violation of subsection (f) of this section. Failure to correct the prohibited act

shall result in dismissal from the library premises for the remainder of the day after an opportunity to be heard by the director of the library, or designee.

- (4) Class D prohibited acts. Any person that has committed a Class D prohibited act under this section will be asked to correct the prohibited conduct immediately. Failure to correct the prohibited act shall result in dismissal from the library premises for the remainder of the day after an opportunity to be heard by the director of the library, or designee.

- (i) Trespass. In addition to any other penalties set forth in this section, the director of the library, or designee, may issue a notice of trespass to any person who has committed a Class A or Class B or Class C prohibited act in accordance with this subsection (i).

- (1) Initial determination. If the library director, or designee, determines that a person has violated subsection (d), (e), or (f) of this section, the library director, or designee, may issue a notice of trespass against that person only after that person has received notice of intent to issue a notice of trespass and has been given the opportunity to be heard by the director, or designee, on the grounds for or extent of the notice. If, after giving the person the opportunity to present evidence, the director, or designee, determines that trespass is still warranted, the library director shall issue a notice of trespass to that person, which shall state the prohibited act committed, the date and time the act was committed, the contact information of the person issuing the notice of trespass, the trespass period, the effective date of the trespass notice if not appealed, the consequences of violating the notice of trespass, and information on how to appeal the notice of trespass. The notice of trespass must be hand delivered or sent via first class mail to the last known mailing address. The notice of trespass shall become effective immediately upon issuance.
- (2) Appeal procedure. The notice of trespass may be appealed to the commission by filing a written notice of appeal. The notice of appeal must be received by the library within three (3) business days of issuance of the notice of trespass. The notice of appeal shall set forth the basis for the appeal and include valid contact information, including a mailing and/or email address. Failure to file a timely petition shall constitute a waiver of any right to appeal the notice of trespass.
- (3) Hearing. Except as otherwise directed by the commission, the appeal shall be heard within ten (10) business days following receipt of the appeal. The hearing before the commission shall be on the record. The commission shall consider the preponderance of the evidence and the burden of proof is on the library director, or designee. The commission shall render a decision at the conclusion of the hearing and mail a certified copy of the decision to the last known mailing

address. The decision of the commission shall be deemed final and effective upon issuance.

- (4) Judicial review. The decision of the commission may be appealed under Rule 75 of the Vermont Rules of Civil Procedure.
- (5) Restorative justice. A person may choose to engage in a restorative justice process with the Burlington Community Justice Center that could adjust the duration of the trespass and the fine. The notice of willingness to engage in the restorative justice process must be communicated to the library either in person, by phone, electronic mail, or first class mail within seven (7) business days of issuance of the notice of trespass.
- (6) Duration. A person that has committed a Class A prohibited act shall be subject to a notice of trespass for one hundred eighty (180) days. A person that has committed a Class B prohibited act shall be subject to a notice of trespass for sixty (60) days. A person that has committed a Class C prohibited act shall be subject to a notice of trespass for one (1) day.

(j) Protection of library property; penalties.

- (1) The city may recover in a civil action damages for detained or damaged library property, together with costs and reasonable attorney's fees. Damages may include both delinquent fines and replacement fees.
- (2) A person who willfully damages or defaces or removes without authorization any recording, book, or object available for public use or loan from the library shall be fined not more than one hundred dollars (\$100.00) for each offense. Each piece of library material shall be a single offense.
- (3) A library patron who detains library property for more than ninety (90) days after being provided written notice to return the property shall be fined an amount equivalent to the replacement cost of the material wrongfully detained, including the staff time to replace it, up to a maximum of five hundred dollars (\$500.00).

(Ord. of 3-9-20(1))