



# Burlington City Council Ordinance Committee 12/5/2017

## BURLINGTON CITY COUNCIL ORDINANCE COMMITTEE

Tuesday, December 05, 2017

Fletcher Free Library, Fletcher Room, 2nd Floor

235 College St., Burlington, Vt.

5:30 p.m. – 7:30 p.m.

### \*\*\*\*MINUTES \*\*\*\*

**Present:** Chair Chip Mason (CM), Sharon Bushor (SB), Ali Dieng (AD)

**Absent:** none

**Other City Staff:** Gene Bergman (GB) (Staff Attorney), Eileen Blackwood (EMB) (City Attorney)

**Public:** Stephen Marshall, Christopher Anderson, Adam Roof, Mark Flynn, Nico Amador, Jared Carter, Anna Stevens, James Lockridge

**CM called the meeting to order at 5:42 p.m.**

1.
  - i. **Agenda:** SB moved the agenda with action to be on 4.03 first, AD seconded, and it was adopted unanimously 3-0.

**2.01 Public Forum:** no one spoke.

**3.01 Approval of OC Minutes of 11/20/17:** SB moved to approve the November 20, 2017 minutes with the modification on Other Business that on items that the committee wants follow up on should be on a tracking list. AD seconded and the minutes were approved unanimously as amended, 3-0.

### **4.01. Proposed Amendments to Comprehensive Development Ordinance re ZA #17-17, Retaining Walls**

GB noted an email from Scott Gustin of the Planning and Zoning Office (PZ) noting that a correction to the text is needed to incorporate a change made by the Planning Commission that was not reflected in the version referred to the council and then the committee. This change deletes the words "side or rear" in lines 22, 23, and 24 to have the setback requirement apply to any boundary.



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CM also noted that due to a scheduling conflict staff from PZ would not be available to answer questions about the proposal. He recommended postponing if there are questions.

GB summarized Gustin's September 18, 2017 memo sent to the council explaining the proposal. The amendment was approved by the Planning Commission (PC) on August 8, 2017. Retaining walls are not expressly addressed in the zoning ordinance but have been governed like any other structure except for the allowance to project into setbacks. The amendment, which addresses height limits and setbacks, is proposed to be located in its own section. The standards were adopted upon review of 8 municipalities. The proposal has walls limited to 5' in height with a 2' setback but taller or closer walls may be allowed subject to DRB review and approval.

SB said she'd called Gustin and asked why the criteria was set and he said he did not know. She has concerns about shadowing effects that she'd like responded to by PZ.

**Action: On SB motion and AD second, the committee unanimously, 3-0, tabled consideration until the next meeting that PZ staff can come to.**

### **4.02 Proposed Amendments to Comprehensive Development Ordinance re ZA #18-03, Article 8, Food & Beverage Processing**

The October 23, 2017 memo from Comprehensive Planner Tuttle explained the amendment which was approved by the PC on October 10, 2017. The item approved by the council on August 7, 2017 on food and beverage processing did not include the corresponding Article 8 updates. This amendment updates the minimum parking requirement table, Table 8.1.8-1 to be consistent with the August amendment. The changes for new food and beverage processing use are consistent with the requirements for Tour Oriented Manufacturing and micro-brewery/winery uses. The proposal intends to allow for flexibility in calculating parking requirements based on the potential intensity of the use.

SB said a piece meal approach is not in anyone's interest and can lead to unforeseen consequences. She wonders about the sizes of the uses. She asks if the change makes it easier to meet the requirements. CM said it seems to depend on the size of the space. SB asked if the goal is to make it easier to establish a brewery. CM said that the change would make it better for the community. SB wants to protect the neighborhoods from the impact.

**Action: On SB motion and AD second, the committee unanimously, 3-0, approved the amendment as written and referred it to the City Council for second reading, Public Hearing, and adoption.**





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### 4.03 Discussion of Ordinance Changes Concerning Quality of Life Issues in Downtown Core.

CM noted this is the second meeting on the issue. The CC directed the committee, by the Wright resolution, to come up with proposed ordinance changes. The committee heard from the Police Department (PD) and City Attorney (CA) last meeting that there are criminal sanctions already for urination/defecation and public consumption but the existing law should be made less punitive. The CA drafted a proposal and GB walked the meeting through it.

CM opened the meeting to public comment.

Stephen Marshall said it was morally repugnant to criminalize public urination if the city does not provide facilities that are freely available 24 hours a day throughout the city. The city can either provide the facilities or not pass the law or suspend enforcement. The city should ask, "what can we do better to make this unnecessary."

Mark Flynn said he is challenging these ordinances in court and is fairly pleased and sees this as a good sign. He has serious concerns about the unavailability of bathroom facilities as well. He would like the city to get out in front of the concerns. This is a public safety concern. In San Diego, that city did nothing when faced with a public health crisis that caused the deaths of 19 people. Being able to wash your hands and go to the bathroom is a basic human need. He also says that locking bathrooms in restaurants violates the plumbing code and isn't good for the city. He said that "customer-only" bathrooms violate the state's plumbing code.

Nico Amador, an ACLU organizer, is happy with the changes to repeal the punitive ordinances and adopt restorative justice practices. He supports the urination comments made thus far and said having more public bathrooms is a solution. There are a lack of options for people and that is compounded by accessibility issues and the lack of accessible resources. He praised Vermont's reputation to try new models and be a leader in solving problems.

Jared Carter, a Vermont Law School professor, asked if all the items in the resolution are under consideration. CM noted the CA's memos and noted that the charge of the committee is to focus on the criminalization of behaviors. Carter then echoed the comments made already and said where there are no places to go, you have to go. He questioned the constitutionality of the criminalization of public urination or defecation. He encourages looking at alternatives.

Jim Lockridge questioned the criminalization of public urination. He noted the millions of dollars that are coming in the city for development but said we are not prioritizing basic human needs like public bathrooms. He asked the city to invest in these basics.

Adam Roof, City Councilor in Ward 8, noted the charge of the OC and that his Public Safety Committee is dealing with the issue in other ways. He questioned the CA assessment that catcalling is protected speech. He asked that the title of the



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proposed ordinance be changed since the ordinances are city-wide in focus. Adam said his public safety committee will look at the issue of the availability of bathrooms.

Anna Stevens, Vermonters for Criminal Justice Reform, also supports the comments made thus far. Criminalization does not address the root causes. You can tack on more and more offenses and still not look at the root of the problems. The way Burlington is looking at the heroin crisis is the way to move and is more effective.

Mark Flynn commented on the catcalling comment of Councilor Roof, saying the problem is how to narrowly tailor the law.

CM said the OC was directed to come back with an ordinance to criminalize certain things. The committee may report back but not support what is reported to the council. He noted that the public health issues by the public safety committee will be taken up by the council at the same time. CM noted that the catcalling issue was called out in the resolution and the CA memo addresses that. CM then turned it over to the committee.

SB noted that it is odd to move something forward that she doesn't support. She's pleased with the CA memo on the 2 issues that can't be addressed. She noted that the proposal does reflect what was asked for and that the CJC connection is very important to keep in the ordinances even if the criminal piece is deleted. She asked about the waiver penalty process and GB explained the process. She asked what the lasting impact is on the individual if the person is found guilty of a criminal offense. She'd like the elimination of the charge if a person completes a restorative/reparative justice program to be mandatory. She wants to have block parties and street events integrated into the revision of § 21-38. She asked the chair how he was going to proceed. CM said he was not going to ask councilors if they were supporting it substantively. GB asked the committee to consider the restorative justice proposal and if it will apply to the civil penalties. There was no support to apply it to the civil penalty revisions. SB asked that a rep from the CJC come to discuss how that system would work.

AD said the OC was tasked to draft an ordinance that has a criminal ordinance in it. It has. He also said it would make most sense to implement the public safety committee recommendations before the ordinance changes are made. CM said an effective date that links the two committee's work is an appropriate thing to talk about with the council.

Mark Flynn raised the question of injunctive relief. GB said the city has the authority to seek injunctive relief.

CM asked Councilor Moore's question about increasing pressure on the courts if this is passed and CA Blackwood said yes there would be more going to court. She asked if the State's Attorney has been consulted and CA Blackwood said yes, there has been discussions.

Jared Carter asked about what happens if a person fails to pay a penalty and GB explained. CA Blackwood said the chief's



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goal is to bring people in front of a judge to hold them to account when the person just refuses to deal with the violations.

SB asked how the CA is going to rewrite the restorative piece. CA Blackwood said that if a person voluntarily participates in the CJC process and successfully completes it, then the charge would be dismissed. SB asked how people are informed of the CJC process. GB & CA Blackwood explained.

Stephan Marshall asked it were possible that a criminal charge can automatically be expunged after a period of time. GB said that was not something the city had authority over to his knowledge.

**Action: SB moved to have the ordinance referred to the CC for first reading with the “downtown core” language in the title removed, with an amendment to have the question of section 21-38 refer to authorized street parties looked at by the CA to determine if and how it can be integrated into this proposal to be comprehensive, and to include the mandatory dismissal of a criminal charge upon the successful completion of a restorative justice program, with the recognition that the OC is making no recommendation on the adoption of the proposal, and with the sending of the 12/5/17 CA memo to the CC, and for the CA to review if defining criminal penalty is possible. AD seconded. The motion unanimously passed, 3-0.**

**5.01 Any Other Business—Next Meeting, 12/19/17 @ 5:30 pm to discuss the Ch. 25 Comprehensive updating of Plumbing Ordinance & Retaining walls.**

**6.01 Adjournment: 7:23 pm**

Committee Members:      Councilor Chip Mason, Chair  
                                 Councilor Sharon Bushor  
                                 Councilor Ali Dieng

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