



Regular City Council Meeting - Monday, November 9, 2015 - 7:00 pm - Contois Auditorium, City Hall 11/9/2015

MINUTES SUBJECT TO CORRECTION BY BURLINGTON CITY COUNCIL. CHANGES, IF ANY, WILL BE RECORDED IN THE MINUTES OF THE NEXT MEETING OF THE CITY COUNCIL.

BURLINGTON CITY COUNCIL

CONTOIS AUDITORIUM, CITY HALL

BURLINGTON, VERMONT

MINUTES OF MEETING

November 9, 2015

MEMBERS PRESENT: Jane Knodell (Council President) – Central District

David Hartnett – North District [arrived 7:35 PM]

Joan Shannon – South District

Selene Colburn, East District

Sharon Foley Bushor – Ward 1

Max Tracy – Ward 2

Sara Giannoni, Ward 3

Kurt Wright – Ward 4

William “Chip” Mason – Ward 5

Karen Paul – Ward 6

Tom Ayres – Ward 7

Adam Roof – Ward 8

ADMINISTRATION: Miro Weinberger, Mayor

Eileen Blackwood, City Attorney

Richard Haesler, Assistant City Attorney

Bob Rusten, CAO

Rich Goodwin, ACAO



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□ Jennifer Kaulius, Mayor's Office
Brian Lowe, Mayor's Office
Amy Bovee, Executive Secretary Clerk/Treasurer Office
Lori Olberg, Clerk/Treasurer Office
Branden Del Pozo, Police Chief
Chapin Spencer, DPW
Martha Keenan, DPW
Ron Gove, DPW
Neale Lunderville, BED
Bill Ward, Code Enforcement & Health Officer

OTHERS PRESENT: Charlie Baker, CCRPC
Andy Montroll, CCRPC rep
David Casey, Board of Health Chair
Matt Young, Howard Center Street Outreach Team
Tammy Boudah, Howard Center Street Outreach Team
Lauren-Glenn Davitian, Channel 17
Ron Ruloff, Cathedral Square
Barbara Hedrick, Ward 6

[Note: Minutes reflect the order of the published agenda.]

1.0 CALL TO ORDER and AGENDA

Council President Knodell called the meeting to order at 7:04 PM on November 9, 2015 and led the assemblage in the Pledge of Allegiance.

1.01 Agenda

MOTION by Councilor Colburn, SECOND by Councilor Giannoni, to approve the agenda with the following amendments with regard to the items listed and to take the action indicated:

Remove Item 4.04 License Agreements for Patio in Right-of-Way Adjacent to 101 Main Street – place on Deliberative Agenda as Item 5.03.



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· **Remove Item 4.03 Petition of South Forty Solar, LLC for Certificate of Public Good – place on Deliberative Agenda as Item 5.04.**

· **Note change of Item 5.03 Communication Fossil Fuel Divestment/Investment Committee to Item 5.05.**

· **Note change of Item 5.04 Communication Police Response to Item 5.06.**

· **Note written material for Item 5.07 Analysis of For-Hire Vehicle Operation.**

VOTING: unanimous; motion carried.

2.0 REPORTS TO CITY COUNCIL

2.01 Report: Charlie Baker, CCRPC, re: FY2015 Annual Report City of Burlington

Charlie Baker, CCRPC Executive Director, and Andy Montroll, Burlington Regional Planning Commission representative, reviewed the content of the annual report which provides background information on Regional Planning, information on funding, assistance from Regional Planning to the city, work with the city on issues of common interest and implementation, work on regional and city plans (ECOS, parking, PlanBTV, Clean Water Act compliance, Transportation Improvement Plan projects), and regional activities (legislative breakfasts, emergency management work). The merger of Regional Planning and Metropolitan Planning Organization has been successful. Annual solicitation for FY17 projects will be sent out by Regional Planning.

Councilor Bushor mentioned the intersection of Colchester Avenue and Riverside Ave. being unsafe relative to housing and should be given priority. The adaptive signal control at Dorset/Williston Road is anticipated. Andy Montroll said the work will start within 60 days.

President Knodell asked about encouraging the development of more housing along transportation corridors. Charlie Baker said the housing issue is beyond Burlington. Regional Planning is encouraging municipalities to have inclusionary zoning. Regional Planning is pulling together a regional housing forum.

2.02 Report: Burlington Board of Health Six Month Report

Bill Ward, Health Officer, and David Casey, Chairman of the Board of Health, discussed the six month report. Council Bushor asked about post-application monitoring of pesticides especially when applied close to the lake. David Casey said the application process for pesticide use is followed. The BED application for use of RoundUp was approved. Bill Ward added the area that was treated had to be cleared so BED workers were safe at work.

Council Colburn thanked the Board of health for support of the Safe Recovery Program that is facing severe funding loss. David Casey noted the three year strategic plan looks at health priorities in the city.





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2.03 Report: Howard Center Street Outreach Program Report 2015

Matt Young and Tammy Boudah, Howard Center Street Outreach Team, briefed City Council on the work of the outreach team to help link homeless individuals and individuals with mental illness and substance abuse issues to the appropriate social service agencies. The perception today is there are less incidents of violence, but more concern about aggressive behavior. The systems run by the state have now fallen on local communities.

Councilor Tracy asked about problems areas such as Cherry Street. Matt Young said the mental health professionals are trying to help one person at a time.

Councilor Colburn asked if there are any concerns or issues with public health, safety, and policing. Matt Young said not every public safety issue is a public health issue. Once public safety issue is cleared up then public health can try to address underlying issues and keep people out of the courts and jail.

3.0 PUBLIC FORUM

Public Forum commenced at 7:45 PM.

PUBLIC COMMENTS

Ø Ron Ruloff, Cathedral Square, spoke of the reaction to the Klan leaflets by the public and criticism of the police response.

Ø Barbara Hedrick, Ward 6, mentioned the parking meters and pay stations on residential streets with the resident only parking plan, noting the document that highlighted changes to the ordinance did not include all the changes. A map showing the location of the meters is needed. The public comment period ends 11/15/15 and the public was not given time to respond, especially about meters on South Prospect by Redstone and Maple Street. Parking meters are for downtown and not residential neighborhoods. Public Works is asked to delete this item from the plan

Ø Andy Montroll, joint committee on form based code, suggested in December a joint work session with the Planning Commission and City Council be held on how form based code will work in the city.

There were no further comments and the Public Forum was closed at 7:53 PM.

4.0 CONSENT AGENDA

4.01 PROCEDURAL: Amend/Adopt Consent Agenda and Take Action(s) as Indicated

4.02 COMMUNICATION: Accountability List

4.03 COMMUNICATION: Petition by South Forty Solar, LLC for Certificate of Public Good – Removed from Consent Agenda and placed on Deliberative Agenda as Item 5.04.





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4.04 COMMUNICATION: License Agreements with Catmount/Van Ness, LLC for Patio and Pavers in Right-of-Way adjacent to 101 Main Street – Removed from Consent Agenda and placed on Deliberative Agenda as Item 5.03.

4.05 RESOLUTION: License Agreement with Brisson Properties for Fence and Signage on Right-of-Way

4.06 RESOLUTION: License Agreement with Dirt Chic for Sign in Right-of-Way

4.07 RESOLUTION: Contract with Courtland Construction Corporation for Manhattan Drive West Slope Rehab Project

MOTION by Councilor Colburn, SECOND by Councilor Tracy, to accept the consent agenda (Items 4.01-4.07) as previously amended (i.e. remove Item 4.04 License Agreements for Patio in Right-of-Way Adjacent to 101 Main Street – place on Deliberative Agenda as Item 5.03; remove Item 4.03 Petition of South Forty Solar, LLC for Certificate of Public Good – place on Deliberative Agenda as Item 5.04.). VOTING: unanimous; motion carried.

5.0 DELIBERATIVE AGENDA

5.01 Special Event Indoor Entertainment Permit (one day only): Zero Gravity, 716 Pine Street, for December 10, 2015, 6 PM – 10 PM for film screening and public speaking

MOTION by Councilor Ayres, SECOND by Councilor Tracy, to approve a one day special event indoor entertainment permit on December 10, 2015 from 6 PM to 10 PM for Zero Gravity, 716 Pine Street.

DISCUSSION: Councilor Ayres noted the Licensing Committee unanimously approved the permit application. The permit has the support of neighbors who previously expressed concerns about earlier permit applications by Zero Gravity. Parking attendants are required for the special event to ensure there is minimum to no impact on the neighborhood. Councilor Shannon commended the engagement of neighbors by Zero Gravity and expressed appreciation for the work of the Licensing Committee to address concerns. There were no further comments.

VOTING: unanimous; motion carried.

5.02 Communication: Lauren-Glenn Davitian, Executive Director Channel 17/Town Meeting Television, re: FY17 Municipal Budget Proposal and Amendment of Channel 17 Government Access Trust Agreement

Lauren-Glenn Davitian reported"

- Negotiations are underway with Comcast for the next 11 year contract. Comcast has not complied with the conditions of the permit and are not proposing to comply. Channel 17 is asking the Public Service Board for public access to the commercial features of the network.

- The Channel 17 Trust Agreement must be amended to allow two municipalities to use one representative and to combine the voting. Town of Essex and Essex Junction would like one representative on the Channel 17 Board.

- The budget request of \$12,000 will cover live streaming of meetings for Burlington. Presently the city pay \$6,000 per year to archive meetings and have the clickable agenda feature.





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Councilor Busher asked if the municipality can vote on the budget request separate from the resolution. Ms. Davitian confirmed this. Mayor Weinberger said the Administration will take the budget request under advisement and bring forth as part of the Administration budget proposal.

5.03 Resolution: License Agreements with Catamount/Van Ness, LLC for Patio and Pavers in the Right-of-Way adjacent to 101 Main Street

MOTION by Councilor Ayres, SECOND by Councilor Paul, to approve the resolution for license agreements with Catamount/Van Ness, LLC for patio and pavers in the right-of-way adjacent to 101 Main Street.

DISCUSSION: The following was noted/discussed:

Councilor Ayres said the Licensing Committee unanimously approved the license agreements. The proposal is ADA compliant and consistent with situation I cities of similar dimension. The issue has been deliberated for almost a year. The right-of-way lease agreement is for viable reclamation of an historic building in the downtown core. The patio will enhance the vibrancy of the downtown from Main Street to the waterfront. The 10 year lease agreement is an attractive repurposing of the historic armory building which has been largely dormant for the past 10 years. The license will allow construction of a patio consistent with the financial obligations.

Councilor Shannon expressed concern about the precedent of an outdoor café structure built on Main Street and the long term for the license. There must be a public benefit before any sidewalk is lost. The public should view the plan on the ground (have the applicant rope off the area). There were no further comments.

AMENDMENT to refer the license agreement back to the Licensing Committee with the request the applicant rope off the area for a site visit by the committee, City Council and the public before having City Council take action on the license on 12/21/15.

DISCUSSION ON AMENDMENT: The following was discussed:

Councilor Colburn asked how anomalous the agreement is in structure and length of time. Mayor Weinberger said there are examples of incursion into the right-of-way in the city (entry to former Vermont House building, Burlington Free Press building, Orange Leaf). The city will receive market rate revenue on the 10 year lease which is not the case with other leases. The proposal is a successful adaptive reuse of a building which was vacant for a long time and meets the goal of connecting Church Street to the waterfront with a vibrant Main Street.

Councilor Tracy asked about the process that was followed. The applicant said the process began in 2013 with meetings with Public Works on the concept and to look at issues with the patio and right-of-way. Necessary adjustments were made to the plans. The patio is nearly 15' from the parking meters and eight feet from the edge of the nearest tree grate. Public Works and the City Attorney drafted the agreement. The perpetual license is wanted because a concrete and steel structure will be built by the applicant. There is risk because the city could require the building to be removed after 10 years. The structure will add vibrancy and stitches the waterfront to Church Street along Main Street. At this point in time in the construction season the work on the building will not begin until spring.

Councilor Hartnett noted the city has some risk in that the public right-of-way and sidewalk are important issues. Going forward more clarity is needed with licenses, outdoor seating, and patios. Handling on a case-by-case basis may not be the best method.

Councilor Tracy noted there has been a lot of process with the application. The way issues before the Local





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Control Subcommittee and Licensing Committee are being dealt with at the City Council level is bad precedent. Individuals are urged to attend the committee meetings and express concerns there. Open channels of communication are needed and a good faith effort to make it work for businesses.

- Councilor Roof agreed it is the responsibility of the city councilors to pay attention and the Licensing Committee should look at how to improve the process to identify issues faster.
- Councilor Bushor agreed one-size-fits-all does not work so there must be trust in the process.
- Mayor Weinberger stated the standard right-of-way clearance is five feet which is exceeded by the project.
- Councilor Ayres stated the purview of the Licensing Committee is not to establish parameters for decisions. The decisions was made based on a strong recommendation from Public Works and the applicant after a year of discussion to negotiate the agreement. The Licensing Committee voted unanimously based on testimony to move forward. It is not the purview of the Licensing Committee to move the boundaries for ADA compliance or to second guess the thorough review by Public Works.
- Councilor Shannon noted Vermont House has encroachment. There is 12' of sidewalk width from the steps, but there is not exclusive use by the establishment. Minimum of five feet of sidewalk is for ADA compliance. There is no other policy that establishes an appropriate walk width in the downtown. The purview of the Licensing Committee is to second guess and question staff.
- Councilor Wright noted some valid issues were raised with the proposal and the applicant said construction will not begin until spring so a small delay to outline the patio area will not be harmful.

There were no further comments on the amendment.

VOTING ON AMENDMENT: 5 ayes, 7 nays (Bushor, Tracy, Paul, Ayres, Roof, Colburn, Knodell); motion does not carried.

VOTING: 11 ayes, one nay (Shannon); motion carried.

5.04 Communication: Petition of South Forty Solar, LLC for a Certificate of Public Good for Installation of Solar Electric Generation Project off Sunset Cliff Road

Councilor Mason recused himself.

MOTION by Councilor Bushor, SECOND by Councilor Wright, to waive the reading, accept the communication on the installation of a solar generation project off Sunset Cliff road and place the information on file.

DISCUSSION: City Attorney Blackwood noted the Conservation Board had comments and will follow up with the applicant. Decommissioning and line of credit assurance is included in the agreement. There are two sets of neighbors with legal counsel (Sunset Cliffs, Strathmore). City councilors can attend the site visit and public hearing. Staff will be present to represent the city. Councilor Hartnett stated the process has been working. The project is good. Councilor Wright said there have been valid concerns by neighbors. Councilor Wright asked about solar panels located over sewer pipes. Chapin Spencer explained there is a sewer easement on the land. The design is being adjusted to maintain free and clear access to the sewer line. There were no further comments.





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VOTING: unanimous; motion carried.

Councilor Mason returned to the table.

5.05 Communication: Recommendations for Evaluating and Responding to Requests for Divestment of Pension Fund Investments

MOTION by Councilor Colburn, SECOND by Councilor Roof, to waive the reading, accept the communication, place the information on file, and approve the recommendations presented by the Fossil Fuel Divestment/Investment Committee.

DISCUSSION: Councilor Colburn reported following evaluation of fossil fuel divestment of city public funds and investigation of the investor network the committee provided recommendations for criteria and processes for the Burlington Employee Retirement System (BERS) and divestment suggestions for consideration. Next steps for the committee include financial assessment of fossil fuel divestment and impact on the portfolio. There were no further comments.

VOTING: unanimous; motion carried.

5.06 Communication: Hate Speech, Harassment, Crime, and Police Response

MOTION by Councilor Colburn, SECOND by Councilor Giannoni, to waive the reading, accept the communication, and place the information on file.

DISCUSSION: The following was discussed/noted:

- Councilor Colburn noted three incidents that appeared to be dismissed by police until there was intervention and then the police responded with a full and thoughtful investigation. City Council and the police need to prioritize matters of racial justice and dismantling racism as matters for discussion and collaboration with affected communities and individuals. Commitment to the goals and actions in the Diversity Plan, anti-racism training for City Council, necessary training for police, and community oversight of policing is needed to build more accountability and transparency in the system and the role of the city in reforming the criminal justice system and restorative justice programs in responding to incidents of hate and bias.
- Councilor Bushor agreed diversity training for City Council on an annual basis would be good. NPAs should be included in the training.
- Councilor Wright reported he heard positive feedback about the police presence in neighborhoods. The city has a fantastic police force.
- Councilor Giannoni agreed there have been positive comments about the police presence, but the affected communities may not feel comfortable saying anything about police presence.
- Councilor Ayres observed the over-arching issue is the scourge of drug use which knows no color lines. Drugs kill all with equal evilness, but that issue is not germane to the issues raised by Councilor Colburn.





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· Councilor Tracy stated the point is to bring laser focus to the issues of racism and hate that is seen in the community. City Council's role as decision makers is to enhance the safety and inclusivity of a particular community.

· Police Chief del Pozo spoke of policing in Burlington going beyond the 9-1-1 response and to work better with issues of bias and racism. The priorities are set by the community. Anyone can contact the Police Chief. The department is creating community affairs officers and liaisons to form several channels of contacts to resources so there is a network where people can see a path into the Police Department for their concern and get answers to questions.

· President Knodell assured City Council will listen to the community. An inventory will be done to see what actions City Council should be doing from the list of actions in the Diversity & Equity Plan.

· Mayor Weinberger said a report to City Council is forthcoming on progress with the Diversity & Equity Plan. The city and the police have taken important steps toward reform and successful policing for the 21st Century. There is vibrant and ongoing discussion in that state on this matter.

There were no further comments.

VOTING: unanimous; motion carried.

5.07 Communication: BPD Analysis of For-Hire Vehicle Operation in the City

MOTION by Councilor Bushor, SECOND by Councilor Shannon, to accept the communication and refer to the Ordinance Committee.

DISCUSSION: The following was discussed/noted:

· Attorney Blackwood noted the report includes police reports, audit of Uber, and a taxi company complaint and license suspension.

· Police Chief del Pozo reported the 90 day data analysis of for-hire vehicle incidents show 583 accidents, 404 traffic tickets issued, 35 incidents (9-1-1 calls) involving taxis in Burlington and South Burlington.

· The conclusion of the reports is for-hire vehicles had less than one percent of all traffic violations issued by the police when officer discretion is used to enforce traffic and safety violations. For-hire vehicles were involved in less than one percent of accidents reported to the police department. Of the 9-1-1 incidents only one case involved a taxi driver. The records management system is still being developed and for-hire vehicles cannot yet be identified in a rigid way so the percentage could be slightly higher.

· Of the 583 accidents, three involved taxis and one involved Uber. Of the 404 tickets issued, three were to taxis, one was to Uber, and two were for municipal taxi violations. One taxi driver was identified as a person of interest in one incident.

· Enforcement on Halloween showed six violations such as stopping in traffic to pick up a fare, lack of a dome light or rate card. On lower volume night no violations were observed.

· Regarding the Blazer investigation and the 90 day license suspension, the violations were not observable by officers on patrol, but were from referrals.





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Recommendations from the analysis include:

- Hire a part-time enforcement officer to investigate violations of the vehicle-for-hire ordinance.
- Draft a standard set of rules governing operation of for-hire vehicles.
- Require meters for street hails. Quotes can be given for rides hired by phone. The passenger must agree with the rate.

Mayor Weinberger spoke in support of the part-time enforcement officer and having the Ordinance Committee review the taxi ordinance.

Councilor Tracy asked about doing background checks. Chief del Pozo said if the city can audit background checks done by private companies then the practice is acceptable.

There were no further comments.

VOTING: unanimous; motion carried.

6.0 COMMITTEE REPORTS

- Ø Public Safety Committee invited the public to share concerns on safety and will discuss the comments at the next meeting.
- Ø Ordinance Committee will meet to discuss technical amendments to the Smoking in Parks and Vehicle-for-Hire ordinances.
- Ø Development Agreement Public Advisory Committee (DAPAC) will meet on November 12, 2015.

7.0 CITY COUNCIL – GENERAL AFFAIRS

- Ø Councilor Hartnett commented on the commitment by Airport Director, Gene Richards, to partner with the neighbors in South Burlington on the airport noise issue. There is no decision on a hotel or parking garage at the airport as yet.
- Ø Councilor Harnett cited the split decisions on the last three items handled by the Licensing Committee as the need for better decision making by the committee.
- Ø Councilor Giannoni reported the VNA Family Room that has transformed so many lives is decreasing staff and hours of operation. City Council and the public needs to advocate for the place.
- Ø Councilor Ayres stated the Licensing Committee makes decisions based on historic precedence and past decision patterns and recommendations. If the parameters of decision making are changed then this needs to be codified.

8.0 CITY COUNCIL PRESIDENT – COUNCIL UPDATES

Council President Knodell acknowledged the divisive discussion on licensing and noted precedence is important because decisions cannot be made capriciously. Decisions must be fair and consistent. More communication between City Council



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and the Licensing Committee outside of city council meetings is needed.

9.0 MAYOR – GENERAL AFFAIRS

Mayor Weinberger announced:

- Interviews are underway for a permanent Fire Chief
- The airport is updating the noise maps in order to receive federal funding for noise mitigation. The new maps were shown to the public to see the noise impact area. Help is provided to homeowners to mitigate noise in their house.
- VFW Veterans Day event on November 11, 2015.
- Hearing on the new criteria approved by City Council to evaluation the BT transactions is November 18, 2015.

10.0 ADJOURNMENT

MOTION by Councilor Wright, SECOND by Councilor Roof, to adjourn the meeting. VOTING: unanimous; motion carried.

The meeting was adjourned at 9:45 PM.

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