BURLINGTON CITY COUNCIL ORDINANCE COMMITTEE 10/21/2015

City Council Ordinance Committee

Wednesday, October 21, 2015

Conference Room 12

MINUTES

Attendance

Committee: Councilors Max Tracy (MT) (arrived at 6:26), Sharon Bushor (SB), & Chip Mason (CM) (chair).

Other City personnel: Eileen M. Blackwood (EMB) (City Attorney), Gregg Meyer (GM) (Asst. City Attorney)

Committee Staff: Sr. Asst. City Attorney Gene Bergman (GB)

Public: Chris Rice (chris@mmrvt.com), Nicholas Schieldrop, John Bossange (JB) (jbossange@myfairpoint.net) (PR&W Commissioner), Adam Roof (AR) (City Councilor)

CM convened the meeting at 5:37 pm

1. **Agenda:** SB moved to approve the agenda, CM2d, and the agenda passed 2-0. (MT absent).

1. **Minutes of 9/17/15:** SB moved the adoption of the minutes, CM seconded, and the 9/24/15 minutes were adopted unanimously (2-0).

1. **Public Forum: none**

1. **Ordinance Discussion**

   4.01 Health- Smoking prohibitions at city parks, sec. 17-8A

CM recognized commissioner Bossange (JB). JB said that he sent the committee information, had received the draft revised ordinance and it looks good to him. The commission stood unanimously behind the initiative as a public health issue and a statement to our families and children and it wants all residents to be able to enjoy the parks. While

understanding the addiction of smoking, the commission wants the grounds, beaches, etc. of the parks to be smoke free. They come from their experiences at North Beach and other parks and having reviewed other cities doing this; they want to join them. They have not received verbal complaints leading to this proposal but they don't think need anything. They believe that the committee has taken good steps and ask it to adopt the ordinance. He said that Dir. Bridges supports it.

SB says she supports the work that went into the additional information supplied by the commission. She was glad to see in the literature the recognition that people are addicted and that not all can stop smoking even if they want to and so the committee discussed that the smoking can occur on the sidewalks and elsewhere. She is glad we are providing space for those who do smoke and providing space for the freedom from smoke.

CM moved the discussion into the proposed ordinance with the committee's amendments. CM asked if the statutory reference was correct and GB said he would have to check. SB said she wasn't sure what the statute defining "tobacco products" says, wondered if it should be spelled out, but decided she was fine with how it is proposed to be written. CM said the statute tracks with what the city did previously and that the intent is to expand the prohibition to electronic cigarettes. He said the intent of the other amendments to the ordinance is to extend the area where people can smoke in the parks. SB noted that the piece not in this proposal is the educational information which, for example, is on NYC's website and CM suggested to JB that the educational materials be included in the PR&WC website. JB agreed. SB and CM also said that signage needs to be part of the budget for this, leaving the specifics to the commission.

SB said she needs to know more of how the ordinance works in alerting persons renting a site at the campground if and where smoking is allowed. JB said they'd leave that to the director's discretion, would be based on common sense, and the director would be able to figure it out and change locations as needed. SB asked CM to reword the ordinance to have more clarity in the decision to allow the designation of smoking permitted campsites. SB wants to require the designation of smoking sites. CM questioned the practicality but would support saying "shall" in the designation and offered the following wording, which SB agreed to: "Additionally, the Director of Parks and Recreation shall designate specific areas with any campground at a city park where smoking is permitted."

Action: SB moved to amend to conform to the wording CM suggested, CM 2d, and the committee unanimously, 2-0 -(MT not yet present), adopted the amendment. Then SB moved to refer back to CC for adoption with a recommendation to adopt the ordinances as amended and CM 2d. The committee unanimously approved the motion 2-0.

SB asked JB to thank the commission for its work.

4.02 Vehicles for hire, chapter 30 (taxi ordinance rewrite)

GM introduced a clean document and said the City Attorney's Office did and is working through the comments it received as part of the effort of the Administration to incorporate the feedback received over the last few months.

CM raised the issue of process that will occur going forward, noting the deadline in Nov. to get back to the council with something. CM asked GM to highlight where there are issues and asked that it be circulated to the working group. EMB said that if changes are made tonight that they be integrated before sending anything out; CM agreed but said he's not anticipating making changes. SB said there may be some things that may be discussed that would suggest a revision and if that happens then that should be posted. CM agreed.

CM asked GM to also highlight where changes have been made from the temporary agreement with Uber.

GM said that, on page 3, the make-up of the licensing board would be changed and the administration be located in clerk/treasurer's office and that there is no airport commission participation in the licensing at the airport. On Page 5, they are proposing that instead of individual licenses to simplify the system to a vehicle for hire license with a schedule for fees; they are now discussing a sliding scale for fees for numbers of cars. CM asked if there is one fee or not. GM said the need is to not lose the revenue that is needed to administer the ordinance and they are looking at how that would work. SB asked the Uber rep if Uber would they be willing a fee for a group of vehicles, i.e. 25-50. EMB said that is what we are trying to do, proposing the threshold as 20 or more and if a company doesn't want to disclose the number, then the company would pay the highest fee.

GM said the goal is to create a simple process for all types of companies. CM asked if the investigation was separate from background check and GM said yes. EMB said that an example of what would disqualify someone from a license would be fraud, pointing to 30-8 on page 6. GM also noted that (e) is where the airport is seen as separate for setting its own rules.

On Page 6, regarding background checks, the model is an audit and compliance model. The standards are much the same as what we have now. GM said we may see some push back on this point. We have lowered the look back from 10 years on some problems but shortened the time on some others.

MT arrived at 6:26 pm.

CM asked if Uber is providing driver names now. GM said no. He said that the certification is that the company did the background check, without naming names, and under the audit process during the year, the city could request a method to show records of a sampling of individual drivers, along with an annual certification. Drivers need to be checked annually. CM posed a hypothetical regarding Uber; EMB said the driver must be checked before driving, and city gets an annual certification and can audit where we believe we need to audit.

EMB asked Chris Rice from MMR/Uber to comment. Rice said that they'd want to provide information as part of an annual certification and audit. He said that the requirement written in (a) (4) of 30-9 is not what Uber wanted. CM said he doesn't

see the value. MT says the system is cumbersome and that he always wanted the city the do the background check and asked, what is the hurdle? EMB said that Uber does not want it and MT asked them why. Rice said it is proprietary info as to how many drivers, etc., they have. EMB said this is a core issue for their model (not disclose who drivers are, etc.) and is important to how it works for them and they'd pull out of Burlington if they are made to disclose. EMB has found that cities elsewhere are being threatened by Uber to leave market and have done so. GM added that the Uber knows the alternative is something that they have to sell to the city and that they will be here to explain this red line. EMB said this is why we are putting forward an alternative model. SB said she's been in the meetings and has been open to a different type of model than the city doing the checks. She noted the public safety enforcement provisions elsewhere in the ordinance. She is open to having background check system applicable to all companies; what is proposed does what we want and will allow people to operate in Burlington.

CM looked at section 30-11, criteria, noting they are the same as in the current ordinance except the look back, which is proposed to conform with current practices. GM noted the "obligation to disclose" section and the sanction for failure to disclose. GM noted the section 30-13 requirement for photo identification. This allows passengers to know who they are getting as a driver. The sanction for a violation is an $800 fine.

GM said the next section is different than current ordinance because it simplifies standards. SB said it doesn't say anything about the cleanliness of a car. GM said it is written to let the market take care of this issue. Uber has its own system. He noted that the vehicle identification provision may be controversial; it was requested by the police. Insurance requirements do recognize the difference between permanent taxis and ones used occasionally but Uber must have $1 million coverage as an umbrella policy.

On records, GM said they have found that a lot can be learned from information provided by this system that can be used to improve the transportation system generally. He has heard there may be controversy by companies feel that the info is proprietary. GM said the request for obtaining this information comes from those who do transportation planning. CM asked if this info is being currently collected by the city and wondered if this is adding costs to startup companies. GM said the info, from reviewing it with other cities and our own planners, led them to the conclusion that this info would be helpful for transportation planning and public safety purposes. CM asked if other cities are providing it and GM said other TNCs are providing it to other cities. Adam Roof (city councilor) said that there is an out for small companies. EMB said it will be imposing a big burden on small companies and that it is still be looked at. SB said some pieces of information would be very useful to help us serve those we are trying to serve and the unmet needs of the community.

GM noted, pointing to page 14, the passenger rights that should be posted. They are similar to what we have in the current ordinance. He noted that they have opened up the possibility for "dynamic market pricing", pointing to section 30-24. GM said the City Attorney's Office has been told that dynamic pricing raises prices only about 10%, normally. SB noted this is an area that she is not sure of. MT wondered how to determine when to turn dynamic market pricing on and off and what is the default for the dynamic price. MT asked Rice how the range offered by Uber works. GM said that price range is locked in. MT posed a hypothetical for a huge bill. CM wondered how this would work with a traditional cab company. GM said that the use of the words "preserve the number of existing drivers" was taken from Vancouver.

The next sections came from the existing ordinance, GM noted. On enforcement, GM noted it was based on feedback they

heard. Establishing compliance system is important as is doing it quickly. SB said she felt strongly about this and the need to build in spot checking. This maintains the oversight over the process, including appeals.

GM said the hearing provisions provide due process. The proposal also allows impoundment. CM noted that hearing panels should be part of this. GM said this will be more straightforward than what is currently done. SB said the testimony at the meeting was that this could be done. EMB feels this can be done.

CM opened the discussion to the public. Chris Rice spoke and thanked the work group and CA office that staffed it. There are a number of pieces that are an issue for Uber and those have been communicated: background checks, liability issues, reporting, and dynamic pricing. On the checks, there have been changes are pleased with, some that depart from other jurisdictions that provide no public safety benefit, but we are working through the issues. The liability issue should be on the backburner based on current draft, which he just got. On reporting, the concept is an important one. If left to a company, there has to be auditing in place. The devil is in the details, including the data, and the current draft is a significant departure from what we've seen elsewhere and Uber is not seeing a safety benefit to asking for it. On dynamic pricing, the point is to get more cars on the road and the language here is too broad. Permitting surge pricing is important step. They are working on these things with the Administration.

Adam Roof, city councilor, said that a lot of tweaking has to happen. He pointed to section 30-12(b) as an example.

Nick Shieldrop said there are things to consider and handed out paper with his points. He said he is uncomfortable that public has not had a referendum approving of the adoption of this ordinance under the state statutes. He also feels licensing should not have been sent to the airport previously. He asked the committee to include the language from his handout. He said that vehicle identification language is for public safety and finds the language in 30-22 vague. CM explained that the requirement is found in section 30-21 in the current draft and that it is one of the four locations. Shieldrop, on section 30-35, said he is complaining about the airport.

CM closed the public comment period, all who were interested having had the chance to speak.

CM asked what happens next and said that he needs more time to digest. He thinks that if there is a list of objections to the ordinance as drafted and comments where the city has a different position than the objectors and the committee can get that a few days before that would be good. He said he doesn't know if more than one OC meeting is needed. SB said she thought 2 meetings were needed.

EMB said the office needs a couple of weeks to do more work on this. CM tentatively set next meeting at Nov. 12 at 5 pm for the next review of the taxi ordinance rewrite and will run the date by MT (who left to go to another meeting) to confirm. Nov. 17 or 18 is an alternative.

5. **Other business. The next meeting was set for** Nov 12 at 5 pm hopefully in CR 12.

Adjournment: CM adjourned the meeting at 7:42 pm.