



Burlington City Council Ordinance Committee Meeting ***Remote Only*** - Wednesday, October 12th at 6:00 PM 10/12/2022

ORDINANCE COMMITTEE

Tuesday, October 12, 2022

Via Zoom (Remote)

FINAL MINUTES

Members Present: Councilor Traverse (Chair), Councilor Hightower, Council President Karen Paul (Ex-Officio)

Staff Present: Kim Sturtevant (Acting City Attorney), Sarah Montgomery (Associate City Clerk)

Others in Attendance: Sharon Bushor, Chris Hughes, James Dumont, Laurie Smith, Sharon O'Neill, Almy, Ashley Steranka, Jon Rose, Jeff Silvestro, Sam McGinty, Rosemary Blizzard, Ryan Kirby

Meeting called to order at 6:00 PM.

1.0 Agenda

1.01 Motion to adopt/amend agenda

Motion to Adopt Agenda as is.

Motion by Councilor Hightower, Seconded by Councilor Traverse

Final Resolution: Motion Passes

Yes: Unanimous

2.0 Public Forum

Sharon B: On Noise Ord – Hopes the committee comes to the conclusion that the ordinance as written is sound and addresses all the possible scenarios that could come up. License Comm. acts as safeguard for the issues the ordinance doesn't address, doesn't think changes are necessary. On RCV – The issue seems to be around if the threshold is not met, the viable tabulation method could be hand-counting, that is how the City used to do it when RCV was in place awhile back.

Chris H: Director of Policy at RCV Resource Center, will be there to answer questions and concerns.

3.0 Adopt Minutes from 9/9/2022

Motion to Adopt Minutes from 9/9/2022 without changes.

Motion by Councilor Hightower, Seconded by Councilor Traverse

Final Resolution: Motion Passes



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Yes: Unanimous.

4.0 Committee Discussion

4.01 Discussion of Noise Control

James D: Does the current noise ordinance, coupled with the entertainment permit ordinance, privileges some speech above other speech? Yes, it does, it is a free speech issue. There a certain speech protections granted to those who have a liquor and entertainment license, the way the ordinance is as written does not address the first amendment issues, but could be addressed better in a re-write. It is unfair that Burton cannot get their permit granted because of these issues.

Laurie S: In total support of a noise ordinance that keeps quality of life in Burlington high. South end of Burlington is a quiet residential area, a business coming in and creating a lot of noise isn't ideal and doesn't make sense. The same bar needs to be held across all noise scenarios (businesses and residential).

Sharon O: Less concerned about noise from the concert itself, but the traffic/car noises when leaving. South end is a quiet end of town and would prefer to keep it as such from her neighborhood and yard.

Almy: The location of this proposal is entirely inappropriate, there are better places much more suited for a large concert venue. The conflict between the noise ordinance and the entertainment permit really emphasizes the issue at hand.

Councilor Traverse: If an entity is exempt of the noise ordinance, do you know if the exemption extends only to the entertainment itself, or extends to everything in and around the event itself as well? His understanding is that only extends to the band/DJ that's playing, not the patrons and their noise levels.

Attorney Sturtevant: Would need to follow up with License Committee as to how the permit is applied, although her understanding is consistent with Councilor Traverse's

Councilor Traverse: There's two issues at present – 1. The legal argument for the first amendment challenge and 2. The noise ordinance as written is effective to protect the quiet and well-being of our neighborhoods. On the CA's Office perspective, on the first amendment argument, is it you conclusion that the noise ordinance is content neutral.

Attorney Sturtevant: The noise ordinance has been challenged before, the Howard Opera House, it was found to be constitutionally acceptable. Yes, the ordinance is constitutionally acceptable.

Councilor Traverse: A case in Attorney Dumont's outline allowed exemptions for business and political speech. If we exempted entertainment permits that we're submitted by businesses, or political candidates, that would be a problem. The entertainment language is rather broad and from a constitutional standpoint our ordinance seems to follow the purpose of the ordinance. While mindful of the specific suggestion that is any entertainment that is permitted by the City needs to end



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by 10 PM, then there is a lot more out there that would have to abide by the ordinance as well, outside of the permitted time.

Ashley S: Reiterates Sharon O's arguments. It isn't so much about the noise, but the infrastructure in and around the concert venue. The one lane bridge will be a nightmare and cannot imagine that the police will be there to help relieve the concert crowd's exit.

James D: Apart from the legal dispute, there are better ways to revise the ordinance. He offered to submit numerous drafts of the ordinance to the CA's Office

Jon R: Represents Burton in the matter. Would leave the constitutional analysis to the CA's Office, although that what has been said makes sense. Burton wants to emphasize the points of the letter - this project has been under extreme scrutiny and has maintained its suitability through multiple public processes. The DRB granted permits based on the facts and findings of the location, it was determined to be an appropriate location. There are operational plans in place to control the flow of parking lot activity, restriction on outdoor music - Burton has made commitments to facilitate the concerns that neighbors may be worried about.

Councilor Paul: Recognizes that this topic was included on the agenda for the neighborhood folk to express their thoughts and viewpoints on the issue, and emphasizes that if neighbors were unable to attend they can submit comments in writing for the committee to review.

Almy: *In writing*: the South Burlington City Council placed limitations on the Old Post for their permit to allow outdoor music at their venue. Makes note that the neighbors present are part of a larger group advocating for the permit to be considered closely.

Councilor Traverse to Attorney Sturtevant: Verification on scope of the exemption's extent to the entertainment itself would be helpful.

4.02 Discussion of Ranked Choice Voting

Councilor Traverse: A decision must be made on the RCV component as the Special Election on December 6th will be the first go-around given there are three candidates in the mix.

Councilor Hightower: A few preferences were drawn out in the last meeting, but no concrete decisions were made.





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Chris Hughes, Ryan Kirby, Sarah Montgomery, and Jeff Silvestro were promoted to panelists for this discussion.

Attorney Sturtevant: Makes note that action will be needed tonight, or the latest the October 19th Ordinance Committee meeting, for the RCV ordinance to be ready to go before the Council on 10/24.

Councilor Traverse to Attorney Sturtevant: From your perspective, are we going to have put whatever method we select this evening into ordinance? Kim: Yes, it will be included in the ordinance.

Referring to Attorney Tim Devlin's outlined memo on RCV methods:

- #1 and #2 were non-decision items. #3 is a tie-breaking method, but there was confusion.
- By lot = random (i.e. a random candidate gets chosen)
- Chris H: Their suggestion is to decide ties by lot, it is the standard method of tie-breaking elections in America generally, and applies for any tie at all during the process of elimination.
 - Councilor Hightower questioned why candidates would be decided randomly.
 - Chris H: By lot – if there are two candidates tied when deciding who gets eliminated and who goes to the next round, you would decide randomly who goes through.
- Councilor Traverse: If there are two candidates who are tied for second, rather than looking at only 'first place' votes for either candidate, is there a way for their 'second + third place' votes to be looked at to determine who goes through?
 - Chris H: Depends on the software as generally the tie is broken by lot in standard practice.
 - Councilor Paul: While a tie is incredibly unlikely in an election, it could still happen at a higher likelihood during a local election. She would prefer that an agreed upon system, that is not human, decide which candidate goes forward into the next round.
- Councilor Traverse: If there is a tie in the first round, it would be decided by lot. In later rounds, it could be decided by forward-looking (or backward-looking).
 - Committee decision is to use the forward-looking method in the event of a run-off, but if it yields the same result then the City will do what's within its power.
 - Additional language is needed in the ordinance to reflect as such.
- On item #4 – general discussion was had around elimination methods. 'Single and tied' method seems most fair, especially coupled with the forward-looking tie-break.
- On item #5 – Decided to use the same tie-break decision.
- On item #6 – If unresolved write-ins are included, that pot of votes could eliminate another candidate who received less votes, without knowing the resolution of the undetermined write-ins. Will not be excluding unresolved write-ins.
- On item #7 – Per the City's recommendation, committee determined that winner will not be declared by threshold.
- On item #8 – The City does not want a threshold declaration so this point is irrelevant. The software requires a choice to be made, but will not functionally affect the outcome of the election in practice. The committee decided to choose continuing ballots per round.
- On item #9 – Results would be published differently when choosing between district and precinct reporting. Councilor Paul made note that voters are used to receiving results by ward, and should be left the same if possible.



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Precinct-level reportability would be helpful to know before making decision, but for now the answer is no to avoid disrupting traditional reporting structures.

- On item #10 – In terms of tabulating the results, this would provide a pause between rounds to show each round's results. The vote is yes to ensure people can observe the RCC elimination process play out on the broadcasted screen in Contois Auditorium.
- On item #11 – Fixed position decimals are irrelevant because the City is using IRV.
- On item #12 – Agreement that voting rankings should be skipped, unless there is state law prohibiting that. CA's Office will research prior to Council's vote on the proposed ordinance.
- On item #13 – Due to high use of absentee ballots, vote-in rankings will not be used.
- On item #14 – The City's ordinance mandates that the winner be selected from the remaining to two candidates, RCVRC recommends not using this setting. The elimination transfer setting eliminates every single candidate except for the winner, the final round would just have one candidate. The committee deems elimination transfer to be unnecessary.
- On item #15 – If assigned skip-rankings are applied, this would affect exhausted ballots. If not, then it would better account the vote to the greatest extent possible. The committee decided to not assign skipped-rankings to exhausted ballots.
- On item #16 – If a first-round suspension is in place, or isn't, it doesn't make a difference based on the choices made on the previous items before. RCVRC noted that first-round suspension is generally not used by other municipalities across the U.S. The committee decided against using first-round suspension.

Jeff S made note that testing preparations may be too late for the December 8th special election if the City waits to prepare the draft ordinance to put it forth on the 10/24 City Council meeting.

Scheduling of future meetings:

Wednesday, October 19th at 4:30PM

5.0 Adjournment

Motion to Adjourn.

Motion by Councilor Paul, Seconded by Councilor Traverse

Final Resolution: Motion Passes

Yes: Unanimous

The meeting was adjourned at 8:40 PM.

