



Burlington City Council Ordinance Committee 9/30/2019

City Council Ordinance Committee – Monday, September 30, 2019

City Hall, Conference Room 12

MINUTES

Members Present: Councilor Chip Mason (Chair), Councilor Sharon Bushor, Councilor Adam Roof

Staff Present: Kim Sturtevant (Assistant City Attorney), Scott Gustin (Zoning Manager & Principal Planner, DPI), Meagan Tuttle (Comprehensive Planner, Planning), David White (Director, Planning), Todd Rawlings (Housing Program Manager, CEDO)

Others in Attendance: Michael Monte, Erhard Mahnke

Meeting called to order at 5:31 PM.

1. Agenda

1.01 Motion to adopt/amend agenda

Motion to adopt agenda as written.

Motion by Councilor Bushor, seconded by Councilor Roof.

Final Resolution: Motion Passes

Yes: Councilor Adam Roof, Councilor Sharon Bushor, Councilor Mason

1. Public Forum

i. Public Forum

No Speakers.



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Closed public forum at 5:32 PM

1. Minutes

- i. Approval of Minutes of 9/16/19

Motion to approve minutes as presented by Councilor Bushor, seconded by Councilor Roof.

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Bushor, Councilor Roof.

1. Committee Discussion/Possible Action

- i. **COMPREHENSIVE DEVELOPMENT ORDINANCE—Inclusionary Zoning, ZA #19-10**

Councilor Bushor raised concern with resale restrictions, lines 454-460, Sec. 9.1.16 (c)—indicating that she wanted the Committee to consider if no oversight of that process is really what is intended. T. Rawlings responded that every time a unit comes up for sale it needs to go to the advisory committee. He also explained the process, that when a project, including an owner occupied property, is included with a right of first refusal, they can designate to another property, ie. CHT. He added that they didn't see any added value to need to scrutinize CHT's process. Councilor Mason also noted the required deed restrictions. M. Monte agreed. Counselor Bushor indicated that she was satisfied.

Councilor Mason returned to the question of smoothing, noting the memorandum presented to the Committee dated 9-26-19. M. Tuttle indicated that she understood from last meeting that the Committee wanted to see smoothing information, calculation and any benefit from using smoothing. She noted that staff included a memo to answer the Committee's questions, including demonstration of change from current calculation if smoothing was used. The rest of the memo describes impact. M. Tuttle noted that she was surprised to see level of impact that would occur under this formula. The difference is about 2% less with smoothing. She also noted that only 20% of units were solely created by IZ. M. Tuttle referenced the spikes identified in the memo, but also noted the lag behind. She indicated that while smoothing benefits tenants in a time where income is strong and rents rising, it doesn't have the effect of rate reflecting actual income if go down.

Councilor Bushor indicated that she was interested to hear what M. Monte and E. Mahnke have to say, questioning that when rents are really high—not sure how to protect tenant when looking at something like this. She also indicated that



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she didn't understand the con statement. Under con, from tenant benefit perspective, see as a con from tenant and pro for tenant. M. Tuttle responded that it can be a con or pro, dependent on the market. Look at chart, look at earliest years modeled, 2010-2012, each year is decreasing, but look at 3 year AMI see coming down off of that keeps it higher for a couple of years than it would have been. Tenant's rent is almost going up 2% if under regular model. Converse is true for the other direction. Con is if incomes are actually going down, it will take a couple of years to get rent down.

Councilor Bushor questioned why it only apply to 20%. M. Tuttle indicated that it only impacted approximately 20% because only 20% of units were required by inclusionary zoning, the rest were developed otherwise.

Councilor Mason questioned whether this was getting to complexity as one would need to run 2 sets of calculations. M. Monte responded that it was. He gave an example of Laurentide Apartments indicating that there are 5 different funding sources, each have their own set of calculations. In each case using a dollar amount less than required for smoothing, however, each unit would be required to demonstrate compliance for smoothing plus other calculation. Would need to do calculation of smoothing and then show blanket. None of the other 5 sources of funding use smoothing, just use AMI. For tax credit can't just go up, but not required to go down. He noted that smoothing does not make as much a difference for CHT because the number is already low, but he did think it would impact private developers. Private developers not doing as many units as CHT, so impact not as great, noting a loss of mortgage.

Councilor Mason questioned the impact with the loss. M. Monte responded that if lose, then would need to go get money somewhere else. Not happen in practicality because already low for CHT. He noted that it is a very Burlington problem because the rest of the state is not using mortgage.

Councilor Bushor indicated that she still had concerns. She noted that Michael's group, CHT, was not really affected by this, but the 20% were more susceptible. Need to figure out who we are protecting here. Also, if his rents are already lower, then would you have to do smoothing?

M. Monte indicated that he would like for CHT to be totally exempt from IZ because they are already doing it. Councilor Bushor indicated that she was confused, do big developers (CHT, Cathedral) not apply? Councilor Mason responded that it does apply to large projects, but some already required to show compliance. Laurentide is a bad example because already IZ.

Councilor Bushor questioned that if they did not do smoothing how could the City protect those tenants from the volatility that we have experienced in housing costs and rents? T. Rawlings responded that one of the changes proposed is to allow a property owner to presume compliance with IZ when asking for Sec. 8 voucher. Trying to do as part of change to incentivize taking sec. 8 voucher in private market as well. Councilor Bushor noted that not everyone gets Sec. 8 vouchers. T. Rawlings agreed.

T. Rawlings noted that smoothing income up protects the tenant, smoothing down protects the landlord.





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Councilor Roof questioned whether it was a good idea? E. Mahnke replied that existing funding sources allow for a floor. Even if adopt smoothing in some form can adopt a floor. Didn't understand the 5 different rent tiers, requirement there no matter how required to get to. Will always have 5 different tiers.

M. Monte added that they calculate with AMI, not smoothing. E. Mahnke noted that you could charge CEDO with making smoothing calculations which is in effect what they do now. Further, that the State publishes affordable housing number. 2 things if of a mind to do smoothing. Totally hear from others that another level of complexity. If do, do floor and have CEDO calculate. That said, not a large fan of this type of smoothing, could do average of percentage change of baseline year. M. Tuttle replied that they did the calculations, noting that it just comes out to same number.

Councilor Roof thanked staff for their report. Noting that he thought everyone was looking at a better way to come up with a number as AMI more volatile. Concerns--drag, complexity. One concern over other. Don't think that shifting to some sort of smoothing methodology will resolve objective trying to resolve. Not resolving for tenant or developer. No guarantee that will be better for people trying to protect. Federal, non-profit, profit--all using same. Unless hear something different in next few minutes, not support.

E. Mahnke noted that you can do smoothing with floor and ceiling. Could limit it that way. Certainly other ways to go at it than just straight line smoothing.

Councilor Mason indicated that his general sense was that it was complicated, without buy-in from those present, concerned. Feel whole ordinance balancing act to incentivize IZ, concern with trying this change, measurement tool not perfect and not sure that this is the way to do it.

Councilor Bushor indicated that there is a problem around how to protect certain vulnerable persons, set around volatility, not sure they're protected. Disappointed don't have the right people in the room. Have people already committed to a mission. Not mission of some developers. Will comply because that is what have in front of us. Will send off, but still believes this needs a better look. Thank you for presenting floor and ceiling, not sure see loss of a million dollars same way presented. Sad, because had a problem and don't believe solved it.

M. Monte indicated that CHT is not against smoothing, will do it either way, probably an issue for the private guys. Smoothing examples have it going up in the last few years. Only been the last few years, rest have been relatively smooth. While perceive a problem, really one year that there was an issue. Really because how HUD does it work.

Councilor Bushor indicated that she was not convinced that the housing market won't become more volatile.





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Councilor Roof moved to approve the amendment as proposed to be amended with change that the City Attorney takes out smoothing language, Councilor Mason seconded the motion.

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Bushor, Councilor Roof.

1.

i. **COMPREHENSIVE DEVELOPMENT ORDINANCE—Article 7 Signs, ZA #19-06**

D. White gave an overview of the amendment, noting it was a comprehensive revision to the zoning regulation related to signs as well as Burlington Code of Ordinance (BCO) sections related to signs after Reed v. Gilbert in 2015. Reiterated 1st amendment application to signs. Regulation of signs needs to be content neutral. If you have to look at a sign and read what it says then there is a concern. Focus is on commercial speak, not regulating private speech. A number of areas to address. Objective same – form based code for signs. Signs based on sign type quantity, area, lighting. 3 different sections of BCO also relate to signs looking to clean those areas up. Art. 7 proposed changes. General provisions—exemptions, expanded, for example, the inside of centennial does not need an individual sign permit. More physical characteristics. 2 areas for real estate and political still recognized by supreme ct. Part 2 deal with an array of types of signs--marquis, monuments, projecting signs. For each type, there are objective standards. Also identifies which districts each sign type is allowed. Part 3 of ordinance pertains to sign master plans. Ensures continuity and provides more. Master sign plans only place where on-the-record review done.

Councilor Mason asked whether there was a material modification that require businesses to change. D. White responded that the terminology is a little different, but the underlying regulations are based on what is required now. If legal now and become illegal, then legal nonconformity. Early on question of make change here in Comprehensive Development Ordinance (CDO) or BCO. CDO legal nonconformity without amortization, BCO could have been amortized, didn't go that direction.

Councilor Bushor complemented the draft, noting it was well written, educational and user friendly. She asked if staff had taken the draft out for a test drive. D. White responded that they had taken it to a couple different groups.

Councilor Mason indicated that he didn't like political signs being 15 days earlier. Also noted that sign boards are now within certain distance from business. D. White responded that the base regulations for those are in Ch. 21. Noting that there are still other places that would want to have regulations and that you need a permit from DPW to do it. Councilor Mason replied that he has seen an explosion in them.



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Councilor Bushor question whether there was any limit to how many exemptions you can have for property management. D. White indicated as many as necessary.

Councilor Bushor questioned electronic signs and side buildings, and whether it meant in the common space. D. White responded that when you are walking down Church St. and looking in store front, a sign in the more than 12 inches away from the glass was not considered a sign, but important that it not obscure window.

Councilor Bushor mentioned prohibitive signs—signs mounted on trailers/boats and asked about buses that traditionally advertise. D. White responded that it would fall under other mobile conveyance, not regulated by zoning in ROW. But prohibited if park bus in a lot. He also noted an exception at end if you drive it to and from work. Councilor Bushor indicated that buses should be an exception. M. Tuttle noted that it would be under last one. Lines 33-36 get around that.

Councilor Bushor noted language in the tables regarding sign height was missing the word “than” before the.

Councilor Bushor also questioned Banner’s across the street. D. White that is not in here because Right of Way. Referencing Ch. 27-63 and noting that it is an outstanding question. Councilor Roof added that Parks and Rec. regulate those.

Councilor Bushor noted that temporary signs can’t be erected more than 60 days before, need to look at closer. 60 days okay? D. White indicated that the current ordinance is 45 days. Councilor Bushor noted that temporary signs installed no more than one week prior to commencement seems to tight, need to give more notice. Councilor Mason pointed out that this was not in reference to the Right of Way.

Councilor Bushor asked why construction window wrap must fill all. D. White responded that it usually has. Have addition, question raised about construction window wrap use for real estate. Suggested change combine change real estate so could be either or--wrap to advertise. He indicated that he will prepare a final draft with changes.

Councilor Bushor referenced nonconforming signs, lines 63-68, bringing in to substantially compliance, noting that she thought one place could be greater. D. White responded that you can’t change except to bring into substantially greater or complete compliance. Moving toward compliance.

Councilor Bushor requested staff to explain the picture in line 151, talking about dimensions within picture? D. White responded that they draw box to determine the dimension, the white square in that instance. White square full extent of sign use to determine area, take smallest cube that encompasses and take half the sum.

Councilor Bushor questioned luminance starting on line 177 versus line 102, difference in nits and whether it is different



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criteria based on different type of messaging? D. White responded that determination was based on that. Councilor Bushor asked if there was no limit on intensity in section (g). D. White responded no as it is fairly limited on how can be. Raceway is channel.

Councilor Bushor asked if can change sign for electronic changeable message anywhere now. D. White responded no, depend on sign and area. Flynn marquee not, but could be. UVM sign not in Burlington, but advertise what goes on. Monument sign and Marquee limited to public or civic use on a monument sign and can only use marquee on certain type of uses, but may include electronic messages and only example where allow flashing light.

Councilor Bushor noted that a marquee can be cantilevered, etc. what if flush? D. White responded that it can't be, it must be at least 6 feet.

Councilor Bushor noted monument signs can't be illuminated. D. White indicated it would be because in I district. Councilor Bushor replied that the hospital driveway was not in Institutional, it was in Residential.

Councilor Bushor asked if rotating signs were addressed anywhere. D. White noted that those that are legal nonconformities could remain. That the Planning Commission spent some time on those, want to allow, but now not allowed to move. Councilor Bushor asked why not want another moving sign. D. White replied that typically do not want anything distracting to the driver.

Councilor Bushor asked about the process of master sign plan submissions and whether the total signs including proposed as well as existing signs require sketch. D. White replied that they did not, can just take picture, need to understand the total area. Councilor Bushor asked if can have freestanding signs in master plan, whether can be a mix of signs. D. White responded that yes, you can have a mix of sign types that are allowed in table. Councilor Bushor asked about the flexibility of existing standards—how much can vary? What does it mean? D. White responded that the sign master plan gives flexibility, suggest add reference to alternative compliance section. Added in second line re 7.1.11.

Councilor Bushor looked at tables and wasn't quite sure why some were permitted and some weren't. Sign type combinations—just didn't know. D. White responded with examples, wouldn't have canopy next to marquee, separate store front, wouldn't have canopy under marquee.

Councilor Bushor asked why you couldn't have freestanding sign and freestanding yard sign. D. White responded that one is smaller. Two different size versions for different districts.

Councilor Mason asked the preference of the Committee. D. White noted changes:



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- 7.1.1 removed
- 7.1.3 topper
- Line 29 add to building opening "or appurtenances," don't want people to block downspouts, but not deal with egress.
- Construction/Real estate add language
- Table 7.1.2(a) alphabetical.
- Directory signs 7.2.5—location within 4 ft "and to side" of principal entrance
- add to 7.1.11
- Councilor Bushor typos in tables re: height

Councilor Bushor moved to approve the amendment as proposed to be amended with changes by staff indicated, Councilor Roof seconded the motion.

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Bushor, Councilor Roof.

4.03 BURLINGTON CODE OF ORDINANCES—Signs, Illuminated, in Public Ways and Over Sidewalks

D. White described process for related BCO sections pertaining to signs and proposed changes, noting that zoning deals with illumination, electrical deals with rest of that part.

Councilor Bushor moved to forward the amendment relating to Chapter 8, Buildings and Buildings Construction, Article V, Illuminated Signs, as presented, back to the full Council for 2nd reading with the recommendation for adoption and to table the rest of the proposed amendment relating to Chapter 21, Offenses and Miscellaneous Provisions, Section 21-5, Signs in the public ways; on vehicles and amending Chapter 27, Street and Sidewalks, Article III, Projections Over Sidewalks to a future meeting.

Seconded by Councilor Roof.

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Bushor, Councilor Roof.



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1. **Any Other Business**

- i. Next Meeting and Items to review

Joint meetings with the Planning Commission on Oct. 8, 15 and 22.

Will send out google to look at possible meeting dates for November.

1. **Adjournment**

6.01 Motion to Adjourn

Motion by Councilor Roof, seconded by Councilor Bushor.

Final Resolution: Motion Passes.

Yes: Councilor Chip Mason, Councilor Adam Roof, Councilor Sharon Bushor.

The Ordinance Committee meeting adjourned at approximately 7:27 pm.