



Burlington City Council Ordinance Committee

9/16/2019

City Council Ordinance Committee – Monday, September 16, 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 & AZAO, DPI), Meagan Tuttle (Comprehensive Planner, Planning), David White (Director, Planning), Todd Rawlings (Housing Program Manager, CEDO)

Others in Attendance: Steve Goodkind, Frank von Turkovich, Kelly Devine, Jane Knodell

Meeting called to order at 5:37 PM.

1. **Agenda**

1.01 Motion to adopt/amend agenda

Discussion to amend agenda to remove item number 4.01. Decision to keep on agenda to identify concerns. 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

S. Goodkind questioned how to calculate parking for inclusionary, citing Sec. 8.1.1. Councilor Mason responded that it was



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not no parking, there is shared parking, that the reduction is based on the number of inclusionary units. S. Goodkind indicated that it should be clearer. He questioned whether, if it was all inclusionary then would you get a credit. Councilor Mason responded that you do not get a credit for above the level. Noting that you do not get a credit above and beyond now as it currently exists.

K. Devine noted that she has been following IZ for a few years and is excited to see it move forward. She then indicated that she was there to speak to street fees. She is looking to start a dialog on what happens when a street gets closed. She noted that constituents have had a hard time when streets get closed. Stating that the City could remove tension if things were clearer. Increase communication, clarify what is required from City when a street is closed.

Closed public forum at 5:46 PM

1. Minutes

- i. Approval of Minutes of 8/28/19

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

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Bushor, Councilor Roof.

1. Committee Discussion/Possible Action

- i. **STREETS & SIDEWALKS—Permits, Fees, Metered Parking Spaces, Awnings**

Councilor Mason identified the amendment and noted that it was on for discussion purposes.

Councilor Bushor indicated that she wanted to provide some feedback as the amendment still needed work. For instance, throughout the ordinance it references Superintendent of Streets but there is no Superintendent (likely supposed to be the excavation inspector). The proposal needs to be cleaned up. Line 44 references administrator of Church Street Marketplace, need to clarify while looking at this again.

Councilor Roof referenced back to K. Devine's comments and agreed that having a conversation about how to systemize how to do this, even if just codifying in an administrative document, is important. Noting no strong opinion if policy or



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ordinance at this point. D. White replied that it sounds more like administrative policy. Councilor Mason noted that it would be interesting to see what the City follows now for notice. Councilor Bushor agreed that it strikes a nerve, notification/communication seems lacking, signs go up on Friday and then cars towed over weekend. She has been told that it has to be done within 24 hours of closing, but feels we can do better. K. Devine noted that parking meter bagging is 24 hour notice. S. Bushor referenced emergency circumstances.

1.

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

Councilor Mason summarized where the Committee was on the item, noting it had tasked staff with smoothing question and then had questions of size, other than that Councilor Bushor wanted to do a line by line. Hope to get it out tonight. Start with smoothing question.

M. Tuttle reported on staff's efforts, 3 out of 4 of them were able to discuss the issues. They also reached out to the original members (Eric Farrell, Eric Hoekstra, Nancy Owens, Michael Monte, Brian Pine and J. Davis), heard back from all but J. Davis, majority indicated to not add smoothing as it adds a complication that do not have in other areas. B. Pine was indifferent.

Councilor Mason indicated that unless there was more from the committee they would move on. Next issue was 9.1.14(e), to have all units at approximately at the same size. F. von Turkovich had come forward and indicated that he believes there is a market for larger units. Appreciates the policy issue, as a City made a choice to make smaller units. With that, F. von Turkovich invited to speak.

Councilor Bushor noted that she looked back at the minutes, and had a question as to value of cap for largest IZ unit in project, batting around the idea of putting a table back in with less, but never a time that calculations done so don't know what numbers would be versus putting a cap on it. Not opposed to this, but want to hear back from experts. Based upon concerns over environment not sure why larger units.

Councilor Roof went through a few different calculations, questioned whether we are legislating for a problem that doesn't exist? He invited to be challenged from those in crowd.

M. Tuttle noted that Councilor Bushor brought up an important point, average of bedrooms of unit to get what it needs to be. Think most important tool to make sure that the units are equivalent. Challenges to reintroduce table, intent to make unit equivalent to market ones. Another challenge figuring the actual numbers. Don't believe there is necessarily an





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approach that we would recommend to put in numbers. S. Gustin stated it was a matter of equity, if put in number, gets away from equity. D. White added it is the same with a CAP, also get away from intent.

T. Rawlings noted that there has been various discussions around equity, comparability.

F. von Turkovich indicated that he misunderstand. He understood that City wasn't happy with amount of production of IZ units, this doesn't help from builder point of view to build. If you don't build market rate, you don't get IZ units. If main drive is to be more equitable, then 90 or 95 % will make more equitable, but a few projects looked at wouldn't go through at this percentage. Outside of Burlington, people want to come in, but if don't build for that market, they won't come in, not everyone wants to come in at that size. Don't think the numbers work. Councilor Mason responded that it is not that he doesn't believe, but there are competing policies. This may not be perfect but hope start something that gets more IZ.

Councilor Bushor indicated that she appreciated F. von Turkovich's work and time put in, but had a question—are you suggesting a project with only large square feet will work? Noting the project that she saw had a number of different units, attractive for different needs. Is there a project where all units are very large? F. von Turkovich responded that he picked a project with ~2000 sq. ft. because it is an easier number. 90-95% makes it harder. All of the rest of the ordinance helps encourage IZ, but this doesn't.

Councilor Bushor noted that F. von Turkovich didn't answer, would a project be all large units? F. von Turkovich responded that possibly, someone wants to move in and wants large units.

Councilor Roof indicated that he understands there is a market downward pressure on developers, policy goals want to average out. Only value of IZ if market rate development. How is pressure different on developers who want to build large units (2000 sq. ft.) v. smaller units? How does this not just translate large to large, small to small. F. von Turkovich replied that it just pushes on to another developer to build. Number one focus, get more IZ built. Believe this is a damper, but never know as you don't know what you don't know since it won't get built. Councilor Mason noted same downward pressure if building larger or smaller. M. Tuttle indicated that staff also talked through the issue. Tried to look at things that drive up costs.

6:15 Jane Knodell joins.

M. Tuttle noted options that could be followed including offsite.

Councilor Mason referenced the right to revisit based on the annual report of the Housing Trust Fund Manager.



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Councilor Bushor noted that the amendments are a tool to integrate IZ, not an incentive to build.

Councilor Roof indicated that the core tenant of IZ ventures is to articulate that within development generally IZ are comparable of whatever else is being built. Concede downward pressure, but not meant to be an incentive. If we were to put together an ordinance to incentivize market rate developers, this is not it. We should go forward with language as written.

Councilor Bushor indicated that she felt that she really looked at the issue and whether this is the right formula and if this is the best we can do. When she went through the minutes she wasn't sure if they were done on the issue of verification from UVM? Also parking, not sure we solved. Talked about parking, and if project was a 100% IZ if waiver only 15% parking requirement still required. Councilor Mason referred to lines 71 and 72, 9.1.14(d)(3), 358 and 359. S. Gustin noted that could add a cross reference.

Councilor Bushor noted that verification was the other issue. M. Tuttle responded by noting changes in lines 474-475, that S. Gustin added sentence to make clear could look at records upon request. Councilor Bushor indicated that was good.

Councilor Roof wanted to check in to see if J. Knodell wanted to say anything. J. Knodell inquired about smoothing. Councilor Mason indicated that M. Tuttle had reported back to members of original committee and asked if J. Knodell had other thoughts. J. Knodell responded that if administrator is one calculating rents than do not understand how it makes it more complicated because based on AMI. Did some modeling to see if 3 year smoothing does modify fluctuations and also addressed lagging. Year to year can be difficult. Day to day is pretty good. Smoothing, if doesn't add more to staff work, does give benefit to have rent not lag behind.

Councilor Roof indicated that he was confused by the argument developers make for complexity and how this 3 year number is more complex. T. Rawlings responded with his understanding that the argument is that if they use 5 different numbers for 5 different rents, every time you add another rent number on top of heap then make it harder. M. Tuttle added that it makes another number to compare against.

Councilor Bushor questions, so other number is average of 3 years, am I hearing that the Feds would want to understand how get there. Councilor Mason replied that it is not up to the Feds, but an administrative complexity.

Councilor Bushor asked if there would need to be a justification for number using. M. Tuttle responded that it is not to report to federal entity, to report to city. 3 year average is a different number than reporting on.

Councilor Roof conceded that smoothing adds another number to what they need to do, but our charge is to make our policy the most fair, effective. Just because they are not, does not mean that we shouldn't look to be more effective.



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Question is whether makes sense? Want to think more about that, possibly others should do blending as well.

Councilor Bushor noted that the whole world of fluctuations created some real problems for people needing affordable units, felt real desire to look at smoothing. Did due diligence, have brought it up through process, don't know what right answer is. Councilor Roof agreed that it is not his world either, but fluctuation can be problematic for both ends of spectrum. Councilor Mason asked why problematic for developer. T. Rawlings responded that it puts damper on IZ rents because a lag if smoothing.

M. Tuttle noted that she just putting forth what responses were. E. Mahnke put forth method. J. Knodell indicated that it goes too far. Councilor Mason asked if it was the percentage of AMI that was too high or smoothing. J. Knodell responded that true area medium does not change that much. It is a bad number, but only number can use. Medium for county, medium can be pulled up.

Councilor Roof questioned why use 3 prior as opposed new number current with 2 prior? J. Knodell responded that she would do current with 2 prior, indicated that if we become concerned with issues around the number, it can pull out later.

Councilor Bushor noted that talking about years of housing market crash, don't know what that means for housing market as Burlington didn't actually experience the crash. T. Rawlings indicated that it was an interesting point, difference between a non-profit that use grants, etc. v. private developer using numbers at a certain time. Issue for private more than non-profit. Think mitigate a large increase and decrease as well. Councilor Roof summarized, winning years and paying years, if dips and jumps then purpose to smooth. T. Rawlings responded that's assuming correlation from market and inclusionary. Councilor Roof responded that AMI not great number, why not try to make better. T. Rawlings indicated arguments from non-profits, a lot of numbers a lot lower than 80%, 35%, 65%, run into trouble with 80%. Question even if a number of rents that there are some above 65%? M. Tuttle noted that she didn't hear that. T. Rawlings responded that he appreciates the administrative issue where have yet another rent limit that an over-burdened property manager has too keep track of, lead to mistakes.

Councilor Roof indicated that he did not want to hold up ordinance for this, he wants to move it to the full city council, will likely be debate there.

Councilor Bushor asked that if smoothing was entertained, where should it be added? M. Tuttle indicated line 216, Sec. 9.1.1. Councilor Mason indicated that we needed to just come up with new definition with smoothing. Need to tighten up language on lines 220-223. Councilor Bushor inquired what do we call smoothing—have area medium income still there than add in another definition re smoothing. T. Rawlings questioned whether 100% median income smoothing? M. Tuttle responded that is why Sec. 9.1.1—only apply to calculating rent. But would likely do hybrid.

Councilor Mason indicated that he was inclined to do smoothing, but if CHT says really bad then would pull back. May suggest go through with other changes. Asked M. Tuttle to do reach out and come back 9/30.



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Councilor Bushor noted that M. Monte said he had comments but couldn't be there. Smoothing is a headache for us, I don't support it. Nothing else, doesn't give rational.

Councilor Mason indicated that as a matter of policy he was interested in exploring it, that we would bring it back for next meeting. He then led the committee on a page by page of the ordinance.

Councilor Bushor noted the intent section was wonderful. She also indicated in line 99 to strike "a", should define MSA (put back in). Councilor Mason asked attorney staff to look at area median income v. median income.

Councilor Bushor asked about the intent line 143 to 146, developer intent if build. Also lines 155-157, can elect to have IZ even if build less than 5 or if any units are added. So if add in lines 143-146, not optional—is that clear? M. Tuttle responded referencing line 157, notwithstanding applicability of above.

Councilor Bushor then indicated that she misunderstood 197-198, thought referring to percentage, M. Tuttle said it was always 15% and asked if it was clear to everyone else? S. Gustin noted the table above says percentage. M. Tuttle gave examples of the math. Councilor Bushor responded that she didn't get that, it is confusing, understand what trying to do. Councilor Mason suggested to add in heading "calculations"—"shall be calculated based on."

Councilor Mason noted in lines 209-210 to tighten up on MSA.

Councilor Bushor noted lines 349-357; troubling if one building high end and one IZ, understand a project of size, but doesn't meet intent, understand—but troubling. D. White responded that there is a practical and philosophical twist. Depending on the partners involved in development and how funding sources structured, may be much easier to figure how funded. From philosophical perspective, in many cases when see IZ applied looking at a large geographical area. Councilor Bushor sought clarification regarding intermediate projects. Do we run risk of segregation or not? Not the big ones or small ones. Is concern valid? If not project so be it. Not sure different for intermediate ones. D. White was not aware of it. T. Rawlings not aware, indicated he was channeling M. Monte, bring in partnership than allow to bring in more.

Councilor Mason noted that if change to be in same building, then can't have off-site, which was a big incentive. Councilor Bushor responded that Grove St. not partnered, very frustrating. Councilor Mason noted some comfort mirroring size, not able to mirror all, but won't have small units stuck in back.

Councilor Roof noted line 471, why institution or developer? M. Tuttle responded, because could be by institution or 3rd party developer. It is whoever is the manager.



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Councilor Bushor noted that she liked the clean-up of verification and asked if T. Rawlings agreed with this as it involves his position. T. Rawlings replied yes.

K. Sturtevant noted to delete "that" in line 35.

Councilor Mason noted to delete "HTF" in line 454 and leave as "manager." M. Tuttle referenced the need for that change on line 462 and elsewhere—need to go through and make consistent.

Councilor Mason noted they will take back up on the 30th with comments limited to smoothing.

1. **Any Other Business**

- i. Next Meeting and Items to review

Next meeting is September 30, 2019. IZ will be put on first.

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 7:14 pm.