



Burlington City Council Ordinance Committee * IN-PERSON & REMOTE*** - Bushor Conference Room (Room 102) 5:30 PM 9/1/2021**

City Council Ordinance Committee – Wednesday, September 1, 2021

Bushor Conference Room and via Zoom

DRAFT MINUTES

Members Present: Councilor Mason (Chair), Councilor Hanson, Councilor Hightower

Staff Present: Kim Sturtevant (Assistant City Attorney), Tim Devlin (Assistant City Attorney), Laura Wheelock, Sophie Sauve

Others in Attendance: David Mickenberg, Sharon Bushor, Ericka Redic, David Van Deusen, Amy Magyar, mdwalker

Meeting called to order at 5:36 PM.

1. Agenda

1.01 Motion to adopt/amend agenda

Motion to adopt agenda as written.

Motion by Councilor Hanson, Seconded by Councilor Mason.

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Hanson

(Councilor Hightower joined at 5:37)

1. Public Forum

2.01 Public Forum

Sharon Bushor: Concern with ADU language elimination. Feels fly in the face of the neighborhood project done in CEDO.



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Some homes 900 sq. ft., almost like owning another house. If add another person under zoning then need certain square footage. Want to have City go to legislature and bring to their attention that might need a second look.

Ericka Redic: Mostly looking to comment on energy efficiency but comments in general. At a complete loss where people think money comes from. Won at Supreme Court and then City found more issues. Every other City department has us as a triplex including assessor. \$2,000 increase in taxes. Efficiency audit cost \$1,500. Not sure where think money comes from. Fair for me to have to pay for tenants to live in units? My responsibility to pay for tenants. Other taxes and bonds coming up. Even if say that want out, can't sell it because in court with City, if successful will cost \$50,000 to \$80,000 to renovate. Only reason came up is because try to buy out aunt.

David Van Deusen: President AFL-CIO, want to encourage passing the prequalification ordinance out of committee tonight. View as a positive ordinance and build good standing family jobs. Once out of committee would be happy to have someone speak at full City Council.

Closed public forum at 5:52 PM.

1. Minutes

3.01 Approval of Minutes of 6/16/21

Motion to approve minutes by Councilor Hanson, seconded by Councilor Hightower.

Final Resolution: Motion Passes

Yes: Councilor Hanson, Councilor Mason, Councilor Hightower

1. Committee Discussion/Possible Action

4.01 B.C.O. - Prequalification of Construction Contractors-Responsible Contractors, Secs. 21-68, 21-73, 21-76 & 21-77

Councilor Mason: Took this up before, asked for information from staff and received it. Asked for information to be made part of public record. Concerns by City Attorney for including school and 21-77(b)(4), no provision for liquidated damages. 21-76 (b) request from DPW to increase to \$20,000. Concern fair amount of work for small contracts and could lose some. Also had some conversations regarding state prevailing wage and would need to be a continuing qualification during that year. Montpelier paying wage for project, written wage across the board. Every contract greater than \$100,000. Don't support moving forward over objections of CA, don't believe we can impose this with those. Not to school. Appreciate intent of liquidated damages but not see why we would move forward with something the CA says is not supported by legislation. Competing policy objectives.



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Councilor Hightower asked to confirm the only issue for CA is including school district? Councilor Mason responded that the liquidated damages provision in lines 128 and 129 were also of concern. He also asked about the violation notice? T. Devlin responded that there is a 60 days opportunity to correct.

Councilor Mason noted that he wasn't sure why there is a menu of enforcement in the ordinance and not in contract.

Councilor Hightower asked about current enforcement, if there is spot checks? How handle now? T. Devlin responded that right now the penalty is fines and suspend from list for up to 2 years. He noted that he hasn't encountered an instance where action has been taken, but his knowledge was limited to past 2 years. L. Wheelock indicated that in the past on rare occasions fall into 2 year, because of money or performance. Only \$100,000 or more, a lot smaller. Not aware of instance where wage qualification come under prequalification.

Councilor Hightower asked about line 137—still city funded or more broadly other government funded?

Councilor Mason noted line 126. As drafted a responsible contractor—city have authority to impose a municipal violation? T. Devlin responded that as drafted yes. Councilor Mason noted potential violation in another jurisdiction can trigger a violation in Burlington. If have then can move them off prequalification list. Can cure if 60 days. Councilor Mason also questioned whether intent all or only going forward, leaving aside whether enforceable.

Councilor Hanson asked about livable wage. Councilor Mason noted line 77. Councilor Hanson indicated that he wanted us to be working with contractor paying prevailing wage across board. Not super clear on how long have to provide those wages before. T. Devlin noted that we could make it clear in the ordinance. Technical staff may want to weigh in on the timeframe. L. Wheelock replied that prequalification applications are already cumbersome for staff. To look back on all contractors pay, is a lot. Concern across board that conflict and put in conflict. Also concern subcontractors being held to standard while working on job. If want to enact and put into ordinance should be a warm up period, will be hard for contractors. Councilor Mason noted that if they did not act tonight then good to get someone to speak on it from airport. L. Wheelock responded that she did meet with airport, did not speak to financial responsibility which is also taxing. List updated since one provided. Difficult for staff to do analysis rather than self-certification.

Councilor Mason noted that the livable wage is not simply absorbed. He asked who in city right person to discuss with. Would like discussion here.

Councilor Hightower asked about legal concerns, are we allowed to negotiate contract if 5% out of compliance when say that they are allowable in contract? T. Devlin responded that under case law concern is that liquated damages are rarely enforceable. Councilor Mason noted a different concern voiced by CA, that ordinance not enabling, in contract not



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enforceable but if close to actual damages maybe. Councilor Hanson asked whether to include the language. T. Devlin responded no. Councilor Hanson asked if there was any instance can use? T. Devlin responded that he hasn't seen use be successful in VT. Councilor Hanson asked if it came from the Montpelier ordinance.

Councilor Mason indicated that he didn't understand why putting penalty in ordinance, not contract. Cure period generous, general default 30 days. Why put in here? T. Devlin responded that contracts do have provisions akin to (b) 1-3, 5 in old and moved down. First 3 redundant to what put in contract and don't usually negotiate. Build in certain protections via contracting mechanisms.

Councilor Mason asked for the following for next meeting:

- up to date list
- Montpelier ordinance
- people from administration that are using contracts
- clarity on other aspects that think are non-starter from CA's office

Councilor Hightower would like to bring at next meeting. Councilor Hanson agreed would like to see ahead. Councilor Mason noted next agenda set and expect to take full time but would like to see back as soon as possible.

T. Devlin noted that tech. staff may be decentralized so have maybe 3 people. Will provide rest.

4.02 B.C.O. - Sex Workers, Secs. 21-28, 21-33 & 21-34

Councilor Mason noted full support from council on proposed amendment.

Councilor Hanson asked to strike "or by any vagrants."

Councilor Mason asked about striking "gamblers" noting that on books but not enforced.

Councilor Hightower asked about striking all of Sec. 21-28, noting we have the noise ordinance.





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Councilor Hanson has moved to amend the proposed amendment by striking all of section 21-28. Seconded by Councilor Mason.

Final Resolution: Motion Passes

Yes: Councilor Hanson, Councilor Mason, Councilor Hightower

Motion by Councilor Mason to approve the proposed ordinance amendment as amended and refer it back to the full Council for second read and a recommendation for approval.

Seconded by Councilor Hanson.

Final Resolution: Motion Passes

Yes: Councilor Hanson, Councilor Mason, Councilor Hightower

4.03 ZA #21-07-- Height Measurement, Dormers & Eaves

D. White described the amendment--attempting to clarify how we measure height when on incline, street. Modify to take distance in increments along street. Other part if have a dormer, dormer increases perceived height of building, amendment to address when actually impact height.

Motion by Councilor Hanson to approve the proposed ordinance amendment and refer it back to the full Council for second reading and public hearing with a recommendation for approval.

Seconded by Councilor Hightower.

Final Resolution: Motion Passes

Yes: Councilor Hanson, Councilor Mason, Councilor Hightower

4.04 ZA #21-08--Act 179 Changes to 117

D. White explained changes due to the Vermont legislature's passage of Act 179. Changes to: 1) Existing small lots—certain small lots need to connect to water sewer; 2) ADU's—change efficiency or one bedroom, strike 2 adult, sq. footage up to 900 sq. ft.; and 3) where treat residential uses as conditional uses in residential district —strike for clarity sake.

Amy Maquire noted that 800 to 900 is about 12% difference, must be 30 percent or smaller of principal. Because of waste water and setbacks will prevent a lot of ADU's being built. Don't see anything wrong with 4 people in 900 sq. ft. In a lot of



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areas of VT not an issue.

Councilor Mason asked if it was read into the ordinance. K. Sturtevant and D. White explained that ordinance can't be more restrictive than statute under this provision.

Proposed amendment for lot coverage to Sec. 5.2.3 (b)(10):

~~The DRB may grant an exemption from maximum lot coverage limits for up to 650 sq.ft., of the lot area occupied by an ADU~~ For the lot area occupied by an ADU, the DRB may approve up to 650 sq. ft. additional lot coverage over existing lot coverage, even if present or proposed lot coverage exceeds the standard lot coverage limits. To grant such an exemption, the DRB must find that the existing lot coverage has been lawfully created, and that the proposed location, site design, and improvements will enable on-site management of the first one inch of stormwater runoff from the lot area of the ADU exceeding the applicable lot coverage limit, and will not have undue adverse impact on public rights of way based on the review of the DPW Stormwater Program Manager.

D. White explained the proposed amendment for lot coverage. Meant to clarify language consistent with original intent. Councilor Hanson asked if sacrificing stormwater for housing? D. White responded that stormwater must still be addressed. Purpose to be more permissive to allow this type of housing, not one to discredit the other. Councilor Mason followed up that it still needs to comply with stormwater. Does it end run 4 unrelated? D. White responded that it did not, still dwelling unit, still need to be occupied by a family.

Councilor Hightower noted that it still needed to be subordinate. Council Hanson noted that still single family. JH concern properties problematic from lot coverage point.

Motion by Councilor Hanson to approve the proposed ordinance amendment with the amended language regarding lot coverage and refer it back to the full Council for second reading and public hearing with a recommendation for approval.

Seconded by Councilor Mason.

Final Resolution: Motion Passes

Yes: Councilor Hanson, Councilor Mason, Councilor Hightower

4.05 ZA #21-09-- Updates and Corrections to Article 14

D. White explained that the changes were based upon 36 months of real world application. Changes: more consistent use of terms and concepts—glazing/voids; clear not in right of way; new definitions awnings/decks/canopy—clarity; eliminate



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rear yard setback in District 5 to be consistent with previous Downtown-Transition District requirement; add new civic type for water related functions; fix map 3 for changes BTC street; clarify awnings, consolidates standards for fencing so easier; clarify standards to non-conforming structures; expands authority for administrative relief based on real world examples; and removes all references to Planning and Zoning and replaces with Permitting and Inspections to reflect changes from before.

Councilor Hanson asked for clarity on line 69, moving to 0 ft. minimum in general or a 15 foot setback from public alley. D. White responded that consistent with how terms are used in other places. Councilor Hanson asked about line 63, clarify functional change? D. White responded trying to be clear don't want parking at street level. Can put at street level or at 20 feet from frontage line. Previous language at grade or above 2nd which implies 3rd story. Want to clarify that can be at 2nd level. Still other design functions that make sure that people not looking at traditional parking garage. Intent always allow at 2nd floor but language makes seems only above 2nd floor--so fixing that. Building type defined to have parking within.

Motion by Councilor Hanson to approve the proposed ordinance amendment as amended with language "at or" added before "above" in lines 63, 71 and 247 and refer it back to the full Council for second reading and public hearing with a recommendation for approval.

Seconded by Councilor Mason.

Final Resolution: Motion Passes

Yes: Councilor Hanson, Councilor Mason, Councilor Hightower

1. Any Other Business

Next meetings:

September 16th --STR

September 22nd --BED rental stnds. and prequalification of construction contracts.

1. Adjournment

Motion to Adjourn by Councilor Hanson, seconded by Councilor Hightower.

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Hanson, Councilor Hightower

The meeting was adjourned at 7:37 pm.



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