



Burlington City Council Ordinance Committee 8/28/2019

City Council Ordinance Committee – Wednesday August 28, 2019

Local History Room, Fletcher Free Library

MINUTES

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

Staff Present: Kim Sturtevant (Assistant City Attorney), William Ward (Director DPI), Scott Gustin (Zoning Manager DPI), Meagan Tuttle (Comprehensive Planner, Planning)

Others in Attendance: Frank von Turkovich, Erhard Mahnke, Councilor Perri Freeman

Meeting called to order at 5:32 PM.

1. Agenda

1.01 Motion to adopt/amend agenda

Motion to adopt agenda as written.

Motion by Councilor Roof, seconded by Councilor Bushor.

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 5:36 PM

1. Minutes

- i. Approval of Minutes of 8/7/19

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. **Burlington Code of Ordinances Sec. 18-111 Accumulation of garbage, trash, abandoned vehicles, appliances and furniture on any property within the city prohibited**

W. Ward presented the amendment, describing the purpose as trying to align the language with the zoning ordinance—striking language to clarify the city does not want the debris anywhere.

Councilor Bushor asked what “flat work” was. W. Ward responded that it was horizontal work—sidewalks, etc.

Councilor Bushor referenced lines 19 and 20 noting they were exempt from ordinance strikeout and questioned whether there was no area limit and also whether there should be a timeline included. W. Ward responded that the material and timing should be commensurate with project—in conjunction with building project/permit. Councilor Bushor then asked about permits that do not get closed. W. Ward responded that while the permit is open it is reasonable to store the material. If the permit expires then no longer in compliance with city permits if the material is still there. Councilor Bushor noted her concern is not new construction, but for people who leave it noting that she hoped if neighbor calls then there is enough on the books that it can be dealt with.

Councilor Bushor next questioned line 24, noting that she thought there was a 24 hour rule that can move recycling in front and then call back. W. Ward indicated that we may need to add in that now as it currently doesn't have it. He noted that the practice currently is to nexus the DPW timeline. Need to be out for collection that day. Councilor Bushor responded that she thought there was another ordinance that said 24 hours noting a toter ordinance. W. Ward indicate that it was not a bad idea, noting that they have had challenge previously. That court case used a 3 day period. Councilor Bushor indicated her preference to have something that states day of collection, believe it is the intent and questioned



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where to insert it. Councilor Mason suggested line 22. Councilor Bushor suggested to amend that section accordingly.

Councilor Bushor questioned the removal of the language that material can't obstruct for fire. W. Ward responded that it was stricken because the rest of the language was more prohibitive. Councilor Bushor noted the language in old (d) and that any of the things in (c), all materials could not obstruct, now out, she questioned where it now says the material can't block. W. Ward responded that there was another place in the ordinance about block egress. Councilor Mason noted that for those in exception can add that can't obstruct. W. Ward indicated that he believed it was covered elsewhere. Councilor Bushor noted that it was included in trailers and boats. Councilor Mason suggested adding exception. Councilor Bushor requested to add language at the end line 20 to the effect of "and in a manner which does not obstruct fire escapes, means of egress, fire lanes, or emergency services access and which does not pose a danger to invitees, including utility, delivery and postal service employees and police officers, firefighters and other public health and safety officials who may need to be present on the property in emergency situations, routine inspections or other lawful reasons."

W. Ward identified BCO Sec. 18-95 safe means of egress required indicating his sense that it was covered by line 20. Councilor Bushor questioned that if that was the case, why was the current language included regarding boats. She also noted that she did not think it was harmful to have that added language. She requested to amend in language from lines 52-56.

Councilor Bushor moved to approve the amendment as revised and refer the amended version of 18-111, back to the full Council for second read with a recommendation for approval, seconded by Councilor Roof.

Councilor Bushor questioned whether help to have a tiered approach for ticketing? W. Ward responded that there is a current escalation that can go to superior now. Also, having discussion about tiered with another amendment.

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Bushor, Councilor Roof.

1.

i. **ZA 19-10 Burlington Comprehensive Development Ordinance—Inclusionary Zoning**

Councilor Mason introduced the item and explained the history of the proposed amendment and then requested M. Tuttle or S. Gustin to explain the proposal for institutions.

M. Tuttle explained that when the Planning Commission looked at it, they thought that any developer should have to participate, they saw the current approach as an exception. They also wanted a mechanism to address off campus



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students. Those were the guiding principles and they worked with the institutions to understand the facts better. For both Champlain College and UVM, part of students estimated cost reflects cost to live and then put in delta of what family can pay and cost and that is the base of what financial aid is awarded. Concept 15% of beds must be offered at 80% estimate. Natural question is how students with actual need will have access. Basically, burden on developer to verify that it is rented at that level.

Councilor Roof noted that there are a range of packages that are offered and questioned what notice looks like, asking whether this allow anyone with need base support rent regardless of how much support received? M. Tuttle responded that it does, noting the difficulty with disclosure, federal law around disclosure and many complexities around institutions financial aid makes it hard to figure out what they are getting. When talking about typical household, clear percentage, no idea for institution. Now any need.

Councilor Mason asked about whether there was discussion about this, noting that he wants those who need assistance the most to benefit. M. Tuttle responded that she thought it was difficult for institutions because Champlain College's delta is from cost and what family can pay, UVM has a different system. Champlain College's system is based on the gap. Didn't really have system to work from.

Councilor Roof noted his concern regarding how the institutions would account for this, it is like a negative circular feedback, how would they make adjustments back to package? M. Tuttle responded that she didn't think so because of how it's awarded. For on campus, Champlain College makes the adjustment by taking money and reapplying it. For off campus they make an adjustment based on an assumption. Councilor Roof asked whether if they give a certain amount then can adjust? M. Tuttle noted it may be an unintended consequence.

Councilor Mason noted that the developer may apply, not necessarily the institution and that an assumption letter may be sought by more than the number of IZ units available. M. Tuttle agreed.

Councilor Bushor noted that it started at a place 15% affordable but weren't matching with people in need. She indicated that the fact that the amendment has something that the developer has to do with regard to process, developer verifying, is an important piece. Noting that it is not perfect, that there was many loopholes, but at least trying to get beds with persons that need beds. She also indicated her surprise that universities were on board with 15 percent, but had not shown up. Noting that she would like representation from UVM/Champlain that say they were on board. She stated that she would think that if they weren't on board, they would be here. M. Tuttle responded that she couldn't say why the institutions were not there. She could say that she received a lot of information from the institutions during the process and that they have definitely been informed many times, also that they knew of the meeting.

Councilor Bushor asked about the verification audit? M. Tuttle explained that every year an institution needed to verify that at least 15% the housing was at the 80 % level. She noted that they were struggling a bit of how to have the institution verify. Can't require institution to turn over info, student verify. Councilor Roof stated that the student could verify through package and then can send. M. Tuttle responded that we were requesting verification on part of developer as we



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can't require, require developer to verify that they got the information from the student. Councilor Roof agreed.

Councilor Mason referenced 9.1.16(g) and suggested to add verification, can be self-certification but maybe housing trust fund manager allowed to come check.

Councilor Roof noted that he couldn't speak for UVM but that he didn't think they will be pursuing many off campus projects in the near future. Can't speak for Champlain.

F. von Turkovich asked if there was any concern that this policy would dampen desire to build that type of project? Councilor Mason responded yes, but it was the same for IZ generally. F. von Turkovich replied that it was a little different because want to build for students to keep them out of neighborhoods. Councilor Bushor noted that students still have housing problem; consistent student population, people in the community (can't control on campus).

Councilor Mason noted that inclusionary exists, but didn't apply well, giving the Eagles project as an example. Therefore put back to consultant to try to figure out. M. Tuttle noted that she did discuss the issue with many colleagues, everyone struggle because it is a difficult issue.

E. Mahnke noted that he helped with the writing because of being a housing advocate and gave a hats off to staff for figuring out an elegant outcome. He responded to some of the issues raised, indicating that he wouldn't expect that it would come back and ding the student, it is an excellent point, but can't imagine would come back to that, almost bad faith if it did. E. Mahnke questioned how they came up with 80%. He indicated that if it say beds must be occupied by someone with assistance, wouldn't want to leave bed open if couldn't, may want to write in an out, not likely to happen, but still don't want unfilled beds. M. Tuttle responded that 15% all beds with 80% of costs typical to other places used in ordinance currently, not apples to apples but don't have similar standards so it is a starting point. E. Mahnke replied that he asked as he would have gone to rental as 65% of median, but noted it was not his issue and that he understood it to be complicated to factor. Councilor Bushor noted that it was very difficult because of different sectors. She had a follow-up question on what E. Mahnke said, if make statement no bed go vacant, understand, but don't want to allow backing away to fill when needed. She also noted that she feels the need is greater than 15%.

Councilor Bushor stepped out 6:31 pm.

Councilor Roof questioned how many UVM juniors or seniors will need it. Noting a high number, a lot of big ticket prices so a large number receive need. Could go either way on the no bed vacant. He indicated that a question for the developer is how larger facilities have rented back.

Councilor Bushor came back at 6:32 pm.





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F. von Turkovich indicated that it was interesting that UVM/CC not there, but think all subsidies internalized. Noting that he believes it is dicey development in first place. Councilor Roof asked if he thought that the transfer of subsidy in general had impact? F. von Turkovich responded no, but then commented the main part of the ordinance. He stated that he understood the City's goal to improve process to promote more projects to be built but that IZ hasn't been a homerun.

Councilor Mason noted that he believed that there were needed improvements and that is why the amendment is here. E. Mahnke noted that IZ is not to be an incentive but rather a benefit to those built. Increase density and lot coverage by right. Always false promise before, amendment one of the most fruitful to bring that to fruition.

Councilor Mason noted that the group started with developers. F. von Turkovich agreed that adjustments are very helpful.

Councilor Mason indicated that he understood what E. Mahnke was saying, that may be creating empty beds, but don't agree. M. Tuttle clarified beds not units; only applies to projects by institution off campus or developer with institution. For example, Redstone lofts, first institution and then only if can't be let to institution student then public. If non-institutional taken over then at 5% take over.

Councilor Mason went back to regular amendment noting that Councilor Bushor wanted line by line and indicating that he received input about parking elimination concerns. Should we consider different standard for level of inclusionary? Email sent by B. Hedrick expressing concern about exemption for parking requirements for IZ units. M. Tuttle referenced Sec. 8.1.8, identify the way the Planning Commission dealt with it was by percentage. 15% affordable get 15% waiver.

Councilor Bushor noted that if have structure that is totally affordable, they would not have to provide parking for all structures or have to provide for percentage.

Councilor Mason questioned if have undeveloped lot as it reads now have to provide 15%, if required 100 parking then could reduce by 15%. Policy question if 100% affordable then 100% waiver. He expressed concern that there was an unintended consequence to eliminate parking completely. M. Tuttle noted there was a concern for what it does to the inclusionary units occupying the property. S. Gustin responded that the working group recommended no parking, but the Planning Commission didn't want that.

Councilor Roof asked if they were saying that the market would deal with demand? Councilor Mason whether the market would work in this instance. M. Tuttle indicated that David White had done parking analysis, but not sure that he looked at this specifically.



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Councilor Bushor noted that it is fixed on inclusionary unit alone. Developer can develop IZ elsewhere. Scenerio where build IZ and no parking for that cluster of units. S. Gustin responded that you would have requirement, worst case, get to double dip on deduction. Councilor Mason indicated that you would need to look at 2 together for calculation. Councilor Freeman asked for clarification on whether they need to be integrated, noting the question came up with Cambrian Rise and that we frequent allow separate units. S. Gustin replied that integration is not required. M. Tuttle noted that offsite only allowed in certain parts of the city.

Councilor Mason noted that it allows incentivize IZ in areas where it is not currently.

Councilor Roof asked if CHT build 100% inclusionary, in situation where development allowed to externalize. E. Mahnke noted Sec. 8.1.8(c) "on site."

Councilor Mason indicated that the question for the Committee is whether the language goes far enough noting the working group went much farther. Councilor Roof questioned whether it was linking to the IZ model. M. Tuttle responded that it was not based on a model.

Councilor Roof questioned if working group say parking down to 0 and we are saying no, then based in market. S. Gustin responded that the wording tied to required amount of inclusionary, if looking to enable CHT can change word "required" to "provided". M. Tuttle noted other communities exempt IZ from parking requirements. She has had a conversation with D. White and M. Monte. M. Monte said will have parking with project, unlikely would have any, but allow to build what need. Councilor Bushor stated that she was concerned with not requiring any parking. Noting that she doesn't believe M. Monte to be representative of all. Very concerned with people in inclusionary to have access to parking spaces.

Councilor Mason indicated that he was not sure they had the right number. E Mahnke indicated that he was having trouble understanding concern. If have CHT will have higher income, then think what Michael says is that they will have to provide parking because funding and marketing of units will require it. Here the question is if someone provides %, ie. Cambrian rise gets 25% because required 25%. Councilor Mason replied that policy concern if no, then can have no parking. We have carved out IZ from all those requirements downtown. E. Mahnke and S. Gustin indicated that they were searching for the concern. E. Mahnke indicated that it was drafted as working group intended. IZ report say eliminate for IZ units, not 0 necessarily, noting that even if choose to build 100%, can still only reduce by 15%. Language as is allows reduction to be required.

S. Gustin noted a companion provision by Planning Commission, Sec. 9.1.14(d)(3) expressly says parking availability shall be uniform to Councilor Bushor's concern. All have equal access.

Councilor Mason asked about other high level concerns.





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Councilor Bushor referenced smoothing (median changing in rent) —noting it never got to the Planning Commission, never forwarded by Joint Committee. There was a conversation re 3 years--5 years. M. Tuttle indicated that she had discussed it a little with T. Rawlings today, that there was a discussion at the Planning Commission, but ultimately they did not give an opinion. E. Mahnke noted that it came up late in process, people struggled if there were other indices to use, but not really, not any that are commonly useable.

Councilor Roof asked about the effect of roping in other communities? Discussions of how look separately? E. Mahnke responded that points made Burlington lower median income than others, frustrating that rolled in, came up late in process, recollection no other easy indicator that could be used.

Councilor Bushor recalled that because of what happened at one time, desire to ward off happening in future, discussion of whether averaging can help. Question from Brian or Michael if we can have that.

E. Mahnke not sure of timing. If you want to take on that should ask Jane to reconvene portion of group.

Councilor Mason did not agree that it would be good to reconvene. If want to introduce a 3 year smoothing then not a detriment. E. Mahnke indicated that they should consult with groups doing affordable housing impact—affordable advocates--Brian Pine and John Davis.

Councilor Bushor asked about the other questions. S. Gustin responded that there was a question from the difference on 10.1—left at same percentage.

Councilor Mason asked F. von Turkovich if he had any input? He responded that with a concern with minimum unit sizes, rest looks good. Example, downtown project, market rate focus, if large units, 2,000 square ft. requirement to build all inclusionary at 1,800 would be impossible. Request to have instead a minimum square unit. Councilor Mason referenced lines 347-352. F. von Turkovich asked it to be scaled down. E. Mahnke responded that the reason it went to 90% was because numbers too large, not consistent with what is built these days. We would like to keep 90% but keep upset limit, ie 90% of mkt. but no greater than x sq. ft. Want to put table back in to address concern raised by F. von Turkovich. Would be comparable with smaller size mkt. rate but put cap on top. F. von Turkovich indicated that he thought it would be helpful to work with E. Mahnke and bring back language to committee.

Councilor Roof indicated a concern with size. Should be a middle ground. Agree should take up at next meeting. Councilor Freeman asked whether in practice doesn't that lead to possibility to make a large luxury and then small inclusionary? F. von Turkovich agreed, but want to make better, but not have deal killers. Councilor Bushor noted that she understood the concern and believed it may have some validity, but not totally in that camp. Noting, that first, who is to say that 4 people couldn't share an inclusionary? Intent to have project self-sustaining, but very important to have project integrated. Should be discussion of whether a minimum size. Took advantage of looking at project being built and seems way is to build smaller units. Mixed in statement. F. von Turkovich indicated that he has, but there are those who want to live in Burlington that want large unit and those who are happy to have small unit. Get what saying, but can have impact on viability. E. Mahnke noted the language is 90% of average of mkt. rate units, therefore, could have both.

F. von Turkovich noted that he wants to make IZ work, but need more projects to do that.





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Councilor Roof noted that it was important, shouldn't shy away from developers because money mobile. Hurting people trying to serve if loose that. Only valuable if mkt rate served too to build IZ. Need to think through pragmatically through process and what it means.

Councilor Mason asked about action items. M. Tuttle identified that she would circle back on smoothing and revisit size issue.

1. **Any Other Business**

- i. Next Meeting and Items to review

Councilor Mason would like to move this amendment along after next meeting, noting it has had significant process. He also noted that there will be more amendments coming after the housing summit. Suggested a Doodle poll to set up next meeting.

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 7:34 pm.