



Burlington City Council Ordinance Committee 5/29/2018

BURLINGTON CITY COUNCIL ORDINANCE COMMITTEE

Tuesday, May 29, 2018

Conference Room 12, City Hall

149 Church St., Burlington, Vt.

5:30 p.m. – 7:30 p.m.

****MINUTES ****

Present: Chair Chip Mason (CM), Sharon Bushor (SB)

Absent: Jane Knodell (JK)

Other City Staff: Gene Bergman (GB) (Staff Attorney), William Ward (WW) (Code), Patty Wehman (Code)

Public: Jay Diaz (ACLU) (jdiaz@aclvt.org), Jessica Radbord (VLA) (jradbord@vtlegalaid.org), Ben Traverse (HBR) (bentraverse@gmail.com), Nico Amador (namador@aclvt.org)

CM called the meeting to order at 5:37 p.m.

1.

1.01 Agenda: SB moved the agenda as presented, CM seconded, and it was adopted unanimously, 2-0.

2.01 Public Forum: no one sought to speak in the forum.

3.01 Approval of OC Minutes of 5/8/18: SB moved to approve the May 8, 2018 minutes as drafted, CM seconded, and the minutes were approved unanimously, 2-0.

4.01. Housing – Suspension and revocation of certificate, Sec. 18-20

CM said the committee met on this previously and noted that ACLU had objections and they had submitted them last week and Code and CAO submitted a response today. He noted that no changes were proposed for (a) (1) – (3).



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SB asked about the line 12-17 deletions and confirmed with WW that all were ok. In (3), relating to building, fire, and health orders, she asked WW if the proposal is adequate. WW addressed the circumstance of unsafe housing and said the problem is addressed in other provisions.

CM asked if it was fair to see the ACLU change as breaking up the city proposal into to civil and criminal sections and JD said yes. CM said he sees no opposition to that from Code. CM used the Code/CA memo on points of agreement, disagreement, and other comments regarding the ACLU proposal as a checklist to walk through the ACLU proposal.

CM asked about the change to "resident" from "tenant." JD said it was to protect all who are living in the dwelling and is asking the City to take a broader view of who is affected by the law. JD said notice could be sent to "Residents". CM noted that there are also financial costs for relocation and this expands the potential cost for people who have no right to be there. He asked the policy question of who gets the notice and the steps that have to be taken. Jessica Radbord asked if using "occupant" would be better and noted that a person not on the lease gets notice under state law prior to an eviction. She thinks state landlord-tenant law in titles 9 or 12 define "occupant."

WW has concern with large number of potential people, i.e., girlfriends and boyfriends who may be now required to be provided notice. He is ok with posting the notice if Code doesn't know the names of the residents ("tenants" or not). He would like there to be a definition in the definition section to guide who would get a notice or be considered an occupant. CM suggested a single notice for unknown occupants and changing all references in the section to the State definition of "occupant," placed in 18-2.

CM raised the question of changing "adult resident rental property resident", to "occupant." JD said the key is not holding the adult liable for the kid's actions. CM said there are enough protections in the proposal and in law generally and balancing the interests he would not add the ACLU's language to the proposal.

CM noted that adding the requirements to have three (3) violations adjudicated and finality were acceptable to Code and he and SB agreed that those are acceptable.

On the federal and state distinction proposed by the ACLU in new (a)(4), JD noted the changes in Vermont marijuana law as the reason for the proposed limit to state law violation. WW noted no objection to the exclusion for federal marijuana violations that would not be allowed under VT law but does not support the broader exclusion. CM & SB agreed to build in the marijuana exception.

CM asked about the limit of protections to residents when there are criminal violations in ACLU proposal (4)(B). JD asked that it be limited to residents. SB and CM did not support this and agreed to add back in the proposed deleted language on rights of residents and neighbors.



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CM noted the following areas of agreement in the proposed new (4) based on the Code/CA memo: (1) the limitation of applicable violations to offenses committed on the rental property, (2) the tying of violations to those committed by the resident or their invitee, and (3) the removal of language expressly giving the landlord the choice of what action to take.

CM asked about (4)(D)(i) and after explanation it was agreed by CM and SB, without opposition, to move it to (E) and renumber the others.

CM noted the acceptability of adding the coercion exclusion proposal to (4) and he and SB agreed.

On the proposed disability exclusion, JD raised a fair housing question. GB responded. CM noted the policy question of an exclusion if a disability is present. JR asked that reasonable accommodation language be placed in the notice. SB noted the broad nature of disabilities and the broad exclusion for disabilities in the proposal and questioned why such persons would be insulated from Code taking action after 3 adjudicated criminal violations. JD agreed that it was not an easy question and suggested that where it is suspected that the incidents are related to disability that then Code would not move forward to seek a suspension until mental health or disabilities' services agencies are contacted. CM questioned how that would work and questioned if this is the appropriate place to deal with this problem. SB agreed and noted that by the time it would come to pass, it is already a crisis that the landlord allowed to happen. CM said that he proposes this subsection be deleted. SB wants to see where protections for the disabled are stated or referenced before taking a position.

On the proposed 1st amendment & emergency services exclusion, JD noted that people will take pleas and not appeal. After further discussion, CM & SB agreed not to accept the ACLU proposals.

On the definition of adjudication, JD agreed that Code/CA correctly stated how the ACLU proposes that the term be limited. WW said all violations should be included. CM disagreed with the ACLU proposal and said he'd strike (E). SB said it seems that this is rare occurrence and she agrees with CM, especially since they've inserted that 3 adjudications that disturbed neighbors in required before action is taken by Code.

On the request for the additional ordinance sections that Code and the CA have proposed to be added to the list of ordinances in new (a)(5), JD said the proposed ordinances were vague. SB said she'd like to include them. CM agreed.

On the public nuisance issue, GB suggested using the disturbing of the right of rights and neighbors language in the original, first read proposal. CM suggested either go back to the original disturbance language or add that public nuisance is defined by the Code office; he prefers going back to the reinserted language in the criminal provision. SB agrees.





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On the bi-annual report, WW raised problems with (C) and questioned how the information would be gathered. CM agreed. JD said the information is up to the perception of the Code Office. CM also questioned how helpful the information would be when we don't know who will be affected. Ben Traverse (HBR chair) said the board's annual report noted that most cases involve housing deposit cases and he questions how many cases will be had under this provision and with so small a docket that the numbers will be skewed. SB asked if the numbers being proposed could be provided by the HBR and Ben said yes, although there is no formal process in place to collect it. He also noted that the HBR process is very informal because it is used by people who don't have lawyers. SB also, in response to the small numbers and the skewing of data based on small data size, questioned the validity of the numbers. JD said he thinks the info is useful because it says who is impacted. WW doesn't object to the first 2 parts of the proposed report. CM said he'd want it to be an annual report; SB said it should come from the HBR. CM agreed.

CM asked GB to eliminate the repeated language on notice to shorten the ordinance.

Ben said the low number of code cases to the HBR reflects the good job that Code is doing. He said the original, first read proposal is designed to punish bad landlords, not bad tenants. He doesn't see a provision that throws tenants out. He thinks that the proposal protects tenants by relocation or the appointment of a receiver. He also has a concern about the fire protection appeals going to the Public Works Commission yet this proposal has the HBR and not the PWC have the power to suspend for failure to comply with a fire order. He'd like the power to hear the underlying case. GB explained the reasoning for the underlying fire appeals going to the PWC and CM and SB were not inclined to open that question up as part of this ordinance.

Ben also questioned the ongoing capacity of the board to do such formal hearings without attorney assistance, since it is an informal board. GB said the CA would assign outside counsel to assist in the hearing of these cases and the issuance of decisions.

Ben also noted that the board has heard arguments on habitability and other incidents in relation to breaches of leases with regard to deposit cases; the board had to make a determination that the warranty of habitability was breached and asked that the council consider authorizing the board to make a determination on the breach of the warranty. This suggestion was not taken up by the committee.

SB asked that, on the protection of tenants, there be added "relocated to comparable housing that meets code requirements during the relocation" to the protection section. SB asked about the cost of relocation and got clarified.

CM asked GB to provide a redraft for the next meeting on the 12th where the expectation is to vote on a proposal to send to the full council.

5.01 Any Other Business—None





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6.01 Adjournment: On SB's motion and CM's second, the meeting was unanimously adjourned at 8:15 pm.

Committee Members:

- Councilor Chip Mason, Chair
- Councilor Sharon Bushor
- Councilor Jane Knodell