Burlington City Council Ordinance Committee
5/16/2017

BURLINGTON CITY COUNCIL ORDINANCE COMMITTEE

Tuesday, May 16, 2017

Fletcher Free Library Community Room

235 College St., Burlington, Vt.

5:45 p.m. – 7:30 p.m.

******MINUTES ******

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

Absent: Jane Knodell (JK) (sick)

Other City Staff: Gene Bergman (GB) (Staff Attorney), Eileen M. Blackwood (EMB) (City Attorney), Meagan Tuttle (Meagan Tuttle) (PZ)

Public: Julien Deschines, Mags Conant, Nancy Kirby, Barbara McGrew, Richard Hillyard, Chris Bullard, Adam Roof, Sandy Wyne, Richard Deane, Caryn Long, Joel Rippa, Michael Long, Emily Lee, Norman Williams

CM called the meeting to order at 5:50pm.

1. **Agenda:** SB moved the agenda with the amendment to add a written communication from Mark Porter about the toter issue, CM seconded and it was adopted unanimously.

1. **Public Forum:** Michael Long, W1, spoke in opposition to ZA 16-11. He said he spoke against it at the Planning Commission and thinks it creates a huge loophole and will result in different rules for similarly situated properties. It is a free pass for illegal units and an expansion of Bianchi. The city suffers from a history of poor or lax enforcement and this would memorialize illegalities. The change expanding it to uses is not appropriate. Use and structure violations should not be treated the same. Caryn Long, W1, also spoke in opposition to ZA 16-11. This will sabotage the progress in enforcement. It is being pushed by developers and landlords. In her neighborhood, there are 2 properties that would escape enforcement if it passes. She referenced a letter from a neighbor on Mansfield Ave, Maggie Conant, on the subject. Chris Bullard, W1, said she complained to the city of problems in the 90s and there are still the same problems in her neighborhood. She read a letter from her husband who referenced state law and complains that the ordinance goes beyond what the statute does. Emily Lee, a Planning Commission member, is also in opposition. It creates an incentive for people to act illegally and act dangerously. It is cheaper to break the law than comply under this amendment. It is supposed to clarify state law but state law has been clear and it isn't the city's business to do this. Compliance is possible; it's not like having to tear down a house. This is a way to circumvent the political process and allow more density than what our zoning allows. It goes against the Municipal Development Plan policy to penalize violations. If something is illegal, we shouldn't allow it to happen. There is also ambiguity as to what constitutes the city being aware. SB pointed out that if there is a public safety concern, this would not allow that to be stabilized. Emily said it will encourage illegal uses, not that the unsafe uses would be

validated. Joel Rippa spoke in favor of ZA 16-11. He brought it up several years ago to the Planning Commission to get the city to follow state law. He said it doesn't have anything to do with allowing owners to have illegal units. He said the only town not following state law is Burlington. Norm Williams, former Planning Commission member, said that often intent is pure but there are unintended consequences. If the language says that use violations can't be enforced upon, that is how it is going to be enforced. There are violations that can be undetected over a long period and you want to correct the violation when the property changes hands. A big problem with this ordinance is that it doesn't deter the illegal breaking up of large single family houses. Joel Rippa said that the ordinance only deals with violations that the city knew about so there's no stabilized status if the city doesn't know about it. Barbara Headrick said at 239 S Prospect has turned into a group home for students. Code has been called but hasn't done anything yet. There are safety issues and noise and parking issues. This causes problems with the properties next door and the problem spreads. CM noted that the proposal does not allow violations of the 4 unrelated law to be stabilized. Sandy Wynne said that having lived on North Willard she experienced city interpretations on the law that were totally wrong; people are not convinced that the city will correctly deal with violations. Closings are when the problem can be addressed. She opposes stabilization of violations.

3.01 Approval of OC Minutes of 3/29/17: SB moved the Jan. 25, 2017 minutes. CM 2d and they were approved unanimously.

4.01 Proposed Amendments to Comprehensive Development Ordinance re ZA #17-08, Food and Beverage Processing: Action: With Meagan Tuttle having needed to leave to a Planning Commission meeting, CM moved and SB seconded the postponement of the item till the next meeting.

4.02 Proposed Amendments to Comprehensive Development Ordinance re ZA #16-11, Enforcement Period of Limitations

CM said that, in response to the public comments, that this amendment does not address Code staffing. CM asked EMB to walk through the law. EMB said that section (a)(2) requires proof that the violation existed and the city knew or should've known. It is true that if the city did know and they don't act on it, then that would be stabilized. An example is if a complaint is filed, then the city would be held to have been notified. SB asked about how SeeClickFix would work; EMB said she is not sure that just sending a SeeClickFix notification would be enough but that there is always a record.

CM said that there have been historically issues with permit filing; an example would be the paper permit being lost. That would come up as a title issue. There is no way to differentiate between that example and the example where no permit was even applied for and none was gotten. The question they are dealing with is how can we not reward bad behavior and still allow the transfer to go forward.

EMB said we already have a 15 SOL for structural changes to allow innocent purchasers to move forward. The use violations are looked at differently under an Environmental Court decision but the Vermont Supreme Court hasn't weighed in yet on that decision's interpretation. This amendment is proposed to state the city's public policy that there is a point in

time at which there needs to be stabilization. This is what is being proposed. At the Planning Commission, there was a concern about the 4 unrelated issue and there was also a concern about parking and these have been excepted from the coverage of this amendment.

CM asked EMB if there is a real distinction between structures and use by law or if the other towns have chosen to do this as a matter of policy. EMB said she can't answer for the other towns. SB said Burlington is having difficulty and is different than other communities because we are the home of UVM. SB noted the difficulty in the balancing the interests at the heart of this amendment. She noted that zoning enforcement was understaffed and this makes the city vulnerable and she is feeling more vulnerable. She is sympathetic to those persons who did follow the law and sees that they are different than those who don't follow it. She thinks this ordinance does not deal with the breakup of single family houses. EMB wondered how much a single family homeowner can take advantage of this amendment to create illegal units or living spaces; the key is that the information is in the city's hands.

CM said that Statutes of Limitations work like this and 15 years are an outside limit, i.e., contract breaches and personal injuries are for much less time. He said that many other states only have 2 or 3 years SOLs.

SB noted that sometimes violations are found, "corrected" and then re-committed. EMB said the clock resets and a new notice to the city would be required if the city had taken enforcement action or the activity stops. EMB said to look at (a) (1).

Adam Roof asked how many properties are involved where a permit can't be located or properties have issues. EMB said that since she became CA she's been made aware that there is a level of uncertainty in Burlington for sales that exists nowhere else. This amendment is meant to address and fix that. This is because Burlington enforces back a number of years.

EMB said that the proposal "stabilizes" the violation but does not make it legal; it just means that enforcement will not happen. SB added that stabilization does not allow for enlargement although it allows properties to be maintained.

Richard Hillyard, W1, said for the last 18 years he's noticed that neighbors come together to improve the neighborhood. What does the city want? If a property is in violation of any sort, it will cost the city money invariably.

Nancy Kirby, Colchester Ave, explained her street's situation and the overloading of houses next to her with people and cars. Richard Hillyard added that the city relies on residents to complain and where there are no owner-occupied units, there are no people to complain.

Barbara McGrew expressed that the city budget has not put enough into pro-active enforcement and it needs to. The

proposal is absurd because it rewards those who have looked the other way.

SB said that based on the commentary by residents, she feels the ordinance does not accomplish the goal. She doesn't have amendments but feels things are missing. This is a change in how she felt coming into the meeting. She is not ready to adopt it. CM said that he would echo SB's comments. He's heard a continued concern with how the neighborhoods are dealing with violations. He thinks it is not ready to be adopted. He hopes that those who feel the law doesn't support Burlington's approach can take a case to court and get it clarified, if that is what they believe.

Action: On SB's motion and CM's second, because they oppose it, the committee voted to table the amendment.

4.03. Proposed Amendments Minimum Housing Code re Mandatory Wheeled Covered Recycling Toters, BCO §§ 18-105 and 18-111 and Resolution dated May 1, 2017

SB asked, on 18-105(g), if an owner-occupied duplex (i.e. 1 rental unit) requires a toter and GB opined that it would not because there have to be 2 units of rental on the property. SB and CM said that in 18-111(c) we should capitalize the word "Toter". CM said he heard a concern on the size of the unit but he is comfortable with the discretion that is allowed to the director.

Action: On SB's motion and CM second as amended, the committee voted to approve the proposed resolution and ordinance amendments as amended (capitalizing "Toter") and refer the ordinance to the City Council for second reading and adoption and the resolution to the Council for adoption.

5.01 Any Other Business—Next Meeting and Items to Review—deferred due to Councilor Knodell's absence.

1. **djournment—8:00**