



Burlington City Council Ordinance Committee The meeting will be entirely Remote with Virtual Access: Link to join Via zoom: https://us02web.zoom.us/webinar/register/WN_bmlSokbqRsmcsBGdubvaVA Password: 576283 To join Via Telephone Dial: US: +1

City Council Ordinance Committee – Tuesday, May 12, 2020,

Via Zoom

MINUTES

Members Present: Councilor Chip Mason (Chair), Councilor Jack Hanson, Councilor Zoraya Hightower

Staff Present: Kim Sturtevant (Assistant City Attorney), Lisa Jones (City Attorney's Office), Eileen Blackwood (City Attorney), William Ward (Director, DPI), Laura Wheelock (DPW), Barry Simays (BFD), Brad Biggie (DPI), Caleb Manna (DPW), Meagan Tuttle (Planning Office), Steven Locke (Chief, BFD), Tim Devlin (Assistant City Attorney)

Others in Attendance: Caryn Long, Kirby Dunn, Amy Magyar, Kelly Poor, Attorney Jay Diaz (ACLU), Attorney Gene Bergman, Michael Long, Councilor Karen Paul, Sharon Bushor, Councilor Joan Shannon, Joe Speidel

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 Hanson, seconded by Councilor Hightower.

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Hightower, Councilor Hanson

1. Public Forum

2.01 Public Forum





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Attorney Gene Bergman spoke to the proposed parking plan requirement, directing listeners to the memo from Former Councilor Bushor and indicating that it was a good summation of the work done by Councilor Hanson and Former Councilor Bushor. He indicated that it was an area that was sort of missed over the years in terms of it being a consumer protection item for tenants so they know exactly where to park. A corollary to that is a number of years of yard parking complaints. This is a simple way to let people know where they are able to park and can help prevent issues of soil compaction and run off. Think it is a great step for landlord/tenant and improvement for lakes.

Former Councilor Bushor noted that the minutes were accurate from last time. She indicated that she was here mainly to listen to amendment on 18-113, but wanted to weigh in on a couple of items. With respect to the trespass ordinance, find it acceptable, still feel under (c)(1)—notice issued for over 180 days, doesn't give a maximum number of days could be trespassed. Moved back to 180 days to be consistent with Library's, but some so egregious could be longer. Still should consider a maximum. Feel that most of time people get trespassed have limited means to write or formulate appeal, find it troubling.

Attorney Jay Diaz indicated that he would wait for his item to speak.

Caryn Long indicated her support for what Gene Bergman said.

Michael Long also endorsed what Gene Bergman said, indicating that it would very useful to make a record of what is allowed. He noted experiencing many years, back into the 90's, that things have happened and the city essentially supporting that, giving an example of parking added on the corner of Loomis Street. Mr. Long indicated that the proposal as he understood it is a simple requirement to have a map to show people where required and allowed to park within confines of zoning ordinance in context of lot coverage. That it was long overdue and would be a good thing to have. He also stated that Bill Ward spoke in the past that it would be good to have a good map of where people were allowed to park.

Closed public forum at 5:48 PM

1. Minutes

3.01 Approval of Minutes of 2/24/20

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

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Hanson, Councilor Hightower.





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1. Committee Discussion/Possible Action

4.01 Notice of Trespass on City Property

Councilor Mason identified that the item had been continued from February 24, 2020 and then turned to City Attorney Blackwood to give further introduction and history.

1. Attorney Blackwood introduced the item, noting that it started a long time ago, when she first starting working with city departments on how and when to issue notices of trespasses when individuals engage in problematic behavior on city property. Majority of issues are in city buildings. During that time, she became engaged by the ACLU in litigation based on a trespass that was issued to an individual in City Hall Park. As part of settlement, she shared what it had been working on and the ACLU suggested tweaks. Didn't fully wordsmith among the parties as they understood that the ordinance would need to go to Council. The process has been delayed, it needs to move forward as part of the settlement. ACLU was not able to attend the last meeting. Changes were made based upon comments from the last Ordinance Committee meeting. Attorney Diaz sent comments from before and new comments from today for this draft. Trying to include city buildings as well as open public spaces. Attorney Blackwood indicated that it was her understanding that the ACLU's concern is with open public spaces that are traditional 1st amendment spaces where people have right to say free speech. She noted that she was more concerned that much more often the trespasses are from persons coming in buildings and threatening staff and want to be able to trespass those. For instance, most recently someone set fire in Hall, it was very disruptive and scared people, would want to be able to trespass that person for a length of time. A couple of years ago, a person in the library was accused of sexually harassing a city staff person who felt very threatened. That went to a subcommittee of the Library Commission who upheld a 1 year trespass. Since then the Library passed its own ordinance change that has a lot of specifics for the Library.

Goal of this ordinance is to have fairly general authority for city officials on city property to be able to issue notice of trespass while at same time have some clarity that notices of trespass can't be done arbitrarily, they have limits on amount of time and have an appeal process can go through if feel wrongfully issued. Additionally, want to allow people to request waiver if notice issued and need to work, get to residence, access government services or engage in constitutionally protected activity. Trying to have notice of trespass available to protect folks and that conduct not occurring that interferes with the intended use of the public space.

Councilor Mason questioned whether the litigation was about the length of the trespass or the lack of due process? Attorney Blackwood responded that believed that was generally the concern--no appeal process where they can say I don't believe I should be trespassed and no notice to have a waiver. If it had been shorter probably not as much an issue either.

Councilor Hanson questioned section c--blue underlying, "no verbal warning is required if..."—is it meant to be the reason of the issuance of the notice of trespass is an accusation? Attorney Blackwood responded yes.



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Councilor Mason noted that the committee was aware of the comments from ACLU at last meeting and asked for changes based on their interpretation of the comments related to accelerated time periods based on more egregious conduct and repeat offenses. Interested in ACLU's current position.

Attorney Diaz indicated the issue in the case for their client is important here because the ordinance proposal looking at is very broad and includes situation like what happened with Mr. Ploof in City Hall Park. Agree concern with those areas where a traditional public forum, like City Hall Park. Places where traditionally had protests, farmers markets, concerts, protests—places people can access to speak or listen to people. Ploof wasn't doing anything, just standing in park talking to friend when trespassed. Notices were for minor infractions which he didn't get opportunity to challenge. While care about due process issues, you all have done a great job on that, the other issue in case is about freedom to access the park, freedom to hear speakers—that is what is impacted when someone is trespassed. Comments on specific sections-- does a lot, meets a lot of our concerns, however concern with: e(1) new language, appreciate trying to get to our issue, starts with maximum trespass of 1 year. What we have seen is that BPD always use maximum. Concern that is what is going to happen here, discretion is up to person issuing. Discretion leads to concern of disproportionate impact. Appreciate blocking out minor, moderate and more serious violations, but meanings of words can be somewhat subjective. Would be totally comfortable if line drawn at violence, harassment or threats of violence, understand city needs there. Maybe that being a dividing line and make time base on that is the best way to go. Also do not really quarrel with increasing number of days can be trespassed for repetitive violations in certain amount of time.

1. Mason questioned role of ordinance committee. Attorney Diaz responded that ACLU advocating on this part. Mason asked where ACLU thought the proposal was in violation of agreement. Attorney Diaz indicated that not currently see violation now, concern for violation if enacted. Sec. (d) of settlement discretion to issue greater than 30 days shall be subject to adequate and meaningful constraints. Looking for, but not finding that. Giving city employees ability to issue very lengthy trespass orders. Recommend to just limit to 30 days maximum in public places or not go into effect until hearing panel reviewed them. Beyond 30 days long time not to be able to access heart of city of minor violation.

Councilor Mason expressed concern if violent offense, whole intent to remove. Concern for not meaningful or adequate constraints. Heard that would gut most as most trespass in CHP. If the other exception is not to allow to go into effect until hearing may not be effective. Attorney Diaz responded that he understood the concern, clarified talking about minor violations. Want to see shorter time of current ordinance. Not talking about public buildings, talking about parks, open spaces. Limit to a maximum number of days.

Councilor Mason noted that the waiver addresses the immediate concern. Hearing now that ACLU wants two tracks, minor and multiple. Attorney Diaz responded that was a fair summary. Consider it a right to access a park, meet with friends, participate in society. Concern how long it can be taken away for a relatively minor offense. Now, 1 day for 1st, 90 days for 2nd, and a year for the 3rd. Trying to get it fit without a lot more work.

Attorney Blackwood indicated that has been a long time debate. One may be error, moderate for alcohol, should be minor. For minor first time violations notice should be 1 day, but then intermediate violations, that 30 day trespass is suitable for second offenses. Trying to get routine, not per space for guidance to employees. If have to look up different rule for each



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space becomes problematic.

Councilor Mason asked if want to table and come back? Don't want to pass ordinance that will be challenged in a month. Attorney Blackwood disagreed with Attorney Diaz that in breach of settlement. One suggestion, take out open container. If more serious or second offense may be out longer. If doing over and over again, taking a lot of time. Part of point of doing things like this is to change behavior. Not clear if alleviate concerns.

Councilor Mason questioned language e(1) whether should change 1 day, remove language "such as having open container alcohol" and fixing typo—adding notice before trespass.

Attorney Diaz indicated limiting discretion is important, so where done helpful. Limiting change of length for trespass, important. Think it would be good to have definition or more objective language to understand minor, moderate or serious so everyone knows what it means. Could cite to sections or otherwise add definition. Adds discretion, concern. Other concern is arrest, court date but not arrested for just being in City Hall Park. Believe City Hall Park is unique, may be easier to make exception around City Hall Park rather than make language change. Have criminal charge, court date, but not arrested.

1. Mason questioned whether reference to 13 V.S.A. Sec. 3705(e). Attorney Blackwood indicated it was. Point of trespass is notice, this section about notice, it doesn't affect state law. If formal notice of trespass, told doing something not supposed to do and then still do it without waiver—don't know if should be giving up public right to say that is not okay. If can't arrest, then makes it a bit useless.

Attorney Diaz indicated that discussed if given trespass and refused to leave then arrest, other options. Just expressing concern for ability to be arrested for being in a public space. Attorney Blackwood followed up for clarity that it was not like give notice and arrest, give notice and then next day when you can come back arrest.

Councilor Mason asked for direction from Attorney Blackwood of what way to go. She responded willingness to work with Attorney Diaz and bring back—asked for comments/guidance from committee.

Councilor Mason indicated a willingness to vote now or bring back.

Councilor Hightower indicated that it makes sense to send back, flag maximum and tendency to move to max., categories, more examples and range of days.

Councilor Hanson agreed with Councilor Hightower--makes sense to make some changes that discussed. Question for the City Attorney--where arresting officer get citation and make arrest work, does that satisfy ability to make arrest? Attorney





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Blackwood replied that she would like to chat with BPD to see if that works. Councilor Hanson agreed made sense to keep working on amendment and come back.

Motion by Councilor Hightower to table pending it coming back from City Attorney based on guidance provided, second by Councilor Hanson.

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Hanson, Councilor Hightower.

4.02 BCO Sec. 18-113 Parking Plan required

Councilor Mason introduced, ordinance sent to Council prior to new Council, put forth by former Councilor Bushor. Understand there may be some concerns forwarded by Bill Ward.

1. Ward indicated that he was not ready to implement the current version. The concept came from his Amherst visit, but wasn't really working in Amherst. Quite common in Amherst to have streets with a number of violations. He thought it was something good to look at, but needed more. Need something with an enforcement hook to change behavior. He indicated that he had a number of objections to the proposed ordinance version. It doesn't address site plans that may be different than zoning ones. Difficulty because most properties don't have violation. For all those that don't have an issue, increasing their costs. Need for signage, requires permits, and increases cost. Just for rentals, doesn't address owner occupancy. Parking on grass issue whether rental or owner occupied. Could have two competing files, need time to cross check, setting up staff. Fire Marshall require access review, not sure if consulted on this. Not sure if have time to do within the next year. Right now, it is a tool that don't want. Think it needs more work.

Attorney Bergman responded with concern of posing perfect as the enemy of the good. Don't believe need a perfect ordinance before implementation. This lays out where you can park. Contradictions license to continue poorly enforcing zoning requirements. No reason targeted enforcement can't occur. Could support temporary employees to help do this if needed. Ability to start without opening up zoning enforcement. No reason tenants cannot be given this basic right without having to also add in owner occupancy. Target moving. Can give minimum housing tickets. Continuing problem enforcement, believe simple to enforce. Don't think Fire Marshall will get inundated with a lot of calls. If people are interested in making sure people are safe, that is a good thing, otherwise wild west attitude. If so few places having issue, even with turnover of students every year than complaints don't hold up. Spent a lot of time with it. When stopped making progress then brought this forward.

1. Bushor indicated that Bill Ward was correct, spent a lot of time on it. She stated that Councilor Hanson and she both worked on ordinance for different agendas. Originally, the concern was the lake and then there came more concern



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when eliminating on street parking and not giving tenants places to park. As we work to make the city more bike friendly, there needs to be more knowledge to tenants. Issue regarding signage is not that onerous, don't believe it is a barrier. Acknowledge that when ended conversation were not altogether. Recommended that it needed a phase in. Suggested interns or other help, not seized upon. When issue, then make come into compliance, then become part of record. Way to address issue that deals with lake and become more important as take more off-street parking and not let people know where to park. Also gets to better knowing properties and therefore power to enforce.

Director Ward indicated that he didn't say he was against the idea, rather, the current model was not ready. Noting that whatever is passed would not be able to be sent out until next year's rental registration. Not suggesting couldn't make it better. Will make over 2,500 administrative violations for people that need help and may not have violations currently. Will be work heavy to begin with and results could be better if spend a little time on it. Councilor Mason noted that he was not aware of the rental registration timeframe, asking what was envisioned if have more time? Director Ward replied, targeting in first phase. In one year only 6 crossed the threshold of zoning, see click fix and tickets. Happy to get to ultimate place of where all, but start with bad actors first.

Caryn Long indicated that she totally agreed with Gene Bergman that it is time, don't understand on why we got to this place, why haven't focused on this already. Zoning rules on setbacks. Clear on grass parking, all visible. Think great because it makes it clear. Why not put in place and tweak as go, why need to wait until next April until rental registration goes out. Rely on street parking or not have car. Not been to many other places—but places in Burlington ugly. Pollution into lake. Aesthetics and save lake. Hope refine and tweak but don't like putting off another year.

Councilor Hanson indicated that it has been a long process. Open to taking more time, don't want to go in circles but willing to give more time. Room to improve. Important for tenants to know where to park, fairness aspect. Another benefit of policy especially with students if they know up front that parking not available, they are much less likely to bring a car. Less free for all, think will actually see reduction of folks that are bringing car. Agree with targeting, like to go after repeat offenders first. See Click Fix list should be valued, not need all three cross over. Owner occupied, open to including, if way to work in in short amount of time. Different, so need to address differently. Signage, not sure about that issue. More important in lease and post in common area. Not as critical to signage. Summary, open to taking more time and making additional changes. Don't want perfect to be enemy of the good.

Councilor Hightower agree with Bill Ward on signage, that it will create nuances. Okay with minimum number of parking spaces before signage (1-4). With respect to consult with Fire Marshall, think that could be part of DPW roll in review plans. Question for Bill Ward regarding Bushor memo about info on numbers of spaces during rental registration. Director Ward replied that yes in grid on rental registration if turned in but, what more compelling is the last approved number, CDO with property owner site plan. Councilor Hightower further questioned the percentage sent back. Director Ward indicated that it was more than half, but not 75%. Councilor Hightower indicated that she would like to see changes and that she was okay with extending the time for weeks, but not multi months.

Councilor Mason agreed with other Councilors—share goal, is how to get there, with more time think can get there. Concern with administrative plan how to get there, most rentals turn over this month will not have this language then.





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Quorum rules, question where it goes, who partakes. Expect report back within month or 6 weeks. Councilor Hanson agreed logical, question best way forward. Councilor Mason table request Bill Ward to come back within next 6 weeks, within 2 meetings. Language if have it, but 6 weeks, not need to complete by then.

Councilor Mason noted unclear if plan to be approved by city staff? Approved by Fire Marshall? Each space sign? Expense on landlord to pass to tenant for signage requirement? Language through City Attorney's Office appropriate.

Gene Bergman indicated that it would be advisable to have drafted amendments—great to have language before and get before six weeks and not let languish.

Motion by Councilor Hightower to table for no more than 6 weeks/2 meetings to return with revisions after meetings, second by Councilor Hanson.

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Hanson, Councilor Hightower

4.03 Discussion re: Sprinkler Systems from the ADU Amendment

Councilor Mason introduced the matter identifying that during the Accessory Dwelling Unit (ADU) amendment process a concern was raised regarding the expense of requiring sprinkler systems for the units as well as a question regarding the code requirements.

Brad Biggie, Senior Building Official, described how the review is triggered as a new occupancy or new building. The Fire Marshall oversees the acceptance of the fire suppression system. National Fire Association is what the State adopts for the Codes, NFPA 101, the Life Safety Code, NFPA 1, the Fire Code, the International Building Code and all other documents that are referenced within those codes. In NFPA 101 the State has made an amendment that says Chapter 24, 1 and 2 family dwellings do not have to be sprinkled. However, State has not amended NFPA 1 requirement. NFPA 1 requires unit to be 50 feet or less to fire access road. If greater than 50 feet needs to be sprinkled.

Councilor Mason asked if they are inconsistent. Chief Locke indicated that he doesn't think they are inconsistent. Sprinklers are life safety requirement. Because do not have fire access, sprinkler allow to meet code, alternative. If have access road would not need sprinkler. Clearly a life safety issue because of the delay of the ability to put water on the fire because of space—setback to street and difficulty to get to. Fire Marshall Simays agreed with Brad Biggie and Chief Locke, noting that NFPA 1, the adopted fire code, adopted by reference in Ch. 13 and 8 does govern fire department access roads, applies to all structures. Once requirement stated then per agreement with State of Vermont review from Fire Department. Fire Marshall's Office is responsible for plan review, permitting, inspections for all fire protection systems and also addressing issues with existing fire protection systems. NFPA 1 is a separate document, separate requirement. Requirement for each





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building to have fire department access road within 50 feet from entrance. Most common type of access road is a city street. First question is if front door within 50 feet from road. If yes, okay. If not, then alternatives. Provision may be modified from authority having jurisdiction if 1 and 2 family dwelling protected with a sprinkler system and existing 1 and 2 family dwelling. Have sprinklers required because of lack of access road back to 1989 at least. Earliest hard copy of regulations is 1992 and requirement very similar, if not nearly identical. In range of 47 residential sprinkler systems required because of lack of fire department access. Brad Biggie added reference to new construction roles in converting carriage barns to rental units.

1. Mason indicated that the reason this is before the Committee is that the issue of sprinklers was raised during the ADU discussion in context of cost, there was different information provided. Appreciate that clear information was given by officials, but questions raised by constituents and others doing research. Want to make sure we are all on the same page. Want to understand 2 points, first this is not a discretionary call, this is enforcing state law as you interpret it? Barry Simays and Brad Biggie both responded that that was correct. Second, Mason questioned whether they were aware of any other jurisdiction that has taking a contrary, different interpretation? Chief Locke indicated that he thought there were others that do not enforce this provision of the code.

Councilor Hightower indicated confusion over what trying to do. Councilor Mason responded that during ADU discussion looking at barriers to providing ADU's and sprinklers were raised as an extra cost. Staff had indicated they were required, some members of the public said they weren't—referred to Committee to review (referral was only sprinkler portion of memo). Chief Locke indicated that their point is that they have tried to interpret this provision consistently since late 1980's. Applies to more than ADU's, single family homes that do not have fire access as well.

Amy Magyar indicated that it was good to have officials here, believe there was confusion regarding regulations as state dropped sprinkler requirement for 1 and 2 family in one section of code but then left fire access road requirement. She further indicated that she now has an official, approved ADU. Her space is under 400 sq. ft. with four 4 foot windows and a sliding glass door and needed \$10,000 sprinkler system. Brad did indicate Uponor available, cheaper, people getting certified to do. However, even if not \$10,000, still will add \$5,000 to \$6,000 on to a detached accessory dwelling unit. Back door to house is 15 feet from ADU. Want to be safe, want BFD to get to back to area, but want to bring up idea that after COVID people will flock to our areas. Think ordinance passed brilliant. Think that we will see people building ADU's. Issue sprinkler system. Understand required, but need to scratch head, if can't get out in 10 minutes will still be an issue. Uponor still half price, still hard pill to swallow. Experience with City started out rough, but got there with help from officials. Support safety, but question whether it is really needed, feel have the ultimate safe room. Brad Biggie responded that unfortunately at start of process didn't have as many Uponor installers certified, if have more will decrease cost.

Kirby Dunn discouraged by the requirement. Hope there is a way for this to be amended at state or local level. ADU's technically a single family home from finance or other perspective. Uponor great, but no plumbers in City of Burlington right now. No contractors available in City. Not viable option if want ADU's currently. Hoping back yard model is what people take, but a huge expense for ADU. Just one more barrier.

Councilor Hanson indicated that it does seem potentially unnecessary but not an expert, curious to hear from experts their opinion whether state law is necessary or how feel about changing it? Would consider asking to remove requirement, but



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would want to hear from experts' opinions on policy beforehand. Chief Locke responded that the he always supports installation of fire sprinklers systems, the requirement saves lives. He noted that he understands the reservations some people have, but indicated that you will not find a fire chief to tell you not to sprinkler. Director Ward also added that it is good for Burlington as it is a uniquely dense area compared to other areas of the State, needed here, support keeping in place.

Council Hanson indicated that the responses were helpful. Makes it difficult to know how to proceed. Councilor Mason agreed. Council Hanson asked for thoughts on alternatives? Senior Building Official Biggie responded that he thought we need to encourage local plumbers to get certified to install Uponor systems. Big component for ADU. Chief Locke added that it is so simple to be able to be certified, 3 day course. If work with CEDO to push out, there is a market and conversation to be had. Fire Marshall Simays agreed, noting that Uponor is a brand name, speaking to the type of system, water user, no different than dishwasher, toilet, etc., pex tubing. Great to bring in more, price will go down over time. There is one in the city on North Street. It was a seamless plan review and inspection process.

Council Hanson indicated that there appeared to be one way forward, sounds like CEDO good option. If Council can be helpful, please feel free to reach out to me.

1. 4.04 BCO—Chapter 27, Streets and Sidewalks-Excavations & Obstructions

Laura Wheelock indicated that she was there from DPW. Caleb Manna introduced the item, indicating it had been before the Council previously. DPW started project in fall of 2019, just seeking to upgrade Chapter 27 which largely covers excavation and obstruction of the City's right of way to capture more modern means of the way we do construction. Highlights of changes: raise insurance limit to million dollar aggregate policy to cover modern policies, raise obstruction fee from \$5 per week (cost at original conception) to \$20 plus \$5 per week, waiving requirement for resurface driveways, extending timelines of excavation and obstruction permits, also looking to capture encumbrance fees which pertains long term occupation of the City's right of way. Most important change and one of the reasons back before Ordinance Committee is change to use of metered parking spaces. Currently rather restricted, DPQ want to expand reasons can use. During COVID looking at uses for parking areas.

Councilor Mason asked to look to specific language asked to change. Caleb Manna responded 27-33 language triggered returned to Committee.

Motion by Councilor Hightower to approve amendment as proposed to be amended and refer back to the full Council with a recommendation for approval, second by Councilor Hanson.

Email from Sharon Bushor raised line 142 language referencing the traffic department, questioned whether it should be traffic division or Department of Public Works? Laura Wheelock indicated that traffic department was likely an older reference. Noted concern with how funding would work.





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Councilor Mason amended motion to include change from "traffic department" to "Department of Public Works" in line 142 as well as other areas with "traffic department" reference unless City Attorney's Office determines more appropriate language to insert. Councilor Hightower, the maker of the motion, indicated that the amendment to the motion was acceptable.

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Hanson, Councilor Hightower.

1. Any Other Business

Next meeting June 2nd at 5:00 pm.

1. Adjournment

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

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Hightower, Councilor Hanson

The meeting was adjourned at 8:07 pm.

