



Burlington City Council Ordinance Committee 5/8/2018

BURLINGTON CITY COUNCIL ORDINANCE COMMITTEE

Tuesday, May 8, 2018

Contois Auditorium, City Hall

149 Church St., Burlington, Vt.

6:00 p.m. – 8:00 p.m.

**** MINUTES ****

Present: Chair Chip Mason (CM), Sharon Bushor (SB), Jane Knodell (JK) (came just after agenda was adopted)

Absent: None

Other City Staff: Gene Bergman (GB) (Staff Attorney), Lise Veronneau (LV) (BPD)

Public: Jay Diaz (ACLU) (jdiaz@acluvt.org), Kelly Daugherty (kellyd@stepsvt.org); Mairead O'Reilly (mcoreilly@vtlegalaid.org)

CM called the meeting to order at 6:00 p.m.

1.
 - i. **Agenda:** SB moved the agenda, CM seconded, and it was adopted unanimously, 2-0.

2.01 Public Forum: no one chose to speak

3.01 Approval of OC Minutes of 1/31/18: SB moved to approve the January 31, 2018 minutes as drafted. CM seconded, JK abstained, and the minutes were approved unanimously, 2-0-1.

4.01. Offenses & Miscellaneous Provisions –Regulation of Security Alarm Systems, Sec. 21-42

CM asked if this is budget driven and GB said yes and asked that LV explain.

LV said the reason for the change is that it is time consuming and ineffective to do false alarm billing and collections are very problematic. The annual fee hasn't been raised for years and the PD would like to try to "pilot" not billing the response charges to see if the annual increase will cover the cost of the program (responses, admin, etc.).





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SB asked if the CA's office looks at the finances and GB said no, that is left to the CAO and departments themselves. SB said she is supportive and asked if the annual fee is hard to collect or it is usually paid and LV said it is always paid. SB asked if the administration of the program would be covered by the increase in the annual fee and LV said yes, she believes so.

CM asked if this is just for systems registered with the PD and asked about off-the-shelf wi-fi systems. LV said the PD requires alarm system owners to register with the PD. Even if there isn't a vendor, the PD has the system registered so the PD knows about a system and can respond to alarms. CM pointed out that for wi-fi systems installed by owners themselves, the owners may not know about the registration requirement. He said that was a future discussion to have.

Action: On SB's motion and JK's second, the committee unanimously, 3-0, to approve the proposed amendment and refer it back to the CC for 2nd reading and adoption with a recommendation of adoption.

4.02. Housing – Suspension and Revocation of Certificate, Sec. 18-20

CM asked GB to summarize and he did. CM then opened the floor for public comment.

Jay Diaz said he wasn't here to wordsmith the ordinance but to talk about unintended consequences. There is a disagreement with the City on can the city do this but the unintended consequence is that vulnerable people will get evicted; i.e., a victim of domestic violence who isn't on the lease is more likely to be evicted. The things to focus on are: do we want to encourage evictions, evictions for people with mental health disabilities, and do we want to encourage people not to call the police for help. Much of the ordinance is good; the problematic section is the one on the adjudications of violations of the law—it is the easiest thing for landlords to just kick someone out when they are being talked to by the City. He doesn't have a problem with loud parties being subject to this law. Also, he complained that the proposal removes the repeated offense requirement. If the concern is about the number of police calls, this will incentivize prosecution. There is also an incentive of people to plead out and that will lead to an adjudication that will trigger this being used.

As for 5 (drug dealing), there are not the protections that are in 4 and there are better ways to address the problem.

Jay concedes that there are absentee landlords that allow situations run amok and they need to be addressed. He asks that they work together to fix the problems in the proposal.

Kelly Daughtery echoes the concerns as they relate to people who experience domestic violence. When the abuser is convicted, the other persons in the apartment are evicted. She asked the committee to slow down and look at





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protections. The fear is that the city's involvement will drive the landlord to action when they wouldn't and that it will encourage people not to call for help.

Mairead O'Reilly, VLA attorney, works with people who have opioid problems. The ordinance will send the message to landlords that you shouldn't rent to certain people or that you should get rid of them quickly. She has worked with pro se landlords who, once they hear of a problem, will just evict. There are a lot of folks who need housing while they are using drugs and state law protects people from getting arrested when they are overdosing and call for help. The fear is that calls will lead to evictions. When people are evicted there are compounding problems. She doesn't know that this ordinance is an answer and would be interested in working on it. She suggested adding a list of non-eviction tools.

CM wondered how often the eviction of people who are adjudicated as violating the law and disturbing their neighbors would happen under the ordinance given that the law already allows evictions for these types of activities.

SB said she appreciates the viewpoint of the vulnerable populations but she represents and lives in a neighborhood with a lot of absentee landlords that are causing a lot of problems by not dealing with their tenants' bad behavior, i.e., noise. She wonders how to deal with both populations. She once lived next to a drug dealer when she had 2 small kids and she was scared to call the police and was very happy when they moved.

CM said he's heard a request to not move it forward. SB said she was concerned about the elimination of lines 12-17 in the original ordinance. CM said he has no big issues with the proposal but is interested to see if the parties are really that far apart and encouraged the ACLU to come up with actual language suggestions. SB would like definition of life threatening to be looked at and has a problem with vagueness with 5.

JK thinks committee is on the right track. She would not support eliminating 4 & 5 but would like to see language suggestions. JK would like some outreach to landlords and GB said he can reach out to Apartment Owners Inc. and Vt. Tenants Inc.

SB listed 2 issues: clarity on lines 214-216 (decisions being written) and GB said yes they would be. She asked for staff to look at reinstituting line 52 (nature of the replacement housing).

Emailed comments from Ben Traverse of the Housing Board of Review were entered into the record:

From: Ben Traverse <bentraverse@gmail.com>

Date: May 8, 2018 at 2:54:21 PM EDT

To: Chip Mason <cmason@burlingtonvt.gov>

Subject: Suspension / Revocation Hearings

Chip,



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Lisa Jones, the clerk for the Housing Board, let us know that the Ordinance Committee's agenda includes consideration of the proposed legislation on the suspension/revocation of landlord certificates of compliance. While I recognize this scenario is unlikely to come up all that often, some input from incumbent members of the Housing Board may be helpful towards determining whether our board has the bandwidth to deal with these serious issues.

I'm not sure I can make tonight's meeting, as I'm on dad duty while Becky and her colleagues at Leg. Council are in the throes of wrapping up in Montpelier. If you think it would be helpful, I'd be willing to appear by phone. A couple of thoughts:

1. Keep in mind that while the board is a quasi-judicial body, it is mere happenstance that two of its current members are attorneys. To fully understand the evidentiary standards proposed in this legislation, the board is going to need some assistance from counsel, no differently than juries need the assistance of instructions from the judge. While I'm unsure as to whether there is any precedent for this in our ordinances, you may consider requiring that counsel from the City Attorney's Office attend any suspension/revocation hearing.
2. As currently written, among the reasons for which a certificate can be suspended is non-compliance with orders related to fire prevention and building safety. Currently, if a landlord appeals a minimum housing order related to these issues, the Housing Board is without jurisdiction to hear the appeal. See 18-42(b). Rather, these appeals go to the appeals board established by the Public Works Commission. See 18-94 (citing 8-8). Truthfully, it is a frustrating reality, as minimum housing orders often combine fire safety issues with other violations, meaning landlords have to appeal orders in two separate venues.
 1. the legislation moves forward as is, it would be strange for the Housing Board to preside over a suspension hearing related to fire safety when it is without any power to hear an appeal from a minimum housing order related to the same subject matter. I recommend amending 18-42(b) to permit the Housing Board to hear appeals related to fire safety. Even without the proposed legislation, I would recommend this amendment, if only to simplify the avenue for appealing minimum housing orders. Please note, however, that it may be worth receiving input from the Public Works Commission's on this issue.
3. While the proposed legislation provides certain protections for tenants in the event of a suspension/revocation, such as the payment of relocation costs or the appointment of an independent manager, the ordinance mentions nothing of a tenant's right to break a lease without penalty. Perhaps I'm missing something but, as written, it appears that even if a landlord's certificate is suspended or revoked, a tenant may remain bound by the terms of a lease. If a tenant decides to move out under these circumstances, a landlord may try withholding the tenant's security deposit for unpaid rent. I suggest that the Ordinance Committee consider whether tenants should be expressly permitted additional protections to a break a lease without penalty in the event of a suspension/revocation.



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I hope this is helpful. Please let me know if you or other members of the Committee have any questions.

Best regards,

Ben Traverse

Housing Board of Review, Chair

The committee decided to suspend the conversation and take up the discussion at its next meeting.

5.01 Any Other Business—the next meetings were set for 5/29/18 & 6/12/18 at 5:30 pm.

6.01 Adjournment: On SB's motion and JK's second, the meeting was unanimously adjourned at 7:45 pm.

Committee Members:

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