



Burlington City Council Ordinance Committee ***Virtual Meeting*** 4/1/2021

City Council Ordinance Committee – Thursday, April 1, 2021

Via Zoom

DRAFT MINUTES

Members Present: Councilor Mason (Chair), Councilor Hanson, Councilor Hightower

Staff Present: Kim Sturtevant (Assistant City Attorney), Eileen Blackwood (City Attorney), Lisa Jones (City Attorney's Office), Meagan Tuttle (Office of City Planning), Cindi Wight (Director, Parks and Recreation), Deryk Roach, (Parks and Recreation).

Others in Attendance: Sharon Bushor, Councilor Karen Paul, Mike Hoey, Rosaire Longe (Elks)

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 Hanson, Councilor Mason, Councilor Hightower

1. Public Forum

i. Public Forum

Sharon Bushor indicated that she would wait until the zoning amendment regarding shorelines



Burlington City Council Ordinance Committee ***Virtual Meeting*** 4/1/2021

Closed public forum at 5:35 PM.

1. Minutes

i. Approval of Minutes of 2/17/21

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

Final Resolution: Motion Passes

Yes: Councilor Hanson, Councilor Mason, Councilor Hightower

1. Committee Discussion/Possible Action

i. BCO Ch. 21 re: Express Prohibitions—Express Prohibition- Leaf blowers, Sec. 21-14

E. Blackwood opened discussion noting that the ordinance is essentially an attempt to address noise and moving from gas/fossil fuel to electric and then referred to Councilor Paul.

Councilor Paul indicated that the process started mid-2019, came to council in 2020, came as a result of a constituent disturbed over noise during summer and due to environmental concerns. She noted that hundreds of municipalities have adopted similar ordinances and that this one is modeled after Newton, Mass. Just one concern in terms of wording. Everyone affected has known about it for almost a year and half would like it to move forward with just one wording change. Councilor Mason noted the request to change "i.e." to "e.g."

Councilor Hightower asked about dates, asking about flexibility in the years, extend beyond this year okay? Councilor Paul responded that it was designed to be a phase in, hoped city to take lead.

E. Blackwood asked whether they could add "and eliminating nuisances" in purposes? Councilor Paul indicated that she was amenable.

C. Wight noted that the concern from staff is the date, originally given more time, now right upon us, hesitant at first, but team tried electric and came on board, but don't have everything needed yet and not sure when will have, need time to pivot, July 1 too soon. Will do everything to meet timeline, but what if cannot meet. Will we be penalized if can't make July 1? Can use savings this fiscal year and will try to use those, but concern can't do it in time. Give team kudos because they have heard council and will be trying to bring more on for electric. Councilor Mason asked what the date would be.

D. Roach responded that COVID has caused difficulties in getting stuff, have 3 quotes but experience that when order from manufacturer they may be delayed, very common in past 14 months. July 1 is very close, looking at flexibility ordinance



Burlington City Council Ordinance Committee *Virtual Meeting*** 4/1/2021**

committee has, not totally in control. Looking at \$ and purchase.

Councilor Paul noted that the ordinance was about 14 months old now, agreed to July 1 because Parks and Rec. agreed to it. If delay dates now, throw off all other dates and then into summer 2022. All aware of supply chain issues in past year, this has been with committee for more than year. If change date the will throw off all dates. E. Blackwood agreed that you need to look at effective dates for businesses and property owners, especially because of COVID. Also, she noted that BED has incentives for purchases on website.

D. Roach indicated that the greatest concern was not Parks which has resources to try to make it happen, but for small businesses that will need to overcome cost of doing it and the limitation of a three month period of being asked to do this. To some degree don't necessarily have the perspective of Councilor Paul that technology has caught up, City can overcome—not sure if heard from enough small businesses what they would need to overcome to meet challenge.

Councilor Hanson moved to refer the ordinance back to the full city council for second reading and adoption with two changes: change i.e.'s to e.g.'s in Section (e), and within Sec. (a) Purposes, add "and eliminating nuisances" after "emissions." Councilor Mason seconded the motion.

Councilor Hanson indicated that it was an activity that has a pretty large externality--noise, dust. The process started long ago, there was notice and warning, comfortable with moving on it as is.

Councilor Mason asked where the universities fit into the effective dates. Subsection 4? Business that owns multiple properties fit where? Where UVM, Champlain College or UVMC fit? E. Blackwood responded that they were covered under businesses, but does open up question. Councilor Mason read 2 & 3 go after landscaper. E. Blackwood agreed that it wasn't clear. Councilor Mason responded that 4 covers everyone else. If intention everyone else, than should revise 4 to say everyone else by Dec. 31, 2021. I.e. mean landscapers, e.g. now examples.

D. Roach indicated there was a heavy concern by adjacent properties of how UVM manages property. Southern portion UVM, northern East Ave. Not directly D. Roach perspective, but tried to act as a mediator in process. Councilor Mason indicated UVM by July 1. Part of concern that larger vendors already identify sources.

Councilor Mason asked if there was a concern after cleanup. D. Roach indicated there was noting that an electric blower has a 40 % reduction air. Council Mason asked the cost of one unit. D. Roach responded approximately \$400 for gas, electric approximately \$1,000 and 40% less effective. Councilor Mason noted that he was concerned for businesses to have to take on cost without sufficient notice. D. Roach noted that the City was able to anticipate and able to replace a percentage, but companies have not have chance to understand what is fully asked of them.





Burlington City Council Ordinance Committee *Virtual Meeting*** 4/1/2021**

Councilor Mason questioned "i.e." versus "e.g." E. Blackwood responded that "i.e." is "among others" and "e.g." is "for example." E. Blackwood noted that (e)(3) says business and/or property, should say more than 1 and up to 9; #4 every other person or entity within the City. Councilor Mason confirmed #4 is the catch all.

Councilor Mason asked about whether Code Enforcement would enforce the ordinance? E. Blackwood responded that people would call police like every other noise violation. Councilor Mason noted that it may be concerning with a July 1 start and a lot of calls to police, it will not be high on priority.

Councilor Hightower noted the UVM discussion was relevant. If have 1 property that is over acre or 1/2 acre then fall into earlier bucket. Smaller businesses into next season and not this season. Suggested changing dates as follows: (e)(1) from July 1, 2021 to Aug. 1, 2021; (e)(2) from July 1, 2021 to Sept. 6, 2021; (e)(3) from August 1, 2021 to December 31, 2021; and (e)(4) from December 31, 2021 to May 31, 2022. Councilor Mason noted that UVM had 100's of properties. Councilor Hightower responded that doing it to capture the discussion on whether UVM business. E. Blackwood noted other large properties like country club and questioned whether they should be treated differently. Councilor Hanson noted that it may be good to explicitly say institutions or non-profits in language. #2 interesting because if doing in house then fall into different category. Need to make catch all change to 4 and be explicit to universities and other large properties that do in house. Councilor Mason agreed wasn't reading that way, agree in 2. Councilor Hanson responded that it should just be one category then, own large, 1 property that fall into 4. Councilor Mason agreed and noted that can spend hours talking about.

Motion restated with additional changes:

Councilor Hanson moved to refer the ordinance back to the full city council for second reading and adoption with the following changes:

- Section (a) Purposes, add "and eliminating nuisances" after "emissions;"
- Section (e) change i.e.'s to e.g.'s;
- Section (e)(1) change date from July 1, 2021 to Aug. 1, 2021;
- Section (e)(2) change date from July 1, 2021 to Sept. 6, 2021;
- Section (e)(3) change date from August 1, 2021 to December 31, 2021;
- Section (e)(4) change date from December 31, 2021 to May 31, 2022;
- Section (e)(3) add "more than one and" in between "with" and "up to 9";
- Section (e)(4) change language to clarify catch all, "Every other person or entity..."

Councilor Mason seconded the motion.

Final Resolution: Motion Passes

Yes: Councilor Hanson, Councilor Mason, Councilor Hightower





Burlington City Council Ordinance Committee ***Virtual Meeting*** 4/1/2021

1.

i. **CDO – ZA#21-03 R-L Boundary at 925 North Ave.**

M. Tuttle introduced the item—received request for rezoning from elks; request to move boundary about 340 ft. to west. Currently, portion where sit just portion within district. Elks have been exploring how to use the property for a number of years. Vast majority of portion in RL already developed so very little flexibility. By changing the boundary allows them to make some improvements. Change to four zoning maps—Base Zoning Districts, Residential Zoning Districts, Recreation, Conservation, Open Space Districts and Design Review Overlay—all updated to reflect change. Overlay District does pertain to vast majority of land in question and impacts development that can occur there. There is also a Planning Commission memo to encourage ways to keep rest of area in conservation. The proposal was unanimous at the PC.

Councilor Hightower asked whether they could add more to the lot that is almost 100% parking lot, good lot, has green next to it. M. Tuttle responded that it would allow pretty modest additional lot coverage. R. Longe indicated that there was no plan for development, plan to allow room to put more picnic tables under structure, noting that they can't even add 2 inches because maxed out. Totally maxed out now. He also noted there is 13 acres of RCO that go to bike path and lake—that area is all wooded except one field. Would like to see City be able to use that area as see fit in future, plus trails have been used as public land, but concerned of liability in future because have more people use. Hope can do more talking about access from bike path, but before can have that conversation want to make sure hands aren't tied. Not developers, nonprofit in certain way. Social club but raise money for charity things. Would like to see 13 acres stay RCO and join up with other city land, taking steps to go that direction. Councilor Hightower noted that adding items would not change lot coverage because impervious now. R. Longe responded that he couldn't answer that. He indicated that down where picnic shelter is, is right on edge of grass now, beyond that all RCO, if want to go back with shelter for more picnic tables then there is a problem. Counselor Hightower asked if not much wiggle room then still not able to go west. R. Longe responded identifying an ariel photo with 5 picnic tables, noting the RCO District is right up against cement. Councilor Hightower replied that you could extend over east. R. Longe indicated that they can't lose parking area, can't use pavement to build out on. M. Tuttle indicated that if incorporate any new lot coverage on already lot coverage is not new lot coverage. Want to be able to expand. Would be RL District, size of parcel in RL District now would give them a bit of room to expand, but not a significant area for development. Much of the area also has design overlay. Move gives them a large piece of property in RL that they can use to calculate coverage in RL.

Councilor Hanson indicated that it felt like it is a work around. Let's add in area to shrink percentage of lot coverage. M. Tuttle responded that it gives them more flexibility without changing on the ground. Specifics of plan not incompatible with city plan, modest. Councilor Hanson noted google view looks like a large parking lot. Exceeds coverage. Remove 2-3 parking spots seems like a better approach. R. Longe responded that when they have certain events like bingo or large wedding or any kind of function like that, can have a full lot for the whole afternoon or evening. Large number of own members as well as function. Good majority of time lot has little use, but when need, need. Alliance church next door uses lot as overflow with permission. Councilor Hanson responded that not saying google reflective, just saying capacity of lot high. R. Longe thought total capacity near 200 to 225 people, still a lot of cars. Councilor Hanson understands that lot fills up with events, but feel better solution 2-3 spots out of 100.

Councilor Mason indicated that he knows the property well, been there a lot. Appreciate and agree that not ideal, but has other protections, plus allows for future. Appreciate what saying, but not as simple pulling up pavement. Comfortable with



Burlington City Council Ordinance Committee ***Virtual Meeting*** 4/1/2021

sending to full council.

Councilor Hightower asked about liability issues and why not look at together with amendment? M. Tuttle responded that this is the way to look at zoning amendment part, other conversations going on with parks. Councilor Mason added that Arms Park and Rock Point open now so likely seeing more to Elks land use. Hope conversations are happening.

Councilor Hightower indicated that she would be voting yes, but made an informal ask to consider future use and look at parking lot how full and how can use.

Councilor Hightower moved to refer the ordinance back to the full city council for second reading, public hearing and with a recommendation for adoption. Seconded by Councilor Mason.

Councilor Hanson asked about future development implications—if change hands does that make it able to be split? M. Tuttle responded that if they are talking complete redevelopment, still RL, still talking relatively small footprint development. Maybe be more intensive, still 35% and Design Review Overlay has impact. Any DRB review would look at any potential negative impact that future development may have. Development would be concentrated closer to avenue. Councilor Hanson indicated that he will be voting yes, but just another reminder still have more work to be done about how much of the city is used as a parking lot and can shift for stormwater and climate.

Final Resolution: Motion Passes

Yes: Councilor Hanson, Councilor Mason, Councilor Hightower

1.
 - i. **CDO – ZA#21-05 Parking Garage Illumination**

M. Tuttle introduced the ordinance explaining that lighting standards in current ordinance reference a lighting document that is out of date and has been replaced several times over in its entirety; the proposal is to just have reference to a current standard.

Councilor Hightower moved to refer the ordinance back to the full city council for second reading, public hearing and with a recommendation for adoption. Seconded by Councilor Hanson.

Councilor Mason noted that the amendment was in line with updating other parts of ordinance. Councilor Hanson agreed that makes sense, curiosity just around lighting you see or energy efficiencies or around both. M. Tuttle responded that she was not sure, but would think so, knows that it talks about dark skies, etc.





Burlington City Council Ordinance Committee ***Virtual Meeting*** 4/1/2021

Final Resolution: Motion Passes

Yes: Councilor Hanson, Councilor Mason, Councilor Hightower

1.

i. **CDO –ZA#21-06 Shoreline Property Setbacks & Buffer**

M. Tuttle introduced the ordinance noting that it establishes an alternative maximum front yard setback for property being redeveloped. Currently setback based on average of neighboring properties, seen a couple projects where measurement made it go closer to the water. Try to clean up and make not have to go as far back. Try to encourage development not to encroach closer to lake. Second piece related to re-naturalization of water. Any property fall within water buffer that include 400 sq. ft. or more development have to have low mow area that is minimally maintained to provide natural area.

Councilor Hightower questioned the wording “not in any event.” M. Tuttle responded that the existing development is a variable, standard trying to achieve in other properties doesn’t make sense here.

M. Tuttle identified that there was a small amendment from staff that Conservation Board had changed after Planning Commission. They noted that “no-mow zone” doesn’t mean never mow or change, suggest to use “low-mow” instead of “no-mow.”

S. Bushor referenced lines 108 and 109. Consistent with development with properties that are non-conforming. May be closer than want but can look at others. Contention that when allowed those developments did not know as much about effect on lake. Now that we know potential for damage to the lake from run off, why would we deviate from existing pattern of development? Feel strongly about this, environmental way we want to go. Want to go on record with statement. M. Tuttle noted the context that the buffer goes 250 feet off shoreline, new standards that preclude within 75 feet of lakeshore now.

Councilor Mason asked if our ordinance was stricter than state law? M. Tuttle responded that it was.

Councilor Hanson indicated that the point raised by Sharon Bushor was good, didn’t appreciate that. Even if not in compliance, if grandfathered in, can take advantage of? M. Tuttle responded that she didn’t think so—if have structure nonconforming then can maintain, but not get more nonconforming. Councilor Hanson asked about changing existing. M. Tuttle responded that it was not prohibited, but discouraged. Can’t make it worse, can make it better or stay same. Councilor Hanson asked about allowed nonconformities. M. Tuttle responded that it was mixing scenarios, noting that lines 108-109 do not say that you can move nonconforming closer. S. Bushor indicated a concern if using average of neighbors who may be nonconforming for new development. M. Tuttle replied that you can’t force front yard setback closer. Noting examples where that was happening because forcing in setback, this pulls further from lake. Councilor Hightower confirmed setback from front, not lake.



Burlington City Council Ordinance Committee ***Virtual Meeting*** 4/1/2021

Councilor Hanson asked if “low mow” means something legally? M. Tuttle responded that “low mow” line 101 says once a year.

Councilor Hightower moved to amend the language from “no-mow” to “low-mow” and refer the ordinance as amended back to the full city council for second reading, public hearing and with a recommendation for adoption. Seconded by Councilor Mason.

Final Resolution: Motion Passes

Yes: Councilor Hanson, Councilor Mason, Councilor Hightower

1. **Any Other Business**

Councilor Mason indicated that next meeting would be TBD—after Committee assignments, feel advanced a lot of good, know more to do, but did a lot.

1. **Adjournment**

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

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Hanson, Councilor Hightower

The meeting was adjourned at 7:30 pm.

