



Regular City Council Meeting - Monday, March 12, 2018, 7:00 pm, Contois Auditorium, City Hall 3/12/2018

BURLINGTON CITY COUNCIL

CONTOIS AUDITORIUM, CITY HALL

BURLINGTON, VERMONT

MINUTES OF MEETING

March 12, 2018

MEMBERS PRESENT: David Hartnett – North District
Joan Shannon – South District
Richard Deane – East District

Sharon Foley Bushor – Ward 1

Sara Moore – Ward 3

Kurt Wright – Ward 4

William “Chip” Mason – Ward 5

Karen Paul – Ward 6

Ali Dieng – Ward 7

Adam Roof – Ward 8

MEMBERS ABSENT: Jane Knodell (Council President)
Max Tracy – Ward 2

ADMINISTRATION: Miro Weinberger, Mayor
Beth Anderson, Interim CAO



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Rich Goodwin, DFO

Eileen Blackwood, City Attorney

Brian Lowe, Mayor's Office

Katie Vane, Mayor's Office

Lori Olberg, C/T

Amy Bovee, C/T

OTHERS PRESENT: John Tashiro

Andrea Gabriel

Doug Lazarus

Charlotte Dennett

Diane Watters

Monique Fordham

Carolyn Bates

Wayne Sanville

James Leas

Steve Marshall

1.0 CALL TO ORDER and AGENDA

In the absence of City Council President Knodell, Interim CAO Anderson called for nominations for Acting Council President.

MOTION by Councilor Bushor, SECOND by Councilor Deane, to nominate Councilor Wright as Acting Council President. There were no other nominations. **VOTING: unanimous; motion carried.**

Acting Council President Wright called the City Council meeting to order at 7:10 PM on March 12, 2018.

1.01 Agenda

MOTION by Councilor Roof, SECOND by Councilor Deane, to approve the agenda with the following amendments:





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- **Remove Item 2.01 (Christening of USNS Burlington)**
- **Add Item 5.50 (Accountability List)**
- **Remove Item 6.03 (Report on Homelessness)**
- **Note information on Item 6.04 (CSM Mural)**
- **Add information and note revision to Item 6.05 (Inclusive Task Force for Mural)**

VOTING: unanimous; motion carried.

The Pledge of Allegiance was recited by the assemblage.

2.0 REPORTS

2.01 Christening of the USNS Burlington

Removed from agenda.

3.0 PRESENTATIONS

3.01 Onion River Co-op Update

John Tashiro, gave an update on City Market noting the following:

- City Market has 336 employees (78% full time, 22% part-time, 62% living in Burlington) who are offered a livable wage and benefits, profit sharing, and store discounts.
- Annual sales in 2017 were \$42 million with 40% of sales from local products.
- Taxes paid in FY17 totaled \$643,281.
- To date there are 13,500 members in the Co-op. The members volunteer many hours in the community each year.
- Donations from the Co-op to the community in FY17 totaled \$131,266. The annual donation to COTS from the tree sale was \$135,000.
- The patronage refund was \$338,835 in FY2017. Grants given to the community totaled \$30,000.
- The south end store grand opening is May 12, 2018. Plans for a store in the north end are on hold at this time.
- Bicycle benefits and free bus passes are offered to staff to commute to work. There are 75 bike parking spaces at the south end store.
- The south end site was toxic and had to be cleaned up to be a safe environment. The Governor's environmental award was received last year for this effort.

Councilor Shannon expressed appreciation for how the Co-op worked with the neighbors in the south end with the new store.

Councilor Moore asked about offering more affordable products. John Tashiro said there are special programs offered and specials on items in the store. Price comparisons are done. The store is competitive with other retailers.





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Councilor Mason asked about the sale of the parcel of land in the south end. John Tashiro said following a thorough RFP process a purchase and sales agreement was signed with Petra Cliffs.

Councilor Dieng asked what elements the south end has that were lacking in the old north end. John Tashiro said market studies and assessments were done with experts that identified the south end location. Other locations were examined including the old north end, but the priority was to offset traffic from the downtown store and the south end was the right fit.

Mayor Weinberger said the Co-op is a great partner in many ways. The south end project had design challenges. The sustainability efforts by the Co-op are appreciated. The new store models what the city is striving to achieve with net zero energy goals. The Co-op works hard to measure public value and community value being created. Mayor Weinberger asked why the "Three Squares Vermont" WIC redemption numbers were decreased. John Tashiro said the federal grants declined in 2013 and the Co-op has struggled to keep pace. Other programs are being introduced to bring the contribution back up.

John Tashiro mentioned the innovative energy technologies in the south end store relative to refrigeration, teaching kitchen, and community space.

4.0 PUBLIC FORUM

Public forum was opened at 7:53 PM.

COMMENTS

- Andrew Gabriel, resident, asked City Council to uphold the mandate from the people of Burlington to cancel the F-35 mission and request a quieter, safer mission for the Air National Guard that does not harm the neighbors or their children. The Navy's fast transport ship named for the City of Burlington is designed for amphibious landings and troop transports or humanitarian missions which is the kind of mission support for the Air National Guard and aligns with Vermont value better than the F-35 first strike stealth bomber fighter jet.
- Doug Lazarus spoke of the mural on Church Street not being a mural of Vermont history, but more of a Church Street phenomenon that has morphed into a concept of the state's history, not Burlington's or Church Street's history. The mural does not include people significant to the state and does not present contributions of non-white Vermonters. The first black female poet in America (in the 1790s) was a Vermonter. Mr. Lazarus said he is not in favor of taking the mural down or replacing it because that would be a statement that goes beyond the mural to the issue of political correctness. The mural should be viewed as a work in progress and with the addition of figures the mural could be altered to be more inclusive of historical materials and a balance of the contribution of non-white Vermonters.
- Charlotte Dennett spoke of appreciating art as history and a reflection of the time when people lived and created it (i.e. a window into civilization at that particular period). Pictures of ancient artwork were shown and an article about a mural in Illinois that was decided by a community committee was mentioned.
- Diane Walters, representing "Keep the Park Green", asked City Council to revisit the plan to remove the trees in City



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Hall Park and to provide wooden benches with back support along the walkways in the shade, not on the grass.

- Monique Fordham with "Keep the Park Green" noted the work that has been done to raise public awareness on the tree removal issue. The DRB received over 180 emails from concerned people in addition to at least 50 people attending the DRB meeting to speak. There will be 39 trees cut down plus trees removed to accommodate the project staging area. City Council did not have all the information when the vote on the project was taken. A compromise can be found to work toward a better plan.
- Carolyn Bates spoke of the benefits of trees for the climate and requested having a public display of the new plan and a re-vote on the project.
- Wayne Senville stated people at the DRB meeting commented on the massive tree removal (60% of the trees will be removed). Also, the historic fountain will be replaced with water jets which will not operate year-round. City Council is requested to re-examine and re-open the process because there is room for compromise.
- James Leas spoke of the recent vote on Article 6 and requested City Council cancel the F-35 at Burlington Airport and provide equipment that is low noise and has a high safety record.
- Steve Marshall spoke in support of the resolution and ordinance changes in support of homeless people and spoke against bringing the F-35 to Burlington. City Council is asked to demand a mission that contributes to the safety of the world, not one that is based on a loud and dangerous machine.

There were no further comments. Public Forum was closed at 8:19 PM.

5.0 CONSENT AGENDA

- 5.01 PROCEDURAL: Amend/Adopt Consent Agenda and Take Action(s) as Indicated
- 5.02 COMMUNICATION: Minutes, City Council BT Work Session, 7/31/17
- 5.03 COMMUNICATION: Minutes, City Council BT Work Session, 8/17/17
- 5.04 COMMUNICATION: Minutes, City Council Mayor Presiding, 8/7/17
- 5.05 COMMUNICATION: Minutes, Local Control, 8/7/17
- 5.06 COMMUNICATION: Minutes, City Council, 8/7/17
- 5.07 COMMUNICATION: Minutes, City Council BT Work Session, 8/28/17
- 5.08 COMMUNICATION: Minutes, Local, 8/28/17
- 5.09 COMMUNICATION: Minutes, City Council, 8/28/17
- 5.10 COMMUNICATION: Minutes, City Council BT Work Session, 9/18/17
- 5.11 COMMUNICATION: Minutes, Local Control, 9/18/17
- 5.12 COMMUNICATION: Minutes, City Council, 9/18/17
- 5.13 COMMUNICATION: Minutes, Local Control, 9/25/17
- 5.14 COMMUNICATION: Minutes, City Council, 9/25/17
- 5.15 COMMUNICATION: Minutes, Full Board of Abatement of Taxes, 9/25/17





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- 5.16 COMMUNICATION: Minutes, Special City Council BTC Work Session, 10/2/17
- 5.17 COMMUNICATION: Minutes, City Council, 10/16/17
- 5.18 COMMUNICATION: Minutes, City Council Mayor Presiding, 10/16/17
- 5.19 COMMUNICATION: Minutes, Special City Council UVM/Champlain College/BT Work Session, 10/30/17
- 5.20 COMMUNICATION: Minutes, Local Control, 10/30/17
- 5.21 COMMUNICATION: Minutes, City Council, 10/30/17
- 5.22 COMMUNICATION: Minutes, City Council Adjourned Session, 11/6/17
- 5.23 COMMUNICATION: Minutes, Local Control, 11/13/17
- 5.24 COMMUNICATION: Minutes, City Council, 11/13/17
- 5.25 COMMUNICATION: Minutes, City Council BT Subcommittee, 11/16/17
- 5.26 COMMUNICATION: Minutes, City Council, 11/27/17
- 5.27 COMMUNICATION: DPW Water Billing Update
- 5.28 COMMUNICATION: NMSS Annual Charity Walk
- 5.29 COMMUNICATION: Minutes, Board of Finance, 12/4/17
- 5.30 COMMUNICATION: December 2017 Financials
- 5.31 COMMUNICATION: Naming of Street after MLK
- 5.32 COMMUNICATION: Resignation, Jeffrey Caesar, Park & Rec Commission
- 5.33 COMMUNICATION: Sweep Accounts and Other Bank Accounts
- 5.34 COMMUNICATION: Redetermination of Equalized Education Property Value & Coefficient of Dispersion
- 5.35 COMMUNICATION: Airport FedEx Lease Agreement Extension
- 5.36 COMMUNICATION: Airport Office Lease, 3060 Williston Road
- 5.37 COMMUNICATION: Airport Property Lease, 3062 Williston Road
- 5.38 COMMUNICATION: Solar Installation Setbacks, ECHO
- 5.39 COMMUNICATION: CY17 Street Reconstruction Project/Budget Amendment
- 5.40 COMMUNICATION: FIO Document(s)
- 5.41 RESOLUTION: Acting Inspectors, Wards 3, 4, 7, 8
- 5.42 RESOLUTION: Standby Letter of Credit, Workers Compensation Program
- 5.43 RESOLUTION: Bond Proceeds, Waterfront TIF District





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- 5.44 RESOLUTION: Reimbursement FY17 Waterfront TIF District and Downton District
- 5.45 RESOLUTION: Capital Lease Purchase Agreement – KS State Bank
- 5.46 RESOLUTION: GMP Ground Lease
- 5.47 RESOLUTION: License Agreement, Connor Contracting, Inc.
- 5.48 RESOLUTION: DPW, Storm Water & GIS Tech Position
- 5.49 RESOLUTION: Risk Management Services
- 5.50 COMMUNICATION: Accountability List

MOTION by Councilor Roof, SECOND by Councilor Bushor, to adopt the Consent Agenda and take the action indicated for Items 5.01 through Item 5.50. VOTING: unanimous; motion carried.

City Council meeting was recessed at 8:20 PM for the Board of Civil Authority Meeting. The meeting resumed at 9:10 PM.

6.0 DELIBERATIVE AGENDA

6.01 Ordinance: Offenses and Miscellaneous Provisions, Ordinances to Repeal – City Attorney, Ordinance Committee

MOTION by Councilor Mason, SECOND by Councilor Bushor, to waive the second reading and adopt the Offenses and Miscellaneous Provisions Ordinance – Ordinances to Repeal.

DISCUSSION:

- Councilor Mason said there are a number of ordinances that may be unconstitutional. The City Attorney is exploring an alternative for abutting streets with regard to the aggressive panhandling ordinance.

VOTING: unanimous; motion carried.

6.02 Resolution: Policy Development and Reporting on Chapter 21 of the Code of Ordinances – Public Safety Committee

MOTION by Councilor Roof, SECOND by Councilor Moore, to waive the reading and adopt the resolution on policy development and reporting on Chapter 21 of the Code of Ordinances.

DISCUSSION:

- Councilor Roof said the action is in response to the Quality of Life ordinance brought forward that was warned incorrectly and had suggested amendments. Burlington Police will be asked to explore the issue of locations of publicly accessible bathrooms relative to enforcing Chapters 21-24 of the ordinance and report to City Council in 90 days. Burlington Police will also be asked to provide a status report to the Public Safety Committee in two years regarding enforcement of Chapter 21. The Administration is requested to maintain and publicize locations of publicly available restrooms to meet the needs of the community.





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VOTING: unanimous; motion carried.

6.03 Report: Homelessness – Public Safety Committee

Removed from agenda.

6.04 Report: Mural Legal Analysis – City Attorney

City Attorney Blackwood summarized the research on the mural as follows:

- There was a verbal agreement with the building owner and a draft agreement between Church Street Marketplace Foundation and the artist for the mural. The Foundation believes the mural was gifted to the city.
- Visual Artist Rights Act (VARA) gives artists the right to prevent any distortion, modification, or mutilation of their work. Any changes to the mural need the consent of the artist.
- Donors gave to the charitable organization (Foundation) without specification on use of the funds.

Councilor Bushor complimented City Attorney Blackwood on the clear and understandable report.

Councilor Dieng asked for clarification of whether the city owns the mural, stressing the critical need to have the right information before taking action. City Attorney Blackwood advised steps should be taken to ensure a release is received from the Foundation if City Council decides to move forward with the mural.

Mayor Weinberger said it is not a fair characterization of staff to say the “right information” has not been provided. The City Attorney gave the best opinion based on substantial work, and depending on the action by City Council to go forward additional steps would be necessary.

Councilor Roof asked if the artist has been contacted. City Attorney Blackwood said Church Street Marketplace tried to contact the artist without success. The city has not followed up with the artist since the recent newspaper article and will not until there is more guidance from City Council on the direction to proceed with the mural.

Councilor Dieng assured action will be taken, but before that occurs the right information to the best of the City Attorney’s ability must be received. It appears not to be clear whether the city owns the mural.

Councilor Shannon stressed the City Attorney has answered the question of ownership repeatedly to the best of her ability.





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Councilor Dieng asked when the information on ownership will be received. City Attorney Blackwood said once direction is received from City Council then a release will be sought from the Foundation.

Councilor Hartnett suggested postponing action until further information is received.

Councilor Mason said it is not a matter of needing to ask more questions, but rather the City Attorney wants to confirm the belief that the city owns the mural by having the Foundation sign a piece of paper confirming that ownership. The City Attorney is looking for guidance from City Council on which direction to take before presenting a document to the Foundation for signature so there is no reason to delay a decision by City Council.

Councilor Dieng asked for an explanation of the harm to the reputation of the artist per VARA. City Attorney Blackwood explained after review of case law it appears to be a subjective standard. There was a recent case where the court ruled in favor of the artists who were awarded a large settlement. If the mural is to be modified it is advised that the artist be contacted first. Councilor Dieng asked for an explanation of the difference between visual art and tromp l'oeil art. City Attorney Blackwood said tromp l'oeil visual art attempts to make 2-D forms appear 3-D. Legal opinion is tromp l'oeil art is covered by VARA. Councilor Dieng asked for a definition of 'proper notice' to the artist. City Attorney Blackwood said that depends on whether notice is for modification or removal of the mural. There could be reasonable notice or 90 day notice.

Councilor Dieng opined the report from the City Attorney was not clearly accurate in what is needed to be known to go to the next step so the City Attorney is requested to provide more concrete steps, one being speaking with the artist and presenting the artist's thoughts to City Council, and having a definitive answer with a signed contract on whether the city owns the mural, and that there be a clear understanding that VARA protects the art techniques used for the mural.

Councilor Roof asked if there is a promised length of display. City Attorney Blackwood said the RFQ indicated five years, but the display is not a contractual term. The draft contract says 10 years. There is not a signed contract. Any promises are not binding so the city is advised to go by the 10 year timeframe.

6.05 Resolution: Inclusive Task Force for the Mural with Report to Mayor and City Council – Councilor Shannon

MOTION by Councilor Shannon, SECOND by Councilor Bushor, to waive the reading and adopt the resolution to form an inclusive seven member task force to reimagine the mural and report recommendations to the Mayor and City Council.

DISCUSSION:

- **Councilor Shannon recognized the mural is not as inclusive as the city would like, but there are a variety of remedies including creating a task force with a wide array of perspectives. Staff support will be provided to the task force and the application process for a new/changed mural will be open. The task force will consider what is to be included on the mural and consider a process going forward to avoid making the same mistakes. A report to City Council from the task force would be due July 16, 2018.**





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- Councilor Wright confirmed the City Attorney will provide legal guidance.
- Councilor Hartnett said the task force is a good idea, but the mural should not be removed. The task force can go beyond the mural and look at a process to use in the future. It is hoped the work can be done quickly so momentum is not lost. There is a lot of other critical work to do in the city.
- City Attorney Blackwood said it appears additional work will be at the direction of the task force, but the city can move ahead with getting a written document or release from the Foundation to solidify ownership.
- Councilor Bushor said the process could bring the community together. The mural as it stands now is a snapshot in time. There will be important dialogue that should not be delayed. City Council needs to be a part of the conversation. The artist needs to be involved as well. It is hoped the task force meetings will be scheduled when the public can weigh in, and it is hoped there is discussion of Burlington as a community and the future people anticipated to come to the community.
- Councilor Dieng spoke of people in the community putting their trust in City Council and the moral obligation to work together to respond to the people. The right answer is needed from the City Attorney before moving forward and once the answer is received then the task force can be formed.
- Councilor Moore spoke in support of moving forward on the matter.
- Councilor Hartnett objected to statements by Councilor Dieng that City Council and the Administration do not care about the safety of people. Over the past 20 years the city has done a tremendous job of making the city welcoming to everyone. Great work has been done so it is unfair to make the assertion that City Council has not acted in a way to welcome people or make the city safe.
- Councilor Shannon said she takes offense to the statement that the intention of the resolution is to sweep the matter under the rug. The resolution will bring more people into the process and will be a more inclusive process with a variety of viewpoints not currently at the table. The process and meetings will be public. Councilor Shannon said she also takes offense to the repeated claims the City Attorney has not come up with the "right answer". The answer is there are some details that are incomplete at this point due to no fault of the City Attorney who was simply reporting on the status of the matter. The review by the City Attorney was thorough and clear to the extent possible, and the direction decided by City Council and the task force will inform what additional work needs to be done to move forward.
- Councilor Dieng said he stands by his statements and saying the city needs to come together which does not mean the city has not been doing great work. The people of Ward 7 are saying "black lives matter" by having an immigrant Muslim sitting on City Council. It is great and wonderful to welcome inclusion, diversity, and equity on City Council, but City Council should be solving problems not forming a task force to do so.
- Councilor Mason said the task force will do more reach out and have more members than City Council to help with the process.
- Councilor Roof said he has already been contacted by three individuals interested in serving on the task force. Applications are due by April 16, 2018. The task force will begin work by mid-May.
- Mayor Weinberger recognized the frustration to take action and move forward, but the issue is polarizing so forming a task force with people who represent a broad array of perspectives and are respected in the community will help move through the process. This is not an effort to sweep anything under the rug, but rather to have a full discussion and reach broad community acceptance on the issue.

VOTING: 9 ayes, one nay (Councilor Dieng); motion carried.

7.0 COMMITTEE REPORTS

- Councilor Deane announced the Local Control and Licensing Committee will meet 3/13/8.





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8.0 CITY COUNCIL – GENERAL AFFAIRS

- Councilor Hartnett said the city needs to be more consistent when considering outdoor seating. It is hoped the Local Control Committee will address this.
- Councilor Deane reiterated the request for information on the history of outdoor seating permits in the city.

9.0 CITY COUNCIL PRESIDENT – COUNCIL UPDATES

No report.

10.0 MAYOR – GENERAL AFFAIRS

Mayor Weinberger congratulated newly elected and re-elected city councilors. The Administration looks forward to working together. The annual organizational meeting will be in April

11.0 ADJOURNMENT

MOTION by Councilor Hartnett, SECOND by Councilor Dieng, to adjourn the meeting. VOTING: unanimous; motion carried.

The meeting was adjourned at 10:15 PM.

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