



Special Board of Civil Authority Meeting - Friday, March 4, 2022, 2:00 pm, Contois Auditorium OR REMOTELY via ZOOM 3/4/2022

BURLINGTON BOARD OF CIVIL AUTHORITY

SPECIAL MEETING

CITY HALL, CONTOIS AUDITORIUM *OR*

REMOTE MEETING WITH CALL-IN

BURLINGTON, VERMONT

MINUTES OF MEETING

March 4, 2022

MEMBERS PRESENT: Karen Paul

Max Tracy

Chip Mason

Joan Shannon

Ali Dieng

Jack Hanson

Perri Freeman

Sarah E Carpenter

Mark Barlow

Joe Magee

Miro Weinberger

OTHERS PRESENT: Dan Richardson

Justin St. James

Katherine Schad

Jordan Redell

Sarah Montgomery



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1. CALL TO ORDER and AGENDA

Mayor Weinberger called the meeting to order at 2:10 PM.

1.01 Motion to amend/adopt agenda

MOTION by Councilor Paul, SECOND by Councilor Magee, to adopt the agenda.

VOTING: unanimous; motion carries.

2. VERBAL COMMENTS

2.01 Verbal Comments

John Franco spoke as legal counsel for Councilor Dieng in the recount. He said that their view is that the 2017 amendments to the statute that addresses recounts in local Australian ballot elections states that the procedure needs to be the same procedure followed in the original count, meaning a tabulator count. He said that the City Attorney's assessment is that a hand count is the preferred approach, and that he disagrees with this approach. He asked the Board of Civil Authority to approve the supplemental memorandum submitted to them, which calls for a tandem hand count and tabulator count recount, which would eliminate potential legal issues for appeals. He said that it is important for the public to have absolute confidence in the voting process.

3. CONSENT AGENDA

3.01 Motion to adopt the consent agenda and take the actions indicated

3.02 Resolution: Appointment Of Assistant Election Officials For March 7, 2022 Ward 7 Recount of the Annual City Election (Councilor Tracy)

MOTION by Councilor Carpenter, SECOND by Councilor Freeman, to adopt the consent agenda and take the actions indicated for items 2.01-2.02.



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DISCUSSION:

- **Councilor Hanson asked how these appointments were chosen and why. Deputy City Attorney St. James said that the appointments were made with the assistance of the City clerk, and that they determined that the 8 individuals selected have served in a number of elections, that none of them serve Ward 7, and that they come from the three major political parties of Burlington.**

VOTING: unanimous (Councilor Dieng recused himself); motion carries.

4. DELIBERATIVE AGENDA

4.01 Review and approval of the City Attorney's Office memorandum on recount and procedures

Mayor Weinberger said that the goal is to adopt procedures at the end of this meeting so that staff and election workers for this recount as well as the candidates are clear about the procedures for Monday's recount.

Deputy City Attorney St. James provided a brief summary of the addendum to the Attorney's Office original memo. He said that in working with the Secretary of State, it was determined that in order to ensure the most transparent process, there should be both a hand count and a tabulator recount at the end of that hand count for the voting recount. He said that the slight amendments in the addendum provide that recommendation. Councilor Shannon asked how the election is certified if the hand count differs from the tabulator count. Deputy City Attorney St. James replied that election officials must agree on which candidate each vote is for, and if they are unable to agree, then those votes are set aside for the Burlington Civil Authority, who then votes on what the intent of the voter is. He said that there should not be a discrepancy between the hand count and the tabulator count.

City Council President Tracy asked when the final certifying vote would occur on Monday. Deputy City Attorney St. James replied that the City would like to count the ballots in a transparent way and have the Board of Civil Authority help resolve differences statutorily at a time-certain during the recount itself. City Council President Tracy expressed concern about inspecting ballots remotely as well as concerns about availability of Councilors for Board of Civil Authority voting during the day. Deputy City Attorney St. James said that it would likely be difficult to make determinations about voter intent remotely. Mayor Weinberger added that there does not need to be a quorum of the Board of Civil Authority present in order to make determinations on ballot intent.

Councilor Mason said that he is unsure how making ballot determinations over Zoom would work, and encouraged the Board of Civil Authority to require in-person attendance in order to participate. He asked if the Board of Civil Authority will be examining defective ballots (as defined in statute). Deputy Attorney St. James replied that the analysis will examine only voted ballots (not defective ballots).

Councilor Mason asked if there is a process for allowing for modification of a defective ballot on the part of the voter. Deputy City Attorney St. James replied that if a ballot is deemed defective then it will remain defective for purposes of the



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recount. Councilor Mason asked whether defective ballots can be corrected if they are received ahead of Town Meeting Day. Chief Administration Officer Schad replied that if ballots are received and are defective, then the City outreaches the voter to attempt to correct the ballot to the extent that it is practical to do so.

Councilor Hanson said he would be supportive of holding the Board of Civil Authority vote occur during the regular City Council (and Board of Civil Authority) meeting on Monday night, to ensure that all councilors can be present. Councilor Shannon agreed.

City Attorney Richardson said that the decision is around voter intent, and allowing the Board of Civil Authority to make judgment calls about voter intent. He added that the City's goal is to maintain transparency and integrity in this process, especially around ballot custody.

Mayor Weinberger called a recess at 2:45 PM.

Mayor Weinberger called the Board of Civil Authority back from recess at 2:55 PM.

City Attorney Richardson proposed that the recount will begin at 10:00 AM, based on availability of election workers, and that whenever the recount process reaches the point it can without the Board of Civil Authority, then the process will stop, the room will be secured, and the doors locked. He said that they would then propose re-opening the room at 4:30 PM in order for the Board of Civil Authority to conduct its role (reviewing and making votes on disputed ballots and certifying the final count). Councilor Shannon suggested that the empty room be livestreamed for an added component of transparency.

Councilor Paul recommended that only members of the Board of Civil Authority who are attending in person are able to vote on ballots.

Councilor Shannon said she is uncomfortable with the idea of doing a recount in two different ways, which risks coming to two different conclusions. City Attorney Richardson replied that with an aim towards resolving a technical legal question in a transparent way, the City is proposing that rather than deciding between two methods of ballot counting, they are utilizing both. He said that there is an initial separating of the ballots based on who the vote is cast for but also for ballots that need to further be scrutinized to determine intent. He said there will ultimately be one count, and that the tabulator will be used to check the hand count.

MOTION by Councilor Mason, SECOND by Councilor Paul, to adopt the procedures contained in the memorandum for the Ward 7 recount. Burlington Civil Authority members need to be physically present, in person, to vote in any disputes in the recount.



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VOTING: unanimous (Councilor Dieng recused himself); motion carries.

5.0 ADJOURNMENT

5.01 Motion to Adjourn

The meeting was adjourned without objection at 3:11 PM.