



Burlington City Council Ordinance Committee

2/24/2020

City Council Ordinance Committee

Monday February 24, 2020

Conference Room 12

MINUTES

Members Present: Councilor Chip Mason (Chair), Councilor Sharon Bushor, Councilor Adam Roof

Staff Present: Kim Sturtevant (Assistant City Attorney), Eileen Blackwood (City Attorney), Mary Danko (Director, Library), William Ward (Director, DPI), Patricia Wehman (DPI)

Others in Attendance: Stephen Alrich Marshall, Max Horovitz, Joe Speidel, Jonathan Chapple-Sokol, Angie Chapple-Sokol, Juliana Landis, Councilor Jack Hanson, Gene Bergman

Meeting called to order at 5:39 PM.

1. Agenda

1.01 Motion to adopt/amend agenda

Motion to adopt agenda as written.

Motion by Councilor Bushor, seconded by Councilor Roof.

Final Resolution: Motion Passes

Yes: Councilor Roof, Councilor Bushor, Councilor Mason

1. Public Forum

2.01 Public Forum

No speakers.



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Closed public forum at 5:41 PM

1. **Minutes**

3.01 Approval of Minutes of 2/6/20

Motion to approve minutes as presented per Councilor Bushor, seconded by Councilor Roof.

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Bushor, Councilor Roof.

1. **Committee Discussion/Possible Action**

4.01 **Notice of Trespass on City Property**

City Attorney Blackwood introduced the item, identifying the history regarding the proposed amendment. The proposal allows issuance of a notice of trespass, while looking at issues which led to litigation and settlement. Part of the settlement was to give more due process. Verbal warning first, some limitation on what one can be trespassed for, some written notice of what the person did and the ability to respond. Waiver provision--if trespassed but need to access city property for legitimate purpose then should be able to do so.

Attorney Blackwood walked through ordinance. Purpose aimed at behavior. Section b, city council control city property, delegate authority to city person in charge. Subsection c trying to meet due process, if individual violate reg./rule/ordinance/state law then can be cited. Within building can issue notice of trespass. Fairly narrowly construed to building at issue. Prior to issuance of notice, individual must be informed of basis and given some reasonable time to address behavior. People not caught by surprise. Specifically note that FFL is a bit different as it has its own rules. Subsection d, in most cases expect notice to be issued right there and it is handed to them. If individual left and can't give them the notice, then can mail it to their legal address. Notice draft ongoing, but will tell why, length of time and where. Notice length of time tied to offense. Trying to give leeway. ACLU concern with year, but usually pretty significant offense. Time up to committee. Need to change, not up to year, up to 180 days. Subsection (f) lays out appeal process. Requires City to do process in a fairly quick timeframe. Exigent circumstances for safety will receive trespass even if appeal. If Commission, then Commission appeal. If no commission then Public Safety Committee. If there is some dispute, then Public Safety Committee do it.



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Procedure is to meet within 10 days. If hearing requested must have at least 3 days' notice. Can be testimony, witness, etc. Commission/Committee must write decision within 10 days. #5--Waiver of request, if need to use area trespass, can ask waiver. Once notice of trespass issued then violation of it pursued via ordinance (civil) or state (criminal).

S. Marshall raised a concern that administrative review would be held up because panel would be bias if they are the ones responsible for the space. He asked whether another committee could do it? E. Blackwood responded that if conflict, bias, etc. then could go to Public Safety Commission. Panel control space have background, etc. S. Marshall replied that it seems that it would make them more bias. Noting he didn't see you to avoid or get past bias until you go to the next step. Councilor Bushor indicated that she did not disagree with the comment since quasi-judicial needs to be staffed by attorney. She also indicated that it may need more thought whether it should be just one committee for consistency.

Councilor Bushor identified items that jumped out to her, including how to mail the notice to someone if they are homeless. If they don't get notice, they may show up again without knowing. Should be any trained city individual. When serious, when to bring in Howard lines 35-37 & 55-58. Line 81 if waiver denied, suggesting that can deny and make loose job because can't get to work, there needs to be someone that can deal with it immediately.

Councilor Mason asked what the volume of anticipated work would be. E. Blackwood responded that she wasn't sure, do not have a listing, but not many. Dealt with 2 or 3 since here in last 7-8 years.

Councilor Mason noted his concern of getting a larger group together. Councilor Roof noted that Vehicles for Hire meets about once a month. He also indicated that he felt that it was better for Public Safety Committee to take it on first, simplifying the process and that they were capable of dealing with it.

Councilor Mason identified lines 60-66 to re-designate it to the Public Safety Committee to hear them and then build in an annual reporting check-in back to the full City Council.

Councilor Roof cited lines 11-14, language about city official. He then questions who would fall under the category. E. Blackwood responded that if the Mayor was not here then it would be Chief Administrative Officer (CAO). If Chapin absent then may be Norm Baldwin. In buildings if there is a Park event, then usually someone in charge.

Councilor Mason asked whether the practical reality was that if happened at DPW then police are called. E. Blackwood indicated yes, frequent police, but sometimes need to have people in building that if warn, then can say next step issue trespass.

Councilor Roof indicated that people have asked if it criminalizes the homeless, noting that he didn't think so, but questioned what the definition for unreasonably disruptive was. E. Blackwood responded that it was general language, but



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c is the more specific. Must violate something that is in writing that can't do it and they do it anyway. In a public building there is a little more leeway. For instance, can't come behind desk and not listen. ACLU concern primarily streets, parks, etc., not in a city building where people are trying to get work done.

Councilor Mason questioned why there are stages at library, but not here. E. Blackwood responded that the library has a lot of specific rules that rest of buildings do not. This tries to give more general as behaviors may be more appropriate at different areas. For instance, parks may be able to be louder than city hall during the day, etc.

Councilor Mason asked, given discretion, how there is an ability to give framework for rules. How police, etc. set the timeframe now? E. Blackwood tried to identify that there is a range of conduct and what the penalty should be. Councilor Mason questioned whether, as currently drafted, we are back to where we started? E. Blackwood indicated that she was hoping ACLU would be here. Think they will say 1 year too long, but 30 days is okay. She offered to come back with a proposal for graduated timeframes could try.

Councilor Bushor asked how to know that the time is appropriate for a non-frequent flyer. How to track and how to enforce? If the intent that the person is a danger, then danger needs to be dealt with by social services and police. If it serves a social purpose, so be it. But if just a penalty then don't feel it is doing what it is supposed to. E. Blackwood responded that they looked at trying to address that. Some longer because of number of times. Other times because threatening and need a cool down period. Everyone in building aware. Police has a database.

Councilor Bushor indicated a concern if person making threats, does a notice of trespass do enough? E. Blackwood responded that those that are threatening we are doing more, asking for courts to assist.

Councilor Mason make a decision whether go forward as is or make an accommodation. Feel should be graduated as to offense and number of times. Councilor Bushor agreed.

Councilor Bushor continued with specific comments. City officials need to be trained. No questions on purpose or b. Concerned if you do not receive notice in person and hiatus from issuance then what happens. E. Blackwood responded, if no legal address then will need to figure how to get it to them.

Councilor Bushor noted a silo concern with lines 35-37 as it lists who need to engage but doesn't give enough guidance. E. Blackwood responded, not always true that having a mental health issues and threatening to people.

Councilor Bushor noted her concern, issue trying to change behavior. Should be consistent with library, 180 days should be maximum. Councilor Mason feels it makes sense if multiple offenses.



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Councilor Bushor noted concern from a report that people became homeless because no representation and got evicted. Worried that some people would not be able to advocate for themselves. Took to heart about empowering people and that they be more fairly represented in process. Feel some people have trouble writing

Councilor Bushor questioned how to craft #5--waiver request. Clear and support if need waiver for work. Problem is if deny and whether there is enough time for it to be heard to get to work. Just compounds already messy situation. E. Blackwood indicated that it was hard to imagine under what circumstances a waiver would be denied. Councilor Bushor heard some concerns from the Marketplace Commission about time to get heard.

1. 4.02 **Fletcher Free Library Rules of Conduct**

M Horovitz indicated he hoped that the Ordinance Committee visited the library and saw how open, friendly and inviting. Come from industry, goal do your best, try to improve and then monitor and can improve. Never get if perfect first time. Take some metrics and then reevaluate in a year.

M. Danko discussed revisions to prior draft, restorative justice—add proposed language about restorative justice and willingness to engage. Line 55, class 2 should be struck. Email from Jay—primarily use for sleeping. E. Blackwood noted there was a difference between library and other public buildings. Court cases that generally want to allow more, but certain places not appropriate with purpose. Street, library are examples.

M. Danko indicated that other places that have no sleeping in ordinances.

Councilor Bushor asked how it is handled when people nod off when reading. M. Danko indicated that they have a process to talk to person, etc. Noting that they try to be equitable.

Councilor Bushor identified line 42, #6, concern subject to interpretation. When add category like number 7, it bumps you up to new category if you have multiple offenses in less serious category. Get it, but not as comfortable with it. E. Blackwood indicated that those provisions were not unusual.

Councilor Bushor moved to line 189, that if not returned within 30 days would be fined up to \$500 and asked if it could be rewritten if return in acceptable condition with 30 days okay. M. Danko responded that it really has to do with damaging. Councilor Bushor noted line 188, detains greater than 30 days after told to return. Feel \$500 pretty harsh. Seemed open to return without paying fine. M. Danko indicated that she didn't look at the language that closely, but would.



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S. Marshall suggested that the allowance to be able to take out 35 books at one time sets people up. M. Danko responded that it is kids that take out 35 at one time.

Councilor Mason noted that it says each one \$500, asking if damage cost of damage or if lost, replacement cost.

Councilor Mason asked about property--looked back, definition is exterior, what happens on the ground. As drafted if someone does show back up then not allow to bring in. M. Danko indicated that it was correct as drafted.

Councilor Mason questioned violation of rule, concerns of #6 and 7, way to get to same behavior and remove 7? Reason need 7 as well? E. Blackwood responded, not sure that we would have a posted rule don't stuff toilet and say not okay. M. Danko replied to strike v in 1 and take out of 7 would be better plan. Councilor Bushor noted that individuals take sponge bath in restroom and asked if that was posted. M. Danko responded that bathing in restroom is not allowed, try to connect them with resources. E. Blackwood noted that it could be taken out of here and say not improper use. Councilor Mason suggested keeping in number 1 and take out number 7.

Councilor Bushor mentioned that other places provide lockers for people to put them in. Noting that we should be able to do something here. Some small locker place where people can put their stuff. E. Blackwood indicated that CEDO was working on a report to look at the broader issue. M. Danko added that there were very preliminary discussions with innovation challenge bin system—very preliminary.

S. Marshall pointed out group meeting every few weeks about issues of homelessness.

Councilor Bushor moved to refer the amendment back to full council for second read with the following amendments—remove lines 93 and line 55, to add section 5 called restorative justice per hand out language after line 175, make current #5 number #6, request City Attorney and Library to refine lines 186-190 regarding property that hasn't been returned for 30 days to be reflective of offense, with a recommendation for adoption.

Seconded by Councilor Roof.

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Bushor, Councilor Roof.



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1. 4.03 **Housing—Enforcement and Penalties**

Councilor Bushor explained that she brought this forward on behalf of code enforcement, trying to bring forth tiered approach for housing violation.

G. Bergman referenced his experience with superior court, could not make criminal refusal to comply with order of housing official. Discussion with code to make 1st civil and could waive. If refuse then could make criminal. Other changes technical in nature. Think makes sense from progression of it.

Councilor Bushor moved to send back for second read with recommendation for approval.

Councilor Roof seconded.

E. Blackwood questioned whether, if a person has a number of properties, then trying not to make those criminal? G. Bergman responded no.

E. Blackwood questioned whether it should be supplemented. G. Bergman responded that if found in violation of housing code in a particular situation, assume sustained, then 31 (a) comes into play. Then person issued ordered fails to correct particular to that violation then second civil offense--stiffer penalty. If person has second and hadn't correct then 3rd, don't fix my plumbing and get inspection, then keep going, criminal. E. Blackwood questioned whether it was to the person or location. G. Bergman responded at one location.

E. Blackwood noted a second concern—what if they appeal one or more violations? G. Bergman responded that that is where the term "found" comes in.

Councilor Mason indicated that the committee was okay with City Attorney changes in language for # of properties and adjudication.

S. Marshall questioned pattern. E. Blackwood looked at "willful", discussed comparison. Councilor Mason indicated a concern that with a LLC it can be hard to figure out "owner". S. Marshall questioned whether there was a state law that makes easier to know who owns the property. Councilor Mason responded that it was a national issue, that it was not likely that the city will be able to fix it fully.

Councilor Bushor amended motion to send back for second read with authority to make per property and add appeals exhausted language with recommendation for approval.

Seconded by Councilor Roof.



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Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Bushor, Councilor Roof.

1. 4.04 **Update on Energy Efficiency Ordinance Work**

W. Ward gave an overview to the memorandum provided. Purpose to update on work regarding proposed revisions to Minimum Housing Standards for Rental Housing, and in particular energy efficiency. Discussion of timeline. Difficulty of shortage of trained contractors. Feel there is a workable solution. Had a focus group meeting with landlords. Easier for larger landlords who have experts to help than smaller landlords, but between BED and others.

Councilor Roof wanted to discuss enforcement. More concern with so many rental units, how go about understanding how many need to go through process? Hard work, know market relatively well and not a lot of people willing to do it. Concern if not able to get enough contractors because of workforce ability then loose window of opportunity.

W. Ward indicated that C. burns may be able to give a number. Some places done voluntarily, some encouraged, others do because financial incentive.

Councilor Bushor asked if CEDO could help with training? Feel need to be proactive to get this group going. Concern with historic buildings and windows. Councilor Mason indicated that he discussed it with the Mayor. Councilor Bushor indicated her desire to have it done. Councilor Mason said Mayor planned to look at again now that DPI was consolidated. Councilor Bushor was glad they had discussed it as she had discussed it in early February. Councilor Bushor indicated that the bottom line is a real barrier, makes harder. Acceptable materials for historic buildings may move it quicker. Surprised at what memo said because focus not on window and doors as that is where the savings would be.

W. Ward noted any window is a large cost. Insulating walls and ceilings easier than going outside building footprint. Any major structural changes trigger zoning and building permits.

Councilor Bushor indicated that she is concerned with displacing occupants. Can be done while they are there? Councilor Roof responded that it could.

Councilor Hanson indicated that he believed it would be good since have data from Vt. Gas. Also, putting the notices out right away would be helpful rather than waiting until out on inspection cycle. Agree should take a proactive approach to the workforce development.





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A. Chapple-Sokol—concern raised when mom and pop landlord has already insulated homes rather than larger landlords. Not statistical, just from talking people.

Question whether controversial if look outside of Burlington or state for contractors. Councilor Roof responded that you would have too. Discussion to have with CEDO.

G. Bergman referenced need to look more closely with displacement and minimum housing code. Just look at so not inadvertent situation. Work for development, heard that people in central Vermont, capstone folks are doing a decent job. There is some real innovative stuff that this can be a real kick start to. Believes it is a tremendous opportunity but take leadership in Mayor's office and departments.

Councilor Roof asked if the lead program displaced. W. Ward responded yes, but try to work around, ie. if on vacation, etc. do it then and allow the time.

Councilor Hanson agreed with historic material change. Did have opportunity to meet with someone from Vermont Energy Coop that does this type of thing. Get a lot of applications to do work, but have a hard time getting people that meet standards. Hard to get to place can do work.

G. Bergman noted that people are people's home so backgrounds are relevant.

Councilor Hanson cautioned how to word exemption over prior work.

S. Marshall referenced CVEOO.

1. **Any Other Business**

Set next meeting by email. Items currently:

- Sprinklers



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- Lawn blowers

1. **Adjournment**

The meeting was adjourned at 7:40 pm.

