



Burlington City Council Ordinance Committee ***Virtual Meeting*** 1/28/2021

City Council Ordinance Committee – Thursday January 28, 2021

Via Zoom

MINUTES

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

Staff Present: Kim Sturtevant (Assistant City Attorney), Tim Devlin (Assistant City Attorney), Lisa Jones (City Attorney's Office)

Others in Attendance: Councilor Brian Pine, Montpelier Councilor Conor Casey, Danielle Bombardier, Jay LeClair, Kim Hokanson—NASRCC, Larry Moquin, Laura, Mike Hoey—Local 22 & 44 News, Tyler Green, Montpelier Mayor Anne Watson, Sharon Bushor

Meeting called to order at 5:35 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

Danielle Bombardier: Electrician with IBEW, strongly support proposed amendments, bring on par with Montpelier and



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bring on par for wages. A union contractor is already a responsible contractor. Vermont already suffering. NY 100% more pay for unionized electricians. Putting workers first paramount in recovery.

Jay LeClair: Property manager at co-op on N. Ave., understanding decarb before them—clarified future agenda item.

Larry Moquin: 20 year member, organizer/field rep., supporting proposed amendment. Will benefit local economy. Supports families, many benefits to responsible contracting.

Conor Casey, Montpelier City Council: Supports amendment, spent good amount time on theirs which was passed about a year ago. Not union or non-union, about safety and equity. About treating workers right in a trade that has a lot of misclassifications. City dollars, if contract with a group should be afforded with the same respect. Small step, but incredibly important. Haven't used it yet with COVID, but will use it in future. About professionalism, going to do job and do it well. Fan of Burlington's livable wage.

Mayor Anne Watson, Montpelier: Delighted to speak on topic, way to do right, felt it was a good way to make sure all workers contracting with Montpelier are classified properly and brought our practices in line with requirements for federal dollars. Available to them if have questions.

Councilor Brine Pine: Timing fortuitous as President Biden announced executive order around climate change allow leveraging of public dollars to get quality projects done. Adequate training for worker leads to better project, better safety. For City and school projects. Hope together can move policy through.

Kim Hokanson: 15 year member North Atlantic States Regional Council of Carpenters, representative in Vermont. Support change, benefit wage, also 21-73 employment practices. Unfortunately there are bad employers who misclassify labor as independent contractors, pay in cash, avoid insurance, worker compensation—amounts to insurance and tax fraud. By doing this, it will bring more citizens into the trades.

Tyler Green: Resident of Burlington, supports change. Proud member local 349, union steward and delegate. Worked on a few large projects in Burlington. Currently working in NH. A lot of these contractors unscrupulous. A lot of independent carpenters get cheated because there are no checks and balances. Can get it done for less but not necessarily safer. Fully support the ordinance amendment.

Closed public forum at 5:59 PM.

1. Minutes

i. Approval of Minutes of 1/14/21

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

Final Resolution: Motion Passes

Yes: Councilor Hanson, Councilor Mason, Councilor Hightower

1. Committee Discussion/Possible Action



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4.01 BCO Offenses & Miscellaneous Provisions—Prequalification of Construction Contractors—Responsible Contractors, Secs. 21-68, 21-73, 21-76 and 21-77

Councilor Mason introduced the item and asked about the existing language in line 12 “government funded projects”? T. Devlin indicated the reference to other government funding. Councilor Mason noted that it was only city project on one side—doesn’t matter where money comes from? T. Devlin agreed.

Councilor Mason questioned the inclusion of school district in line 15 given state law concerns around ability to bind their actions and conduct, noting Act 60. T. Devlin acknowledged the concern and noted that the City Attorney’s Office could follow-up with an atty./client communication.

Councilor Mason noted the passage of the original ordinance in 1998. He then mentioned staff’s concern that they can’t do the independent analysis, too subjective. He asked if there was better give criteria that would make it more subjective. Councilor Hightower noted that a lot of contractors just certify—she didn’t know what that does. Councilor Mason responded that if false certify, then penalty.

Councilor Mason also questioned requirement for evaluating financial stability. Not sure where to look, uncomfortable with that provision. What is done today? T. Devlin responded that when the City receives a package in order to become prequalified, which typically includes an audit of the contractor’s finances certified by a third party CPA, not sure if always the case. Councilor Mason ask T. Devlin to look at that process closer and bring back, also whether it is sufficient if that is what is actually happening. Councilor Mason also inquired that if one is currently deemed a sufficient contractor, what is second step for qualification? What happens when they bring subcontractors in? How do subcontractors get qualified? T. Devlin responded that numerous contractors and subcontractors both re-up each year, but can do as part of bid and believe that if submit then any subcontractor not already prequalified would also submit for prequalification at that point. Councilor Mason questioned which department handles the prequalification. T. Devlin responded his understanding that it is currently decentralized. However, there is one list kept so that as a department encounters a request, they will check the list—most frequent users are DPW, Airport, and Parks. Councilor Mason asked who was on list—one or 15 groups? T. Devlin responded that he would follow-up with that information. Councilor Hanson agreed that it made sense to get information on that.

Councilor Mason referenced Section 21-73 asking whether it was done project by project or in general. When making certifications does everyone the contractor employs get paid that? How does it apply in reality? T. Devlin replied that there was a good distinction of contracts—one slightly higher, structure different than Vermont state wage as is Davis Bacon, similar. Rate different, but scheme similar. Councilor Mason asked whether as drafted under Section 21-73 wage/contract is paid the same for every project or just that particular project. Councilor Pine indicated that the crossed out language speaks to customarily and looks back a year, understand now that language not clear. What is customary way—not just today—in general? Montpelier Councilor Casey noted their intent to apply to specific project, threshold in Montpelier \$200,000, specific project not history of contractor. Councilor Hightower asked whether Montpelier had prequalification then. Councilor Casey responded that it was not an amendment to existing ordinance, it was a new ordinance, not prequalification.





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Councilor Mason noted a concern regarding the responsibility between contractor and subcontractor, not sure how contractor gets that level of information for subcontractor. Councilor Mason references lines 84-87 regarding properly classifying. T. Devlin notes lines 78-79 regarding women in construction is now preempted by federal regulation/statute and are now defunct. Councilor Mason replied that it should be stricken if preempted.

Councilor Hanson indicated looking back a year was stronger policy than just that project.

Councilor Mason indicated a concern with enforcement concerning the liquidated damage clause. Noting that it provides that even if we don't suffer actual damage we could still get 5% for violation. He mentioned City Attorney's concern. Councilor Mason indicated that as contract lawyer experience that need to show that suffer harm and only allow when actual can show, not for penalties. Feel very close. Would be very cautious in moving forward with that in there.

Councilor Mason indicated that contractor and subcontractor offenses raise concern. If subcontractor misclassifies then main contractor kicked off for 6 months. Understand want to enforce, but seems challenging. Allow further up to fix but don't know how to undo some of these. Appreciate shift, but before fined and then barred and now more challenging. Maybe now because more optional. Councilor Hightower responded that she felt it can be somewhat easy to tell. Felt staff could tell if mistake versus intentional misclassification. Want to make penalty high enough that don't want to get caught. Councilor Mason replied that he appreciated some discretion in (b), but in (c) it doesn't read that way. If subcontractor violate than a ban. He suggested taking out sentence in line 135. Could add above as a graduated penalty for 1st, 2nd and 3rd offense. Can be redrafted, do not think it is workable as is. Councilor Hanson responded that he heard the concern but needed to absorb it a bit, but hear what you are saying. Think having suite of options available for City staff. Councilor Mason replied that he was okay with suite of options except liquidated damages.

Councilor Hightower asked about the \$7,500 threshold in Section 21-76. Councilor Mason responded that there was a Department of Public Works communication asking to change it to \$20,000. Councilor Hightower asked how big \$7,500 was. Councilor Mason gave an example.

Councilor Mason asked for a number of items for next meeting on this item—2020 Vt. State construction prevailing wage rate schedule, list of contractor and subcontractors for year 2021 and certification or CPA process currently used for figuring out financial. He also asked about the efficiency of the departments and whether they all following same process. T. Devlin responded that DPW, Airport and Parks all communicate with each other, and that he would ask the departments to provide a bit more detail.

Councilor Hanson asked the status of other pending items. Councilor Mason indicated that leaf blower was with him, weatherization was coming back on 2/4 and decarbonization would be set for a future meeting.



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1. Any Other Business

Next mtgs.: Feb. 4 at 5:30 for weatherization.

1. Adjournment

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

Final Resolution: Motion Passes

Yes: Councilor Mason, Councilor Hanson, Councilor Hightower

The meeting was adjourned at 6:47 pm.