



Regular City Council Meeting - Monday, January 6, 2020, 6:00 pm, Contois Auditorium, City Hall 1/6/2020

MINUTES SUBJECT TO CORRECTION BY BURLINGTON CITY COUNCIL. CHANGES, IF ANY, WILL BE RECORDED IN THE MINUTES OF THE NEXT MEETING OF THE CITY COUNCIL.

BURLINGTON CITY COUNCIL

CONTOIS AUDITORIUM, CITY HALL

BURLINGTON, VERMONT

MINUTES OF MEETING

January 6, 2020

MEMBERS PRESENT: Kurt Wright (Council President) – Ward 4

Perri Freeman – Central District

Franklin Paulino – North District

Joan Shannon – South District

Jack Hanson – East District

Sharon Foley Bushor – Ward 1

Max Tracy – Ward 2

Brian Pine – Ward 3

William “Chip” Mason – Ward 5

Karen Paul – Ward 6 [via telephone]

Ali Dieng – Ward 7

MEMBERS ABSENT: Adam Roof – Ward 8

ADMINISTRATION:

Mayor Weinberger

Steve Locke, Interim CAO

Rich Goodwin, DFO

Eileen Blackwood, City Attorney

Jordan Redell, Mayor’s Office

Olivia LaVecchia, Mayor’s Office

Deanna Paluba, HR



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Brian Lowe, CIO

Lori Olberg, C/T

Amy Bovee, C/T

Chapin Spencer, DPW

Sophie Sauve, Parks & Rec

David White, Planning

Meagan Tuttle, Planning

OTHERS PRESENT:

Jeff Glassberg

Jennifer Morrison

Ana Burke

Birgit Matthiesen

Jonathan Chapple-Sokol

Jason Adams

Lea Terhune

Richard Hillyard

Jack Daggitt

Jerry O'Neill

James Marc Leas

Amy Magyar

Carol Hinson

[Note: Minutes reflect the order of the published agenda.]

1.0 CALL TO ORDER

Council President Wright called the City Council meeting to order at 6:16 PM on January 6, 2020.



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1.01 Agenda

MOTION by Councilor Bushor, SECOND by Councilor Shannon, to approve the agenda with the following amendments:

- **Note updated material for Item 2.01 (ADUs)**
- **Add Item 4.15 (BFP article) to Consent Agenda**
- **Note added information for Item 5.01 (End Domestic Violence)**
- **Note material for Item 5.12 (Interim Police Chief)**

VOTING: unanimous; motion carried.

2.0 WORK SESSION: ZA#20-03 Accessory Dwelling Units

Mayor Weinberger said accessory dwelling units (ADU) are the second major housing reform from the housing summit. The city has an ordinance in place, but has not seen an increase in ADUs. It is hoped the amendments will lead to more ADUs in the city.

Planning Director White and Senior Planner Tuttle reported the joint committee on housing discussed fire and building codes, parking requirements, owner occupied requirement, lot coverage waiver and stormwater management for ADUs. The joint committee felt the fire and building codes add cost to an ADU and urged looking at the zoning side to decrease costs. Homeowners need to be given options to address code requirements in a more cost-effective way. Regarding parking, the joint committee agreed with eliminating the base requirement and allowing stacked parking for an ADU. The 'owner occupied' requirement is difficult to enforce and could create financing issues. A boom of ADUs is unlikely if owner occupancy is not required. The joint committee suggested working with the DPW Stormwater Division on stormwater management related to ADUs on a site.

Councilor Bushor asked about storm water runoff onto abutting properties. Senior Planner Tuttle said it is a standard condition that storm water cannot adversely impact abutting properties. Councilor Bushor asked how to know where ADUs are not allowed. Planning Director White said ADUs are allowed only in a principal structure on a lot occupied by a single-family residence.

Councilor Pine asked if the ordinance is concerned with whether people in the building are renters or owners. Planning Director White said the principal place is owner occupied. State statute allows regulating ADUs based on owner occupancy. Senior Planner Tuttle added boarding houses and B&Bs are regulated based on owner occupancy. Councilor Pine asked if there are any data on whether owner occupancy achieves the desired objective of preserving the neighborhood, quality of life and stability. Mayor Weinberger said the data show high levels of owner occupancy regardless of the requirement. Senior Planner Tuttle noted the joint committee recommended not changing the requirement.

Councilor Shannon stated with the owner occupied requirement the parking requirement can be waived because the owners will have to deal with any problems that are created which is not the case without the owner occupied requirement.



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Councilor Shannon asked if lot coverage requirements are being waived to allow ADUs. Senior Planner Tuttle said the waiver applies to the portion of the lot for the ADU and only the portion of the ADU that exceeds the lot coverage limit can be waived. Up to 650 s.f. of lot coverage occupied by an ADU can be waived if the resulting storm water from the ADU is managed. The property owner can work with DPW on how to manage the storm water.

Councilor Freeman asked why owner occupancy applies to an ADU and does not apply to other rentals. Planning Director White said there are examples across the country where owner occupancy is not a requirement, but historically the city's ordinance has provided for owner occupancy. Senior Planner Tuttle added the approach toward ADUs has been evolving over time. The city is becoming more permissive toward ADUs as a way to bring housing into neighborhoods. Councilor Freeman asked who would develop an ADU if not for the property owner. Senior Planner Tuttle said the issue is still developing and being defined.

Councilor Mason said the Planning Commission was unanimous in opposition to the owner occupied requirement. The joint committee discussed out of state parents buying property for their student in the university town and tacking on an ADU to generate additional revenue. Senior Planner Tuttle said the cost to construct an ADU is a barrier. ADUs are limited to one bedroom and two occupants. Results of not requiring owner occupancy are not known. Councilor Shannon commented owner occupancy is important to setting roots in the community. It is believed owner occupancy makes better landlords. Also, ADUs make home ownership more affordable. Mayor Weinberger said there is no debate that there is some benefit to having the owner on site with an ADU. By the nature of ADUs a majority of the units will have owners on site. Making owner occupancy a requirement will be of little impact on owner occupancy, but there will be an impact on the number of ADUs that are built.

Councilor Paulino asked how to handle ADUs without street parking. Planning Director White said there is a management tool for parking in the residential areas. The issue is the requirement for parking for an ADU when the residents may not even need a car. When a parking space is required there will be more impervious area and a struggle with lot coverage. Councilor Paulino asked about assistance from the Housing Trust Fund to help neighborhoods that need ADUs more than others. Planning Director White said it is in the purview through the regulatory process of how to make it easier to do an ADU (e.g. cost reduction). Senior Planner Tuttle said an ADU does not need to go through the DRB process which reduces some cost. HomeShare VT, CEDO, and other partners are working on a technical assist program for lower income homeowners interested in an ADU.

Councilor Paul mentioned the difficulty in proving and enforcing owner occupancy. Comparison should be made to other cities of the size of Burlington for data on ADUs. Senior Planner Tuttle said cities large and small have been researched for best practices used with an ADU policy.

Councilor Pine said with the owner occupancy requirement there will be minimal conversions. Owner occupancy could be required in housing closer to the university only. Planning Director White confirmed it is possible to define a geographic area, but it will be more difficult to enforce the ordinance.



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Councilor Bushor said removing the owner occupied requirement will come at a price because investors will be building ADUs. The point of ADUs is to find a way to help people stay in their homes. If zones can be created legally then do it.

Councilor Hanson asked who would be stifled by the owner occupancy requirement. Mayor Weinberger said a great number of ADUs are created by homeowners. With the owner occupancy requirement fewer homeowners can actually succeed in getting an ADU due to financial concerns, market restrictions, and complications when selling the property on short notice.

3.0 PUBLIC FORUM

Public forum was opened at 7:42 PM.

- Jason Adams spoke about the poor condition of Battery Street (potholes) and the need for regular maintenance.
- Lea Terhune spoke about the mural not representing African Americans and that it pushes notable people of color off the stage.
- Richard Hillyard, Ward 1, spoke to three items: In support of Jen Morrison's community outreach effort; Uncertainty with noncitizens having a vote; Funding immigration attorneys to help noncitizens secure permanent residency (green card) as an alternative.
- Jack Daggitt, Ward 3, spoke of the mural taking time that could be focused on other issues like homelessness, the deterioration of Memorial Auditorium, loss of property taxes, sales tax, and parking revenue related to the town center, and loss of Macy's.
- Jerry O'Neill spoke in favor of the appointment of Jennifer Morrison as interim Police Chief.
- James Marc Leas spoke of the Mayor being complacent in the F35 assault on hearing and learning, and spoke against the F35 and war with Iran.
- Amy Magyar spoke of the expense to build an ADU due to the requirement for a sprinkler system at a cost of \$10,000 which will be cost prohibitive for many people. Also, the parking requirement may not apply to those living in an ADU who no longer drive and do not have a car.
- Carol Hinson spoke in support of Jennifer Morrison as interim Police Chief.

No further comments. Public forum closed 8:03 PM.

4.0 CONSENT AGENDA

- 4.01 PROCEDURAL: Amend/Adopt Consent Agenda and Take Action(s) as Indicated
- 4.02 COMMUNICATION: Accountability List
- 4.03 COMMUNICATION: 2019 Equalization Study Results
- 4.04 COMMUNICATION: Petition to Remove the Mural, Lea Terhune
- 4.05 COMMUNICATION: Remarks to City Council, James Marc Leas
- 4.06 COMMUNICATION: Police Chief Brandon del Pozo, Thomas Frost
- 4.07 COMMUNICATION: Burlington Wildways Support



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- 4.08 COMMUNICATION: Bond Financing Outcome
- 4.09 COMMUNICATION: Stantec Contract, Airport Storm Water Permit Management
- 4.10 COMMUNICATION: Stantec Contract, Airport UIC Permit Management
- 4.11 COMMUNICATION: Police Investigation, Steve Goodkind
- 4.12 COMMUNICATION: FIO Document(s)
- 4.13 ORDINANCE: ZA#20-02 Accessory Uses and Structures
- 4.14 RESOLUTION: Select Newspaper for 2020 Election Warning & Notices
- 4.15 COMMUNICATION: BFP Article, John Hyslop

MOTION by Councilor Bushor, SECOND by Councilor Hanson, to adopt the consent agenda, items 4.01 – 4.15, and take the action indicated. VOTING: unanimous; motion carried.

5.0 DELIBERATIVE AGENDA

5.01 Presentation: Steps to End Domestic Violence

Ana Burke, Birgit Matthiesen, and Jonathan Chapple-Sokol gave a presentation on Steps to End Domestic Violence and requested funding to continue the work. In the past Burlington contributed 2% of the Steps budget. The request for FY21 is an increase to 3%. Eventually the requested amount will be 5% to address public safety and local issues. Also, the current shelter is too small so it is requested the CDBG money be rolled over for a new shelter and the city help Steps work with state agencies for funding support.

MOTION by Councilor Bushor, SECOND by Councilor Shannon, to refer the presentation by Steps to End Domestic Violence and the request for funding to the Board of Finance for consideration and consultation with CEDO.

DISCUSSION:

- **Councilor Pine asked if a PILOT needs state approval. Mayor Weinberger said the Board of Finance will investigate the matter.**

VOTING: unanimous; motion carried.

5.02 Appointment: Interim Chief of Police, Jennifer Morrison

Mayor Weinberger echoed the positive comments and support for the appointment of Jennifer Morrison as interim Police Chief, noting her 23 years of service at BPD including serving as Deputy Chief before leaving to be the Colchester Police Chief.



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Jennifer Morrison reviewed her years of experience serving in the Burlington Police Department and serving as the Colchester Police Chief. Ms. Morrison said her family is very committed to the City of Burlington.

Council President Wright expressed confidence and appreciation to Jennifer Morrison for being willing to take on the interim role.

Councilor Shannon thanked Ms. Morrison for stepping up, noting many citizens were angry the city let her leave the department because of the good job she did.

Councilor Pine asked about handling the data on police bias and racial bias. Jennifer Morrison said traffic stop data are one piece of information. Feedback from people in the community who have had contact with the police is equally important. Ways to collect data, not just a thin slice, and refining how to code the data need to be found. BPD has raised the bar on training. Ms. Morrison said she is a certified instructor on implicit bias. Councilor Pine asked about handling use of force incidents. Jennifer Morrison said it is important to get the community engaged before policy is promulgated and to continue community engagement as policies, best practices, and laws change.

Councilor Freeman asked about support for the Black Lives Matter movement and calls for reform. Jennifer Morrison said she has not specifically supported the group in her time as Police Chief, but does believe in treating all human beings with respect and getting educated in implicit bias. Councilor Freeman asked Ms. Morrison to address her comment on the use of video and officer use of force. Jennifer Morrison said the context of the comment was relative to officers feeling they are being watched or "caught in the act" (i.e. "Big Brother"), but in most cases the video shows the officers did in fact do things correctly. Ms. Morrison said she stands by her statement that 90% or more of the time the officers do get it right.

Councilor Tracy asked about rebuilding trust and if the Administration has taken responsibility for its actions. Jennifer Morrison said she will not look backwards because she is not responsible for the decisions that occurred and that her track record is impeccable in terms of taking responsibility for decisions or happenings under her watch. Being transparent and open and communicating with city leadership is the first step to rebuilding trust. Taking swift, decisive, proportional disciplinary action when the situation warrants is necessary. When something goes wrong, fix it and move on. Ms. Morrison said she is a direct communicator and does not play games. Job one is to work internal to BPD. Councilor Tracy asked about involvement in the Social Media Policy. Jennifer Morrison said she will adopt and train people to the citywide policy and hold them accountable to that going forward. BPD does a good job disseminating information on social media. Councilor Tracy asked about the approach to the opiate crisis. Jennifer Morrison said changing the way BPD leads the charge on the opiate crisis is not needed.

Councilor Hanson asked Ms. Morrison about her position on release of body cam footage in use of force cases. Mayor Weinberger interjected the policy is currently under review. Councilor Hanson asked about using proportionality with discipline. Jennifer Morrison explained "negative outcome bias" where there are two officers with the same out of policy behavior, but the one with a negative outcome gets a larger punishment. This cannot be supported. Body cam footage release is a complex issue and the decision needs to be made in totality of the circumstance and in consultation with the



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prosecutor and internal/external investigators of police actions. If a policy is developed, community input is critical. Regarding discipline on an infraction, the punishment should be proportionate to the violation and not a reaction to it or a negative outcome that might occur. Ms. Morrison said she has a solid reputation as a warm, empathetic leader not afraid to put a boot in someone's backside when needed. Each use of force incident needs to be carefully scrutinized in order to refine practices, training, and to try to identify trends. Councilor Hanson asked about interaction with the Police Commission and its role. Jennifer Morrison said the Police Commission is part of the government system so the interaction will be as with any city governance body in a direct and truthful manner that is collaborative and seeks the best answers, best practices. The Police Commission will be asked to review policy updates or changes as they occur, and potentially review disciplinary measures that come up, and to be a conduit of information from the community.

Councilor Bushor said the community needs a Police Chief who is direct, clear, honest, and able in the position. The Police Department and community needs some compassion. There are many levels of questions and concern by the community, and it is hoped to find a way to collectively work together as one community. Jennifer Morrison is the way to hear each other and move beyond where the department is now. Ms. Morrison said she is capable of disagreeing without being disagreeable, can hear other perspectives and, in fact, invites other perspectives in order to look at all angles.

Councilor Dieng asked if Ms. Morrison lives in Burlington and is willing to serve beyond six months. Jennifer Morrison said she served in BPD for 23 years and was not a resident. Ms. Morrison said her availability is four to six months which is the timeline to layout a process for selecting a new Police Chief. Councilor Dieng asked about the difference between Police Chief and interim Chief. Jennifer Morrison said it is the vision and what is hoped to be accomplished. Councilor Dieng asked how Ms. Morrison envisions working with community members. Jennifer Morrison said she will infuse her philosophy of approachability and engaging in conversation with the community, rebuilding relationships. Maintaining public trust is job one. All members of the department are ambassadors to the department. The focus needs to be brought back to the outstanding police work being done every day.

Councilor Paulino observed Ms. Morrison is already rebuilding trust by taking on the interim role.

**MOTION by Councilor Mason, SECOND by Councilor Shannon, to confirm Jen Morrison as interim Police Chief.
VOTING: unanimous; motion carried.**

Council President Wright expressed thanks and gratitude to Jennifer Morrison for accepting the interim position.

Mayor Weinberger thanked Deputy Chief, John Murad, for his time as Acting Chief. Feedback on the process to secure a new Police Chief is welcomed.

Jennifer Morrison was sworn in as interim Chief of the Burlington Police Department.



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5.03 Funding Alternate Transportation - TEUC

Councilor Hanson said the city needs to be creative and explore as many transportation options as possible that are sustainable and affordable.

MOTION by Councilor Hanson, SECOND by Councilor Freeman, to approve the resolution on funding alternate transportation.

DISCUSSION:

- Councilor Bushor said details on the cost of infrastructure and the cost of fuel are needed. There is concern about the expansion of meters, raising residential parking fees, expansion of hours for parking (lines 46 through 48 of the resolution).
- Councilor Tracy pointed out the resolution is about gathering information and the true cost of providing and funding resources, and providing alternatives to driving in the city.
- Councilor Paulino urged being respectful of the people who want to drive to Burlington for a movie or dinner and not making this more expensive because a portion of the population wants to ride bikes. There is not a lot of revenue from parking so other sources need to be found.
- Mayor Weinberger said it is a worthy question to look at resources to expand public transit and look at creative ideas.
- Councilor Hanson said the city is in a crisis which means rapid and real change is needed. The alternative of not transforming the transportation system is a climate disaster.
- Council President Wright spoke against rolling back or enhancing parking hours.

VOTING (by roll call): Councilor Bushor – aye, Councilor Hanson – aye, Councilor Dieng – aye, Councilor Paulino – aye, Councilor Freeman – aye, Councilor Mason – aye, Councilor Paul – aye, Councilor Pine – aye, Councilor Shannon – aye, Councilor Tracy – aye, Council President Wright – nay (10 ayes, one nay); motion carried.

6.0 COMMITTEE REPORTS

- Councilor Tracy announced the TEUC will meet 1/16/20 to discuss the rail siding by the McNeil Plant, potholes, FY21 United Work Plan.
- Councilor Mason announced the Housing Policy Reform Committee will meet 1/14/20 to discuss parking requirements and short term rentals.
- Councilor Shannon announced the Parks, Arts, Culture Committee (PACC) will meet 1/23/20 to discuss Memorial Auditorium, Moran Frame Project, bike path, City Hall Park, Highlight review, BCA building, and library update.
- Councilor Freeman announced the Public Safety Committee will meet 1/8/20 to discuss sheltering on public lands.

7.0 CITY COUNCIL - GENERAL AFFAIRS

Councilor Pine said the Greater Burlington YMCA is offering special rates for low income families.

8.0 CITY COUNCIL PRESIDENT – COUNCIL UPDATES



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Council President Wright reminded all city councilors to let the Council President know if they will not be attending a city council meeting.

9.0 MAYOR – GENERAL AFFAIRS

Mayor Weinberger reported:

- Thanks to BCA and others for hosting the successful Highlight event.
- YMCA is a great facility that will be here for generations to come.

10.0 EXECUTIVE SESSION

10.1 CityPlace Update

Jeff Glassberg listed the following milestones in the CityPlace project since September:

- Restoration of the right-of-way, sidewalk, parking on Cherry Street and Bank Street
- Payment to the city of \$272,000 for a range of fees and charges including support of holiday parking and city promotion
- Presentation to City Council of new design concepts for the former mall property and Macy's
- More detailed program and design for the mid-block development
- Written confirmation of the commitments by the developer for submission to VEPSE for request of substantial change to the project
- More substantial development of the plan and program for housing UVMCC and a redeveloped Macy building
- Two newly redeveloped bathrooms in the mall
- Review by UVMCC, the city, and the developers to move the process of redeveloping Macy's forward
- Meeting with VEPSE on the request for substantial change (TIF can still be used and there is room to negotiate)
- Developer scheduled appearance before the Technical Review Committee on 1/9/20

Jeff Glassberg said there has been a complete lack of public engagement by the developer despite repeated requests. The development agreement needs to be amended. Both these items can be discussed in Executive Session.

Councilor Paul was not present for Executive Session.

MOTION by Councilor Mason, SECOND by Councilor Bushor, to find that premature public knowledge of the contract and development agreement and potential broader topics around the development agreement and attorney/client communications would clearly place the city at a disadvantage. VOTING: unanimous; motion carried.



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MOTION by Councilor Mason, SECOND by Councilor Bushor, based on the finding of premature knowledge of the development agreement and attorney/client communications placing the city at a disadvantage to go into Executive Session to discuss the same and invite the Mayor, Mayor's Office, interim CAO, City Attorney, Parks & Rec staff, and Jeff Glassberg. VOTING: unanimous; motion carried.

Executive Session to discuss the development agreement was convened at 9:50 PM.

10.2 Passenger Rail and Waterfront Bike Path Relocation

Councilor Mason announced he will recuse from the discussion of the passenger rail contract negotiations or probable litigation due to professional conflict of interest.

MOTION by Councilor Shannon, SECOND by Councilor Bushor, to find that premature public knowledge of contract negotiations or probable litigation and attorney/client communications would place the city at a substantial disadvantage. VOTING: unanimous; motion carried.

MOTION by Councilor Shannon, SECOND by Councilor Bushor, based on the finding of premature public knowledge of contract negotiations and attorney/client communications placing the city at a disadvantage to go into Executive Session to discuss the passenger rail contract or probable litigation. VOTING: unanimous; motion carried.

Executive Session to discuss rail contract negotiations was convened at 10:45 PM. Councilor Freeman left prior to adjournment of Executive Session.

MOTION by Councilor Shannon, SECOND by Councilor Dieng, to adjourn Executive Session. VOTING: unanimous; motion carried.

Executive Session was adjourned at 11:30 PM.

11.0 ADJOURNMENT

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

The meeting was adjourned at 11:31 PM.



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