



Wednesday, January 24, 2024, 5:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM

When: Jan 24, 2024 05:00 PM Eastern Time (US and Canada)
Topic: Ordinance Committee Meeting

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1. Agenda

Subject

1.1. Motion to amend/adopt agenda

Meeting

January 24, 2024 - Ordinance Committee Meeting - Wednesday, January 24, 2024,
5:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM

Category

1. Agenda

Department

Type

Recommended Action

2. Adopt Draft Minutes from October 30, 2023

Subject	2.1. Adopt Draft Minutes from October 30, 2023
Meeting	January 24, 2024 - Ordinance Committee Meeting - Wednesday, January 24, 2024, 5:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	2. Adopt Draft Minutes from October 30, 2023
Department	Council and Board
Type	
Recommended Action	

3. Public Forum

Subject	3.1. Verbal Comments
Meeting	January 24, 2024 - Ordinance Committee Meeting - Wednesday, January 24, 2024, 5:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	3. Public Forum
Department	Council and Board
Type	

4. Councilor Review of Trespass Ordinance referred from City Council (60 Minutes)

Subject	4.1. City Hall Park and Church Street Marketplace
Meeting	January 24, 2024 - Ordinance Committee Meeting - Wednesday, January 24, 2024, 5:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	4. Councilor Review of Trespass Ordinance referred from City Council (60 Minutes)
Department	Council and Board
Type	
Recommended Action	

Subject	4.1. i. Who Can Enforce (10 Minutes)
Meeting	January 24, 2024 - Ordinance Committee Meeting - Wednesday, January 24, 2024, 5:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	4. Councilor Review of Trespass Ordinance referred from City Council (60 Minutes)
Department	Council and Board
Type	
Recommended Action	

Subject	4.1. ii. Criteria for Enforcement (10 Minutes)
Meeting	January 24, 2024 - Ordinance Committee Meeting - Wednesday, January 24, 2024, 5:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM
Category	4. Councilor Review of Trespass Ordinance referred from City Council (60 Minutes)

Department Council and Board

Type

Recommended Action

Subject 4.1. iii. Harm Reduction (10 Minutes)

Meeting January 24, 2024 - Ordinance Committee Meeting - Wednesday, January 24, 2024, 5:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM

Category 4. Councilor Review of Trespass Ordinance referred from City Council (60 Minutes)

Department Council and Board

Type

Recommended Action

Subject 4.2. Private Property Enforcement (30 Minutes)

Meeting January 24, 2024 - Ordinance Committee Meeting - Wednesday, January 24, 2024, 5:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM

Category 4. Councilor Review of Trespass Ordinance referred from City Council (60 Minutes)

Department Council and Board

Type

Recommended Action

5. Councilor Discussion of Graffiti Ordinance (30 Minutes)

Subject 5.1. Councilor Discussion of Graffiti Ordinance (30 Minutes)

Meeting January 24, 2024 - Ordinance Committee Meeting - Wednesday, January 24, 2024, 5:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM

Category 5. Councilor Discussion of Graffiti Ordinance (30 Minutes)

Department Council and Board

Type

Recommended Action

6. Adjournment

Subject 6.1. Motion to adjourn

Meeting January 24, 2024 - Ordinance Committee Meeting - Wednesday, January 24, 2024, 5:00 PM, Bushor Conference Room 1st Floor, City Hall OR REMOTELY via ZOOM

Category 6. Adjournment

Department Council and Board

Type

Recommended Action

Ordinance Committee
Monday, October 30, 2023 at 5:30PM
Spark Space at 585 Pine St. and Remote via Zoom

DRAFT MINUTES

Members Present: Councilor Traverse (Chair), Councilor Carpenter, Councilor Hightower, Councilor Shannon

Staff Present: Kim Sturtevant (Assistant City Attorney), Darren Springer (BED General Manager), Chris Burns (BED)

Public Present: Ashley Adams, Greg Hancock, Jim Goldsmith, Melo Grant, Peter Duval, Patti Wehman, Sharon Bushor, Tom DiChristopher, Brynn Martin, Dylan Giambatista, Jack Hanson, Erik Lahr, Karen Vastine, Kim Hornung-Marcy, Catherine Bock, Elizabeth Palchak, Luce Hillman, Steve Goodkind, Nick Persampieri, Mark Barlow, Spencer

Meeting returned from recess at 5:30 PM.

1. Adopt the Agenda

1.01 Adopt the Agenda

Motion to Adopt Agenda as drafted.

Motion by Councilor Shannon, Seconded by Councilor Carpenter.

Final Resolution: Motion Passes

Yes: Unanimous

2. Adopt Draft Minutes from September 21

2.01 Adopt Draft Minutes from September 21

Motion to Adopt Minutes from September 21, 2023.

Motion by Councilor Shannon, Seconded by Councilor Carpenter.

Final Resolution: Motion Passes

Yes: Unanimous

3. Public Comment

3.01 Public Comment

Public Comment was also taken on the October 16th meeting of the Committee. Only new comments from October 30 are recorded here. Public Comment was taken after Councilor Discussion.

Nick Persampieri: I am disappointed that the Committee has not stricken certain measures. I am concerned that the State process is not going to fix everything and answer our questions. The State is going to come up with a sliding scale of credits. I think we should consider adjusting this ordinance once the State has put out their work. It may have to go back to a vote by the voters. The City's climate policy is fundamentally flawed and should focus on greenhouse gas

emissions rather than fossil fuel use. Electrification and geothermal are the way to go and the other measures aren't as good. There is some good language that will discourage those other measures.

Connor Wertz: I work for 350VT and live in Ward 2. I have concerns similar to Nick Persampieri. The State is trying to move away/phase out certain fuels such as renewable natural gas, but new buildings are going to continue to be built with these fuels in that time period. Burlington will fall behind other climate leaders if we end with just this ordinance.

Peter Duval: The Committee has avoided talking about McNeil. Where is the impact analysis on the steam pipe project? Darren Springer encouraged the Committee to link the ordinance with State legislation. What will happen when biomass is examined by the PUC? We should reject this ordinance and send it back to the TEUC. A strong building code would be better. We heard at City Council that the hospital would not consider the steam pipe project were it not for the carbon fee ordinance. It is bad government to impose an ordinance on the hospital to bully them into a steam pipe project.

Sharon Bushor: There is a time limit of one year for large building owners to use half their carbon fee, is there a reason for that? I don't know the rationale for this. I think every building should be evaluated on its own, but I still don't care for the credit system. Was there ever an analysis of the amount of money that this fee would generate? Is this a large quantity of money?

Jack Hanson: The credit system is definitely improved by the amendments today, but the question is if these improvements were going to be completed anyway. If so, it undercuts the compliance mechanism of having the fee. I think these sections should go just be deleted and have all the money go to low-income folks.

4.0 Carbon Impact Fee Discussion

4.01 Carbon Impact Fee Discussion

Councilor discussion began with a discussion of a draft ordinance labelled "Carbon Fee Draft ORD10.25.23". This draft is available on CivicClerk.

Councilor Traverse asked if there was consensus on section 8-76. All councilors were in agreement except for some wording changes from Councilor Hightower.

Darren Springer explained the redline changes in 8-77. The ordinance definition for "clean energy" now relies on 30 V.S.A. § 8127(d) and (e). He also explained that the Technical Advisory Group of the PUC advises on electrification and provides feedback for clean heat measures for the state. If a fuel meets the clean energy requirements of the PUC then it fits the criteria of the City ordinance.

Councilor Hightower proposed having three categories of heating systems: fossil fuel-based, renewable-based, and 'low-carbon'-based. She used Nick Persampieri's definitions offered in

his redlined version of the ordinance. The ‘low-carbon’ category would include solar water heating systems and electric heat pumps.

Councilor Traverse offered a similar framework: fossil fuel-based, non-combustion-based, and renewable fuel-based. Renewable fuels for this this would be wood, renewable natural gas, and the like. Non-combustion would be geothermal or other electric systems.

Darren Springer noted that these frameworks would differ from the state construct and would increase administrative work for the departments.

Councilor Carpenter said that if an owner or builder did not use electric or some other encouraged heating system, that there would be a requirement for some kind of analysis or report to the City departments about why the owner or builder did not use one of the encouraged heating systems.

Councilor Shannon added that most people want to move toward heat pumps or geothermal already and has a concern that owners might be penalized for having a backup system that is not fully electric, but is not used often.

Chris Burns (BED Staff) said that BED staff work with the Technical Review Committee so they are aware of what systems are being used in new construction and work with developers. Most new buildings in the last few years are primarily heat pump based because they are a low capital investment while also offering cooling. Most backups are electric resistance but some use fossil backups. Champlain College and Hula both have gas backups to keep the buildings from freezing in case of an emergency, but neither use the backups.

Motion to change “Clean Energy” as defined in 8-77(c) to “Renewable Energy” throughout the draft ordinance.

Motion by Councilor Traverse, without objection.

Final Resolution: Motion Passes

Motion to modify 8-77(c) to read: “”Renewable energy” shall include all of the electrification, geothermal, and solar measures, and renewable fuels included in (d) and (e) of 30 V.S.A. § 8127.”

Motion by Councilor Traverse, without objection.

Final Resolution: Motion Passes

Motion to add to section 8-78(a): “If an applicant utilizes a primary thermal energy system that relies on renewable energy other than electrification, geothermal, or solar measures, the applicant must certify prior to receiving a permit that the use of electrification, geothermal, or solar measures is not technically feasible, is economically unduly burdensome, is not permitted by applicable regulation, or is not feasible for other similar reasons demonstrated to the satisfaction of the Department of Permitting and Inspections. If an applicant utilizes a non-primary thermal energy system that relies on renewable energy other than electrification, geothermal, or solar measures, the applicant must provide the Department of Permitting and

Inspections a written explanation of the reason for not using a thermal energy system that relies on electrification, geothermal or solar measures.”

Motion by Councilor Traverse, without objection.

Final Resolution: Motion Passes

Darren Springer explained that the exception in 8-79(c)(3) was intended to reward early adopters of electrified or otherwise renewable thermal energy systems by compensating owners on other systems that may be subject to the fee.

Motion to modify 8-79(c)(3) to read: “If an applicant with one or more buildings is seeking a permit pursuant to this chapter, and is already using one or more thermal energy systems that rely on ~~clean~~ renewable energy, the applicant may apply for a credit toward any carbon pollution impact fee equal to the carbon value of the ~~clean~~ renewable energy used for any thermal energy system permitted by the City of Burlington since January 1, 2024 and not regulated under this ordinance.”

Motion by Councilor Traverse, without objection.

Final Resolution: Motion Passes

Darren Springer clarified the intent 8-79(d)(i) is to encourage owners/builders of large buildings to use renewable energy systems not regulated by this ordinance (such as appliances) in any other Burlington building they own.

Motion to modify 8-79(d)(i) to read: “Half of the proceeds paid into the Clean Energy Fund by a large existing building applicant shall be available to the payor for projects to reduce greenhouse gas emissions at any site owned by the payor in the City of Burlington. The large existing building applicant must request these proceeds within one (1) year following payment of their carbon pollution impact fee, the proceeds may not be used to subsidize the cost of thermal energy systems regulated by this ordinance, and any proceeds not requested within that year shall be made available under subsection (iii).”

Motion by Councilor Traverse, without objection.

Final Resolution: Motion Passes

Motion to further modify 8-77(c) to read: ““Renewable energy” shall include all of the electrification, geothermal, and solar measures, and renewable fuels included in (d) and (e) of 30 V.S.A. § 8127. Renewable energy measures that do not rely on electrification, geothermal, or solar will be subject to the applicable requirements of section 8-78(a).”

Motion by Councilor Traverse, without objection.

Final Resolution: Motion Passes

Councilor Hightower asked about clarifying section 8-79(d)(i) to ensure that the half of the carbon fee that would be available to owners would be put to an adequate carbon reduction purpose. Councilor Hightower wanted some assurance that this section would continue the intent of the ordinance in reducing carbon emissions.

Motion to further modify 8-79(d)(i) to read: “Half of the proceeds paid into the Clean Energy Fund by a large existing building applicant shall be available to the payor for projects to reduce greenhouse gas emissions at any site owned by the payor in the City of Burlington. The large existing building applicant must request these proceeds within one (1) year following payment of their carbon pollution impact fee, the applicant shall demonstrate to the satisfaction of the Department of Permitting and Inspections that the proceeds will be used to meaningfully reduce greenhouse gas emissions, the proceeds may not be used to subsidize the cost of thermal energy systems regulated by this ordinance, and any proceeds not requested within that year shall be made available under subsection (iii).”

Motion by Councilor Traverse, without objection.

Final Resolution: Motion Passes

Darren Springer clarified that the carbon fee funds would have to be requested within a year, but the project does not have to be completed within a year. We want to make sure the money is being used either for this further encouragement or for low-income people. The fee range expectations are estimated at \$600,000 for a new, large, multifamily building that uses fossil fuels. For larger existing buildings it would be in the thousands to tens of thousands if they continued to use fossil fuels.

Councilor Hightower was interested in including that using the carbon fee credits have to be used in a 1 to 1 ration for carbon emissions. Currently, the amended ordinance only requires it to be to the satisfaction of DPI. Darren Springer said he supports the current language, but would be willing to work on wordsmithing the language.

Councilor Traverse brought back up if the Committee wanted reports crafted by DPI on the work for this ordinance. Councilor Carpenter agreed and thinks having records would help in drafting ordinances in the future. All councilors were in agreement and the language is forthcoming before the ordinance goes to the full Council.

Motion to approve the ordinance as amended and forward to the full Council for consideration.

Motion by Councilor Traverse, second by Councilor Carpenter

Yes: Councilors Traverse, Carpenter, and Shannon

Absent: Councilor Hightower

Final Resolution: Motion Passes

5.0 Adjournment

5.01 Adjournment

Motion to adjourn by Councilor Traverse, without objection.

Final Resolution: Motion Passes

The meeting was adjourned at 9:06 PM.



OFFICE OF THE CLERK/TREASURER

City of Burlington

City Hall, Room 20, 149 Church Street, Burlington, VT 05401

Voice (802) 865-7000

Fax (802) 865-7014

TTY (802) 865-7142

MEMORANDUM

TO: Ordinance Committee Members

FROM: Lori Olberg, Licensing and Records Coordinator

DATE: December 19, 2023

SUBJECT: 12/18/23 City Council Ordinance: Burlington Code of Ordinances-Sections 21-45 – 21-49 Trespass

Enclosed please find a copy of the ordinance that was referred to your Committee for further review to include, but not be limited to, consideration of the list of parties authorized to issue no trespass orders, balancing no trespass orders with proactive harm reduction efforts and to evaluate expanding the ability to enforce the trespass ordinance on private property. Please keep this as part of your records.

Thank you.

CITY OF BURLINGTON

ORDINANCE

8.5.

Sponsor: Councilors Paul and

Traverse

Public Hearing Dates: _____

In the Year Two Thousand Twenty-Three

An Ordinance in Relation to

BURLINGTON CODE OF ORDINANCES-

Sections 21-45 – 21-49

Trespass

First reading: _____

Referred to: Ordinance Committee *

Rules suspended and placed in all

Stages of passage: _____

Second reading: _____

Action: _____

Date: _____

Signed by Mayor: _____

Published: _____

Effective: _____

It is hereby Ordained by the City Council of the City of Burlington as follows:

That Chapter 21, Offenses and Miscellaneous Provisions, Article I, In General, of the Code of Ordinances of the City of Burlington be and hereby is amended to read as follows:

ARTICLE I. In General

Secs. 21-1 – 21-44 As written.

Sec. 21-45 Unlawful trespass.

It shall be unlawful for a person who, without legal authority or the consent of the person in lawful possession, enters or remains on any land or in any place as to which notice against trespass is given by:

(a) Actual communication by the person in lawful possession or his agent or by a law enforcement officer, community service officer, community support liason, urban park rangers, parks patrol, or the city's contracted private security acting on behalf of such person or his agent; or

(b) Signs or placards so designed and situated as to give reasonable notice.

A violation of this section shall be a civil matter and enforced in accordance with the provisions of 24 V.S.A. section 1974a and section 1977 et seq. A civil penalty of not more than five hundred dollars (\$500.00) may be imposed for a violation of this section. The civil penalty may, at the discretion of the prosecuting official, be eliminated or reduced upon the successful completion of a restorative or reparative justice program through the community justice program. In lieu of further process and prosecution, persons ticketed for violations of this section may pay a waiver penalty under the schedule set out below:

Waiver Penalty:

First offense: The waiver penalty shall be two hundred fifty dollars (\$250.00).

Second offense, within a six-month period: The waiver penalty shall be three hundred dollars (\$300.00).

32 Third offense or more, within a twelve-month period: The waiver penalty shall be four hundred dollars
33 (\$400.00).

34
35 Each time that the violation occurs will constitute a separate violation of this section. Any law enforcement
36 officer, community service officer, community support liason, urban park rangers, parks patrol, or the city's
37 contracted private security can enforce this section.

38
39 **Sec. 21-45A Notice of trespass on city property.**
40

41 (a) Purpose. The purpose of this section is to enable a city official in charge of city property to issue a
42 notice of trespass and enforce that notice against an individual whose behavior is dangerous, illegal, or
43 unreasonably disruptive, while recognizing the rights of individuals to engage in constitutionally protected
44 activities on public or city-owned property.

45
46 (b) City official/officers authorized to issue notice of trespass. The city council hereby expressly delegates
47 its authority to issue a notice of trespass to any city official who is in charge, at the time of issuance, of the
48 city property for which the notice of trespass is issued and to any sworn officer, community service officer,
49 or community support liason of the Burlington police department or the City's urban park rangers, parks
50 patrol, or contracted private security in the exercise of their official duties (hereinafter "official/officer").
51

52 (c) Issuance of notice of trespass – Initial conference. If an individual violates any city ordinance, rule or
53 regulation, or State law, or within a public building fails to follow the lawful directive of a city official/~~or~~
54 ~~police~~-officer authorized under subsection (b) of this section, that official/officer may issue a notice of
55 trespass for a violation which was committed while on or within a city facility, building, or outdoor area,
56 including a municipal park, for the specific property where the violation occurred, excluding a right-of-way.
57 Prior to issuance of the notice of trespass, the issuing official/officer must ensure that the person to whom a
58 notice of trespass will be issued has been informed of the basis for the notice of trespass and has been given
59 an opportunity and reasonable amount of time to change or address the underlying conduct – that is, a verbal
60 warning must have been issued. No verbal warning is required if the reason for the trespass is an accusation
61 of serious harmful conduct such as arson, assault, harassment or a threat of such conduct. Notices of trespass
62 may be issued at the Fletcher Free Library as provided in Section 21-43.
63

64 (d) Service of notice – Content. In most cases, the notice of trespass must be hand-delivered to the person
65 to whom it is issued by an authorized city official/~~or a law enforcement~~-officer; however, if the
66 circumstances do not permit safe delivery of the notice in person, in the discretion of the authorized city
67 official/~~or law enforcement~~-officer, it may be mailed to the individual's legal address. The written notice of
68 trespass shall detail the basis for which the notice of trespass was issued, the length of time for which the
69 notice of trespass remains in effect, and the consequences for violating the terms of the notice of trespass; it
70 shall also advise the recipient of the right to contest the notice of trespass and the location at which to file the
71 appeal.
72

73 (e) Length of notice of trespass.
74

(1) Generally. For minor, first-time violations, such as having an open container of alcohol, the notice may be issued for up to one (1) day. For moderate violations, such as other nonviolent disorderly conduct, or for a second offense within thirty (30) days, the notice may be issued for up to thirty (30) days. For more serious violations or a third offense within sixty (60) days, the notice may be issued for up to one hundred eighty (180) days. Generally, it is expected that the length of time should reflect the severity or repetitiveness of the underlying conduct. Only for more serious offenses such as conduct that involves violence, harassment, or threats of physical harm to an individual may a notice be issued for over one hundred eighty (180) days, and in any event, a notice of trespass may not be issued for more than one (1) year.

(2) Fletcher Free Library. Due to the nature and character of the Fletcher Free Library, the following durations apply to violations made under the library ordinance. For a violation of Section 21-43(a)(1), a notice of trespass may be issued for up to one hundred eighty (180) days. For a violation of Section 21-43(a)(2), a notice of trespass may be issued for a period up to sixty (60) days. For a violation of Section 21-43(a)(3), a notice of trespass may be issued for a period of one (1) day.

(f) Appeal.

(1) Process. The recipient of a notice of trespass may appeal the notice of trespass by filing an appeal, in writing, within seven (7) calendar days of the issuance of the notice. The written appeal shall include the appellant's name, address, phone number, and indicate whether a hearing is requested. No fee shall be charged for filing the appeal. The appeal shall be filed at the location designated in the notice of trespass. Except for in exigent circumstances, any such appeal shall stay the operation of the notice of trespass beyond the day the appeal is filed, pending a hearing and/or written decision.

(2) Exigent circumstances. For purposes of this chapter, "exigent circumstances" means any situation in which the issuing city official/~~or~~ officer determines that a person presents an immediate and substantial threat or danger to the health, safety, or welfare of another person. In such circumstances, an appeal shall not stay the operation of the notice of trespass.

(3) Designated hearing panels. All appeals made under this chapter shall be heard by the public safety committee of the city council, which will make an annual report to the city council on the number of appeals.

(4) Procedure. When an appeal is filed, the designated hearing panel shall meet within ten (10) business days to consider the appeal. If no hearing is requested, the designated hearing panel may consider any written submissions as part of its decision. If a hearing is requested, the appellant must be provided at least three (3) business days' written notice of the date, time, and location of the hearing. The designated hearing panel shall allow oral and/or written testimony and evidence from the appellant and the issuing city official/~~or~~ officer. In reviewing the notice of trespass, the panel will utilize the preponderance of the evidence standard with the burden of proof on the charging official/~~officer~~ or their representative. The designated hearing panel shall issue a written decision within ten (10) business days of the hearing. The designated hearing panel may extend the time period for hearing if the operation of the notice of trespass is stayed or if the appellant consents.

(5) Waiver requests. An individual who has received a notice of trespass may request a waiver from the issuing official/officer (or in the absence of that official/officer from another city official/officer authorized to issue the notice) in order to access the property for which the notice of trespass was issued for purpose of work, residence, access to government services, or the exercise of constitutionally protected activities. If that waiver is denied, an appeal may be made to the designated hearing panel. In addition, in the context of any appeal of a notice of trespass, the designated hearing panel shall also consider any waiver request from the individual appealing.

(g) Enforcement. Once a notice of trespass has been issued, unless the notice has been stayed by receipt of an appeal or the notice has been overturned by a decision on appeal, a violation of the notice may be enforced pursuant to Section 21-45 (a civil violation) or 13 V.S.A. § 3705 (a criminal violation). Unless the notice of trespass was issued for conduct involving violence, harassment, or threats of physical harm to an individual, enforcement pursuant to 13 V.S.A. § 3705 may only commence with issuance of a citation and a request to leave the premises; however, arrest is permissible for refusal to leave the premises within a reasonable period after issuance of the citation.

Sec. 21-46 Disorderly conduct.

It shall be unlawful for a person who, with the intent to cause public inconvenience, or annoyance or recklessly creating a risk thereof:

- (a) Engages in fighting or in violent, tumultuous or threatening behavior; or
- (b) Makes unreasonable noise; or
- (c) In a public place uses abusive or obscene language; or
- (d) Without lawful authority, disturbs any lawful assembly or meeting or persons; or
- (e) Obstructs vehicular or pedestrian traffic.

A violation of this section shall be a civil matter and enforced in accordance with the provisions of 24 V.S.A. section 1974a and section 1977 et seq. A civil penalty of not more than five hundred dollars (\$500.00) may be imposed for a violation of this section. The civil penalty may, at the discretion of the prosecuting official/officer, be eliminated or reduced upon the successful completion of a restorative or reparative justice program through the community justice program. In lieu of further process and prosecution, persons ticketed for violations of this section may pay a waiver penalty under the schedule set out below:

Waiver Penalty:

First offense: The waiver penalty shall be two hundred fifty dollars (\$250.00).

Second offense, within a six-month period: The waiver penalty shall be three hundred dollars (\$300.00).

Third offense or more, within a twelve-month period: The waiver penalty shall be four hundred dollars (\$400.00).

Each time that the violation occurs will constitute a separate violation of this section. Any city official/~~law enforcement~~-officer can enforce this section.

Sec. 21-47 Unlawful mischief.

It shall be unlawful for a person who, having no right to do so or any reasonable ground to believe that he has such a right, intentionally does damage to property of any value not exceeding two hundred fifty dollars (\$250.00).

A violation of this section shall be a civil matter and enforced in accordance with the provisions of 24 V.S.A. section 1974a and section 1977 et seq. A civil penalty of not more than five hundred dollars (\$500.00) may be imposed for a violation of this section. The civil penalty may, at the discretion of the prosecuting official/officer, be eliminated or reduced upon the successful completion of a restorative or reparative justice program through the community justice program. In lieu of further process and prosecution, persons ticketed for violations of this section may pay a waiver penalty under the schedule set out below:

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Second offense, within a six-month period: The waiver penalty shall be three hundred dollars (\$300.00).

Third offense or more, within a twelve-month period: The waiver penalty shall be four hundred dollars (\$400.00).

Each time that the violation occurs will constitute a separate violation of this section. Any city official/~~law enforcement~~-officer can enforce this section.

Sec. 21-48 City Hall Park.

(a) Prohibited activities. Notwithstanding other rules and regulations, the following activities are prohibited at City Hall Park and may be ticketed under this section.

(1) Disorderly conduct as defined by Section 21-46; ~~Any person who, with the intent to cause public inconvenience, or annoyance or recklessly creating a risk thereof;~~

~~a. Engages in fighting or in violent, tumultuous or threatening behavior; or~~

~~b. Makes unreasonable noise; or~~

~~e. — In a public place uses abusive or obscene language; or~~

~~d. — Without lawful authority, disturbs any lawful assembly or meeting or persons; or~~

~~e. — Obstructs vehicular or pedestrian traffic.~~

(2) Unlawful mischief as defined by Section 21-47; ~~— Any person who, having no right to do so or any reasonable ground to believe that he has such a right, intentionally does damage to property, private or public.~~

(3) Graffiti and defacement of property as defined by Section 21-29;

(4) Possession of open or opened intoxicating liquor as defined in 23 V.S.A. § 1200(4), except as permitted pursuant to a valid liquor license and/or an outdoor consumption permit for properly organized and supervised activities or events held within the limits of City Hall Park.

(45) Possession of a regulated drug as defined in 18 V.S.A. § 4201(29).

(b) Enforcement.

(1) First offense. Any violation of any provision of subsection (a) above shall be deemed a civil offense and shall be punishable by a penalty of a minimum fine of two hundred dollars (\$200.00) to a maximum fine of five hundred dollars (\$500.00). The waiver penalty for purposes of the municipal complaint (civil ticket) shall be two hundred dollars (\$200.00). The recipient of a municipal complaint for violation of this section (first offense) shall not be permitted within the City Hall Park for the balance of the day on which the alleged offense occurred.

(2) Second offense. Any violation of any provision of subsection (a) above by an individual who has previously violated any provision of subsection (a) above shall be deemed a civil offense and shall be punishable by a penalty of a minimum fine of three hundred dollars (\$300.00) to maximum fine of five hundred dollars (\$500.00). In addition, the recipient of a municipal complaint for violation of this section (second offense) may be issued an order of no trespass prohibiting the recipient from entering the City Hall Park for a period of up to 90 days commencing immediately upon said issuance. The waiver penalty for purposes of the municipal complaint (civil ticket) second offense shall be three hundred dollars (\$300.00); payment of which shall also be deemed acceptance of the no trespass order. Both the fine and the no trespass order may, at the discretion of the prosecuting official/~~officer~~, be waived in whole or in part upon the successful completion of a restorative or reparative justice program through the community justice program.

(3) Third and subsequent offense. Any violation of any provision of subsection (a) above by an individual who has on two (2) or more occasions violated any provision of subsection (a) above shall be deemed a civil offense and shall be punishable by a penalty of from four hundred dollars (\$400.00) to five hundred dollars (\$500.00). In addition, the recipient of a municipal complaint for violation of this section (third and subsequent offense) may be issued an order of no trespass prohibiting the recipient from

entering the City Hall Park for a period of up to one (1) year commencing immediately upon said issuance. The waiver penalty for purposes of the municipal complaint (civil ticket) third or subsequent offense shall be four hundred dollars (\$400.00); payment of which shall also be deemed acceptance of the no trespass order. Both the fine and the no trespass order may, at the discretion of the prosecuting official/officer, be waived in whole or in part upon the successful completion of a restorative or reparative justice program through the community justice program.

Sec. 21-49 Church Street Marketplace District trespass authority.

(a) Purpose. The Burlington city council finds and declares that the following substantial government interests will be advanced by the ability to issue a no trespass order created by this section, based on conditions the police department and the Church Street Marketplace District commission have identified and confront in the Church Street Marketplace District on a regular basis:

- (1) The abatement or removal of nuisances determined to be against the public health, safety or welfare of citizens;
- (2) The protection of citizens from physical threats or injury and from damage to property;
- (3) The prevention of harassment and intimidation of any member of the public;
- (4) The prevention of violent crime;
- (5) The orderly control and safety of pedestrian, car and cart traffic on Church Street; and
- (6) The provision and maintenance of a safe, attractive environment in areas designed to attract tourist revenue.

(b) Findings. The substantial government interests identified in subsection (a) of this section are undermined by unlawful and inappropriate behavior in the Church Street Marketplace District. Such behaviors include, but are not limited to, disorderly conduct, unlawful mischief, the possession and consumption of intoxicating liquor, and the possession and use of regulated drugs.

Specifically:

- (1) Unlawful behavior within the Church Street Marketplace District diminishes this public asset and deprives citizens and visitors of its full use and enjoyment;
- (2) In addition to more serious criminal acts that threaten personal injury and property damage, a wide range of illegal disorderly behaviors can and often do transform the Church Street Marketplace District into an unwelcoming, unattractive and ultimately unsafe public space requiring increased expenditures for public safety and maintenance;

(3) Laws intended to preserve and protect public spaces like the Church Street Marketplace District for the benefit of all people are effective only if those present on the space obey the law. The current criminal and civil penalties for violating these types of laws are frequently inadequate to deter the illegal behavior, to prevent its recurrence, or to provide for the removal of offenders from the public space;

(4) Compliance with behavior laws within the Church Street Marketplace District will be enhanced by the immediate administrative sanction of removing offenders from the Church Street Marketplace District in addition to issuing tickets to them. For repeat offenders and for more serious offenses, exclusion for extended periods will further provide a necessary additional remedy to protect the public;

(5) The failure to comply with these and other laws creates a public nuisance.

(c) Prohibited activities. Notwithstanding other laws, ordinances, rules and regulations, the following activities are prohibited within the Church Street Marketplace District and may result in a no trespass order authorized under this section.

(1) Disorderly conduct as defined by Section 21-46;

(2) Unlawful mischief as defined by Section 21-47;

(3) Graffiti and defacement of property as defined by Section 21-29;

(4) Possession of open or opened intoxicating liquor as defined by 23 V.S.A. § 1200(4), except as permitted pursuant to a valid liquor license and/or an outdoor consumption permit for properly organized and supervised activities or events held within the limits of the Church Street Marketplace District;

(45) Possession of a regulated drug as defined in 18 V.S.A. § 4201(29).

(6) Offense of retail theft as defined by 23 V.S.A. §2575 from a business in the Church Street Marketplace District.

(d) Enforcement.

(1) First offense. Any person ticketed for a prohibited activity noted in subsection (c) of this section as a first offense may also be issued an order of no trespass, and will not be permitted within the Church Street Marketplace District for the balance of the day on which the alleged offense occurred.

(2) Second offense. Any person ticketed for a prohibited activity noted in subsection (c) of this section as a second offense may also be issued an order of no trespass prohibiting the recipient from entering the Church Street Marketplace District for a period of up to ninety (90) days, commencing immediately upon said issuance.

(3) Third and subsequent offense. Any person ticketed for a prohibited activity noted in subsection (c) of this section as a third or subsequent offense may also be issued an order of no trespass prohibiting the

recipient from entering the Church Street Marketplace District for a period of up to one (1) year commencing immediately upon said issuance.

(4) Hearing procedure and staying of order of no trespass.

a. Recipients of an order of no trespass issued pursuant to subsections (d)(2) and (3) of this section may appeal said order to a hearing panel designated by the Church Street Marketplace commission pursuant to the procedure detailed below. Any such appeal shall stay the order of no trespass pending the hearing and written decision of the hearing panel.

b. Any individual subject to the trespass provisions of subsection (d)(1), (2), or (3) of this section may request in writing that a hearing panel of the Church Street Marketplace commission hold a public hearing for the purpose of challenging the issuance of the order of no trespass and/or to request a waiver to access the Church Street Marketplace District for purpose of work, residence, access to government services, the exercise of constitutionally protected activities, and/or for any other good reason as determined by a hearing panel.

c. Recipients shall have thirty (30) days from the date of issuance of an order of no trespass to request a hearing. Requests shall be sent to the executive director of the marketplace commission at 2 Church Street, Suite 2A, Burlington, VT 05401-4457.

d. If a hearing is requested, the hearing shall be scheduled within ten (10) calendar days of receipt of the request, and a written notice of the hearing shall be sent to the recipient at least seven (7) calendar days prior to the hearing.

e. The hearing panel shall consist of three (3) people designated by the Church Street Marketplace commission or its designee, and be comprised of one (1) representative from the business community, one (1) representative from the social services community, and one (1) representative from the general public.

f. The hearing panel shall allow for oral and/or written testimony and evidence from the recipient of the order of no trespass, the issuing ~~city official/police~~ officer, and any other witnesses requesting to be heard.

g. The hearing panel shall issue a written decision within ten (10) calendar days of the hearing.



Move to waive the reading and refer the proposed to the ordinance committee for further review to include, but not be limited to, consideration of the list of parties authorized to issue no trespass orders, balancing no trespass orders with proactive harm reduction efforts and to evaluate expanding the ability to enforce the trespass ordinance on private property.

Resolution Relating to

SUPPORTING LGBTQIA+ COMMUNITY MEMBERS AND CONDEMNING TRANSPHOBIA

RESOLUTION 5.07

Sponsor(s): Councilors Magee, Paul,
Barlow, Carpenter, Traverse,
Bergman, Freeman, Hightower, Brandt
Introduced: 03/13/23
Referred to: _____

Action: adopted
Date: 03/13/23
Signed by Mayor: 06/27/23

CITY OF BURLINGTON

In the year Two Thousand Twenty-Three.....

Resolved by the City Council of the City of Burlington, as follows:

1 That WHEREAS, violence and hate toward queer and transgender people is on the rise nationally and in
2 Vermont; and

3 WHEREAS, here in Burlington, a group of residents continues to target queer and transgender
4 community members, especially young people; and

5 WHEREAS, these residents spread hate through protests, aggressive stickering near our schools and
6 other public spaces, and on social media; and

7 WHEREAS, 378 anti-LGBTQIA+ bills have been introduced and are advancing in state legislatures
8 throughout the United States;¹ and

9 WHEREAS, across the country, these kinds of hateful acts are leading to a rise in violence toward the
10 LGBTQIA+ community, with higher rates of violence directed at trans community members; and

11 WHEREAS, in recent years, we have seen the tragic results of this kind of hate here in Vermont; and

12 WHEREAS, in 2022, Fern Feather, a transgender woman, was murdered in Central Vermont; and

13 WHEREAS, The Pride Center of Vermont had the front door of their office, a safe and welcoming
14 gathering space for all, smashed in a hateful act of vandalism and intimidation; and

15 WHEREAS, hate directed at LGBTQIA+ students and faculty in Burlington Schools poured in from
16 around the nation, when Fox News amplified hateful, transphobic messages related to a DEI presentation on
17 gender identity and pronouns; and

18 WHEREAS, hateful, transphobic protesters have targeted community events such as Burlington Pride
19 and the Outright Fire Truck pull, events that are meant to be welcoming, joyful, and supportive celebrations;
20 and

21 WHEREAS, in a show of solidarity, community members have come together to remove harmful,
22 transphobic stickers from public places; and

¹ <https://www.aclu.org/legislative-attacks-on-lgbtq-rights>

* * * * *

DISTRIBUTION:

I hereby certify that this resolution
has been sent to the following
department(s) on

ORIGINAL

RESOLUTION RELATING TO

.....
.....
.....

Adopted by the City Council

....., 20.....

..... Clerk

Approved....., 20.....

..... Mayor

Vol. Page

* * * * *

23 WHEREAS, Burlington Parks and Public Works staff has worked hard to come up with a plan for
24 addressing and tracking hateful stickers in our parks and on other City-owned property, including street signs;
25 and

26 WHEREAS, The Burlington School District has made a statement condemning these hateful acts and
27 pledging support to LGBTQIA+ students and staff; and

28 WHEREAS, the Burlington Community Justice Center has made a significant effort to bring
29 community members together and offer space to talk about the harms caused by these hateful acts; and

30 NOW, THEREFORE, BE IT RESOLVED that the City Council and the Mayor condemn these hateful
31 acts against trans community members; and

32 BE IT FURTHER RESOLVED that the City Council extends our unequivocal support to the
33 LGBTQIA+ community; and

34 BE IT FURTHER RESOLVED that the City Council expresses our gratitude for the work of those
35 community members who have come forward to support queer and transgender community members by
36 removing the harmful stickers; and

37 BE IT FURTHER RESOLVED that the City Council is committed to the City of Burlington's efforts
38 to begin observing Trans Day of Visibility annually on March 31st, through a city-wide, city-sponsored and
39 funded campaign, to include vocal support from the Mayor's Office affirming support for the LGBTQIA+
40 community, specifically the trans community; and

41 BE IT FURTHER RESOLVED that the City Council will work in collaboration with community
42 members and organizations and the City administration to develop a plan for ongoing activities to support and
43 amplify the voices of the LGBTQIA+ community, including days of action, flying pride flags on City
44 property, and organizing a speakers series; and

45 BE IT FURTHER RESOLVED that the City Council supports the continuation of tracking all
46 transphobic and other hate speech in an annually published report available to the public to ensure the ongoing
47 commitment to decreasing the amount of hate speech in our City; and

48 BE IT FURTHER RESOLVED that the City Councils urges Burlington's state legislative delegation to
49 look at current state hate crime statute to look to extend protections for schools and organizations that
50 advocate/support LGBTQ+ (and other minoritized communities) from hate motivated targeted crimes; and

51 BE IT FURTHER RESOLVED that the City Council's Ordinance Committee shall, in coordination
52 with the Burlington Police Department and the City Attorney's Office, examine Burlington's graffiti

* * * * *

DISTRIBUTION:

I hereby certify that this resolution
has been sent to the following
department(s) on

* * * * *

ORIGINAL

RESOLUTION RELATING TO

.....
.....
.....

Adopted by the City Council

....., 20.....

..... Clerk

Approved....., 20.....

..... Mayor

Vol. Page

53 ordinance and consider changes that address continued defacement of public property, and graffiti that spreads
54 hateful and harmful messages.

55
56 JP/JD/Resolutions 2023/SUPPORTING LGBTQIA+ COMMUNITY MEMBERS AND CONDEMNING TRANSPHOBIA
57 March 9, 2023

* * * * *

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BPD
Ordinance Committee

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RESOLUTION RELATING TO

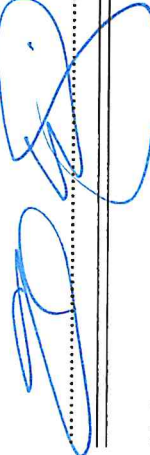
Supporting LGBTQIA + Community Members And Condemning Transphobia

Adopted by the City Council

March 13, 2023

 Clerk

Approved June 27, 2023

 Mayor

Attest:

Lori Olberg
Licensing, Voting and Records Coordinator

Vol. Page

* * * * *

21-29 Graffiti and defacement of property.

(a) *Findings and purpose.* This section seeks to help prevent the spread of graffiti and defacement of property, public and private. Graffiti and the defacement of property are destructive of the rights and values of property owners. They are aesthetic blights on the entire community. Graffiti and defacement of property are acts of vandalism, detrimental to the city, and are, therefore, public nuisances.

(b) *Definitions.*

(1) *"Graffiti"* means any inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, without being authorized to do so by the owner of the property or the owner's duly authorized agent.

(2) *"Graffiti implement"* means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or manmade surface.

(3) *"Defacement"* means any application or causing the application to any surface of public or private property of paint, varnish, lead, crayon, wax, ink, dye or other substance, or the carving, chiseling, writing, or other such act of any mark, figure or letter on such property without being authorized to do so by the owner of the property or the owner's duly authorized agent.

(c) *Prohibited acts.* It shall be unlawful for any person to make graffiti or deface any surface of public or private property unless authorized by the owner of the property or the owner's duly authorized agent.

(d) *Penalties.* A violation of this ordinance is a civil offense and shall be punishable by a fine of five hundred dollars (\$500.00) with a waiver penalty of four hundred dollars (\$400.00). At the discretion of the prosecuting officer or city attorney, this penalty or a part thereof may be waived upon the successful completion of community service related to the elimination of graffiti and defacement.

(Ord. of 10-16-72; Ord. of 6-4-07, eff. 7-4-07)