

Ordinance Committee
Wednesday, January 24, 2024 at 5:00PM
Bushor Conference Room, City Hall and Remote via Zoom

DRAFT MINUTES

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

Staff Present: Kim Sturtevant (Assistant City Attorney), Jon Murad (Chief of Police), Kara Alnasrawi (Business and Workforce Development Director), Bill Ward (Permitting and Inspections Director), Scott Pavek (Substance Use Policy Analyst)

Public Present: Kelly Devine, Todd Deluca, Sharon Bushor

Meeting called to order at 5:14 PM.

1. Adopt the Agenda

1.01 Adopt the Agenda

Motion to Adopt Agenda as drafted.

Motion by Councilor Carpenter, seconded by Councilor Traverse.

Final Resolution: Motion Passes

Yes: Unanimous

2. Adopt Draft Minutes from October 30, 2023

2.01 Adopt Draft Minutes from October 30, 2023

Motion to Adopt Minutes from October 30, 2023.

Motion by Councilor Hightower, seconded by Councilor Carpenter.

Final Resolution: Motion Passes

Yes: Unanimous

3. Public Comment

3.01 Public Comment

Sharon Bushor: I sent an email to the chair regarding the trespass ordinance. When I was on the Council I worked on the trespass ordinance. I was not sure if the expanded roles for the other staff as laid out in the draft ordinances would affect the library and if the library staff should be a part of this discussion. I wondered what the training would be for these other staff like the Urban Park Rangers. I am concerned for the safety of these staff members. If these are new duties for these staff, will they be compensated? Has anyone asked these staff for their opinions? I don't know what dollar amount for retail theft that should be criminal. We need to get a handle on this issue. There should be some deterrence. I think there is some work to do on the graffiti ordinance so that it is better for the health of our community.

Todd DeLuca: I live in Ward Four. Thank you for strengthening the trespassing laws. I am hoping the City will provide an update on the prosecution of Bill Oetjen under the graffiti ordinance given the liability for the City. There are civil rights issues given the Council's condemnation of his speech.

Kelly Devine: I am the executive director of the Burlington Business Association. I am glad the Committee is taking up these issues. I don't see any mark ups of Section 21-49 on the Church Street Marketplace. In my experience the enforcement was effective, but it was challenged by the ACLU based on the enforcement clauses. Kara may be able to speak more on this, but I was hoping we could review those enforcement clauses.

4.0 Councilor Review of Trespass Ordinance Referred from City Council

Councilor Traverse asked Attorney Sturtevant for more background on the ACLU settlement brought up by Kelly Devine. Attorney Sturtevant said that the library trespass ordinance and potentially the general ordinance were changed at that time. The ACLU was allowed to comment on the ordinance changes. It should have been updated back then to comply with the ACLU's concerns. Attorney Sturtevant would follow up on this issue.

Councilor Traverse brought up that the City Council received a letter from the Library Commission about issues with behavior at the library. He said that the library trespass ordinance is more specifically tailored to the library and is not currently on the agenda for the Committee. The Committee would seek input from Library Commissioners on this issue.

4.1 City Hall Park and Church Street Marketplace

4.1.i Who Can Enforce

Councilor Traverse said that the current ordinance states that the trespass ordinance can be enforced by a city official in charge of the public place or a law enforcement officer. It sounds like people other than law enforcement officers are already enforcing this ordinance and the drafted language reflects the current practice.

Councilor Hightower said she was fine with the proposed changes so long as everyone has the proper training. Councilor Carpenter agreed with respect to city property.

Kara Alnasrawi (BWD Director) clarified that this discussion is only about the issuing of trespass citations as opposed to enforcing them. Enforcement is often done through dispatch and gets trickier.

Councilor Traverse asked Attorney Sturtevant if law enforcement officers other than BPD (such as a Vermont State Trooper) could issue a trespass order in Burlington. Attorney Sturtevant responded they likely could, but deferred to Chief Murad.

Councilor Traverse wondered if the draft ordinance should be less specific about position titles so that the Committee would not have to redraft language in the future should positions change. Councilor Shannon suggested adding a general catchall term at the end of the list rather than

removing the titles altogether. All councilors agreed and Attorney Sturtevant would draft the language for the next meeting.

4.2 Private Property Enforcement

Councilor Shannon brought up the issue that only certain private individuals can ask for a trespass order. She said that renters or workers cannot ask for a trespass citation for another individual as they are not the property owner.

Councilor Traverse agreed and said that many people are not comfortable delivering a trespass citation themselves. He mentioned there is a trespass enforcement program in some cities that allows previous consent for law enforcement to enforce their ordinances.

Councilor Carpenter wanted to explore the definition of ‘lawful possession’ of a property.

Kelly Devine said that there was a program similar to what Councilor Traverse had brought up for the Church Street Marketplace. She believed that BPD had the universal trespass citations available on their website.

Councilor Hightower wanted more information on this program, but was not sure if she supported having people so far removed from the process. She said that she did not want to give people pathways to be further disconnected from the issue of say, homelessness. She was supportive of allowing renters or workers being able to ask for trespass orders.

4.01.ii Criteria for Enforcement

Councilor Traverse said that the draft changes are a clarification and simplification of the current practice. It also adds that graffiti and retail theft as trespass-able criteria. There are monetary thresholds as defined by state law for the retail theft criteria.

Councilor Shannon wanted to know if the retail theft criteria was limited to felony theft or just misdemeanor theft. Councilor Traverse said that the state law covers any theft, either petty or more extreme.

Councilor Carpenter wanted to know if this Church Street Marketplace ordinance should be expanded to cover other retailers elsewhere in the city. Councilor Traverse said that a private retailer could always trespass someone for theft privately, but this ordinance is designed to prevent someone from coming back to the Marketplace altogether.

Councilor Carpenter left the meeting at 5:59 PM.

Councilor Shannon wanted to know who could privately request a trespass order for a business like Sierra Trading Post since it is not locally owned.

Councilor Traverse wanted to know if the draft language in the ordinance required a conviction of retail theft or if it could happen before a conviction. Attorney Sturtevant said she would draft language on the intent.

Councilor Hightower left the meeting and the Committee lost a quorum at 6:01 PM. Councilor Hightower returned at 6:08 PM.

4.01.iii Harm Reduction

Councilor Shannon said that harm reduction should probably be handled in City policy rather than in ordinance so that there are no issues with enforcement.

Scott Pavsek (Substance Use Policy Analyst) said he agreed with Councilor Shannon about not conflicting with enforcement. He said that some individuals have been trespassed in the past just for having an overdose incident. He was concerned about trespass orders deterring individuals from seeking aid in an overdose situation. He said repeated public drug use should be a trespassable offense, but an overdose event on its own should not be. He said that all city staff capable of issuing trespass orders should have training with regards to new and emerging treatment options around the city that places like the Howard Center have worked hard on. Both BFD and BPD have expanded their services in this regard and other staff should be similarly prepared.

Councilor Traverse said it would be helpful to hear from BFD and BPD with regards to their training and procedure. Councilor Shannon said she is happy with the draft ordinance, and the city should look at the policy side.

Scott Pavsek said the one thing he would change would be to have a carve-out for overdose events. He said that there could be protection against trespass violations for medical emergencies like overdoses.

Councilor Traverse said he does not know if there is a way to change the ordinance to accommodate that. He would like to know how often these issues come up, but this may be better addressed through policy rather than ordinance.

Councilor Hightower left the meeting and the Committee lost a quorum at 6:20 PM.

5.0 Councilor Discussion of Graffiti Ordinance

No quorum to continue.

6.0 Adjournment

6.01 Adjournment

No quorum to continue.