Ordinance Committee

Tuesday, December 18, 2012

## Minutes

# (Approved 1/29/13)

# **Councilors present:** Chip Mason, Chair (CM), Sharon Bushor (SB), Vince Dober (VD)

# **Councilors absent:** None

**Staff:** Gregg Meyer, Asst. City Attorney (GM)

**Others Present**: Ron Redmond, Church St. Marketplace Director (RR), Mike Schirling, Chief Burlington Police Dept. (MS), Eileen Blackwood, City Attorney (EB), Bill Keogh (BK)

**Convened:** 6:10 pm

### Agenda & Minutes:

### On SB motion and VD second the committee unanimously approved the agenda.

### On SB motion and VD second the committee unanimously approved the 8/28/12 minutes.

### § 21-49 Church St. Marketplace District, miscellaneous offenses related to disorderly conduct and unlawful mischief, open containers and drug possession

CM noted that at the previous meeting that SB had concerns about the Hearing Panel makeup in the first draft of the proposed ordinance and then read the proposed changes to the Hearing Panel section drafted by GM in response to those concerns.

SB then noted that when work on the ordinance was completed by the committee, the draft should be sent back to the CC for second reading along with a resolution that called for a report to be issued by the Marketplace and/or Police Department on the implementation of the ordinance. The resolution calling for such a report was preferable to requiring a report within the actual language of the ordinance. The idea of having a report on the implementation of the ordinance came from an email that RR sent to the committee from Howard Family Services.

CM then asked MS to speak to the ordinance. MS stated he was prepared to discuss the need for the ordinance in general, or to answer specific questions.

VD stated he was interested in the enforcement aspect of the ordinance and asked MS about statistics – i.e. how often was the no trespass tool likely to be used - and also what was his expectation about the subsequent need for hearings. VD stated that his question was premised on the fact the hearing process he was familiar with for appeals of Taxi License denials took a great deal of time.

MS said that over the past 16-17 months, there were 15 no trespass orders issued in City Hall Park under the ordinance governing the park. He also said as a result call volumes related to incidents in City Hall Park had gone down by approximately half – some of that reduction related to the no trespass orders.

GM noted that the park trespass procedure did not provide for the hearings like those contemplated in the proposed Church Street ordinance, and thus was probably not a good gauge.

VD restated that he was concerned about requiring a hearing within 10 days of a request because scheduling them so quickly could be problematic and time consuming.

SB and VD asked GM about the “tolling” provision of the ordinance. GM stated that the ordinance would not be enforced if a hearing was requested until the matter was resolved.

VD asked MS whether the tolling provision was a problem. MS stated there was not tolling on the first offense so the tool was not hindered. As far as the second or third offense, MS did not expect many hearing requests but even if there were, he did not see it as a major concern. The idea would be to see how the process worked for the spring and summer seasons and then reevaluate if the procedure became overly burdensome.

RR stated that he did not have a concern about scheduling hearing panels on short notice either during the day or at the end of the work day so that people would still be in town for scheduling without having to miss work and could do it within 10 days of requests fairly easily. VD stated that he appreciated that.

CM asked about the length of hearings, and GM stated that the length of the procedure was left intentionally unspecified. SB stated that she was concerned about issues raised by a former councilor (EMS) about the constitutional rights of those affected by the ordinance. CM offered that it appeared there were constitutional protections afforded those affected including the right to a hearing and the tolling provision discussed earlier.

CM then suggested the committee focus on the language of the ordinance. VD agreed and asked about repeat offenders and their ability to get to work or home if on Church Street. CM and GM noted the language in the ordinance specifically states people can request and get granted a waiver of the no trespass order to get to work and home and other exceptions too.

SB suggested changing section (a)(3) to say “any member” instead of “members.” All agreed to the change.

SB suggesting changing (b)(5) by striking all words after “district.” All agreed to the change.

SB asked about the meaning of “unreasonable” in the context of unreasonable noise. EB explained that although “reasonable” is hard to define, it is a critical element of legal thought and analysis. MS further explained that it is a matter of opinion and that things are not always black and white.

SB and VD asked about the restorative justice provisions in (d)(2) and (d)(3) and why they were not in (d)(1). GM said there was no reason – it was an oversight. CM proposed creating a section (d)(4) to say restorative justice applies, and to strip the language out of (d)(2) and (d)(3). All agreed to the change, though as seen later below, this provision was ultimately determined to be confusing and really to not apply since this was simply the no trespass procedure – NOT the procedure for dealing with the underlying ticket/offense where restorative justice was and still is an option.

SB asked what the rationale was behind the length of time for trespass in the second and third offense categories. MS stated that the times were helpful operationally for the PD. CM also stated that the similar times in the Library and City Hall Park ordinances made these appropriate and consistent. SB stated she thought Church Street was a different type of setting and thus a different time frame for offenses should be considered. RR stated in his view the Marketplace was a defined space similar to the Library and Park so didn’t think it was different.

A discussion of what the Marketplace District actually was ensued. RR said it was Church Street plus the corner buildings frontage on the side streets. MS stated operationally the PD just was looking at Church Street.

SB, VD, and CM expressed concerns about the ordinance in current form – particularly that the trespass provision was not clear. All suggested that GM clarify the language and if possible take out excess references to the underlying ordinance violations that trigger the trespass – which was a main source of confusion. GM agreed to clean up the language for review by the committee prior to the next meeting.

**Action: On SB’s motion and VD’s second, the committee unanimously requested GM do a next draft of the ordinance for the committee to review incorporating the suggestions made during the meeting.**

1. **Livable Wage Ordinance**

EB gave a brief update on the City Attorney’s efforts to gather and analyze city contracts to ensure compliance with the livable wage ordinance. EB explained there are different classes of contracts where the ordinance may or may not apply, separate and apart from the airport contracts where it seems from the language of the ordinance that all contracts apply.

SB said she could not recall the underlying basis for making the airport different from the rest of the city at the time the ordinance was drafted.

VD asked about the exemption process and EB responded by saying she would be better able to explain how and when the process worked after she finished gathering the contracts. Once she knew what was going on, EB would better be able to explain a strategy for insuring compliance with the ordinance. Some questions are legal, where others related to the ordinance are clearly political.

CM sated he was familiar with only 2 exemptions – for TD Bank and for Skinny Pancake. SB stated she had other concerns besides the exemption process and whether it was applied fairly in those instances or others. Of particular concern to SB were the dollar values in the ordinance. With time passing, those amounts should be made more current. EB agreed and said she was in the process of first asking not only local contractors but national ones too whether the dollar amounts are realistic for them to maintain business with the City. First we need to ask. Then, with knowledge we can make decisions and give advice about how to move forward with those contractors who say no.

VD stated that basing decisions on information as suggested by EB was the right idea. He further stated that he could not imagine why anyone would want to do business with BTV if they could rent space elsewhere such as at IBM without the obligation to meet the livable wage. It was just not realistic to expect such things.

CM asked who would know why the ordinance was drafted as it was – with the airport singled out. SB though Ken Schatz might know as well as Michael Monty and/or Joan Shannon. BK joined the conversation as an airport commissioner and said the commission as looking into the livable wage at the airport as well but would defer to the City Attorney until the information she was gathering was complete. EB agreed that was the right thing to do.

1. **Other Business**

VD raised some questions about a possible taxi ordinance modification. GM noted that in general, the City needed to get a change in the charter done in Montpelier in order to officially ratify the current ordinance, which Judge Crawford suggested in a decision was not properly implemented. EB said the committee could work on VDs suggested changes while the City did its own lobbying in Montpelier. VD said he would have draft language to consider at the next meeting.

1. **Adjournment—on SB motion and VD second the meeting was adjourned at 8:30 p.m.**