**Minutes of Burlington City Council Ordinance Committee**

**Thursday, July 25, 2013**

Committee members present: Councilor Chip Mason, Chair; Councilors Sharon Bushor, Karen Paul

Staff: City Attorney Eileen Blackwood

Others present: see sign-in sheet

Meeting called to order at 5:42 pm by Chair Mason

**1. Agenda and Minutes**

Bushor moved to add 1.5 Public Forum; agenda adopted unanimously

Minutes of 7/17/13 p.2 changed “airport” to “comments” and 6/13/13—Changed “JS” to “CM”

Mason moved to adopt; unanimous.

**1.5 Public Forum—Livable Wage Ordinance (LWO)**

Dhana Dhungana – doing home care for his mother but only paid for 3 hours, 25 minutes, though works all day. It is not enough per hour and is hard to pay the rent.

Donna Iverson—has lived in Burlington over 30 years and works for BSD. She is in charge of computer lab since 1997. She earned $11,000 the first year and had to work 3 jobs. She found out LWO didn’t apply to BSD employees, so she organized and started going to school board meetings. They did finally get a LW contract. Her most recent contract is for $19,000 but for fewer hours. LW means she can support herself. It also means gender equity. The Burlington ordinance mostly covered men, and most school employees are women. LW also means economic justice. She thanked Sharon Bushor for helping them get a LW contract.

Melissa Gelinas—intern at Peace & Justice Center. She read a statement from P&JC which is attached.

Max Tracy—Before he got on City Council, he focused on LW at UVM, an issue he feels most passionate about. He put a lot of pressure on UVM administration to adopt a LW. LW is a basic concept—a basket of goods you need to survive in this city. There’s a feeling this could be an opportunity to erode livable wages. Instead, this is an opportunity to affirm our mutual values of respect and caring for all citizens. There are some really great specific proposals before you. One is Worker’s Center idea to have third party monitoring—another nonprofit or worker’s hotline. This will bring added accountability and weight to the ordinance.

Vince Brennan—Before becoming City Councilor, he was a school board member and was involved in debate about service workers and service contracts. It was a close vote, but implementation took 3 years, particularly since food service workers were paid close to minimum wage and were laid off in summer. Going to LW, the school saw opportunities for new individuals and jobs with dignity. People coming out of culinary institute can now be employed. Shortly after ordinance passed, UVM had task force to look at whether UE (union) employees were paid LW. They weren’t, and about 100 people received more money. These are unintended consequences. The weaknesses need to be strengthened to create wholeness. It’s unfortunate that some things have come out as they have. As an entrepreneur with an opportunity to blossom, it was just 20 years ago Subway was just New England and now it’s worldwide, so exposure can create opportunities, but the City needs to be sure all the people in the food chain are included.

Julia Behrens—works at Hudson News at airport. She read a statement which is attached.

Jeremy Behrens—worked for Avis at airport for 8 years and left 2 years ago. Anyone who doesn’t work at the counter is now outside. They brought in temp workers to do the job he used to do. There’s talk of the airlines going away, but it is not true. The airport grocery is going to open where One Flight Up was. Whoever works at the airport and doesn’t make the LW, can’t afford to eat at the airport now.

Brittany Nevins—just graduated from UVM. She read a statement which is attached.

Jessica Morrison read testimony from Davon Martin which is attached. She also read another statement from a home care worker who said they face increases in rent and have to provide care for 24 hours.

Tiffany Silliman—a member of P&J center read a statement from Dan Holtz which is attached,

Sam Cliff—chief steward of UE at City Market. He has worked at City Market for the past 2 years, but many employees still do not make a LW there. As a student, he still had to meet the same expenses. His student loans have come due, but he doesn’t make enough to pay them. This ordinance can help that. He moved to this city as a health food city, and he thinks it can expand.

Emma Mulvaney-Stanak—former director of VT LW Campaign from 2004-07. She did a little contract research. BSD has 250 employees, which is on a parallel track with Parks & Rec. It would help to speak to the superintendent about how they were able to phase in LW. These are school-year employees—essentially seasonal employees. They phased in LW and did so very publicly. For most of the school support staff, they’re right around the City’s LW. They also are represented by unions, but the same rights that are in the ordinance should apply to school employees. There wouldn’t be much financial impact. The police department has several seasonal employees too. It’s worth investigating Syracuse’s application of LW to its contracts. They are close to Burlington in size. They just enacted their ordinance. In 2001, there was debate about whether the Board of Finance or the City Council should review exemptions. They thought there would be lots of exemptions. It should be a minor occurrence but full Council should weigh in. There should be more standards and sunsets on exemptions. Companies that don’t pay should move in the direction of paying LW. This is time for the City to phase in its seasonal workers.

Martha Ahmed noted that Deco employees and Manpower and Westaff are paid only $9 an hour. The City needs to look at this.

C. Mason noted that this is an enforcement issue. The ordinance currently applies to subcontractors, which would include employment agencies. C. Bushor noted it points out inconsistencies too.

Rachel Siegel—She was discussing her family’s economic status with her 6-year old, who said no one has less than 1 cent, and she explained that some people do have debt. There are many hard workers who don’t get what she and her family do. It’s just dumb luck; it’s not merited. It’s so cool that Burlington has partially addressed this. She hopes the Committee will uphold and expand this. It’s ironic that the least powerful workers—school, airport, and seasonal—are included. She was blindsided by the Skinny Pancake exemption and hopes that future exemptions will come to the full Council. She hopes the Committee will limit exemptions to a 2-year maximum. A city that works against the growing class divide is a city she wants to live in.

Matt McGrath—VT Worker’s Center was founded 15 years ago by low income Vermonters. They’ve moved to become a human rights organization with universality first and foremost. They’re committed to helping in this process. This morning he spoke with an economics professor at UVM who is willing to help with data about how LW strengthens economies.

Public forum closed at 6:35 pm.

**2. Livable Wage Ordinance Review and Discussion**

C. Mason received information back from the school district, which showed all employees are paid above the LW. BSD’s lowest paid employees receive $14.40.

C. Bushor wanted to know which departments have seasonal employees. In relation to the airport, she would like to know what structures were built with City money and which are owned by the City or sold, etc. BCDC money was accessed in a different way than other money. She would like to know the history, how the money was obtained for the structure. She asked that someone look through the minutes and find this information.

21-81(g): no change

21-82(a): C. Mason suggested not putting a number for the LW rate in the ordinance. C. Bushor responded this was the rate at the time ordinance was passed. C. Mason suggested that if the number is left in there, it should be updated to the current rate as published, as it’s misleading to members of the public.

21-82(a)(3): tipped employees: C. Mason questioned what compensation means and suggested cleaning up the phrase “more than hourly wages.”

21-82(b): This is the amended basic needs budget used at the state level. C. Bushor noted that LW was intended to be the base pay and that people would be able to go up from there. She would expect that people would be paid more as they remain employed.

C. Mason discussed the issue of public notice as written. C. Bushor asked about having a mailbox and whether the City could send out a notice annually to employers from some database. It would take a little time to create but then would be easy to send. CA Blackwood noted it would not be possible now but with centralized contracting should be able to happen in the future. C. Paul would ask the administration to give a suggestion about how to do it in as cost effective a way as possible.

C. Brennan noted that every employer has to post the minimum wage, so why can’t they do this too. C. Mason responded this discussion was about how to do it administratively.

21-82(c): C. Bushor noted this provision requiring employers to provide 12 paid days off was just to ensure employers wouldn’t remove paid days off in order to pay LW.

C. Mason said he wasn’t sure how this would work since employees only have to be paid during the time they work on Burlington work.

C. Bushor suggested that most employers give at least one week, plus holidays. This is a compromise.

C. Mason said he hadn’t seen this in any other jurisdiction he looked at.

C. Bushor said there was agreement about the concern and that’s why the language is there, and the drafters thought they were being conservative. She suggested looking at this when we look at monitoring. This is a real issue.

CA Blackwood suggested that language could be adjusted to indicate proportionality.

C. Paul favors keeping it in. The City should be working to solve the enforcement of the LW. Let’s solve the wage issue in full, and this detail can be solved later.

21-83: No issues with this section.

21-84: C. Mason said: This is a big one. There really was no enforcement. Some other cities allow a private right of action. The City should add an anti-retaliation clause so that someone who raises a claim can’t be fired for doing so.

21-84(a): C. Bushor asked what would the City like to see. What do we need?

CA Blackwood said the question has come up about providing payroll records and privacy concerns.

C. Brennan suggested that enforcement be complaint-driven but that it’s common to produce payroll records as part of certification.

C. Bushor suggested the language be clearer that it be in form of audit or complaint-driven.

C. Mason mentioned Bloomington requires annual certification and in connection with that certification, all records can be requested.

C. Bushor said this last sentence could be rewritten.

C. Tracy noted that having an audit provision benefits the city.

C. Brennan said UVM gets the payroll and holds 10% of the contract until it receive the data. But the City could do random audits.

C. Mason asked what process, if any, does the Committee envision to strengthen enforcement—does the City want additional remedies? For example, should aggrieved employees notify the City Attorney’s office and let that office investigate? Should the ordinance include a private right of action with attorney’s fees?

C. Bushor suggested she’d leave it to C. Mason and CA Blackwood to work out a proposal and bring it to the other two members to review.

C. Brennan suggested a liquidated damage on the contract—a percentage of the contract.

Mr. McGrath asked about having a complaint trigger a payroll audit. He also suggested the fine should go back to the workers.

C. Mason noted Bloomington’s ordinance lays out a remedy in detail.

C. Paul said she thought the original handout from Vermont Worker’s Center a few weeks ago suggesting an independent enforcement agency made sense. She doesn’t see an employee coming to City administration, so she’d suggest an outside third party agency.

Mr. McGrath said the community organization would file the complaint with the City Attorney. Another member of the public chimed in that the Committee should consider this option since there’s an organization that’s stepping up and saying they will do this.

C. Bushor said she needed time to look at and consider this proposal.

C. Paul said being a whistleblower is incredibly intimidating. If there’s not a third party, she doesn’t think people will come forward. She doesn’t see the City as the third party.

C. Mason noted that if we have two options—investigation by City Attorney and private right of action—that seems to cover it. He is concerned about the city handing off financial remedy oversight to another organization.

C. Bushor said that she would want the employer to have to pay back wages to make people whole. If they’re found out, they have to make it right going back to the beginning of the contract, or the City should not do business with them going forward.

C. Brennan noted the contract was bid and if the contractor doesn’t meet the obligation, then they’re cheating the other contractors who didn’t get the contract. This is someone who is lying, cheating, and stealing.

C. Mason noted the City Attorney should have some discretion in how to handle remedies.

C. Bushor said the City Council should be aware of how many employers are violating the ordinance and what the outcome was of the case. She agrees there needs to be flexibility and accountability under the ordinance. C. Mason noted Bloomington requires an annual report of the civil penalties, etc. to the City Council, and the City could do that.

C. Mason noted that the Committee would like information by the Aug. 26 meeting and will work with CA Blackwood to begin drafting language.

After discussion, the Committee added a meeting on Aug. 13 for LW at 5:30 pm.

**3. Other Business--none**

**4. Adjournment—Moved by C. Paul, second by Bushor. Adjourned at 7:47 pm.**