**Minutes of Burlington City Council Ordinance Committee**

**Tuesday, August 13, 2013**

Committee members present: Councilor Chip Mason (CM), Chair; Councilors Sharon Bushor (SB), Karen Paul (KP)

Staff: City Attorney Eileen Blackwood (EB)

Others present: see sign-in sheet

Meeting called to order at 5:40 pm by Chair Mason (CM)

**1. Agenda and Minutes**

CM amended agenda to add public forum. SB moved to approve minutes with amendment that Gene Bergman would make minor tweaks, initials of Nathan Wildfire, add Kelly Devine’s initials, add Gay Farrington’s comments that he has lot that stands alone so needs to reflect that intent. KP seconded. Approved unanimously.

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

CM noted this is the Committee’s fourth hearing and they would like to move forward. He reviewed the process to date. He indicated that the Committee will finish reviewing the ordinance and then will try to produce changes to refer to the Council.

Marigo Farr read written testimony.

Tom Brossard (TB), BBA, and Tom Torti (TT), LCRCC: TT stated that the Chamber supports the LWO and willingly pays LW under their contract with the City, but he is concerned about the airport. In reviewing the airport’s performance, his takeaway was that the airport’s infrastructure was not strong and that the cost structure was not supportable. BTV is necessary to support our largest employers, but it has to be cost-competitive. Airlines do make decisions about which airports to use based on cost. He tried talking to the airlines about quality of life and other factors, but they focus on cost.

TB read a prepared statement from Kelly Devine, director of the Burlington Business Association, after echoing TT’s statements about the importance of the airport. BBA intends to stay engaged in creating a workable ordinance. SB asked if there is support for the existing LW or just for the philosophy? TB responded there is support for the initial concept and goal, but the issue is with consistency and enforcement. SB wanted to know if BBA supports the methodology. She asked that Ms. Devine respond to CM.

Devon Ayers, member of Vermont Worker’s Center (VWC) lives in Ward 2 and as a college student worked to get the LWO passed. It’s disappointing to be where we are because the LWO is necessary, not just a noble effort. VWC would like to add language to the LWO. They’re calling for a third party monitor. They’d be appointed by the City and would be responsible for receiving complaints and verifying credibility. Then, they’d be referred to City Atty’s Office to investigate and enforce the ordinance. This gives someone else the responsibility to police. It would be a nonprofit with the infrastructure to handle those kinds of complaints. There’s a large fear of retaliation in the workforce. There’s safety in having an independent organization that can walk people through the process. They aren’t looking to take power away from the City, which would still get the payroll records, determine if back wages are due, etc. This is a small fix that goes a long way. It’s an ordinance that VWC think is really good (although they’d like to see it go further.) Right now the City needs to focus on how to make it stronger, not just a noble goal. The monitor will verify through viewing a person’s paycheck. LA set up LAAN, a separate nonprofit. CM asked for more information about how they would investigation. SB noted she thought there is value in a third party nonprofit being less intimidating. There are lots of ways to work this. KP asked about cost and whether there is a local organization that would have lower cost. Devon noted there might be local organizations to partner on this. The proposal also includes a private right of action. Devon gave example of federal and state wage and hour laws, which are difficult to enforce if employees don’t have unions.

An unidentified woman spoke as a homecare provider who lost her job just before retirement. She is currently providing respite and outdoor services for a woman with Huntington’s disease and is paid $9 an hour because she couldn’t find other work. She also gets Social Security early and Medicare. She can’t get dental insurance or eye exams or homeowners insurance, and can’t buy meat often. She trades work to keep her rent low. You may need home care at some point in your life. $9 an hour is not enough to live on.

Public forum closed at 6:18 pm.

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

CM asked if there is money in the budget for enforcement. EB said whatever is passed the City Atty’s Office would try to address with existing personnel and would have to come back to the City Council if more resources are needed. SB said she thought the Committee would have to go to the mayor and CAO and see what money is available. KP said she thinks the City will have to find the money, but first we have to strengthen the enforcement. If we have the ordinance, we have to enforce it. SB noted the enforcement and audit can be an amendment to the existing ordinance. SB agreed that if we tighten up contracting, that will help. Also, spot auditing will help. Meeting with employees is a good service. KP noted her goal is to do something along the lines suggested by VWC. If everyone knows they can be randomly audited, that knowledge can create change. CM also mentioned having the City Atty’s Office do an annual report.

CM noted some elements needed include an investigation by City Atty and an audit, and can include a designated accountability monitor. SB asked what action/remedy would occur if there is a violation. CM would like the City Atty’s office to be able to pursue damages. SB thinks each contract needs to state the ramifications if the ordinance is violated. Who takes the action? There has to be a reporting mechanism too. The action could be delegated to the person who is authorized to take the action, but the Council should be made aware. EB said the City Atty’s Office could investigate and then bring information to the Dept head to decide what action to take. The Council would be informed. SB noted that the Mayor, administration, and Council are all on the same page that we support the LW and want it to be enforced.

21-85(d): Is Earned Income Tax Credit still $12 an hour? Do we have to include the dollar figure? Emma Mulvaney-Stanak noted the EITC changes annually, so this is supposed to refer to that. Can we reference the current EITC figure? EB will find out where this number comes from and how to link it.

21-85(e) CM noted that Council is not currently considering having the CAO promulgate rules. If the provision remains in the ordinance and is never used, that’s not a problem, SB noted.

21-86 Exemptions: CM noted that the Council wants exemptions presented to the full Council. He also said it is not clear what a “substantial economic hardship” is. TD Bank example: It was more of an administrative nightmare than economic hardship to the corporation. Skinny Pancake: Does it mean hardship to the entity or just this location? Also, if the City continues with the exemption process, an exemption should not be unlimited in time—perhaps putting in some sort of revisitation after a period of time. KP agreed that an exemption has to go before the full Council. She also agreed that if there’s a 10 year contract, you shouldn’t get an exemption for that long, as the goal for the business is undoubtedly growth. There should be a time limit, some accountability. KP does not recall the economic hardship discussion with TD Bank, but just that it would be an administrative nightmare. SB said requests should go to the CAO and the BOF should consider the request first. She also agrees that the exemption should be for a set time—a year or two. Are they limited to economic hardship? What are you going to do if you need something specialized and no one is going to pay LW? What are the circumstances that would allow an exemption? SB said we need to better define hardship. The City of Bloomington’s ordinance uses language that allows an exemption where payment of the LW will 1) substantially curtail services, 2) have an adverse economic impact on city, or 3) not be in the best interests of city. SB would like any employer granted an exemption to have to have a plan about how to get to a LW. This may not be a perfect system, but we want to strengthen it as much as we can. CM would support a “best interests of the city” test. EB raised question of situation where there is a single provider who won’t pay or cooperate with the process. Substantial economic hardship could be an objective standard. SB said she has never started a business so she doesn’t really know what an employer can do. KP noted that a time limit may solve some part of the problem, as businesses may be able to meet the requirements in the future.

Grantees: CM noted that some municipalities exclude all non-profits, others only cover those with a minimum number of employees, others (Bloomington) have a waiver process for non-profits. CEDO was very concerned about grantees having to meet this requirement—looking at the number of employees and size of grants might address this. The Committee would like to have CEDO come address this and say if it’s a major problem. Otherwise, the Committee is likely to leave this alone.

School: CM reported that the school department said all its employees are paid the LW. Also, the school superintendent said the City can’t tell the School Dept. what to do, so it should not be addressed in the ordinance. The Committee would like to eliminate the parenthetical. The Committee asked EB to look into the legal issue of whether school has to be excluded.

KP noted the next meeting will be to go over the formal language of proposed amendments.

**3. Other Business—Next m**eeting is already scheduled for August 26th and Committee decided to do Livable Wage at that meeting, as well as toters. Next meeting on Sept. 16 at 7 pm to address no-trespass. CM will invite John Franco.

**4. Adjournment—Moved by KP, second by SB . Adjourned at 7:30 pm.**