**Minutes of Burlington City Council Ordinance Committee**

**Monday, August 26, 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 5:38 pm by Chair Mason (CM)

**1. Agenda and Minutes**

Approval of agenda-moved by KP, deleting July 25 minutes. SB amended motion to deal with mandatory toters first. KP seconded. Adopted unanimously.

SB moved to adopt minutes of Aug. 13. Written testimony was not attached. Either recap what was written or add written testimony to it. KP seconded. Adopted unanimously.

**2. Public Forum**

CM explained that the copies of the ordinance that were circulated contain a proposal, not even a draft—nothing has been decided yet. Even after this Committee decides, there will likely be two opportunities before the full Council to comment as it goes through first and second readings.

Robin Whalen: Employs two homecare providers through the State, and they need to have health care just like any other City employee. They are paid by the City. They rely on the City’s grants/payment, but they have no benefits at all. They need to be included in the LWO. She’s a mother whose children are cared for by Burlington’s employees.

Emma Mulvaney-Stanak: Just had a quick glance at the proposed ordinance. The airport provision, seasonal workers, and school workers have had minimal testimony at best. It’s the job of the Committee to get its information. The two department heads gave minimal oral testimony. She would want to vet as much information as possible to exclude the entire airport from the ordinance. She would encourage the Committee members to take a closer look at the seasonal employees.

Martha Ahmed: Why did you exclude seasonal workers? School workers? This should cover them too.

CC. Vermont Worker’s Center. When she got the draft of the ordinance, she was concerned that she didn’t have chance to talk to folks who were implicated in the strike-out before the meeting. This has been going on for a month, and it’s been hard to reach out to people. She’s very concerned that it’s just been announced, and we don’t have much time for public forum on the non-inclusion of the airport.

Jonathan Leavitt: He hasn’t had time to read the proposed ordinance yet. To give public comment on something he hasn’t had time to read is not transparent government, as this administration claims to want. He wishes it had been released before this meeting.

CM: This was intended as a starting point for this committee. This process was started by the mayor asking the City Attorney to look at this issue. This is not an issue being thrown out today for the first time. We’ve had 5-6 hearings. He noted he appreciates and will be receptive to comments. This is just the starting point for discussion. What comes out of this committee will be reported to the full Council, and there will be full public hearings before the Council. He appreciates that many would have liked to see this a week ago, but these are his initial thoughts, not the action of the committee.

SB: She noted she feels like all of the commenters in some respects. The Committee identified things we wanted to change and things we wanted to think about. The Chair started a draft and ran it by the city attorney. She got this last night about 10 pm. She knows the public comments are valid. But as the Chair said, this is trying to get us to the next step. There will be time to discuss and point out flaws in this process. We’re all at the same point. There will be other meetings and will be time to organize people to come speak.

CM: This is intended to jump start discussion on things we’re looking at.

KP: We did get this draft late in the afternoon yesterday, and KP drove a copy over to SB’s house. Council members often get things at the last minute. It had to go through the City Attorney. It is unusual for the chair of a committee to spend 5-10 hours working on a draft of an ordinance and incorporating his or her take on the debate into draft language. I am grateful to the chair for taking on this task. If given the timing of when we received the draft, we need another meeting, then we should have another meeting.

CC: We’re guilty until proven innocent. This is unfortunate that this is our benchmark now.

Jonathan Leavitt: In the same way as legislators say that it’s just the Health Exchanges. This document doesn’t allay my concerns. This document could have a hand in shaping how the final LWO looks. That lack of transparency and participation is concerning. He is concerned that the airport employee testimony isn’t reflected here—that airport employees testified that they’re just barely scraping by. He is concerned we’re moving backwards with the ordinance, not forward. We should be including more people.

Amy \_\_\_. Organizer for Vermont Fair Food Campaign. She’s very concerned about excluding airport workers. She doesn’t understand the sweeping exclusion of people who work at the airport, just because it’s expedient.

Public forum closed at 6:02 pm.

**3. Mandatory Recycling Toters**

Bill Ward (BW), Code Enforcement, discussed whether or not the effective date of Oct. 1 could be met. He also reported that places like Northgate, Redstone, and South Meadow would not be required to meet the specific wheeled containers under this ordinance, but would be dealt with by an equivalent receptacle approved by the director. He will be working with Director Spencer on this in the coming weeks.

CM: What date would be more effective?

BW: This would come down to prosecutorial discretion. DPW has to deliver the toters and put them together. Until we see the level of response, we won’t know how long it will take to get all properties met. If we find they haven’t responded until Nov. 1, we may wait until then.

SB: She is open to any date. But the City shouldn’t put a date in if we can’t provide owner with a toter. As she reads this, if you have 10 units, you must have a capacity of 20 gallons per unit, so does that mean 10 toters?

BW: No, it means 200 gallons, so it could be 3 95-gallon toters. People will fill their uncovered bins and dump them into the toter.

SB: Do we have enough toters?

BW: Yes, for this list of properties that are covered by this ordinance of 10+ unit properties [referring to list of specific properties accompanying ordinance].

SB: Do we have enough staff?

BW: He is not sure, as it’s DPW staff. If they had nothing else to do, yes. A larger property owner may have their own truck to pick this up, so it’s unclear how many toters the City will have to provide.

SB: She is vacillating between Nov. 1 and Dec. 1.

BW: Folks wanted to wheel this out ASAP, so that’s why we drafted Oct. 1.

CM: How will the people [properties] on this list know about the ordinance?

BW: The mayor had a focus group a while ago. Many of them already know.

CM: He sees no reason not to push this to Dec. 1. KP and SB agree.

SB: Who is “the director”?

BW: Me.

SB: She would amend this to say “the director of code enforcement.”

CM: A question was raised whether the term “equivalent receptacle” would cover Northgate and other properties that want to use the existing blue bins? After discussion, the decision was to change “equivalent receptacle” to “alternative” approved by the director.

CM: The approval should be for some time duration, not an unlimited time.

KP moved to pass the ordinance with amendments (the three identified above) back to the City Council for second reading. SB seconded. Unanimous.

**4. Livable Wage—**

CM: He appreciates need for public input, but noted the Committee also needs to move forward. When the report came out, it was pretty damning. He has heard the comments that this is an important issue for the City and is sensitive that there are things in here that everyone is not going to be happy with.

SB: Prior to this meeting, she took the opportunity to go through the minutes of July 25 and Aug. 13 to comprise list of questions that she feels a need to at least respond to—have some discussion about. This is not a complete list, but she’d prefer to go through proposed draft line by line.

The Committee then proceeded to go through the proposal line by line:

21-80: No proposed changes except adding City of Burlington. SB said that as to year-round employees, seasonal employees are still on the table for her. So (b) may need to be amended. KP asked to discuss this now and included 21-81(f). KP had mentioned those employees who had been here for some time and the job was seasonal, but not on a one time only basis—to piece together different jobs. She still feels seasonal employees who are here for some time should be treated differently. SB—we don’t know how many seasonal employees we have. We’ve heard some people come back year after year. How many are really regular employees on a seasonal basis? SB doesn’t know how often they come back. She suggested that if people come back for five years, they should meet LW. We should be able to define this. City Atty Blackwood noted that she had asked HR for this information, but it was not easy to get. KP said she can’t believe it’s taken more than 2 months to get this information.

21-81(a): In the first sentence, the definition of service contract was moved to (j). SB noted that she thought there had been some discussion of $20,000 being okay. CM suggested we could tie it to the CPI. KP said we’d also discussed number of contracts affected and it was negligible. SB said we discussed moving it to $20,000 to tread water, but not crucial.

The second sentence deals with removing the leased property at the airport. CM noted that there were significant issues with leasing property, especially the airlines. He does not think we should be messing with the airport, but we should treat the airport as any other City department. We have Heritage with a 20-year agreement. SB said this is a real bugaboo for her. She understands the issue with the airlines, but she isn’t willing to throw the baby out with the bathwater. The City-funded BCDC property accessed low interest money, but then we’re allowing those people to have loans on the backs of low paid employees. She recognizes the concerns with the airlines. Maybe the better course is to expand the ordinance to include the boathouse. For her, it’s not all or nothing, but she doesn’t know what else to do. SB said what was missing from the exemption process was that an applicant should come in with a plan about how to meet the LW. A start-up restaurant might not be able to meet LW, but they should over time. She won’t support an ordinance that completely excludes all of the airport property and all of the services there. KP noted that if this were applied to everyone, Splash would have to pay LW, as would each of the restaurants on the Marketplace. Splash owner has told her that it would put them out of business to pay a LW because they are seasonal. Everyone should be playing under the same rules, and she is not sure how to do that and be fair. While some businesses may be able to pay LW, it would be a significant departure, and she’d have to know what those businesses’ response would be. We’d have to know more than we know now.

CM: Where would you like to go now with this? KP said that if SB wants to expand this, then we’d have to hear more. CM said that without even asking, we would hear testimony from many property owners opposing that. SB said it would not be a good use of our time. She is confident restaurant businesses would say that they can’t meet this requirement. SB would prefer to focus on the airport. SB asked if we could link leased property that has used BCDC funding. How many contracts would be covered?

21-81(b): No substantive changes. The Committee will revisit if CEDO says grants are a problem. The definition of covered employee only applies to employees of a grantee who spend more than half their time on the City.

21-81(c): Delete the parenthesis about the school. Added primary contractor responsibility—ok.

21-81(d): ok

21-81(e): This would define the designated accountability monitor—ok.

(g): The City Attorney suggested changes in language about health care contributions. The Committee would like more information about how to figure out the cost of coverage. The prior number was based on the JFO, but the JFO took it out when they thought there would be universal health care. CA Blackwood will contact CAO, HR, and Doug Hoffer to follow up with what would be a good calculation.

(i) Definition of retaliation is new. SB asked does intimidation need to be in the definition? CA Blackwood will check to see that this definition is consistent with standard EEO language. CM noted intimidation is in section prohibiting retaliation.

(j) Definition of service contract is from first page. SB understands financial, insurance, but software bothers her. KP is okay with the proposed language.

21-82 revised definition of LW. Should we update the number? There is a rationale for a starting point and then annual updates, according to SB. CM would not support leaving the old $9.90, but could agree to not include any number. SB and KP agree with change.

21-82(a)(3) was to reflect what happens in reality.

21-82(b) removes floor of 2010. SB said the idea was that people should not lose money if the LW goes down. She noted that even in reclassification people have a period of adjustment. She can’t support removing the floor. KP agreed. All are agreed that they will keep the floor. All agreed to remove notice to hearing.

21-82(c): added CTO—all agreed.

21-83: (a) leave date in. (b) just clarification—all agreed.

21-84: (a) Added requirement that they submit certification each year and kept other requirements. All agreed.

(b) Added designated accountability monitor—not full-blown investigation. CM noted the open question is the cost. SB asked if any of the proposers have put forward a cost for hiring. Matt McGrath from Vermont Worker’s Center said they had never done this type of contract, but just thought it would be more effective and efficient. This was proposed knowing the budget for this year was already in place. The VWC does this on a statewide basis for general labor issues. McGrath suggested some monitoring period about number of calls, etc. and then finances could be discussed.

(c) SB had questions about the one year being too long, what is a reasonable time is for the City Atty to investigate, and why a hearing officer is proposed instead of a panel. CM responded one year was not too long. SB thought there needed to be some time line in which the City Atty should investigate. CA Blackwood suggested “no later than ninety (90) days”. The hearing officer will require payment.

SB would like some language that would allow the City to do a spot audit at any time. The City may audit any covered employer that has a contract or grant covered by this section—add this before CAO may request payroll records.

(g) ok

(h) ok

(i) non-retaliation—ok

21-85 no change

21-86: includes time limit of 2 years-ok. (a) SB would like to include section that requires the employer to have a plan to become compliant. CM is not sure he wants to tell someone what they have to come forward with. What also happened to best interests of the City, KP asked? CM noted it was missed. So, add to (b) if it would be in the best interests of the City. SB wants to ask the employer if they will be able to pay the LW in the future? SB may want to figure out some language to address this.

The final paragraph moves authority to CC, not BOF

21-87: no change

21-88: City Atty’s office report by April 15.

Summary: 4 issues—seasonal. How many employees are repeat seasonal employees—2, 3, 4, 5+ years? For entire season. If someone comes back and pieces together their employment this way. People who are using this as a way to bridge their employment. Susan Leonard should come to the next Committee meeting. Is there a way to include some part of the airport? June through Dec. 2001 copies of ordinance committee meetings would tell us the original discussion of why the airport was included.

CA Blackwood will forward up with Rusten, Leonard, Hoffer about health insurance.

SB asked about how to get feedback from everyone who wants to give feedback. CM said people could send comments to City Atty, and she will send them to Committee.

**5. Other Business—**Sept. 16 agenda will include exec session to discuss no trespass litigation. Also, downtown parking.

**6. Adjournment—Moved by KP , second by SB . Adjourned at 8:05 pm.**