**Burlington City Council Ordinance Committee**

**Minutes of Sept. 16, 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 by Chair Mason at 7:03 pm.

1. **Agenda and Minutes** of 7/29/13, 8/26/13—KP moved to approve with her emailed changes; SB seconded; unanimous.

2. **Public Forum—**

James Haslan (Vt Worker’s Center)—commended committee on trying to have ordinance that works for this City. He is proud to have this ordinance but is concerned with exemption of the airport. He hasn’t seen any actual evidence that the airlines or current vendors can’t pay LW. The exemption should be able to address any vendor who can’t meet it. He knows people who work there and currently make a LW, and it’s important to their families. So he would like this committee to recommend keeping the airport in the ordinance. Workers should be able to thrive like businesses and airport want to do as well.

 Ken Lawless--Please consider removing the exclusion of the airport. The Skinny Pancake can afford LW west of us; why not at the airport?

 Max Tracy—Jane Knodell and he requested information about the vendors at the airport not being able to meet LW, but we haven’t seen that evidence yet. Hudson News and Skinny Pancake are locked in, so what we’re hearing is just from the airlines. He needs to see the facts.

 John McLain—There’s a long history of exempting workers from the FLSA, and it’s disgraceful.

 A member of the public asked the Committee to respond. CM explained that committee doesn’t engage in dialogue, just takes comments from public.

 Fareen Manosha—He shares the committee’s frustration with the slow pace. The law has been on the books for over a decade, and he’d like to urge the committee to expand it to everyone who works on City-owned properties. Two years ago, Burlington voters approved a ballot saying the City should do everything in its power to address economic inequality (the 99%). He would encourage the committee to speak to people other than business owners who work on Church St.

 Michael Chan—It’s a great law, but when it’s not enforced, there’s no accountability. He’d like to see something that says who is responsible and who will be fired if it’s not enforced.

**3. Livable Wage Ordinance**—Committee invited Susan Leonard (SL) and Ben Pacy (BP) forward. CM said the committee has requested to understand seasonal v. temporary employees and how many such people are employed. SL and BP had forwarded information by email to the committee. SL explained temporary means employed up to one year and can be year-round; seasonal means just for a season. KP noted this is great information, and she sent email over weekend with additional questions, particularly in regard to the number of years employees were employed. SL and BP explained that some of the information was not easy to compile. BP said that on the Rec side there are probably people who come back 3-4 years. People on Parks side who make above LW do come back year after year. KP asked about crossing guards. BP reported that all guards are paid around $17 per hour ($127 a week), so they make LW.

KP noted employee in assessor’s office who does data entry and has been back year after year, but who is only there for 8-12 weeks. For data entry, they’re paid $13 per hour. For the $3300, that person should be paid the LW. She would add 21-81 (f) & (g), which she had emailed to the committee, which say employees who work 10 hours per week or more who have been employed for 4 years, should get LW in their 5th year.

SB also explored going farther than that. She liked the way HR broke it down. BED looks as though they’re already being paid LW, so she was surprised it would cost them anything to add seasonals. She spoke to Emma Mulvaney-Stanak to get some information about how the schools approached the LW over time by a stepped-up basis over several years. She’s thinking less than 10 hours a week is not really employment, so she’s excluding them. The total projected figure from HR’s study is $462,000, and that’s a lot of money. She would see seasonal as defined as a minimum of 3 months for 20 hours a week or a total equivalent of 240 hours in a year.

There are people such as the technical intern at DPW who has been here over a year, April through November, and makes $13 a year. We could do a phase-in, but she’d like to have almost everyone who is a seasonal employee included. She hasn’t been able to carve out any employee who doesn’t deserve a LW. She noted that the City is trying to be the model.

She also has issues with another category—people who receive financial assistance from the City—and she believes BCDC is financial funding from City. She’d like to figure out who receives BCDC lower interest loans.

Councilor Vincent Brennan asked about cross-reference between the school department and other City departments. SL indicated this analysis does not include the school. Another person asked about people receiving disability benefits who have a cap of 15 hours a week. KP said her suggestion was 10 hours.

KP explained her reasoning was to equate it to a year’s worth of full-time working—10 hours a week for 4 years. CM wanted to know what that translates to from a dollar prospect. The biggest hit would be to Parks & Rec budget. BP said he’s assuming that as employees return, they get a small increase each year. To guess how many people come back for a 5th year, that number is probably fairly small, although there will be some people who keep coming back for 10 years. KP would be willing to lower the number to 3 years. BP said Jesse Bridges should weigh in on this. CM noted that 85% of the total increase is Parks & Rec and is taxpayer dollars. CM said he hasn’t heard any support to jump into this large a budget increase. SB has a three month basis. She wants to include seasonal workers who have worked over a couple of years, but really broader than that. She hopes there can be recognition of phase-in and discussion of this budget cycle how to do that.

SB proposed that employees who work 20 hours or more per week on a seasonal basis for three months or a total hour equivalent of 260 hours per year, at the beginning of their third year, would receive a LW. BP said the City’s current payroll and HR systems cannot calculate these numbers easily and encouraged the committee to hear from Jesse Bridges. SB said she’s trying to capture most, but not all of the people. She doesn’t want to include the drop-in teachers at BCA, etc. SB asked BP what he thinks, and he said it’s really complicated. Based on a contractual requirement of $15,000, that translates to 948 hours a year. He pointed out that the committee had a lot of data in front of them, but it will be hard to execute this. CM noted this is hard because we’re cutting budgets so much that we’re moving to generic rather than name-brand toilet paper on one hand and now are talking about adding a $300,000 expense.

SB wanted to know if someone could get all the department heads in a room and come up with proposals for what this would cost on a 3-year basis, 4-year, 5-year basis. BP said it would not take long without Parks. For example, BPD temps generally stay only 2 years. The exception is Parks. SB noted that students may need to make LW too. So, how do we get educated about what to recommend? Jesse Bridges needs to respond, BP suggested. EB suggested staff could contact Jesse and pull together the cost of specific proposals, if the committee wanted to wait for that. SL explained that this is not simple, as there is no single system that can answer these questions. Pay information is in payroll systems, but there are three of them. There is no computer record that says how many years a person has been employed. BP said they could try to quantify this with input from the department heads. CM said he was hesitant to vote this out without the answer to these questions. CM will ask EB to as expeditiously as possible to get the information back to the committee and to put the issue on next meeting.

Vince Brennan expressed concern that if there is a standard of 3 years or 3 seasons, that an employee may be penalized, so that the employee will be hired who meets the budget, rather than experienced employee. Perhaps it could be based on an evaluation of the employee. SL reported that the City does not evaluate temp or seasonal employees. EB noted that the City probably does not have the operational capacity to do evaluations for that many additional employees.

KP said this is a moving target, and we won’t get the perfect answer. Sometimes you have to do the right thing because it’s the right thing to do.

21-80: KP suggested adding to (b) “such that they are not”. CM and SB agreed. This will also have to change if the ordinance includes seasonals. The committee accepted all marked changes in a, c, d, e.

21-81(a): This draft deletes use of property under the jurisdiction of airport commissioners. SB read BCDC minutes sent to her, leaving her with a question: North Hangar, Pratt & Whitney, and Ash buildings were built with funds from BCDC. Because the City in its non-profit role made funds available on a low interest basis, this was financial assistance. She doesn’t know what is in those buildings or who is leasing them now. She doesn’t want to exclude the airport, but hasn’t been able to figure out what to do with the airlines. She said that the Airport Director and the Chamber have told the committee that it would have a negative effect on the airport to impose this on the airlines. She wants to protect people who work at the airport as much as she can. She would like to know what’s in these buildings and would like to hear directly from airport personnel.

CM asked why the fact that BCDC built it rather than having the building funded from bonds or taxes would make any difference. SB responded that these businesses grew and thrived because the City built and let them lease the buildings. The City helped these businesses get off the ground and had a right to expect they’d pay the LW. CM pointed out the Heritage contract is on BCDC-funded property and is already a long-term lease. Vince Brennan said it’s vital that the information that was requested be brought forward. Large corporations should come in front of the Council and ask for an exemption just like Skinny Pancake did.

Dave Hartnett said this is clearly not ready for the Council tonight, and it’s 8:15 already. He’s amazed that the committee is here at this point. CM noted that each route you go down opens more avenues.

The committee took a short break for EB to call the airport director to clarify what is currently in the BCDC buildings. The committee reconvened after a few minutes.

EB reported that she spoke with Gene Richards by phone, and he indicated the following: North Hangar was leased by Heritage and now has been returned to the City. The Pratt & Whitney and Ash buildings are currently used by Heritage.

21-81(b): changes are ok.

21-81(c): This is a new section proposed by KP: Existing contracts would be grandfathered and must agree to abide by existing terms. New contracts would not be covered so as to make them consistent with the rest of the City. EB noted that she preferred the language proposed by CM by email. KP was okay with that; she just does not want any employee now getting LW to lose that. CM’s language is that no employer may reduce existing LW below what currently exists. SB supports no one losing wages. The committee agreed to add language emailed by CM to committee prior to meeting.

21-81 (d), (e), (f), (i), (j), (k) changes are ok.

21-81(g): CM suggested that we leave the original language until the CAO can find the correct number. The Committee decided to leave it to be amended on the floor.

21-85(a): CM asked to remove “affected.” Committee agreed.

21-80(b): SB raised how to include seasonal employees and suggested this section refer to “covered” employees. KP is comfortable with leaving it to EB to figure out how to change 21-80(b) to be consistent. CM suggested stating just employees, removing full and part-time. Committee agreed.

21-81(f): Change definition to cover full-time, part-time, or seasonal employees.

21-81(g): KP noted she had looked through the information and determined 10 hours was the right number, leaving out the BCA folks who worked less than 10 hours a year, but would include someone who works only 10 hours a week for 3 weeks. SB could go along with KP’s language but would want to say LW paid in 3rd year. CM said he’d like to see the financial impact of this. He did not want to hold the ordinance up from going forward to the Council, so he would vote for it here, but he noted to all that he might not support this provision on the Council floor. KP is okay with this.

So, EB is to follow up on the financial impact of paying LW to individuals, in their third year, who work 10 hours or more per week. The committee debated where to add the seasonal definition and decided to add it as a new (f) so it says full or part time employees and then, “As to City, this also means seasonal employee who works more 10 hours a week for more than 2 years.” EB suggested adding “or temporary” into (d)(1). The committee agreed.

21-85 (b) (new): and then renumber the following subparagraphs. The committee inserted CM’s sentence about “no covered employee” as (b). SB is still not resolved with exclusion of all airport property. She is concerned that many people at the airport will be losing LW. SB feels the committee never got back to Gene R. and the airport about their concerns and should have asked them back in. SB would like to support the proposal moving forward but would like to note that she is still concerned about exempting the airport.

KP moved to accept LW sections 21-80 through 21-88 as amended and refer the amendments to the City Council for full vote at its next meeting on Sept. 23. CM seconded.

SB noted she is happy to support this with the understanding that she doesn’t have adequate direct input from the airport whether to delete 21-81(a) from the ordinance. KP said she feels this is a good step forward in oversight. CM thanked members of the public who have stuck with this over the weeks and testified. He said he hopes this will continue to be a positive ordinance going forward. CM respectfully disagrees with SB that we have not heard sufficient testimony from the airport, as the airport director testified that he had spoken to the airlines and they will not pay LW, and he has no reason to disagree with him. KP particularly noted that the input from members of the public about the third party organization was key. She was chair of the Airport Strategic Planning Committee and agrees that the airport director can’t speak directly about ongoing negotiations, but he made it clear it would be dangerous for airport. She is not willing to risk the airport. SB wants more than this, but she is really pleased with what the Committee has done. She thanked the public, saying that the committee couldn’t have done this without the City Attorney’s Office’s in-depth analysis and all of your support.

Unanimous.

4. **Church St. Marketplace Dist. No Trespass Authority Ordinance—**

CM moved to go into executive session to discuss a matter that is currently in litigation, premature disclosure of which would place the City at a disadvantage. KP seconded. Unanimous. The Committee went into executive session at 8:50 pm.

The Committee came out of executive session at 9:40 pm.

5. **Other Business**: none

 Next meeting: Oct. 1 downtown parking

6. Motion to adjourn by SB; seconded by KP. Meeting adjourned at 9:45 pm.