

Ordinance Committee
November 17, 2011
Fletcher Library Community Room
Approved December 21, 2011

Committee Members: Councilors Joan Shannon (JS) (Chair); Sharon Bushor (SB); Bram Kranichfeld (BK)

Absent: None

Committee Staff: Gene Bergman (GB) (CA);

Others: Sharon Mallory, Ryan Mitofsky, Ron Redmond (Dir., Marketplace), Jenny Davis (CEDO), Jeff Nick (Marketplace Commission), Nick Karabelas, Evan Williams, Greg Bejian, Jim Hughes, Mariah Sanderson

6:20p.m.- Call to Order

I. Minutes & Agenda:

Action: On SB's motion & BK's second, the committee unanimously approved adding the approval of the Nov. 1st meeting's minutes to the agenda, amended the fourth sentence of the last paragraph on page 1 of those minutes to read "SB questioned if cart vendors have to be at their carts and if they could leave their carts and Jeff said they did and could on both questions.", and then approved the minutes and agenda as amended.

II. Smoke Free Downtown

Jeff Nick was asked to begin with an update from the last meeting. He noted that Nov. 17 is the Great American Smoke Out day and that only 15% of Vermonters smoke. He reiterated that he has changed his thinking on this issue. The downtown action group meeting took place last Tuesday with 14 attendees. They indicated that they want to keep the ordinance simple and supported all of the proposal but the exceptions for the vendors, City Hall Park and the top of the Marketplace Garage. They had thoughts about the café exception but decided to support it. He then noted that the BBA meeting had 9 members out of 18 present so due to the low member turn out they didn't take a position. The people in attendance were concerned about the carve outs and thought the rest of the proposed ordinance was clear.

Jeff noted that Ron Redmond had surveyed the cafes and found support. The BBA's members also voiced concerns about enforcement and he [Jeff] spoke with Chief Schirling and the chief noted the department's concerns, as set out in the summer memo on enforcement. Jeff said that it will take time and that the PD is prepared to enforce a no smoking law if it is passed. He said to look to the skateboard ordinance as an example of the time it takes to get community acceptance and compliance.

Ron Redmond said the Marketplace Commission met on Wednesday and reviewed the ordinance. He provided them with (1) a survey of Quebecois visitors to Burlington that

noted that fewer Quebec visitors to Burlington smoke than the percentage of Quebecois who smoke generally; (2) a marketplace “zip code intercept survey” that showed that 71% of the visitors to the marketplace reside in Vermont and 31% are from Burlington, and noted that Vermonters smoke less than most Americans; and (3) a survey of cafes that allow smoking, finding that it was the bars that mostly allow smoking outside. He said that at the Wed. meeting the commission was not confused about the proposal and endorsed it as proposed with the elimination of the three carve outs found in (d)(3)-(5). Ron also noted that the street workers also are in full support of the ban.

JS said she’d attended the downtown action group and found it not supportive of the vendor carve out. Jeff agreed that the group supported the elimination of that exception along with the exception for the park and garage, the elimination of the (3)-(5) exceptions. Jeff said that the BBA expressed other concerns, such as the expanded area and enforcement and he said that what the commission and action group support is in line with what the PD chief supports.

Jenny Davis said she has mixed feelings because what the action group and commission are proposing is not what the task force proposed. The task force balanced interests and came up with the carve out options. She feels conflicted with eliminating the carve outs and wants to be an advocate for the process and the product it came up with. This is not necessarily her personal opinion.

Sharon Mallory of the health department said VDH supports the effort to reduce smoking. Burlington would be the first place in Vermont to go beyond a ban in parks. She noted that 12% of Chittenden County residents smoke and 10% of its youth smoke. This ban would be a good step to take because it removes examples of smoking from youth. The carve outs may make enforcement harder. The VDH is also looking to protect employees of restaurants. She noted that the correction of loopholes is hard once they are in place. Overall the law is a great step and VDH supports the city taking this action.

Mariah Sanderson said she is from the Coalition for a Healthy City, a coalition of groups. They support the ordinance. The coalition’s role is to educate and it has \$2,000 to support education and enforcement efforts. They can help with the process of education of the community if the law passes, i.e. through newspaper ads or information. They can provide support as much as possible. She was at the Statehouse and saw a group from St. Albans and they noted that when Burlington passed its smoking ban in the parks it supported the St. Albans city council in its ban.

Jim Hughes, a St. Mike’s student, asked if they get rid of the carves where it is safe to smoke. Jeff Nick said smoking would not be banned on private property and the area outside of the borders of the zone. He thinks that there are a lot of nooks and crannies on private property for smokers. He noted that there are bans on smoking on private property popping up.

SB said that GB had done a nice job in drafting and distilling it into a basic ordinance. She’s reviewed the ordinance and the minutes of the last meeting and she’s thought about

the vendor carve out and thinks it doesn't make sense. It has been drafted as recommended by the task force but she will offer an amendment to eliminate the vendor carve out. She also has questions about the safety of the carve out for the top of the garage; she doesn't think it is in the right place. She would like to allow smoking in City Hall Park but doesn't know where people would have it. Employees in City Hall have no place to go to smoke. She'd like it if they eliminate exception (d)(3) & (4) and is open to further define and narrow the park exception. They can deal with the fines later.

BK said he has a problem with the carve outs except those on private property. Carve outs undermine the purpose of the law and will undermine enforcement. They seem arbitrary. He is frustrated with the city not being able to enforce its existing laws on Church St. now and he doesn't want to add to the burden of the PD. The chief's memo says that this will be their last priority to enforce. He is willing to separate his roles and make a recommendation of the best part of the proposal for discussion purposes. He thinks a full ban is better but he is still not convinced that it is a good idea.

SB said that laws can be self-enforcing, noting stop signs, without police presence. Most people try to follow the law.

JS said she was the one that had suggested the top of the garage exception and the chief has raised questions about it so that exception is the one she feels most comfort with eliminating. On the vendor carve out, while she doesn't agree with it, she wants to support as much of the task force proposal as possible. She wants to change how smoking areas are dealt with; she'd like to do them by resolution because she thinks it is easier and more flexible; if they see that the area set by resolution is working, then they can codify it.

JS said enforcement has been raised since the workplace smoking ban went into effect. It will require a cultural shift and it won't work on day one but they will need to educate the public because the public will be the one to enforce the law. She thinks this is different than the disorderly conduct ordinance because they can prime the public as to how to help with compliance. She said they need a compliance plan.

SB said she does not support doing this by resolution. The details should be in an ordinance. She could support it as a pilot project and would prefer that. GB noted that a pilot project would have to automatically sunset or go into effect and reminded the committee about the problem with the pilot project aspect of the off leash dog areas they dealt with in the spring.

JS said the council is bound by a resolution until it is changed.

SB said that on the removal of exception (4), she would acquiesce to just eliminating that exception but she does not want to mislead anyone into forgetting that she still wants to also remove exception (3) when it comes back to committee.

GB explained how to implement the smoking areas by resolution, noting that they would have to be specifically spelled out to make them enforceable.

Action: on JS's motion and SB's 2nd, the committee unanimously decided to remove exception (4).

JS said that was all she was in favor of at this time; she wants it to go to the council as is. Jeff N. said that not all of City Hall Park was recommended as a smoking area but the park smoking area would be set with a plan for the park; the task force discussed the southern portion of the park but nothing was set.

GB discussed the problems with the lack of specificity in setting an area, noting that if no specific area was set, then there would be no designated smoking area in the park until there was.

JS suggested designating a portion of the park on a picture of the park. SB suggested having the ordinance say something like "designated area within City Hall Park as determined by the P&R Commission." Jenny D questioned if it would prolong the discussion if it were sent to the commission. JS suggested substituting the council for the commission as follows: "designated smoking area as determined by the city council by resolution."

GB pointed out that no area would be designated unless and until a specific area was determined by either the commission or the council.

BK said he won't support any carve outs and that wherever they put it will have problems.

JS said they can tell the council that they will come back with a more detailed proposal.

SB said she'd like something more specific to recommend. JS said she could not do that yet and asked if the committee could take it as is to the council and get a more detailed map of the park later. She said it was not essential to do more at this point. SB disagreed, saying she thinks being more specific is important even for first reading. JS suggested the middle triangle of the park on the south side. SB thought that was ok and suggested attaching a map to show the area that is being proposed.

Jenny D reminded the committee that the task force recommended the park's carve out because it would mean that a person could smoke downtown without having to pay [go into a café].

BK said he still thinks the carve outs will undermine enforcement.

SB said the area will need to be signed.

JS asked if there were any more changes. SB said she'd concede on the vendor exception for now.

Mariah S said that while it might be the first time for such a wide ban for our area, her group can do education. She pointed to the Champlain Fair and other sporting events that have banned smoking. With a small amount of education she thinks they won't have a hard time enforcing this as with other issues.

Jenny D said the vendor carve out was the last one put in by the task force and wasn't talked about and she thinks it could be easier to pass without it. Nick K said he supported keeping it in.

Action: on SB's motion and JS's second, the committee voted unanimously to remove exception (3).

JS asked what the full penalty should be. SB suggested \$50 with a waiver penalty of \$50. BK said that sounded ok. On the question of an enhanced penalty for the failure to heed a previous warning, SB suggested a \$100 full penalty and a \$50 waiver penalty. JS agreed.

Action: on SB's motion and BK's second, the committee voted unanimously to set the full penalty at \$50 and the waiver penalty at \$50 for offenses committed prior to warnings, with a \$100 full penalty and \$50 waiver penalty for offenses committed after being warned.

Action: on SB's motion and JS's second, the committee voted 2 to 1 (BK no) to change exception (5) to "a designated smoking area within City Hall Park as determined by the city council", renumbering the exceptions as well.

Action: on SB's motion and JS's second, the committee voted 2 to 1 (BK no) to refer the amended ordinance to the council for first reading with an attached map of City Hall Park that designates the middle south triangle as a smoking area, for the deliberative agenda, with a concurrent referral to the Parks & Rec Dept. and Commission.

JS asked if it could go on the council's 12/5 meeting agenda and GB said that with Jenny D's help on the map it should be possible, even though he was going to be out of state from 11/19 – 11/27. Jeff N asked if the committee would like the task force present and JS said yes. Jeff said he could not be present at the 12/5 meeting but he could prepare something. BK said it would be helpful for the council to hear about the carve outs. JS said it was important to have Jeff present and asked about the 12/19 meeting. Jeff said he could be at the 12/19 meeting. JS asked that it be placed on the 12/19 agenda. She also noted that having a compliance group would be helpful. She asked Ron R, Jenny D, and Mariah S to develop a plan and ask people who might be interested.

III. Other Business

SB questioned JS if she had received something from the fire department on the smoke detector ordinance. JS explained that in October 2009 the Ordinance Committee passed the fire ordinance rewrite. At the council there was push back on the requirements on single family homes; the council did not want to go beyond state law. She thought they had passed an amendment to change it but has found out that they did not.

GB said he thought he could draft the change to chapter 13 to return the requirement on smoke detectors to the one adopted by the state and to send it to the council for first reading on the deliberative agenda, hopefully for the 12/19 meeting.

The committee set the next meeting for December 21 at 6 p.m. to discuss the retirement ordinance if the City Attorney opinion on board composition is done, the fire ordinance if it was given first reading, and the smoking ordinance.

IV. Adjournment: 8:15 p.m.