
DELIBERATIVE AGENDA

SPECIAL CITY COUNCIL WORKSESSION
CONFERENCE ROOM 12, CITY HALL
MONDAY, FEBRUARY 11, 2013
6:00 P.M. – 7:00 P.M.

PRESENT: City Council President Shannon; Councilors Blais, Brennan, Siegel, Paul, Bushor, Tracy, Worden and Dober; Councilor Mason (6:10 p.m.), Councilor Aubin (6:25p.m.)

ABSENT: Councilors Decelles, Hartnett and Kranichfeld

CITY COUNCIL PRESIDENT SHANNON PRESIDING:

1. AGENDA
2. PRESENTATION: Scott McIntire, Auditor, re: Fiscal 12 Audit Reports (oral)
3. ADJOURNMENT

Attest:

Lori Olberg, Licensing, Voting and Records Coordinator and Amy Bovee, Executive Secretary

REGULAR MEETING, CITY COUNCIL
CONTOIS AUDITORIUM, CITY HALL
MONDAY, FEBRUARY 11, 2013
7:20 P.M.

PRESENT: City Council President Shannon; Councilors Worden, Bushor, Tracy, Kranichfeld, Brennan, Siegel, Aubin, Mason, Blais, Paul, Dober and Hartnett

ABSENT: Councilor Decelles

CITY ATTORNEY'S OFFICE: Eileen Blackwood and Gregg Meyer

CLERK/TREASURER'S OFFICE: Paul Sisson; Rich Goodwin, Scott Schrader and Lori Olberg

CITY COUNCIL PRESIDENT SHANNON PRESIDING:

1. AGENDA

Councilors Siegel and Bushor made a motion to remove item 3.20 from the consent agenda and add it to the Deliberative Agenda as item 4.1.

On a motion by Councilors Kranichfeld and Siegel the agenda was adopted as amended.

2. PUBLIC FORUM

City Council President Shannon opened the public forum at 7:30 p.m.

<u>Name</u>	<u>Ward/Affiliation</u>	<u>Subject</u>
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Sandy Wynne	Ward 1 Resident	Fair Trade
Marc Sherman	Ward 7 Resident/ Outdoor Gear Exchange	In favor of Church Street Trespass Ordinance
Andy Simon	350 Vermont/Ward 5 Resident	Tar Sands Teach-in Feb 27
Jordan Redell	Ward 1 Resident	Involve Students with Quality of Life Issues
Robin Lloyd		One Billion Rising Event

With no one further coming forward and no objection from the remaining Council, City Council President Shannon closed the public forum at 7:43 p.m.

3. CONSENT AGENDA

On a motion by Councilors Kranichfeld and Bushor the consent agenda was unanimously adopted thus taking the following actions as indicated:

- 3.01. COMMUNICATION: Lori Olberg, Licensing, Voting & Records Coordinator, re: Accountability List
*waive the reading, accept the communication and place it on file
- 3.02. ORDINANCE: BUILDINGS AND BUILDING CONSTRUCTION – Building Codes Adopted (Councilors Paul, Mason)
*consider this 1st reading and refer to the Ordinance Committee
- 3.03. RESOLUTION: Compensation Adjustment for Officer Kratchovil Burlington Police Department (Board of Finance)
*waive the reading and adopt the resolution
- 3.04. RESOLUTION: Approving the Pledging of the Credit of the City in Anticipation of the Receipt of Revenue From The Electric Department (Board of Finance: pending BOF approval on 02/11/13)
*waive the reading and adopt the resolution
- 3.05. COMMUNICATION: Barbara L. Grimes, General Manager, BED, re: Revenue Anticipation Note
*waive the reading, accept the communication and place it on file
- 3.06. COMMUNICATION: Lori Olberg, Licensing, Voting and Records Coordinator and Amy Bovee, Executive Secretary, re: Draft Minutes, Adjourned City Council, September 24, 2012
*waive the reading, accept the communication, place it on file and adopt the minutes as received at the January 28, 2013 City Council Meeting
- 3.07. COMMUNICATION: Eileen M. Blackwood, Esq., City Attorney, re: Welcome to New City Employee Kimberlee J. Sturtevant, Esq.
*waive the reading, accept the communication and place it on file
- 3.08. COMMUNICATION: Lori Olberg, Licensing, Voting and Records Coordinator and Amy Bovee, Executive Secretary, re: Draft, Minutes, Regular, City Council

Meeting, October 15, 2012

*waive the reading, accept the communication, place it on file and adopt the minutes at the February 19, 2013 City Council Meeting

3.09. COMMUNICATION: Lori Olberg, Licensing, Voting and Records Coordinator and Amy Bovee, Executive Secretary, re: Draft, Minutes, City Council, Regular Meeting, November 13, 2012

*waive the reading, accept the communication, place it on file and adopt the minutes at the February 19, 2013 City Council Meeting

3.10. COMMUNICATION: Lori Olberg, Licensing, Voting and Records Coordinator and Amy Bovee, Executive Secretary, re: Draft, Minutes, Adjourned, City Council, November 26, 2012

*waive the reading, accept the communication, place it on file and adopt the minutes at the February 19, 2013 City Council Meeting

3.11. COMMUNICATION: Mayor Miro Weinberger, re: Re-appointment of Sheila McLaughlin-Gorski to BHA Board of Commissioners

*waive the reading, accept the communication and place it on file

3.12. COMMUNICATION: Pete French, re: ban of semiautomatic assault weapons and high capacity magazines resolution

*waive the reading, accept the communication and place it on file

3.13. COMMUNICATION: Bad4country, re: gun ban

*waive the reading, accept the communication and place it on file

3.14. COMMUNICATION: Gary, re: disregard for the U.S. Constitution

*waive the reading, accept the communication and place it on file

3.15. COMMUNICATION: Anthony, re: 2nd Amendment rights of US Citizens

*waive the reading, accept the communication and place it on file

3.16. COMMUNICATION: Gregory Epler Wood, re: Remarks to the Burlington City Council, January 28, 2013 Public Forum

*waive the reading, accept the communication and place it on file

3.17. COMMUNICATION: SeaBee Veteran, re: New Gun Legislation

*waive the reading, accept the communication and place it on file

3.18. COMMUNICATION: Mike Snyder, re: Passing Legislation on Assault Weapons

*waive the reading, accept the communication and place it on file

3.19. COMMUNICATION: Hir Burt, re: Banning guns

*waive the reading, accept the communication and place it on file

3.21. COMMUNICATION: Karen Lafayette & Erhard Mahnke, re: Burlington Legislative Update and Burlington/Chittenden Delegation & Committee Assignments

*waive the reading, accept the communication and place it on file

3.22. COMMUNICATION: Brian, re: Laws to restrict guns

*waive the reading, accept the communication and place it on file

- 3.23. COMMUNICATION: Harry Chen, MD, Commissioner of Health, Department of Health, Environmental Health, re: Deputy Health Officer Appointment of Linda Ayer

*waive the reading, accept the communication and place it on file

- 3.24. COMMUNICATION: William E. Johnson, Director, Property Valuation and Review, State of Vermont, Department of Taxes, re: Notice of Tentative Redetermination of Equalized Education Property Value and Coefficient of Dispersion

*waive the reading, accept the communication and place it on file

- 3.25. COMMUNICATION: Report to the City Council from City Attorney Eileen Blackwood & Sr. Asst. City Attorney Gene Bergman, re: Communication from Preservation Burlington to Burlington Planning Commission re: "Historic Building Materials Replacement Policy" dated October 9, 2012

*waive the reading, accept the report and place it on file

4. ORDINANCE: OFFENSES & MISCELLANEOUS PROVISIONS – CHURCH STREET MARKETPLACE DISTRICT TRESPASS AUTHORITY (Councilors Mason, Dober, Bushor: Ordinance Committee)(2nd reading)

Councilors Mason and Dober made a motion to waive the second reading and adopt the ordinance.

Councilor Mason stated this ordinance was initiated in the Public Safety Committee in 2011. It was referred to the full Council with a split vote of 2-1. The full Council heard it in March of 2012 and referred it to the Ordinance Committee. There were questions raised about constitutionality. The City Attorney prepared a memo to address questions that were raised. They held three public hearings. The goal was to make sure that the Marketplace was safe and secure for everyone to enjoy. It was not designed to target a specific population but manage behavior. It gave law enforcement another tool to use. They would be able to issue a civil no trespass order to anyone engaged in disorderly conduct, unlawful mischief, possession of intoxicating liquor, or possession of a regulated substance. The ability to issue a trespass order had already been extended to the Library and City Hall Park. There was a graduating penalty with one day for a first offense, 90 days for a second offense, and a year for a third offense. There was a hearing procedure included in the ordinance to address concerns of due process and fairness. The hearing panel would have one person representing the business community, one representing the social service community, and a member of the general public. Anyone in receipt of a no trespass order would have their sentence suspended until the hearing. It also provided for a potential waiver for those who work on Church Street. They received testimony at all of the hearings in support of the ordinance. He encouraged everyone to support the ordinance.

Councilor Dober stated it was a joy to work on this ordinance although it was more lenient than he would like it to be. It hit the right areas needed to give law enforcement the tools they needed to help clean up Church Street. They went through everything and included as many people as possible.

Councilor Bushor thanked those involved in the process. She came into the process with reservations that groups of people would be targeted rather than individuals' behavior. She listened to the concerns and now felt that she could support it. The Police Department and social services helped her understand why the length of times of the no trespass order would be helpful. She had concerns that they were limiting access to an entire street. With the definitions she began to understand the need for something like this to eliminate behavior that could put someone at risk. She noted that the Marketplace would determine the members of the hearing panel. They decided membership should be broader than the Marketplace Commission. She trusts the Police Department to utilize this tool appropriately.

Councilor Brennan stated that he had concerns about the ordinance. The first was that it was a significant rewrite from the first reading. He inquired if they could look at this as a first reading rather than a second reading. City Council President Shannon stated they could not do that. It went back to the Ordinance Committee after the first reading because they expected changes to be made. Councilor Brennan stated there had not been enough time for the City as a whole to look at this. City Attorney Blackwood stated there was no particular definition of first and second reading. The rules state the City Council may adopt the Ordinance at any time following the second reading. Someone could make a motion to send it back to the Ordinance Committee or to postpone action. City Council President Shannon stated it was a second reading, but they could make a motion to postpone action. Councilor Brennan stated he would like to postpone based on the significant changes. The whole City had not been able to digest what this encompassed. His biggest fear was the additional opportunities for the Police to take action. He appreciated the Police using their discretion and the inclusion of safeguards, but still had reservations.

Councilors Brennan and Tracy made a motion to postpone action until March 11.

Councilor Siegel stated she supported postponing action because she had a number of questions she would like to have answered. The terms anti-social or inappropriate behavior were very subjective and inadequate. She inquired how the addition of a street outreach worker had impacted problems. She did not want to add legislation if there was a way to boost support systems. Another problem that was mentioned was swearing on Church Street. That was not mentioned in the ordinance. It was rewritten and she was unsure how the offenses were being changed.

Councilor Mason stated he was not in favor of postponing action. The changes that were made were of a non-substantive nature. The way it was first drafted was confusing. The Committee focused on what constituted inappropriate behavior to help clarify questions. This was not a standalone provision that could be issued. There was defined conduct defined under existing law. A no trespass could not be issued unless the behavior fell into one of those categories that was defined elsewhere. This was a way to address those problems in a non-criminal way.

Councilor Bushor stated that some of the questions that have been raised were discussed. She tried to define what behaviors were included. They felt that the terms were so broad it would not be useful to include a laundry list. She understood the questions and believed that what was different was the no trespass order. The original ordinance included other forms of punishment that were intertwined. They tried to make this more clear and specific. She inquired if the request to delay action was to answer Councilor questions or to get input from the community. Councilor Brennan stated he believed that having more time would allow the community to have a clearer understanding of these vague terms. It would be a shame if a broad term ended up being abused. It would help with understanding about what they were moving towards. The Marketplace had weighed in, but the general public had not.

Councilor Bushor requested an explanation about how the Police Department would define and judge the term anti-social behavior. Police Chief Michael Schirling stated the term anti-social behavior was referenced in the legislative intent section of the ordinance but not in the definitions of what would warrant a trespass ordinance. The four things delineated there were what officers would use. The key one was disorderly conduct. There was a robust amount of case law that guided officers as to what constituted disorderly conduct. There were two categories. One was fighting that fell short of assault and the other was obstructing traffic by standing in the road. If this ordinance worked the way it had at the Library and at City Hall Park, it would reduce the need for action to be taken. There were very few arrests at the Library now because people did want to use it and therefore curtail inappropriate behavior. The same thing happened at City Hall Park in the last year. The same people who were causing problems were still present in the park but the behavior had been curtailed. In the first year, it had had the intended effect.

Councilor Hartnett requested an explanation of who will sit on the review board. He hoped that the law would be used as intended, but felt that the review board was an important component. Councilor Mason stated there would be three people designated by the Church Street Marketplace Commission. It would consist of one representative from the business community, one representative from the social services community, and one member of the general public. It was unknown how active the panel would be and membership would rotate. Councilor Hartnett inquired if the Howard Center would be the representative from the social service community. Councilor Mason stated that someone from the Howard Center or any other social service agency would be his interpretation.

Councilor Brennan inquired how many no-trespass tickets had been issued. Chief Schirling stated there had only been a couple dozen total. City Council President Shannon inquired what the time frame for that had been. Chief Schirling stated it had been about 18 months.

Councilor Tracy inquired if there had been an additional Street Outreach person in the last year. Chief Schirling stated it had been about 2.5 years since they added an evening person. There were 3.5 Street Outreach workers in the downtown area and one that worked full time out of the Police Department. Councilor Tracy stated it was important to understand what the existing tools were. He inquired what the current tools were that they use to deal with these issues. Chief Schirling stated they fit into the categories of prevention and education, outreach and intervention, alternative sanctions, and criminal prosecution. The Street Outreach team fell into the category of outreach and intervention and was most prevalent in the City core. There were some drug and alcohol outreach efforts through local social service agencies. There were many options and tools available for a community of this size. All of these areas were important to effectively deal with these issues. This was one more tool to prevent things from getting to the level of criminal prosecution. Councilor Tracy inquired if he felt that any aspects of this ordinance were geared towards restorative justice efforts. Chief Schirling stated this ordinance gave the respondent the opportunity to go through the restorative justice process to have the ticket voided and the impact mitigated.

The motion to postpone action failed by a vote of 1-12 with Councilor Brennan voting in favor.

Councilor Siegel stated she felt better having heard the discussion but there were two sticking points.

Councilors Siegel and Brennan made a motion to change the words “and inappropriate” to “unlawful behavior” and to strike clause 5 that referred to anti-social behavior.

Councilor Mason stated he was supportive of the amendment with the caveat that it did not impact the constitutionality of the ordinance. He requested an explanation from the City Attorney. Assistant City Attorney Gregg Meyer stated they would not impact the constitutionality.

Councilor Bushor requested they not strike the word behavior so the resolution read correctly. Councilor Kranichfeld stated they should renumber the items if 5 was stricken.

Councilor Dober stated he was concerned they were losing the bite of each statement. The elements of fear and intimidation needed to be included to protect any person who had those feelings going down Church Street. He was hesitant to do this on the floor because they spent a great deal of time reviewing the ordinance line by line.

Councilor Brennan stated these areas were significant for him in passing the ordinance. He wanted the Police to have the tools to address unlawful activities. He was concerned with these areas because they had the potential for an unchecked and unbalanced ability to move forward. It was important to note that there were people who might be zealous in their ability to dictate how others moved through the

community. He believed that removing these items would take care of the problems and was in favor of the amendment.

Councilor Dober inquired if removing anti-social behavior on the Marketplace would give the Police any authority to protect an individual who felt uncomfortable because of social norms. Chief Schirling stated the change would not affect enforcement capabilities but would impact the City Attorney's ability to uphold constitutional ground if there were a challenge to the ordinance. Assistant City Attorney Meyer stated there was no operational authority that came from the proposed ordinance. The only way someone could be issued a notice of trespass was if they participated in the prohibited activities listed in the ordinance. Removing those two provisions did not change that fact. Councilor Dober stated that removing those clauses did change the intent of the ordinance. He felt that the ordinance should be broad enough to help everyone in a situation where they felt uncomfortable. Assistant City Attorney Meyer stated when a Police Officer was called to a situation the individual must be violating one of the four prohibited activities to issue a notice of trespass in addition to ticketing them. The underlying concept was still expressed in the findings and purpose section even with those two portions stricken. Councilor Dober stated that his concern was that if they were challenged in Court, that portion of the reasoning would be removed. He felt they should do all they could for each situation by removing the sections about intent.

The motion to amend the ordinance passed by a vote of 11-2 with Councilors Dober and Hartnett voting against.

Councilors Dober and Siegel made a motion to call to question. The motion passed unanimously.

The motion to adopt the ordinance, as amended, passed unanimously.

4.01. COMMUNICATION: Gregg Meyer, Assistant City Attorney, re: Proposed Marketplace District No Trespass Ordinance

Councilors Kranichfeld and Aubin made a motion to waive the reading, accept the communication and place it on file. The motion passed unanimously.

4.1. (originally 3.20.) COMMUNICATION: Burlington Employees' Retirement System Board, re: Response to Tar Sands Resolution

Councilors Siegel and Brennan made a motion to waive the reading, accept the communication and place it on file.

Councilor Siegel stated she removed this from consent because she was looking for clarity about the next step. She was pleased to get this response in a timely manner. The original resolution requested that the Retirement Board examine pension fund investments overseas and remove investments from oil companies that profit from tar sands. It also requested they work with the State of Vermont Municipal Pension Board to find out how many municipal funds were invested in oil companies that profited from tar sands. The report was about the funds invested at the State level. She inquired what the best way to reach out to them about the funds invested at the City level. She suggested they request a meeting with VPIC to see if they consider divesting. That would be the next step and would likely require a future resolution.

Councilor Bushor stated there was a line saying that the assets controlled by BERS did not have any direct investments in tar sands oil.

Councilor Paul stated she was an alternate on the VPIC Board and attended some of their meetings. They were currently discussing removing fossil fuel stocks from their portfolio as a result of a pending bill. The

response was correct in that their contract stated they did not have control over that. There was a higher level examination at a state wide level. They would discuss this issue at their next meeting.

Councilor Siegel stated it was not clear to her if they were answering both questions. The statement that Councilor Bushor noted might be answering the first question.

Councilor Brennan stated that although Councilor Paul was not a voting member, perhaps she could bring the voice of the Council's intent to the State.

The motion passed unanimously.

5. COMMITTEE REPORTS (5 mins.)

Councilor Siegel stated that the Charter Change Committee met and looked at the two resolutions that had been referred to them regarding Commission Appointments and Guns. Action on Commission Appointments would be coming forward at the next meeting. The gun topic was moving at a slower pace and would be discussed at the next meeting. The Diversity and Equity Committee had been meeting bi-weekly. They were working on a strategic plan with an oversight body in place. They have hired a facilitator to help with the process. The Committee would be disbanding and creating another short term committee, as many of the members were expecting a short term process.

Councilor Brennan stated the Tax Abatement Subcommittee would be meeting and there were some important items that would be addressed.

6. COMMUNICATION: City Councilors, re: General City Affairs (oral)(10 mins.)

Councilor Brennan stated that he would like to acknowledge the passing of Dan Balon. His untimely death was shocking to him. In his first year on the City Council, he served as the task force chair for the School District. He worked with Dan daily to come up with the recommended strategic plan for the Schools. He has had positive conversations with the Mayor about the status of the Schools. There was a lot of work that needed to be done to recognize what was happening in the community and to find ways to move forward to create a welcoming community. City Council President Shannon called for a moment of silence.

Councilor Siegel read a letter from Suzie Comerford about the passing of Dan Balon. She stated that the Diversity and Equity Committee had discussed holding anti-racism trainings for City Council. It was necessary to have trust to do that type of deep personal work. Being a political body with people of different political backgrounds did not promote that. She encouraged Councilors to do this type of work.

Councilor Tracy stated their NPA would be meeting and holding a candidate forum. He had spoken with a constituent who was very excited about the work happening surrounding Moran. He spoke with him a week later and he seemed disappointed. The constituent had not submitted a proposal because he felt like it was too difficult and would not be considered without having big money behind him. That was not the idea they had hoped to give members of the public when they passed the PIAP and he hoped that they could find a way to make everyone feel that it was open to everyone.

Councilor Bushor stated the Ward 1NPA would be meeting and holding a candidates' forum. They would also discuss the Burlington School Budget.

7. COMMUNICATION: Mayor Weinberger, re: General City Affairs (oral)(5 mins.)

Mayor Weinberger acknowledged Dan Balon's tragic and untimely death. He stated he attended the wake and funeral service. The outpouring of emotion and support from the community was remarkable. He hoped and believed that his service and life in the community would have long lasting benefits for the community. He thanked Councilor Brennan for organizing a group to meet after the event.

The Public Investment Action Plan had begun after the resolution was passed at the last meeting. It was a new process and they were figuring some portions of it out as they went. The reaction that Councilor Tracy had mentioned had been reported back to CEDO. They were working to help people understand that the intention was not that big money and established teams were necessary to bring forward a concept that would be considered. They would be making sure this was clear at NPAs and other community forums.

He gave testimony in Montpelier last week on TIF legislation and districts. The House Ways and Means Committee requested that he and the Mayor of Winooski give input. They focused on questions about events past, current reforms, and extensions of the five year window to incur debt.

The monthly Department Head Meeting was held at Burlington City Arts and a presentation from the new curator from BCA occurred. He brought the "This Seat's Taken" exhibit to the City. It was an interesting discussion and was a form of anti-racism training.

Mayor Weinberger has also started having a monthly meeting with project managers throughout the City. This includes projects like the Champlain Parkway to block long sidewalk repairs. They were gathering to ensure those projects were moving forward in a coordinated way.

The Annual Report was almost complete and would be ready for Town Meeting Day. He thanked staff from his office for putting it together. This would be the first time the audited financial statements would be part of the Annual Report since 2006. This was a sign of the sustained improvement in the financial area of the City and he thanked the CAO.

His take home from the Audit was that there has been modest progress. He expects more improvement in next year's audit when the Administration has been in place longer, when New World is more in place, and when the Fiscal Stability comes through.

He invited others to attend a benefit for DJ A-Dog at Higher Ground. He has been civic minded and engaged. He led an awareness event to bring attention to the ballot items on the November ballot. He has been diagnosed with leukemia and will need a bone marrow transplant.

8. ADJOURNMENT

Without objection, City Council President Shannon adjourned the Regular City Council Meeting at 8:53 p.m.

Attest:

Lori Olberg, Licensing, Voting and Records Coordinator and Amy Bovee, Executive Secretary