

**** CITY COUNCIL WORKSESSION ****
CITY HALL, CONFERENCE ROOM 12
MONDAY, OCTOBER 5, 2009
6:00 P.M. TO 7:15 P.M.

PRESENT: City Attorney Schatz, CAO Leopold, Asst. CAO Pacy, BED General Manager Grimes, Sgt. Higbee, Assistant City Attorney Haesler, Chief O’Neil, Joseph E, McNeil, Esq., Councilors Kaplan, Paul, Keogh, Bushor, Dober (arrived at 6:32 p.m.), Davis (arrived at 6:38 p.m.), Decelles (arrived at 6:34 p.m.), Caldwell, Mulvaney-Stanak, Ellis, Berezniak, Shannon and Kehoe

ABSENT: Councilor Adrian

1. AGENDA

2. COMMUNICATION: Joseph E. McNeil, Esq., re: Collective Bargaining (oral)

* * * * **EXPECTED EXECUTIVE SESSION** * * * *

3. COMMUNICATION: Richard W. Haesler, Jr., Esq., Assistant City Attorney and Brian Pine, CEDO Assistant Director for Housing, re: Confidential Communication
Re: Pending Litigation (written)

* * * * **EXPECTED EXECUTIVE SESSION** * * * *

4. ADJOURNMENT

On a motion by Councilors Dober and Paul, the Council voted unanimously to adjourn the work session at 7:00 p.m.

Attest:

Lori Olberg, Licensing, Voting and Records Coordinator and Sue Trainor, Assistant to the CAO

REGULAR MEETING, CITY COUNCIL
CONTOIS AUDITORIUM, CITY HALL
MONDAY, OCTOBER 5, 2009
7:25 P.M.

PRESENT: Councilors Caldwell, Davis, Mulvaney-Stanak, Bushor, Kaplan, Adrian, Keogh, Shannon, Ellis, Kehoe, Berezniak, Paul, Dober and Decelles and Mayor Kiss

CITY ATTORNEY’S OFFICE: Ken Schatz, Richard Haesler, Jr.

CLERK/TREASURER’S OFFICE: Jonathan P.A. Leopold, Jr., Ben Pacy, Sue Trainor

PRESIDENT KEOGH PRESIDING:

1. AGENDA

On a motion by Councilors Adrian and Dober, the Council voted unanimously to amend the agenda as follows: remove from the consent agenda item 6.04. COMMUNICATION: Gene Bergman, Interim Code Enforcement Director, re: Pesticides; add to the consent agenda item 6.04. RESOLUTION: Authorization for Settlement of Pending Litigation (Board of Finance); note written material for consent agenda item 6.17. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance Minutes for September 14, 2009 with the consent action to “waive the reading, accept the communication and place it on file;” note written material for consent agenda item 6.18. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance Minutes for September 21, 2009 with the consent action to “waive the reading, accept the communication and place it on file;” note written material for consent agenda item 6.19. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance Minutes for September 29, 2009 with the consent action to “waive the reading, accept the communication and place it on file;” note corrected page 8 for consent agenda item 6.20. COMMUNICATION: Chris Burns, General Manager, Burlington Telecom, re: Annual report filed with the public service board- Cable- with the consent action to “waive the reading, accept the communication and place it on file;” add to the consent agenda item 6.24. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: DRAFT Report on the Results of an Experience Study of the Burlington Employees’ Retirement System Covering the Period July 1, 2003 through June 30, 2008 with the consent action to “waive the reading, accept the communication and place it on file;” add to the consent agenda item 6.25. COMMUNICATION: Kirsten Merriman Shapiro, Special Projects Manager, CEDO, re: Authorization to apply for a grant for the College Street Waterfront Access Project with the consent action to “waive the reading, accept the communication and place it on file;” add to the consent agenda item 6.26. RESOLUTION: College St. Waterfront Access Project – Downtown Transportation Improvement Fund Grant with the consent action to “waive the reading and adopt the resolution;” add to the consent agenda item 6.27. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: BCDC Minutes for September 21, 2009 with the consent action to “waive the reading, accept the communication and place it on file; add to the consent agenda item 6.28. COMMUNICATION: Amber Thibeault, Contract and Governmental Affairs Specialist, Burlington Telecom, re: Cable Service Quality Report for March 22, 2009-June 21, 2009 and Telephone Service Quality Report for April – June 2009 with the consent action to “waive the reading, accept the communication and place it on file;” add to the DELIBERATIVE agenda item 6.5. APPOINTMENT: Bob Kiss, Mayor, re: Parks & Recreation Director Appointment; add to the DELIBERATIVE agenda item 6.5.01. RESOLUTION: Establishing Pay Level for Parks and Recreation Director Mari Steinbach (Councilor Davis); remove from the consent agenda item 6.08. RESOLUTION: Authorization for the Execution and Acceptance of Loan Forgiveness and Borrowing Terms Related to ARRA Stormwater Improvement Projects (Board of Finance) and place it on the DELIBERATIVE agenda as item 6.6; remove from the consent agenda item 6.14. RESOLUTION: Authorize Implementation of Compensation Adjustments for Distribution Engineer and Director of Operations at Burlington Electric Department-McNeil Station (Councilors Bushor, Kaplan, Dober: Institutions & Human Resources Committee) and place it on the DELIBERATIVE agenda as item 6.7; add to the DELIBERATIVE agenda item 7.5. REPORT: Jonathan P.A. Leopold, Jr. CAO, re: Update on BERS Fund Assets & Liabilities.

2. PUBLIC FORUM

President Keogh opened the public forum at 7:33 p.m.

<u>Name</u>	<u>Ward/Affiliation</u>	<u>Subject</u>
Peter Potts	Chairman, Planning Commission	Quarterly Report
Kurt Wright	4	Burlington Telecom
Mary Jay Mallowney	4	Burlington Telecom

Roger Kilbourn	4	Burlington Telecom/Moran
Karen Maher	4	Burlington Telecom

There being no one further coming forward, President Keogh closed the public forum at 7:43 p.m.

3. COMMUNICATION: City Councilors, re: General City Affairs

Councilor Caldwell pointed out that military leave has affected a number of City employees. She wished them a safe return.

Councilor Mulvaney-Stanak expressed her appreciation to the Mayor for officiating at a family wedding and remarked on the Firehouse being a great place to hold a wedding.

Councilor Bushor informed the Council that she had attended the VLCT Annual Meeting and encouraged other Councilors to attend next year, noting that other than the Mayor, she was the only person that she saw from the Burlington area. She attended several informative meetings.

Councilor Davis remarked on the fact that October is Domestic Violence Awareness Month and he provided statistics relative to this issue. He applauded the work that Vermont Network Against Domestic Violence was doing.

Councilor Kaplan, as the City Council representative to the Burlington Food Council, discussed the recent meeting she attended. She was heartened by the work this group was focused on: food safety and food access.

Councilor Kehoe spoke of the Moran Center Open House. She congratulated CEDO and, in particular, Kirsten Merriman-Shapiro, for the work that was done at the Moran Plant. It made her feel very hopeful about the project.

Council President Keogh remarked on the Planning Commission's demonstration of the three-dimensional plan that Champlain College students devised. It is a tool that can show, among other things, the visuals of any downtown height changes.

4. COMMUNICATION: Mayor Kiss, re: General City Affairs

Mayor Kiss remarked on the appointment of Mari Steinbach as the new Director of Parks and Recreation in this evening's agenda. He also informed the Council that he had received new applications for the reopened Code Enforcement Director position and he hoped to have that position filled soon.

The Mayor spoke about the tour of the Moran Center, commenting on the work that had been done and the momentum in place to complete the project.

The Mayor then informed the Council and the public of Faye Lawes' retirement party and invited everyone to attend.

Finally, the Mayor spoke about the contact and communication that was ongoing with Burlington's sister cities and was pleased to note that the City was still connected to the world in a variety of ways.

5. COMMITTEE REPORTS

Councilor Shannon commented enthusiastically on the tour of the Moran Center, stating that it was easier now to see its potential. The Ordinance Committee met with members of the Fire Department and

Councilor Shannon was happy to report that single family homes, as well as the additional restrictions on outdoor grills, was removed from the Fire Ordinance. She noted that the Electricity Ordinance was referred to BED for their recommendations. The Committee, in reviewing the Noise Ordinance, has asked Karen Vastine and Chief Schirling to provide them with a proposal that was easier for the Community Justice Center to implement.

Councilor Adrian complimented the Administration for the hiring process put in place for the Code Enforcement Director and reported it was a fair and thorough process. He then stated that this meeting was the deadline for the Public Safety Committee to review the future of the Code Enforcement Office. He thought it was not appropriate to do so at this time.

Councilor Paul noted that the TEUC will be meeting this week to finalize the Transportation Plan.

6. CONSENT AGENDA

On a motion by Councilor Adrian, seconded by Councilor Kehoe, the Council voted unanimously to adopt the consent agenda, as amended, taking the following actions as indicated:

6.01. COMMUNICATION: Lori Olberg, Licensing, Voting & Records Coordinator, re:
Accountability List

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

6.02. COMMUNICATION: Lori Olberg, Licensing, Voting & Records Coordinator and Sue Trainor,
Assistant to the CAO, re: Minutes, City Council for Monday, May 18,
2009

*waive the reading, accept the communication, place it on file and adopt the minutes as received at the September 21, 2009 City Council Meeting

6.03. COMMUNICATION: Board of Health, re: Pesticide Ordinance Revisions

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

6.04. RESOLUTION: Authorization for Settlement of Pending Litigation (Board of Finance)

*waive the reading and adopt the resolution

6.05. ORDINANCE: HEALTH—PESTICIDE ORDINANCE REWRITE (Board of Health)
(1st reading)

*consider this 1st reading and refer to the Ordinance Committee

6.06. COMMUNICATION: Gene Bergman, Interim Director of Code Enforcement and Norm
Baldwin, Assistant Director of Public Works, re: Proposed Changes to
the Vacant Building Ordinance

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

6.07. ORDINANCE: BUILDINGS AND BUILDING CONSTRUCTION*ARTICLE III,
ABATEMENT AND REHABILITATION OF VACANT BUILDINGS
AND STRUCTURES AND DANGEROUS STRUCTURES* (Board of
Health)(1st reading)

*consider this 1st reading and refer to the Ordinance Committee

6.09. RESOLUTION: Livable Wage Calculation Review (Councilors Mulvaney-Stanak,
Caldwell, Davis)

*waive the reading and adopt the resolution

- 6.10. COMMUNICATION: Carol Weston, Capital Improvement Program, Department of Public Works, re: Contois Auditorium Sprinkler System
*waive the reading, accept the communication and place it on file
- 6.11. RESOLUTION: Authorization to Contract for City Hall Sprinkler System (Board of Finance)
*waive the reading and adopt the resolution
- 6.12. RESOLUTION: Correction of Authorization to Purchase and Financing of New Police Vehicles (Board of Finance)
*waive the reading and adopt the resolution
- 6.13. RESOLUTION: Authorization for Obstruction of Street and Metered Parking Spaces on Cherry Street (Board of Finance)
*waive the reading and adopt the resolution
- 6.15. COMMUNICATION: Michael E. Schirling, Chief of Police to All Personnel, re; Lieutenant Assignments – January 2010
*waive the reading, accept the communication and place it on file
- 6.16. COMMUNICATION: Peter L. Potts, Chair, Burlington Planning Commission, re: Update on Planning Commission Activities, July-September 2009
*waive the reading, accept the communication and place it on file
- 6.17. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance Minutes for September 14, 2009
*waive the reading, accept the communication and place it on file
- 6.18. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance Minutes for September 21, 2009
*waive the reading, accept the communication and place it on file
- 6.19. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance Minutes for September 29, 2009
*waive the reading, accept the communication and place it on file
- 6.20. COMMUNICATION: Chris Burns, General Manager, Burlington Telecom, re: Annual report filed with the public service board-Cable
*waive the reading, accept the communication and place it on file
- 6.21. COMMUNICATION: Chris Burns, General Manager, Burlington Telecom, re: Quarterly report filed with the public service board-Cable
*waive the reading, accept the communication and place it on file
- 6.22. COMMUNICATION: Chris Burns, General Manager, Burlington Telecom, Annual report filed with the public service board-Telephone
*waive the reading, accept the communication and place it on file
- 6.23. COMMUNICATION: Chris Burns, General Manager, Burlington Telecom, Quarterly report filed with the public service board-Telephone
*waive the reading, accept the communication and place it on file
- 6.24. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: DRAFT Report on the Results of an

Experience Study of the Burlington Employees' Retirement System
Covering the Period July 1, 2003 through June 30, 2008

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

6.25. COMMUNICATION: Kirsten Merriman Shapiro, Special Projects Manager, CEDO, re:
Authorization to apply for a grant for the College Street Waterfront
Access Project

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

6.26. RESOLUTION: College St. Waterfront Access Project – Downtown Transportation
Improvement Fund Grant (Board of Finance)

*waive the reading and adopt the resolution

6.27. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: BCDC Minutes for September 21,
2009

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

6.28. COMMUNICATION: Amber Thibeault, Contract and Governmental Affairs Specialist,
Burlington Telecom, re: Cable Service Quality Report for March 22,
2009-June 21, 2009 and Telephone Service Quality Report for April –
June 2009

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

6.5. APPOINTMENT: Bob Kiss, Mayor, re: Parks & Recreation Director Appointment

Councilor Davis made a motion, seconded by Councilor Paul, to approve the appointment. Councilor Kaplan stated that she would have appreciated the Human Resources Committee being given the opportunity to meet the candidate. Councilor Davis asked Steve Allen, Chair of the Parks and Recreation Commission, to speak about the process involved in the unanimous decision by the Commission to seek Mari Steinbach's appointment. Mr. Allen noted that the process was very inclusive and collaborative.

The motion then passed unanimously.

6.5.01. RESOLUTION: Establishing Pay Level for Parks and Recreation Director Mari Steinbach
(Councilor Davis)

Mayor Kiss explained that the compensation being requested for the new Director is consistent with the salaries of the Directors of Planning and Zoning, CEDO and Human Resources. Given Ms. Steinbach's twenty-one years of experience and extensive education, it was an appropriate salary on the pay range. He noted that she was taking a pay cut to accept this position.

Councilor Davis made a motion, seconded by Councilor Paul, to waive the reading and adopt the resolution. In response to questions from Councilor Adrian about the compensation, Mayor Kiss noted that the previous Parks and Recreation Director received the benefit of a car as part of his position and this was not being recommended for the current Director.

The motion to waive the reading and adopt the resolution passed by a vote of 12 to 2 with Councilors Berezniak and Adrian voting against.

6.6. (was 6.08.) RESOLUTION: Authorization for the Execution and Acceptance of Loan Forgiveness
and Borrowing Terms Related to ARRA Stormwater Improvement
Projects (Board of Finance)

Councilor Bushor made a motion, seconded by Councilor Kehoe, to waive the reading and adopt the resolution. Councilor Bushor explained she wanted it noted that there will be no increased costs to the taxpayer as the costs for loan repayment will be absorbed by the fee. The motion passed unanimously.

6.7. (was 6.14.) RESOLUTION: Authorize Implementation of Compensation Adjustments for Distribution Engineer and Director of Operations at Burlington Electric Department—McNeil Station (Councilors Bushor, Kaplan, Dober: Institutions & Human Resources Committee)

Councilor Bushor made a motion, seconded by Councilor Kehoe, to waive the reading and adopt the resolution. Councilor Bushor explained that Councilor Dober did not support the change in compensation in the McNeil Director of Operations position. Councilor Dober had concerns that if the position had been vacant since 2006 it may not be necessary to fill. Additionally, he stated the position had not been advertised in years. He then made a motion to split the resolution. No second or vote was taken on this motion. Councilors Caldwell, Berezniak and Adrian stated their support of the resolution.

Council President Keogh then requested a vote to support the resolution including the Senior Distribution Engineer position but excluding the Director of Operations. The motion passed unanimously.

Council President Keogh then requested a vote to support the resolution excluding the Senior Distribution Engineer position and including the Director of Operations. The motion passed by a vote of 12 to 2 with Councilors Dober and Decelles voting against.

At this time City Attorney Schatz suggested that item 7.5 be moved and placed before item 7 due to the potential of moving into executive session regarding item 7. Councilor Shannon made a motion to move item 7.5, seconded by Councilor Bushor. The motion passed unanimously.

7.5. REPORT: Jonathan P.A. Leopold, Jr. CAO, re: Update on BERS Fund Assets & Liabilities

CAO Leopold briefed the Council of two items of significance relative to the Burlington Employees Retirement System. At the request of Councilor Paul, the actuaries completed their review of the assumptions that were being used. The liabilities for the System as of June 30, 2008 was approximately \$2 million less than the valuation report that had been used. Additionally, the fund received approximately \$6 million more in assets than previously projected due to a good financial quarter.

Councilor Mulvaney-Stanak asked how the State's discussion about the Teacher's Retirement Plan would affect the City's retirement money. CAO Leopold explained that the State was looking at investing more conservatively in order to eliminate fluctuations which could reduce the rate of return on investments. However, the 10% of the fund that the Retirement Board is investing in alternative funds has been providing a very good rate of return.

Councilor Paul expressed her appreciation for the work that was done on the study.

7. RESOLUTION: Authorization for Burlington Telecom to Seek Relief from Condition 60 Of Its Certificate of Public Good (Board of Finance)

Councilor Kehoe made a motion to move into executive session to discuss a matter of pending litigation, premature disclosure of which could place the City at a substantial disadvantage. Councilor Adrian seconded the motion and then asked if the motion was debatable. City Attorney Schatz stated it was. Councilor Adrian then noted the filing documents that were provided to the Council did not appear to be under court seal. City Attorney Schatz agreed the documents were public, however, the discussion of strategy or other aspects of the City's approach to litigation were appropriate for executive session.

Councilor Adrian then stated his belief that there were a number of questions that the Council should be able to ask and therefore he did not agree with going into executive session. City Attorney Schatz again stated that the City was in pending litigation with the PSB and some matters should be addressed in executive session. Councilor Caldwell agreed that as much public discussion as possible was desired. Councilor Kehoe then withdrew her motion which was friendly to the seconder.

Councilor Bushor moved to waive the reading and adopt the resolution, seconded by Councilor Shannon. Councilor Bushor then asked the CAO to respond to questions from the public as to the use of taxpayer money. She then explained that the Council, through executive session and prior work sessions, were provided information relative to this resolution. She noted that all Council resolutions had a beginning, middle and end and she thought this resolution could be voted on at this meeting.

Councilor Ellis reported he had received a number of phone calls following newspaper articles about money being used to support Burlington Telecom. He stated he felt he was not fully informed about the way the financing was being done. He believed the Charter language was not being honored.

Councilors Dober and Caldwell asked that CAO Leopold respond to questions. CAO Leopold started by explaining what pooled cash was, noting it was an internal banking program operated by the Clerk/Treasurer's Office. He outlined how the costs of each fund, 50 in total, are accounted for. With the exception of the School Department and Burlington Electric Department, these funds do not have separate bank accounts. Any money that has gone into these funds, other than normal transactions, were approved by the Board of Finance and City Council. Funds were charged and credited interest and were noted in each of the statements for the funds. He then outlined the Koch Financing and CitiCapital financing, noting that the Board of Finance was informed two to three times a month following the CitiCapital financing because the CitiCapital funds were being quickly exhausted.

He also noted that less than \$25 million in the pooled cash was taxpayer money and that Burlington Telecom paid interest on the money used in the pooled cash. He explained that the City was working on determining alternative financing. The CAO further stated his job was to manage the pooled cash of the City and that this was not the first time a department had a deficit, with Burlington Electric, Water and Wastewater having deficits over the years. This resolution only asked the Public Service Board to alleviate the restriction on reimbursing pooled cash within 60 days of its use and to not request this would put Burlington Telecom and the City at risk.

Following a question from Councilor Dober, City Attorney Schatz explained this resolution was reiterating a prior resolution that the Council passed several years ago authorizing Burlington Telecom and the Administration to negotiate with other towns with respect to expansion, with the understanding being that any contracts must return to the Council for final approval. The resolution also confirmed the authorization to submit the amended petition to the Public Service Board. It did not address broader financing issues.

Councilor Shannon asked why the reiteration of the expansion proposal was necessary and asked City Attorney Schatz to explain the authority of the City Council as she was unclear about what items needed Council approval. City Attorney Schatz stated that Burlington Telecom felt it would be appropriate to receive confirmation of this direction. City Attorney Schatz stated that with pending matters of litigation it was the practice to bring these matters to the Council for authorization to proceed. Following additional questions, City Attorney Schatz stated that the Council did have oversight authority over Burlington Telecom and that historically it had been the Board of Finance that had served that function. Further, he noted the discussion of what role the Council wanted to have with Burlington Telecom should be held in public session. CAO Leopold followed up by saying the Council had the same authority over Burlington Telecom as it did for any department other than BED.

Councilor Paul asked why the Council was not informed when the City started using the pooled cash. CAO Leopold stated that Burlington Telecom had been using pooled cash since inception. Councilor Kehoe stated that her understanding of the purpose of this resolution was more a matter of housekeeping, but now believed it was requesting the elimination of the 60-day provision in the CPG, which she did not believe the Council felt was appropriate. CAO Leopold explained that it was housekeeping following up on discussions the Council has had over the last month and a half. Further, this need was considered to be temporary because at some point Burlington Telecom must be self-sufficient enough to pay off its debt and the markets should become more reasonable in their interest rates. Councilor Kehoe asked if it were possible that the amount of outstanding debt to the City could be higher than it is currently to which CAO Leopold responded in the affirmative.

Councilor Kaplan asked CAO Leopold what would happen if Burlington Telecom failed. CAO Leopold explained that he had asked a consultant if BT continued to be a good investment. He had been advised by this consultant that the informal value of the system would be between \$50 and \$75 million. Councilor Kaplan again asked about repayment of the loans if Burlington Telecom failed. CAO Leopold stated the recourse would be to sell the company, however, the value of BT was not in being closed. The greater value of the company came from expanding the business.

Councilor Berezniak expressed his excitement about the potential of expansion of Burlington Telecom. He then asked for a more formal appraisal of the business in order to substantiate the value. CAO Leopold stated a formal valuation would be done when the City refinanced the venture. Councilor Caldwell noted her support of Burlington Telecom and was proud that the City owned its own cable company, providing services that many others in the state did not have.

Council President Keogh called a five minute recess at 10:00 p.m. The Council returned at 10:08 p.m. Councilor Caldwell then stated that the change in the CPG was only for the expansion of cable television services, which City Attorney Schatz confirmed.

Councilor Adrian then asked if the CAO knew the amounts of funds removed from the pooled cash over the last three months. CAO Leopold replied that the revenue was sufficient to cover the operating and interest costs. Councilor Adrian then asked when a large amount of the \$16 million was removed from the fund. CAO Leopold replied that the cash was paid out over a period of time, slowly increasing the debit. It was not removed as a large sum. Councilor Adrian asked if the Council was ever asked for approval going over the 60 day period. CAO Leopold stated it was not and that he was not aware of Condition 60 until August of 2008. Councilor Adrian again asked why the Council was not notified of the use of the pooled cash. CAO Leopold stated it was an ongoing function of the Clerk/Treasurer's Office, one which also allowed for the advancement of money to other departments, including BED. The Board of Finance was advised of the requirement for refinancing and, were it not for the markets collapsing, additional financing would have been acquired and Condition 60 would not have been an issue. Councilor Adrian then asked about a Charter provision which required that prior to any monies being spent for an enterprise like BT, that the City would ensure that those monies would not expose taxpayers to liability. City Attorney Schatz stated the specific section Councilor Adrian was referring to applied to the Public Service Board, whose responsibility was ensuring that no losses be covered by City taxpayers and City Attorney Schatz believed the City was in compliance with that provision. City Attorney Schatz stated Condition 60 did allow for the use of pooled use, with the stipulation being that the monies must be returned within sixty days.

Councilor Paul asked if the CAO knew about Condition 60 a year ago and if so, why it was not reported to the Council when the amount pulled from the cash pool was less. CAO Leopold's understanding was the Charter provision stating that taxpayers would not be at risk based on the valuation of the business. He also noted that the Public Service Department was informed and were asked for advice.

Councilor Mulvaney-Stanak reminded Councilors of the language in the resolution stating that this was asking for temporary relief from Condition 60, which was confirmed by CAO Leopold. She then stated her opinion that the mission of Burlington Telecom was to provide an alternative for high speed, broadband, internet access.

Councilor Kaplan made a motion to suspend the rules and continue the meeting. The motion was seconded by Councilor Adrian. The motion passed by a vote of 13 to 1, with Councilor Davis voting against. Councilor Kaplan then talked about the technology of fiber to home and the limitless possibilities of this product. However, she believed this review of Burlington Telecom was important. She then asked the Mayor and the General Manager of Burlington Telecom if they knew about the restrictions within Condition 60. City Attorney Schatz stated that that issue should be discussed in executive session due to the pending litigation.

During Councilor Adrian's follow up comments, Councilor Decelles called for a point of order and then asked that the Council consider going into executive session. He noted the possible attendance of a Comcast lobbyist in the audience. Council President Keogh did not consider the point of order well taken. Councilor Adrian then stated it was important for the residents of Burlington to know what the Mayor knew and when he knew it. City Attorney Schatz stated again it was a matter that should be discussed in executive session. Councilor Adrian asked the question again, with the same response being provided by City Attorney Schatz. At this point Councilor Bushor asked for a point of information, requesting that the President of the Council rule on whether or not this information should be discussed in executive session. She was very uncomfortable continuing this conversation when advice from counsel was to discuss this information in executive session. The Council President then took the advice of City Attorney Schatz stating the issue was a matter for executive session.

Councilor Shannon then made a motion, seconded by Councilor Decelles, to go into executive session at 10:45 p.m. The motion passed by a vote of 12 to 2, with Councilors Adrian and Berezniak voting against.

Councilor Dober made a motion, seconded by Councilor Decelles to come out of executive session at 12:00 a.m. Councilor Adrian then made a motion to postpone the decision on this resolution until the meeting of November 9, 2009, seconded by Councilor Kaplan. Councilor Decelles noted his opposition to postponement and reminded the Council of the amendment that was considered friendly by the maker. He stated that he had been given information for hours about Burlington Telecom and the Board of Finance would continue to have discussions about the financing of Burlington Telecom. He encouraged Councilors to attend work sessions and Board of Finance meetings if they were concerned.

Councilor Shannon asked for a point of order noting that the motion on the table was to postpone the decision to the November 9th meeting. The Council President stated the amendment had not been voted on by the Council. Councilor Bushor said that when she introduced the resolution she had said that the amendment being passed to all Councilors was considered friendly. Councilor Decelles then asked if it would be appropriate to offer that amendment now. Council President Keogh said it was not. Councilor Decelles then called the question on Councilor Adrian's motion to postpone. Councilor Caldwell seconded the motion. The motion passed unanimously.

Councilor Decelles then asked for a roll call. The vote then failed by a vote of 12 to 2 with the voting as follows:

Ayes: Berezniak, Adrian

Nays: Decelles, Dober, Paul, Kehoe, Ellis, Shannon, Keogh, Kaplan, Bushor, Mulvaney-Stanak, Davis, Caldwell

Councilor Shannon then asked to offer an amendment to the resolution which requested that the Board of Finance review Burlington Telecom financials and the City's use of pooled cash and report back to the

Council no later than November 16th. Additionally, that the CAO would provide quarterly reports to the Council on the dollar amount of BT's position in the pooled cash. Councilor Bushor, as the maker of the first amendment found both friendly.

The motion passed by a vote of 13 in favor with 1 opposed, Councilor Adrian voting against.

8. ADJOURNMENT

On a motion by Councilors Kehoe and Paul, the Council voted unanimously to adjourn the meeting at 12:15 a.m.

Attest:

Lori Olberg, Licensing, Voting & Records Coordinator and Sue Trainor, Assistant to the CAO