

**** CITY COUNCIL WORKSESSION ****
CITY HALL, CONFERENCE ROOM 12
MONDAY, DECEMBER 14, 2009
5:00 P.M. TO 7:00 P.M.

PRESENT: All Councilors

- 1. AGENDA
- 2. PRESENTATION: Moran Redevelopment Finances (including discussion of New Markets Tax Credits and Tax Increment Financing)
- 3. COMMUNICATION: CEDO, re: Moran Tenant Negotiations (oral)

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

- 4. COMMUNICATION: Bill Ellis, Esq., re: Confidential Report on Negotiations with the Public Service Department (oral)

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

- 5. ADJOURNMENT

LOCAL CONTROL COMMISSION

CONTOIS AUDITORIUM, CITY HALL
MONDAY, DECEMBER 14, 2009
7:15 P.M.

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

CITY ATTORNEY’S OFFICE: Ken Schatz

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

PRESIDENT KEOGH PRESIDING:

- 1. AGENDA

Commissioner Davis, seconded by Commissioner Dober, made a motion to adopt the agenda. The motion passed unanimously.

- 2. CONSENT AGENDA

On a motion by Commissioners Davis and Berezniak, the Local Control Commission voted to adopt the consent agenda, thus taking the following actions as indicated:

- 2.01. EXTENSION OF HOURS AND SERVICE (**one day only**):

Benjy Adler, Owner, The Skinny Pancake, 60 Lake Street, Thursday, New Year’s Eve
*waive the reading, accept the communication, place it on file, approve the extension of hours and service for The Skinny Pancake for New Year’s Eve only

- 3. FIRST CLASS RESTAURANT LIQUOR LICENSE APPLICATION (**2009-2010**):

Saint Nicholas, LLC, d/b/a Sky Burgers, 161 Church Street

Commissioner Davis made a motion, seconded by Commissioner Dober, to approve the First Class Restaurant Liquor License for Sky Burgers pending the Fire Marshal approval. The motion passed unanimously.

4. ADJOURNMENT

On a motion by Commissioners Davis and Dober, the Local Control Commission voted unanimously to adjourn at 7:43 p.m.

Attest:

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

ADJOURNED MEETING, CITY COUNCIL
MONDAY, DECEMBER 14, 2009
7:43 P.M.

PRESENT: See above

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 6.15. COMMUNICATION: Lieutenant Kristian Carlson, Unit Supervisor, Burlington Police Department, Street Crimes Unit (SCU), re: Operational Overview *Six Month Executive Summary May-October 2009* and place it on the January 4, 2010 City Council Deliberative Agenda; remove from the consent agenda item 6.18. COMMUNICATION: David E. White, AICP, Director of Planning & Zoning, re: Open Government – Dept. of Planning and Zoning Resolution and place it on the January 4, 2010 City Council Deliberative Agenda; remove from the consent agenda item 6.19. COMMUNICATION: David E. White, AICP, Director of Planning & Zoning, re: Open Government Committee Report – Dept. of Planning and Zoning Update and place it on the January 4, 2010 City Council Deliberative Agenda; add to the consent agenda item 6.22. COMMUNICATION: Jarrod Becker, Business Manager, Northern Vermont Resource Conservation & Development Council, re: Appropriation of \$75.00 with the consent action to “waive the reading, accept the communication, place it on file and refer to the Board of Finance;” remove from the agenda item 7.0. PRESENTATION: Clem Nilan, General Manager, City Market/Onion River Co-op, re: City Market Update (up to 10 mins.) and place it on the January 4, 2010 City Council Deliberative Agenda; note **revised** version for agenda item 12. RESOLUTION: Policies for the Audit, Management Letter and Response to Management Letter (Councilor Paul); add to the agenda item 12.5. COMMUNICATION: Karen Paul, Chair, Ad Hoc Committee on the BT Audit, re: Findings of the Ad Hoc Committee on the BT Audit; add to the agenda item 13.5. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Refinancing Burlington Telecom; add to the agenda item 13.6. RESOLUTION: Authorization to Pursue Burlington Telecom Financing (Councilors Davis, Bushor); per Councilor Mulvaney-Stanak add Councilors Davis, Berezniak, Caldwell and Ellis as co-sponsors to agenda item 10. RESOLUTION: Moran Plant Project – Responsible Contracting (Councilor Mulvaney-Stanak).

2. PUBLIC FORUM

President Keogh opened the public forum at 7:47 p.m.

<u>Name</u>	<u>Ward/Affiliation</u>	<u>Subject</u>
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Minutes, City Council for December 14, 2009		3
David Maher	4	Burlington Telecom
David Grossnickle	4	Burlington Telecom
Larry Walters	4	Supported Smoking Prohibition
Tom Papp	4	Burlington Telecom
Peter Jacobsen	Vermont Cares	Supported item 9
Roger Cole	3	Burlington Telecom
Bea Bookchin	6	Burlington Telecom
Mariah Sanderson		Supported Smoking Prohibition
Benjamin Weber	6	Burlington Telecom
David Byman		Supported Smoking Prohibition
Dan Feeney	6	Burlington Telecom
Kurt Wright	4	Burlington Telecom

There being no one further coming forward, President Keogh closed the public forum at 8:18 p.m.

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

Councilor Kaplan urged all to attend the COTS vigil being held in front of City Hall. She stated her appreciation that people were participating and attending the Council meetings in order to speak their mind on an issue they felt strongly about and, finally, because this was Councilor Mulvaney-Stanak's last night on the Council, expressed her appreciation to the Councilor Mulvaney-Stanak for her work on the Council over the past months.

Councilor Dober informed the public of the upcoming Ward 4/7 NPA meeting. Additionally, he noted the upcoming budget hearing of the School Board. He then expressed his appreciation to Mr. Pomerleau and the Parks and Recreation Department for the recent Holiday Party event.

Councilor Ellis noted the benefits that Councilor Mulvaney-Stanak provided in her service to the Council and wished her well.

Councilor Caldwell informed the community of the rally at the State House on January 6, 2010 to call for Health Care as a Human Right and encouraged people to attend.

Councilor Paul noted that the truck weight allowance had recently changed and trucks would no longer be allowed on Willard Street. She expressed her appreciation to both of the Senators and the Congressional offices for their help in getting this legislation passed.

Councilor Bushor expressed her regret that Councilor Mulvaney-Stanak was leaving the Council, noting the valuable insights that she had provided throughout her tenure on the Council.

Councilor Mulvaney-Stanak expressed her appreciation to Mr. Pomerleau and the employees of the Parks and Recreation Department for the work they did regarding the Holiday Party.

Councilor Adrian spoke of the benefit of having opposing ideological differences and hoped that residents would continue to participate in City government when they have concerns.

Councilors Kehoe, Berezniak and Davis also expressed their appreciation of Councilor Mulvaney-Stanak's leadership, dedication and commitment.

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

Mayor Kiss announced the hiring of William Ward as the Code Enforcement Director after more than a six month process which included the participation of over 30 people from the community. He also requested support from the Council to allow Piper Jaffray to begin to find funding for Burlington Telecom. He asked that the Council work together to ensure the future success of Burlington Telecom.

5. COMMITTEE REPORTS

Councilor Shannon reported that David Berezniak was appointed to replace Councilor Mulvaney-Stanak on the Ordinance Committee. Councilor Berezniak announced that the Community Development Committee would be meeting to discuss the laptop/wi-fi resolution. Councilor Bushor noted that the HR Committee would be meeting to discuss the City's Domestic Partner policy.

Councilor Decelles reported that the Charter Change Committee met and asked Councilor Adrian to report on the meeting. Councilor Adrian stated the Committee reviewed the appointment of Department Heads and Commission involvement. By a vote of 2 in favor, 0 opposed, the Committee decided to request the City Attorney draft a resolution for the Council to vote on. He believed the matter would be done in time for the residents to vote on in March.

6. CONSENT AGENDA

On a motion by Councilors Adrian and Kaplan, the Council voted unanimously to adopt the agenda, as amended, thus 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. RESOLUTION: Supplemental Budget Resolution #2010-02 Appropriation Changes to
Assessor's Budget Program #107014 (Board of Finance)

*waive the reading and adopt the resolution

6.03. RESOLUTION: Authorization for Land Purchases and Relocation Services in
Anticipation of AIP Grant Funds for Burlington International Airport
(Board of Finance)

*waive the reading and adopt the resolution

6.04. RESOLUTION: Authorization for Land Purchase and Relocation Services Included in
Airport Improvement Program Grant AIP-74 for Burlington International
Airport (Board of Finance)

*waive the reading and adopt the resolution

6.05. RESOLUTION: Appointment of Ward Six Ward Clerk (Councilors Kehoe, Paul)

*waive the reading and adopt the resolution

6.06. RESOLUTION: Supplemental Budget Resolution #2010-4 Planning & Zoning Flood
Insurance Rate Map (Board of Finance)

*waive the reading and adopt the resolution

6.07. RESOLUTION: Supplemental Budget Resolution #2010-5 Community Development Specialist Position Transfer to Police Department (Board of Finance)

*waive the reading and adopt the resolution

6.08. COMMUNICATION: Lori Olberg, Licensing, Voting & Records Coordinator and Sue Trainor, Assistant to the CAO, re: Minutes, City Council for June 15, 2009

*waive the reading, accept the communication, place it on file and adopt the minutes as received at the December 7, 2009 City Council Meeting

6.09. COMMUNICATION: Lori Olberg, Licensing, Voting & Records Coordinator and Sue Trainor, Assistant to the CAO, re: City Council Minutes for June 22, 2009

*waive the reading, accept the communication, place it on file and adopt the minutes as received at the December 7, 2009 City Council Meeting

6.10. COMMUNICATION: Lori Olberg, Licensing, Voting & Records Coordinator and Sue Trainor, Assistant to the CAO, re: Minutes, City Council Meeting of July 13, 2009

*waive the reading, accept the communication, place it on file and adopt the minutes as received at the December 7, 2009 City Council Meeting

6.11. COMMUNICATION: Lori Olberg, Licensing, Voting & Records Coordinator and Sue Trainor, Assistant to the CAO, Minutes, City Council Meeting, August 10, 2009

*waive the reading, accept the communication, place it on file and adopt the minutes as received at the December 7, 2009 City Council Meeting

6.12. COMMUNICATION: Bob Kiss, Mayor, re: BT Action Items—Letter of Intent Agreement Piper Jaffray(**distributed at the December 3, 2009 Special City Council Meeting**)

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

6.13. COMMUNICATION: Bob Kiss, Mayor, re: BT Action Items—Authorization to Pursue Burlington Telecom Financing and Appointment of an Ad-Hoc Committee to Recommend External Consultant(s) on The Burlington Telecom Refinancing Proposal and to Serve as Liaison to the Council on Litigation Pending before the Public Service Board Resolutions (**distributed at the December 7, 2009 City Council Meeting**)

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

6.14. COMMUNICATION: Amber Thibeault, Contract and Governmental Affairs Specialist, Burlington Telecom, re: Federal Communications Commission (FCC) Petitions and CPG Compliance (**distributed at the December 7, 2009 City Council Meeting**)

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

6.16. COMMUNICATION: Karen Paul, Ward Six Councilor, re: Farmers Market Expansion Resolution (**distributed at the December 7, 2009 City Council Meeting**)

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

6.17. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance December 7, 2009 Minutes of Meeting

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

6.20. COMMUNICATION: Karen Lafayette & Erhard Mahnke, Legislative Liaisons, re: 2009

Burlington Legislative Review

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

6.21. COMMUNICATION: Benjy Adler, Owner, The Skinny Pancake, re: New Year's Eve Request-Dancing-

(See Local Control Commission consent agenda item 2.01)

*waive the reading, accept the communication, place it on file and approve the New Year's Eve Request for dancing at the Skinny Pancake—no more than 46 people at one time in the establishment—

6.22. COMMUNICATION: Jarrod Becker, Business Manager, Northern Vermont Resource Conservation & Development Council, re: Appropriation of \$75.00

*waive the reading, accept the communication, place it on file and refer to the Board of Finance

8. COMMUNICATION: Tom Buckley, BED & Larry Kupferman, CEDO, re: Establishment of a Clean Energy Assessment District

Mr. Buckley, Mr. Kupferman and a representative of Vermont Energy Investment Corporation made a presentation to the City Council about establishing a Clean Energy Assessment District. It was the hope that this item would be brought to City residents at the upcoming March election.

Lengthy discussion ensued with questions from Councilors on the risks and benefits of this program.

8.01. RESOLUTION: March 2, 2010 Annual City Meeting—Referendum Re Clean Energy Assessment District (Councilors Paul, Keogh, Caldwell: Transportation, Energy, Utilities Committee)

Councilor Paul made a motion, seconded by Councilor Shannon, to waive the reading and adopt the resolution. She then read the ballot language into the record. The motion passed by a vote of 12 to 2, with Councilors Dober and Decelles voting against.

9. RESOLUTION: AIDS Awareness and Blood Safety on World AIDS Day (Councilors Mulvaney-Stanak, Davis, Caldwell, Paul, Adrian, Berezniak, Bushor, Keogh, Kaplan)

Councilor Mulvaney-Stanak made a motion, seconded by Councilor Caldwell, to waive the reading and adopt the resolution. She outlined the fact that the number of individuals in the United States with AIDS/HIV continued to rise. She then acknowledged her appreciation to Vermont Cares for their leadership and dedication.

Both Councilors Kaplan and Bushor spoke to this issue. The motion then passed unanimously.

10. RESOLUTION: Moran Plant Project – Responsible Contracting (Councilor Mulvaney-Stanak)

Councilor Mulvaney-Stanak made a motion, seconded by Councilor Caldwell, to waive the reading and adopt the resolution.

She explained that she brought this resolution forward in order to request that contractors pay appropriate wages to their employees and follow appropriate labor practices. Councilor Ellis noted his support for this resolution stating he viewed it as a matter of fairness.

Councilor Dober proposed an amendment removing “and retirement” from the resolution. The amendment was not considered friendly by the maker of the resolution. The amendment was then seconded by Councilor Decelles. Councilor Mulvaney-Stanak explained that the resolution uses the term

“recommends” and does not require. Councilor Ellis then spoke about his belief that the resolution, including a retirement benefit, merely demonstrated the City’s desire to see contract employees treated fairly. Councilor Davis also noted his support for the full resolution. The amendment failed by a vote of 12 to 2 with Councilors Dober and Decelles voting in favor. The resolution then passed unanimously.

11. RESOLUTION: Supplemental Budget Resolution #2010-03 Payments in Lieu of Taxes/ BT Connectivity Services (Board of Finance)

Councilor Davis made a motion, seconded by Councilor Decelles, to waive the reading and adopt the resolution. The motion passed by a vote of 12 to 2, with Councilors Kaplan and Adrian voting against.

12. RESOLUTION: Policies for the Audit, Management Letter and Response to Management Letter (Councilor Paul)

Councilor Paul made a motion, seconded by Councilor Berezniak, to waive the reading and adopt the revised version of the resolution. Councilor Paul stated that this resolution was written to develop policies and protocols for the City’s annual audit and audit documents. She stated that she did not believe there were tight controls over the response to the management letter and noted there were repeated deficiencies in reports from one year to the next. Therefore, she felt it was appropriate to require certain procedures following the receipt of the audit.

Following comments from Councilors Davis, Bushor and Shannon and amendments being made to the resolution, the motion to waive the reading and adopt the resolution, as amended, passed unanimously.

- 12.5. COMMUNICATION: Karen Paul, Chair, Ad Hoc Committee on the BT Audit, re: Findings of the Ad Hoc Committee on the BT Audit

Councilor Paul made a motion to waive the reading, accept the communication and place it on file. The motion was seconded by Councilor Shannon and approved unanimously.

- 12.6. RESOLUTION: Appointment of Blue Ribbon Committee to Recommend External Consultant (s) on Burlington Telecom Viability, Finance Structure Options and to Serve as Liaison to the Council on Litigation Pending Before the Public Service Board (Councilors Shannon and Kehoe)

Councilor Shannon made a motion, seconded by Councilor Kehoe, to waive the reading and adopt the resolution. Councilor Shannon noted that this resolution originally came about as a result of a proposal from the Mayor and had been expanded to include additional outside resources.

Councilor Caldwell asked how this group would interact with VTAC, considering that VTAC had just been authorized to have more authority with Burlington Telecom. She also offered an amendment which stipulated that the Mayor would be involved in the selection of the participants. This amendment was not considered friendly by the maker of the resolution. Councilor Mulvaney-Stanak seconded the motion. Councilor Shannon noted that the process needed to move forward quickly and that no other names had been offered to participate in this Task Force. Councilor Bushor noted that because of the schism that had occurred and because she had no notification of the meeting, she felt it was important to include the Mayor in the selection process. Councilor Kehoe stated she was concerned that the process would be delayed if they included the Mayor in the selection process.

Mayor Kiss explained that at their meeting several days ago, he had suggested four rather than three Councilors be on the Committee, one from each of the political parties. Further, he had suggested that Council President Keogh ask other Councilors at this meeting whether they had names of qualified candidates, with the final decision being made on December 16th. He felt that this was a not a fair process in the way the participants were being selected; further, he did not understand the concern of a delay of

two days and was disappointed in the process. Councilor Shannon argued that the Mayor had been invited to be on the Committee and he had declined.

Councilor Davis stated he could not vote on a resolution without knowing who the people were that were being asked to participate. He also stated that representation from all parties was important, allowing for a broad view of opinions. Councilor Mulvaney-Stanak expressed her opinion that this amendment was a reasonable request and she hoped that people could support it and move on to the bigger issues that the Council had to work on. Councilor Adrian stated his belief that politics and political opinions should not be of concern when attempting to get representation on the Committee.

Councilor Kehoe stated that the list of candidates for the Committee came as a result of a brainstorming meeting and even the candidates did not know they were being considered. Therefore, it was not included in the resolution as it needed to remain private until the individuals were contacted.

The vote to adopt the amendment failed by a vote of 10 to 4 with Councilors Bushor, Mulvaney-Stanak, Davis and Caldwell voting to adopt.

At this time, Councilor Adrian made a motion to suspend the rules and continue the meeting past 10:30 p.m. The motion passed by a vote of 12 to 2 with Councilors Adrian and Kaplan voting against.

Councilor Bushor noted her concerns with the resolution and expressed her disappointment about being excluded from the process of selection of candidates. Councilor Caldwell asked City Attorney Schatz whether these meetings needed to be warned to which he responded they did. Following additional questions, City Attorney Schatz noted the Committee would continue to exist until the Council decided otherwise. Councilor Caldwell then spoke about her disapproval of the lack of public process that took place in the selection of the committee members, with no warning and no public notice.

Councilor Mulvaney-Stanak outlined the various committees that have recently been created or authorized to oversee Burlington Telecom and she was concerned that this was another layer and duplication to the process. Confidentiality was of major concern to her as well. Councilor Decelles, outlining the various requests within the resolution for information, believed there was no need to request public input into the process. He then called the question, seconded by Councilor Berezniak. The motion passed unanimously.

Councilor Shannon asked for a roll call to be taken. All Councilors voted aye. The motion passed unanimously.

13. RESOLUTION: Burlington Telecom – Request for Proposal to Refinance Burlington Telecom’s Debt (Councilors Adrian, Berezniak, Kehoe, Decelles)

Councilor Adrian made a motion, seconded by Councilor Decelles, to waive the reading and adopt the resolution. Councilor Adrian explained his reasoning for the passage of this resolution as being the ability to find other options for refinancing. While he understood there was a payment due, he felt due diligence was appropriate in this matter.

Councilor Bushor noted her concern that, in fact, a payment was due and the resolution had no timeline or way of funding the payment that was due. Additionally, she was concerned that this process would supersede the work with Piper Jaffrey and she was concerned that the Council was moving ever closer to closing Burlington Telecom.

Following a question from Councilor Bushor, CAO Leopold noted his concern with a number of items relative to the resolution. He noted that whoever produced the proposed RFP used Clerk/Treasurer stationery which was not approved and did not include correct information as to those who should receive an RFP. He disagreed with a previous statement made during the Public Forum about Piper Jaffrey. He

reported the problems he saw with the proposal being suggested by the Council, as far as the knowledge and ability of those viewing any RFP's. At this point, Council President Keogh curtailed the CAO's comments.

Councilor Bushor followed up by asking about the letterhead that was used, to which Councilor Adrian replied another Councilor had forwarded the letterhead to him to use.

Councilor Mulvaney-Stanak asked about the health of the financial institutions listed on the resolution and noted her concern about the length of time required to pursue the proposed action. CAO Leopold replied that the financial consultants used by the City stated the process would take 7 to 10 weeks to complete. Given the seriousness of the timing and the remedy of the situation, she was very concerned that this delay was being proposed.

Councilor Decelles stated he was very concerned that due diligence was performed. He did not feel ready to accept Piper Jaffrey. He then added a friendly amendment requesting that the CAO provide a list of additional companies to add to the RFP proposal. Councilor Kehoe then spoke of her support for the resolution because, after speaking with Piper Jaffrey, she was not confident that they would be able to secure financing. She was also not confident that Burlington Telecom would be able to pay the money that would be owed three to four years down the road.

CAO Leopold requested that the Council turn to PFM, the City's financial advisor for the past 25 years, to advise them on the underwriting. He also noted that PFM had every confidence that Piper Jaffrey could manage the financing. He reminded the Council that there was a very tight timeline to accomplish the refinancing. He outlined the dangers of default and the course that the Council was on toward that inevitability.

Councilor Paul responded stating her displeasure with the Administration and the pressure they were putting on the Council to make quick decisions on this item. She was not sure Burlington Telecom was financially viable to begin with and she did not appreciate the implication that the Council was sinking the project.

Councilor Shannon explained her reasons for not supporting the resolution, noting she did not have the expertise to make the decision and all those she spoke with for counsel had different responses as to what to do. Councilor Berezniak explained his reasons for supporting the resolution.

Councilor Ellis explained his interpretation of the financial situation that Burlington Telecom and the City found themselves in and asked the CAO if it were possible to request that Piper Jaffrey begin its process and, at the same time, go out to bid as the resolution suggested. CAO Leopold stated the reasons this was not a viable idea.

Councilor Caldwell requested information from the CAO about Piper Jaffrey. She then asked Attorney Joe McNeil his opinion about moving the dates forward and the view the State would take on this. She then outlined the history of the refinancing request, noting the Council had had a month to do due diligence and she continued to believe she was seeing the end of Burlington Telecom. She noted the money being refinanced had already been spent, it brought the City back into compliance with the State, and did not preclude the City selling the assets of Burlington Telecom in the future.

Councilor Paul then called the question, seconded by Councilor Decelles. The motion passed by a vote of 13 to 1, with Councilor Caldwell voting against.

A roll call vote was requested by Council President Keogh. The vote on the amended resolution was as follows:

Ayes: Councilors Adrian, Berezniak, Kaplan, Keogh, Kehoe, Paul, Dober and Decelles

Nays: Councilors Bushor, Mulvaney-Stanak, Caldwell, Davis, Ellis and Shannon

The motion passed by a vote of 8 to 6.

13.5. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Refinancing Burlington Telecom

Councilor Shannon made a motion, seconded by Councilor Decelles, to waive the reading, accept the communication and place it on file. CAO Leopold addressed the Council regarding this communication, outlining the response from PFM, the City's financial advisor and largest professional advisor in the country on municipal finance. PFM had stated their recommendation of Piper Jaffrey, that PFM had noted if the Council wanted to review other financing options PFM would be willing to do so. Another piece of the communication was from Hiawatha, a fiber to the home firm in Minnesota, advising favorably on the proposal. The written communication was provided to support the resolution to move forward with Piper Jaffrey to protect the credit rating of the City and to avoid Burlington Telecom having to cease operation.

Councilor Paul made a motion to reconsider the vote on item 13 so that PFM could be included in the decision making progress. Councilor Shannon seconded the motion. Councilor Adrian stated his previous request could be changed to reflect that PFM would review other financing options. CAO Leopold stated PFM would provide professional advising on the RFP request, rather than the system that was set up in the previous resolution. Councilor Adrian disagreed with CAO Leopold's statements, at which point Councilor Mulvaney-Stanak called a point of order to determine whether Councilor Adrian's comments were germane to the reconsideration of the vote. Council President Keogh agreed with Councilor Mulvaney-Stanak's point of order. Councilor Dober then called for a point of information asking City Attorney Schatz if someone who voted against the previous resolution could second the motion offered by Councilor Paul. City Attorney Schatz stated the motion could be seconded by Councilor Shannon. Councilor Adrian then explained why he would not support reconsideration of the resolution.

The motion failed by a vote of 6 to 8, with Councilors Paul, Shannon, Ellis, Bushor, Mulvaney-Stanak, Davis voting to reconsider.

The Council then voted unanimously to waive the reading, accept the communication and place it on file.

13.6. RESOLUTION: Authorization to Pursue Burlington Telecom Financing (Councilors Davis, Bushor)

Councilor Bushor made a motion, seconded by Councilor Davis, to waive the reading and adopt the resolution. This motion requested funding the \$2,500 to move forward with Piper Jaffrey. She felt it also created confusion now that the Council passed the previous resolution. Councilor Bushor stated the City would be in the best position if financing was completed, allowing the City Council to continue working on this issue. She was concerned that the Council and the local media only discussed the possibility of failure without highlighting the possibility that the future payments could be made by Burlington Telecom.

Councilor Shannon noted that the CAO had mentioned that this resolution and the previous resolution could not be done in unison. CAO Leopold agreed it was a moot point. Councilors Bushor and Davis then withdrew the resolution.

15. RESOLUTION: Power of the Chief Administrative Officer (CAO) to Vote on the Board of Finance (Councilors Decelles, Dober, Adrian, Kaplan, Kehoe)

Councilor Decelles made a motion, seconded by Councilor Dober, to waive the reading and adopt the resolution. Councilor Decelles immediately proposed an amendment, eliminating all language prior to

the Therefore Be It Resolved clauses. Councilor Decelles then read into the record the remaining resolution, requesting the Charter Change Committee review changes that would eliminate the CAO's power to vote on the Board of Finance and, instead, add another Council member to the Board of Finance. Further, it was noted in the resolution that the Charter Change Committee would bring a recommendation to the Council by January 4, 2010.

Councilor Bushor asked for a review of other towns that were Burlington's size and the voting rights of Treasurers on Boards of Finance. Councilor Shannon did not believe that there was time for the City Attorney's Office to review this item prior to the upcoming election.

Mayor Kiss noted this item would change 100 years of practice that had served the City well. He stated that all Council members knew the vast majority of decisions were approved unanimously, every decision was reviewed by the Council and he hoped that the Council would vote not to support the resolution.

Councilor Ellis agreed this was a matter of interest, but there was not an adequate amount of time to review the issue and he did not believe the issue was of such a critical nature that a decision needed to be made so quickly. Councilor Davis reiterated Mayor Kiss' comments, stating that no final decisions were made by the Board of Finance. All decisions made by the Board have to be approved by the City Council. Councilor Dober did not agree that votes on the Board of Finance were unanimous. Councilor Berezniak supported Councilor Decelles' decision to move this item forward.

The resolution was then adopted as amended by a vote of 9 in favor and 5 opposed, with Councilors Caldwell, Davis, Mulvaney-Stanak, Shannon and Ellis voting against.

16. RESOLUTION: Prohibition of Smoking in City Parks, Beaches and the Church Street Marketplace (Councilors Paul, Shannon, Kaplan, Ellis, Kehoe, Adrian)

Councilor Paul made a motion, seconded by Councilor Shannon, to waive the reading and adopt the resolution. Councilor Shannon appreciated this resolution being brought forward and stated it was now time to determine places where individuals could smoke. Councilor Kehoe called the question, seconded by Councilor Shannon. This passed by a vote of 11 to 3 with Councilors Caldwell, Paul and Adrian voting against. The resolution then passed by a vote of 12 to 2, with Councilors Dober and Decelles voting against.

16.01. ORDINANCE: HEALTH – Smoking in City Parks, Beaches and Church Street Marketplace (Councilor Paul) ***Proposed action: consider this the 1st reading and refer to the Ordinance Committee**

Councilor Paul made a motion, seconded by Councilor Kehoe, to consider this the first reading and refer to the Ordinance Committee. The motion passed unanimously.

17. ADJOURNMENT

On a motion by Councilors Kehoe and Decelles, the Council voted unanimously to adjourn at 12:45 a.m.

Attest:

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

CITY COUNCIL WITH MAYOR PRESIDING
MONDAY, DECEMBER 14, 2009
12:45 A.M.

PRESENT: See above

MAYOR KISS PRESIDING:

1. AGENDA
2. CONSENT AGENDA

On a motion by Councilors Davis and Bushor, the City Council with Mayor Presiding, voted unanimously to adopt the consent agenda thus taking the following actions as indicated:

2.01. COMMUNICATION: Clerk/Treasurer's Office, re: Openings Burlington City Commissions/Boards

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

3. APPOINTMENT: Board for Registration of Voters (Term expires 6/30/13)

Councilor Davis nominated Patricia J. Braine.

The nomination passed unanimously.

4. ADJOURNMENT

On a motion by Board of Civil Authority Members Caldwell and Mulvaney-Stanak, the Board of Civil Authority voted unanimously to adjourn at 12:48 a.m.

Attest:

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