

LOCAL CONTROL COMMISSION
CONTOIS AUDITORIUM, CITY HALL
MONDAY, JANUARY 4, 2010
7:06 P.M.

PRESENT: Commissioners Caldwell, Davis, Bushor, Kaplan, Adrian, Keogh, Shannon, Ellis, Kehoe, Berezniak, Paul, Decelles, Dober (via phone), Mayor Kiss

OFFICE OF THE CITY ATTORNEY: Ken Schatz, Nikki Fuller

OFFICE OF THE CLERK/TREASURER: Ben Pacy

1. AGENDA

Commissioner Davis made a motion, seconded by Commissioner Bushor, to approve the agenda. The motion passed unanimously.

2. CONSENT AGENDA

Commissioner Davis made a motion to accept the consent agenda and take the actions indicated. Commissioner Bushor seconded the motion. The motion passed unanimously.

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

Kevin Deschenes, Owner, 156 Bistro, 156 St. Paul Street, Thursday, 12/31,
New Year's Eve

*waive the reading, accept the communication, place it on file, ratify the extension of hours and service for 156 Bistro for New Year's Eve only

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

Genay Cohen, Manager, Vietnam Restaurant 2, 169 Church Street, Thursday, 12/31,
New Year's Eve

*waive the reading, accept the communication, place it on file, ratify the extension of hours and service for Vietnam Restaurant for New Year's Eve only

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

The Spot LLC, d/b/a The Spot, 210 Shelburne Road

Commissioner Davis, seconded by Commissioner Bushor, made a motion to approve the First Class Restaurant Liquor License Application for The Spot. The motion passed unanimously.

3.01. OUTSIDE CONSUMPTION PERMIT APPLICATION (**2009-2010**):

The Spot LLC, d/b/a The Spot, 210 Shelburne Road

Commissioner Davis, seconded by Commissioner Bushor, made a motion to approve the Outside Consumption Permit Application for The Spot. The motion passed unanimously.

4. ADJOURNMENT

Commissioner Davis, seconded by Commissioner Bushor, made a motion to adjourn at 7:15 p.m. The motion passed unanimously.

Attest:

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

REGULAR MEETING, CITY COUNCIL
MONDAY, JANUARY 4, 2010
7:15 P.M.

PRESENT: See above

1. AGENDA

Councilor Adrian, with no second, made a motion to amend the agenda as follows: remove from the consent agenda item 6.03. ORDINANCE: COMPREHENSIVE DEVELOPMENT ORDINANCE—Parallel Signs Height Exemption in E-LM #ZA 10-01 (Planning Department) and place it on the January 4, 2010 City Council Deliberative Agenda as item 9.5; remove from the consent agenda item 6.04. ORDINANCE: COMPREHENSIVE DEVELOPMENT ORDINANCE—Conditional Use Exemptions #ZA 10-03 (Planning Department) and place it on the January 4, 2010 City Council Deliberative Agenda as item 9.6; note **revised** version for agenda item 11. RESOLUTION: March 2, 2010 Annual City Meeting—Proposed Charter Change Re: Mayoral Appointment Process (Councilors Decelles, Adrian, Shannon: Charter Change Committee) Line 89 of proposed resolution should replace “2009” with “2010” in two instances and the public hearing dates should be noon on January 29, 2010 and 7:00 p.m. on February 8th; add to the agenda item 13.5. expected Executive Session Re: Litigation (per Councilor Adrian); remove from the agenda item 9. COMMUNICATION: Lieutenant Kristian Carlson, Unit Supervisor, Burlington Police Department, re: Street Crimes Unit (SCU) and place it on the Deliberative Agenda for the January 25, 2010 meeting; amend the consent action for item 6.09. COMMUNICATION: Sharon Zecchinelli, re: Smoking ban on Church Street, to “waive the reading, accept the communication, place it on file and refer to the Ordinance Committee”; amend the action for consent agenda item 6.18. COMMUNICATION: Scott Rieley, Rieley Properties, re: 817 Pine LLC vs. Deidre Burns, security deposit case reviewed by the Burlington Housing Board of Review 12-21-09 to “waive the reading, accept the communication, place it on file and refer to the Attorney’s Office for any recommended further action; remove from the consent agenda item 6.06. RESOLUTION: Authorization to Amend Cooperative Agreement for the Champlain Parkway Project (Board of Finance) and place it on the Deliberative Agenda as item 13.1. The motion passed unanimously.

2. PUBLIC FORUM

President Keogh opened up the public forum at 7:30 p.m.

Dave Maher

Burlington Telecom

David Grossnickle

Burlington Telecom

With no one further coming forward, President Keogh closed the public forum at 7:36 p.m.

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

Councilor Decelles congratulated Norm’s Grill, a new restaurant on North Avenue on its recent opening. He also congratulated the group who recently received enough names on a petition to add an anti-IRV ballot item to the upcoming election.

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

The Mayor congratulated the Department of Public Works, the Parks Department and the Police Department for the work that was done to minimize the impact the recent large snowstorm had on Burlington residents. He also noted the upcoming Martin Luther King, Jr. Day events that would be taking place to honor Dr. King. He then explained the Moran Advisory Group (MAG) would be reconvening to review options for tenants of the Moran Plant. Finally, he noted that he was considering asking the Mayor's Budget Task Force to work with the School Department as they move through their budget process.

5. COMMITTEE REPORTS

Councilor Shannon informed the Council the Blue Ribbon Committee on Burlington Telecom had met twice over the holidays. She was pleased with the selection of participating community members and their dedication to the work. She stated that there would be a strong emphasis on researching the financial aspects of Telecom. She noted the Committee would make a recommendation to the Council on the consultants to hire to review Burlington Telecom.

Councilor Shannon then reported that the Blue Ribbon Committee had decided that they would be unable to provide a recommendation by the January 15th deadline noted in the prior resolution. She stated the Council had known that deadline might be problematic.

Councilor Shannon also stated the Ordinance Committee would be meeting to discuss the removal of the Downtown 50/50 requirement under the Planning Ordinance and would also discuss the retirement and disability ordinances.

Councilor Bushor noted that due to staffing issues, the HR Committee would now be discussing Domestic Partner coverage at their January 20th meeting. Councilor Bushor then spoke about the Council staff support issue that still needed to be addressed by the Council. With Councilor Mulvaney-Stanak leaving the Council, Council President Keogh offered to participate in the discussion. Councilor Bushor stated she would forward a copy of last year's RFP to the members to review and decide if the RFP still reflected what the Council desired.

Councilor Davis reminded the Council that the License Committee was beginning the annual process of approving liquor licenses. He expressed his appreciation to the staff that supported this Committee in making the process run so smoothly.

Councilor Paul informed the public that the Parks, Arts and Culture Committee would be meeting to discuss the Moran Plant tenant search in several weeks.

Councilor Berezniak noted the upcoming Community Development & Neighborhood Revitalization Committee meeting which would discuss the laptop in every home resolution.

6. CONSENT AGENDA

On a motion by Councilors Adrian and Berezniak, the Council voted unanimously to adopt the consent agenda, as amended, thus taking the indicated actions on the following items:

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: David E. White, AICP, Director of Planning & Zoning, re: Proposed Zoning Amendments: ZA-10-01 Parallel Sign Height Exemption in E-LM and ZA-10-03 Conditional Use and Major Impact Review Exemptions

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

6.05. COMMUNICATION: Bob Kiss, Mayor, re: CAO as Voting Member of the Board of Finance

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

6.07. RESOLUTION: Authorization to Execute Contracts with Hickok and Boardman, Inc. and Travelers Insurance Company to Manage the City's Insurance (Board of Finance)

*waive the reading and adopt the resolution

6.08. COMMUNICATION: Benjamin Pacy, Asst. CAO, re: Upcoming Annual City Election

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

6.09. COMMUNICATION: Sharon Zecchinelli, re: Smoking ban on Church Street

*waive the reading, accept the communication, place it on file and refer to the Ordinance Committee

6.10. COMMUNICATION: Diane A. Lavallee, Chittenden County Clerk, Superior Court of Vermont, re: Chittenden County Annual Budget Meeting

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

6.11. COMMUNICATION: Ward Six NPA, re: Draft NPA Resolution, Rev. 3.0, 1 October, 2009

*waive the reading, accept the communication, place it on file and send copies to the Police Commission members

6.12. COMMUNICATION: Ward Six NPA, re: Resolution to Change Burlington, VT Noise Ordinance

*waive the reading, accept the communication, place it on file and send copies to the Ordinance Committee members

6.13. SPECIAL EVENT INDOOR ENTERTAINMENT PERMIT APPLICATION (**one day only**):

156 Bistro, 156 St. Paul Street, New Year's Eve, Acoustic Performer/New Year's Master of Ceremonies, No dancing, 9:00 p.m. – 1:00 a.m.

*waive the reading, accept the communication and ratify the one day only special event indoor entertainment permit application for 156 Bistro

6.14. SPECIAL EVENT INDOOR ENTERTAINMENT PERMIT APPLICATION (**one day only**):

Vietnam Restaurant 2, 169 Church Street, New Year's Eve, Vocalists and Hand Drummer, Possible dancing, 8:00 p.m. – 2:00 a.m.

*waive the reading, accept the communication and ratify the one day only special event indoor entertainment permit application for Vietnam Restaurant 2

6.15. SPECIAL EVENT INDOOR ENTERTAINMENT PERMIT APPLICATION (**one day only**):

Miguels on Main, 30 Main Street, New Year's Eve, Salsa DJ Hector Cobeo, Dancing, 10:00 p.m. – 1:30 a.m.

*waive the reading, accept the communication, place it on file and ratify the one day only special event indoor entertainment permit application for Miguels on Main

- 6.16. COMMUNICATION: Marina Collins, Retirement Administrator, re: Retirement Board Attendance Record
*waive the reading, accept the communication and place it on file
- 6.17. COMMUNICATION: Karen Horn, Director, Public Policy and Advocacy, Vermont League of Cities & Towns, re: VLCT 2010 Legislative Priorities
*waive the reading, accept the communication and place it on file
- 6.18. COMMUNICATION: Scott Rieley, Rieley Properties, re: 817 Pine LLC vs. Deidre Burns, security deposit case reviewed by the Burlington Housing Board of review 12-21-09
*waive the reading, accept the communication, place it on file and refer to the City Attorney's Office for any recommended further action
- 6.19. COMMUNICATION: City Council President Keogh, re: Council President Memo – Dec. 28, 2009
*waive the reading, accept the communication and place it on file
- 6.20. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance Minutes for December 14, 2009
*waive the reading, accept the communication and place it on file
- 6.21. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance Minutes for December 21, 2009
*waive the reading, accept the communication and place it on file
7. PRESENTATION: Clem Nilan, General Manager, City Market/Onion River Co-op, re: City Market Update

Mr. Nilan explained to the Council the unique public/private partnership of the City and City Market which had recently received awards of excellence from federal agencies for the unique success of City Market. He outlined the multitude of benefits to both the customers of City Market's program, including financial refunds and local products. Councilors then commented on the benefits they and other City residents received from having City Market in the community.

8. PRESENTATION: Jeanne Collins, Superintendent, School Department, Scott Lisle, Business Manager, School Department and Keith Pillsbury, Finance Committee Chair, School Board, re: FY 2011 School Budget

Ms. Collins, Mr. Pillsbury and Mr. Lisle presented the FY 2011 School budget to the Council. Mr. Pillsbury noted that this budget was a result of work done with the Mayor's Budget Task Force, members of the School Board and the Administration. He outlined the number of programs that are available for the complex, urban and diverse population of Burlington.

Councilor Ellis expressed his appreciation for the work done so far on the budget. He asked about the reduction in the athletic budget, asking if it meant the end of after-school programs at the middle schools. Mr. Pillsbury reiterated that the budget was being proposed and was not set in stone. Councilor Decelles was concerned that cutting the "B" programs would allow for teenagers not participating in sports. He recommended requesting sponsorships from local businesses. He also asked if teachers had been asked for a freeze in pay. Councilor Shannon noted her appreciation, as a parent, for the quality of work of the Burlington School Department. She also agreed with the previous Councilors' comments.

Councilor Caldwell expressed her hope that the Board would reconsider the cut in social worker staffing. She was also concerned about class sizes at the elementary school level. Ms. Collins explained the current situation relative to that.

Councilor Bushor asked about the social worker staffing issue with the No Child Left Behind policy. Ms. Collins explained that while it was important to have social workers available to students, it was not mandated by any laws. The current proposal removed the funding of this service from taxpayer funding and moved it to grants. However, as the state continues to cut services, the funding would eventually need to come from local dollars. Councilor Bushor then requested information on the review of shared purchasing options for the City and the School District. Mr. Lisle outlined the collaboration with the Parks Department, the use of Burlington Telecom and fuel purchasing. He stated it continued to be an ongoing discussion. Ms. Collins stated there was an opportunity for collaboration with computer purchasing with the District.

Councilor Dober expressed his concern that consolidation of business processes had not moved quickly enough and he did not like the idea of athletics being cut. Councilor Dober then stated his concern that a class of students were each being offered laptops to work on when a lab could be set up instead. Ms. Collins explained that this was a pilot program, the computers were netbooks, which were less expensive, and were part of a grant for 21st Century Learning.

Councilor Paul insisted the School Department put the athletic funding back into the budget, stating the amount was not significant enough to not be able to find somewhere else in the budget. She then asked that the School Department representatives go on record as to what would be happening with the Edmunds Middle School elevator. Ms. Pillsbury stated that with the help of the federal stimulus money it was anticipated to be done in the spring. Councilor Berezniak asked about the French Program at the schools.

- 8.01. COMMUNICATION: Keith Pillsbury, Finance Committee Chair, Burlington School District to Burlington Board of School Commissioners, re: Board Approved Finance Committee recommendations for FY 11 Budget for Public Input v3
- 8.02. COMMUNICATION: Burlington School District, Burlington Schools: Continuing the Proud Tradition-School Board FY 11 Budget Proposal, December 8, 2009
- 8.03. COMMUNICATION: Jeanne Collins, Superintendent, Burlington School District to Board of School Commissioners, re: Formation of Equity Office of Employment and Retention v. 2
- 8.04. COMMUNICATION: Jeanne Collins on behalf of the Burlington Board of School Commissioners to City Council, re: Collaboration and shared services with the city

On a motion by Councilors Adrian and Shannon, items 8.01 through 8.04, were waived, accepted and placed on file.

- 9.5. (was 6.03) ORDINANCE: COMPREHENSIVE DEVELOPMENT ORDINANCE—Parallel Signs Height Exemption in E-LM #ZA 10-01 (Planning Department)

Councilor Shannon made a motion, seconded by Councilor Berezniak, to consider this first reading, suspend the rules regarding referral to the Ordinance Committee and direct the Clerk/Treasurer's Office to schedule a public hearing on January 25, 2010.

Councilor Shannon noted that this item had been discussed during the Zoning Rewrite process but had mistakenly been dropped. The motion passed unanimously.

9.6. (was 6.04) ORDINANCE: COMPREHENSIVE DEVELOPMENT ORDINANCE—Conditional Use Exemptions #ZA 10-03 (Planning Department)

Councilor Shannon made a motion to suspend the rules regarding referral to the Ordinance Committee and schedule a public hearing. There was no second to this motion. The motion passed unanimously.

10. COMMUNICATION: David E. White, AICP, Director of Planning & Zoning, re: Open Government – Dept. of Planning and Zoning Resolution

10.01. COMMUNICATION: David E. White, AICP, Director of Planning & Zoning, re: Open Government Committee Report – Dept. of Planning and Zoning Update

Following discussions and questions from Councilors, Councilor Adrian made a motion to accept the communications and place them on file, seconded by Councilor Berezniak. The motion passed unanimously.

11. RESOLUTION: March 2, 2010 Annual City Meeting—Proposed Charter Change Re: Mayoral Appointment Process (Councilors Decelles, Adrian, Shannon: Charter Change Committee)

Councilor Shannon made a motion to adopt the resolution, seconded by Councilor Decelles. Councilor Shannon explained the changes that were being made which required that members of a Commission be included in the hiring process of a department head. She noted there was still an issue with reappointments wherein the Mayor can keep an appointment in place whether or not the Council approved of the individual and she believed that was a problem.

Councilor Bushor was concerned that language was removed regarding the Mayor being able to remove department heads that were not performing. City Attorney Schatz stated it had been his recommendation because it was already dealt with in another section (Section 1.29) of the Charter. Section 1.29 authorized the Council, rather than the Commission, to remove department heads. Councilor Shannon explained that Section 1.29 actually stated the removal had to be initiated by the Mayor and then approved by the Council. Mayor Kiss, while appreciating the housekeeping nature of the resolution, did not approve of the specificity of it. He explained that the last two open positions did, in fact, include the participation and recommendations of the Commission members. The motion then passed unanimously.

12. RESOLUTION: March 2, 2010 Annual City Meeting—Proposed Charter Change Re: Membership of Board of Finance (Councilors Decelles, Adrian: Charter Change Committee)

Councilor Decelles made a motion to adopt the resolution, seconded by Councilor Adrian. Councilor Decelles explained that as far back as 1904 the voting members included the Mayor, the Treasurer and the Chair of the Board of Alderman. In 1976, through a referendum to the voters, two more Councilors were added to the Board. He also stated that Burlington is the exception rather than the rule to other Vermont towns in the state. He believed this issue should be brought to the voters to make the change. Councilor Dober spoke to his view of the separation of duties and how it related specifically to Burlington Telecom.

Councilor Kehoe stated she would support an amendment to change the language such that the change would not go into effect until after the current Administration is in place. Councilor Berezniak then offered the amendment to take effect on April 1, 2012. Councilor Kehoe then seconded the motion.

Following a question from Councilor Decelles, Councilor Berezniak stated this amendment would remove this item from the Burlington Telecom issue. Councilors Decelles and Adrian called the amendment friendly. Councilor Davis asked the City Attorney if the Council could vote on altering an item in the Charter for a future date.

Councilor Bushor could not determine from the minutes of the meeting that this was fully researched by the Committee. She noted that the Board of Assessors allowed the Assessor to vote so she did not feel that the CAO voting on the Board of Finance was unique within the City. Councilor Bushor also stated she had done some research to see how many Board of Finance votes were problematic and, in fact, there were very few 3-2 votes over the years. She did not feel this had had the discussion it deserved, especially considering it would not go into effect until 2012. She also noted that removing the CAO and allowing another Councilor to be on the Board of Finance could then allow for more 3-2 votes. And finally, she believed not allowing the CAO to be at the Board of Finance meeting would be a particularly bad idea and the residents would not be well served by not having the information the CAO could provide on any given item.

President Keogh requested that the vote be taken by roll call.

Councilor Ellis stated he assumed that the CAO would act as the staff person for the Board. He also believed that the CAO votes on the Burlington Employee Retirement Committee as well and this should be reviewed as well. He thought the resolution was a good idea but wished there was more discussion about it prior to the vote.

Councilor Shannon agreed that this was not a thoughtful process and it was a foregone conclusion. She believed that there had not been enough research. Her issue was not that the CAO should not vote. Her issue had more to do with the structure of the Board and noted that the role the CAO would play relative to the Board had not been addressed.

Councilor Adrian made a motion to suspend the rules and extend the meeting past 10:30 p.m. The motion was seconded by Councilor Decelles. The motion failed by a vote of 7 to 5 with Caldwell, Kaplan, Davis, Paul, Kehoe against.

Therefore, the meeting of the City Council ended at 10:34 p.m.

13. RESOLUTION: Establishing Pay Level for Code Enforcement Director William Ward (Councilors Davis and Keogh: Board of Finance) (up to 3 mins.)

13.1. (was 6.06.) RESOLUTION: Authorization to Amend Cooperative Agreement for the Champlain Parkway Project (Board of Finance)

14. ADJOURNMENT

Attest:

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

BOARD OF CIVIL AUTHORITY
MONDAY, JANUARY 4, 2010
10:35 P.M.

PRESENT: See above; Councilor Decelles left at 10:34 p.m.

1. AGENDA

There were no changes to the agenda.

2. CONSENT AGENDA

On a motion by Board of Civil Authority Members Davis and Bushor, the Board of Civil Authority voted unanimously to adopt the consent agenda thus taking the indicated action on the following item:

2.01. COMMUNICATION: Ben Pacy, Asst. CAO, re: Relocation of Ward 4 Polling Place

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

3. ADJOURNMENT

On a motion by Board of Civil Authority Members Kaplan and Davis, the Board of Civil Authority voted to adjourn at 10:35 p.m.

Attest:

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