

CITY HALL, CONFERENCE ROOM 12
MONDAY, FEBRUARY 22, 2010
6:00 P.M. TO 7:00 P.M.

Item 2 was removed.

1. AGENDA
3. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Burlington Telecom (oral)

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

4. ADJOURNMENT

LOCAL CONTROL COMMISSION
CONTOIS AUDITORIUM, CITY HALL
MONDAY, FEBRUARY 22, 2010
7:24 P.M.

PRESENT: All Commissioners except Adrian and Decelles. Mayor Kiss.

PRESIDENT KEOGH PRESIDING:

1. AGENDA

There were no changes made to the agenda.

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

2. CONSENT AGENDA

2.01. **SECOND CLASS STORE LIQUOR LICENSE RENEWALS (2010-2011):**

see attached list

*waive the reading, accept the communication, place it on file and approve the 2010-2011 Second Class Store Liquor License Renewals

3. **SECOND CLASS STORE LIQUOR LICENSE APPLICATION (2009-2010):**

KKD Inc., d/b/a Kountry Kart Deli, 155 Main Street

Commissioner Davis made a motion, seconded by Commissioner Dober, to approve the Second Class Store Liquor License Application. The motion passed unanimously.

4. ADJOURNMENT

On a motion by Commissioners Davis and Dober, the Local Control Commission voted unanimously to adjourn at 7:26 p.m.

Attest:

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

ADJOURNED MEETING, CITY COUNCIL
MONDAY, FEBRUARY 22, 2010
7:26 P.M.

PRESENT: All Councilors except Councilor Adrian. Councilor Decelles was present at the beginning of this portion of the meeting. Mayor Kiss.

C/T Office: Jonathan Leopold, CAO, Ben Pacy, Assistant CAO, Lori Olberg, Sue Trainor

Attorney’s Office: Ken Schatz, City Attorney

PRESIDENT KEOGH PRESIDING:

1. AGENDA

On a motion by Councilors Shannon and Kaplan, the City Council voted unanimously to amend the agenda as follows: Amend the action for consent agenda item 3.14. COMMUNICATION: Jonathan P.A. Leopold, Jr., Chief Administrative Officer, re: Preliminary Results for the fiscal year ending June 30, 2009 for the major City funds to “waive the reading, accept the communication, place it on file **and have CAO Leopold give an oral report regarding this item at the March 8, 2010 City Council Meeting;**” add to the consent agenda item 3.16. COMMUNICATION: Sue Trainor, Assistant to the Chief Administrative Officer, re: Budget Consultant RFP with the consent action to “waive the reading, accept the communication and place it on file;” add to the consent agenda item 3.17. COMMUNICATION: Rene Kaczka-Valliere, Member, Conservation Board, re: Resignation with the consent action to “waive the reading, accept the communication, advertise the vacancy and send a letter of appreciate thanking Rene Kaczka-Valliere for his time served on the Conservation Board;” remove from the consent agenda item 3.04. RESOLUTION: Strengthening Noise Ordinance (Councilor Paul) and place it on the DELIBERATIVE agenda as item 7.5. Note that Councilor Berezniak has been added as a co-sponsor. Note hard copy of proposed amendments; remove from the consent agenda item 3.03. RESOLUTION: Extending Contract for Service Installation and Repair Work from Eustis Cable Enterprises, Ltd. (Board of Finance) and place it on the DELIBERATIVE agenda as item 7.6; add to the DELIBERATIVE agenda item 7.7. COMMUNICATION: DIMASALANG F. JUNIO, Colonel, USAF, Chief, Programs Division (A7P), re: F-35A Operational Basing Environmental Impact Statement (EIS).

2. PUBLIC FORUM

President Keogh opened the public forum at 7:31 p.m.

<u>Name</u>	<u>Ward/Affiliation</u>	<u>Subject</u>
Michael Williams	Business Owner	Does Not Support Smoking Ordinance
Sara Martinez de Osaba	Vermont Multicultural Alliance for Democracy and Equity	

There being no one further coming forward, President Keogh closed the public forum at 7:35 p.m.

3. CONSENT AGENDA

On a motion by Councilors Shannon and Kaplan, the Council voted unanimously to adopt the consent agenda, as amended, 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. RESOLUTION: Supplemental Budget Resolution 2010-07 Appropriation Changes to Reflect Wellness Grant (Board of Finance)

*waive the reading and adopt the resolution

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

K2D Group Inc., d/b/a 156 Bistro, 156 St. Paul Street, Thursday, February 25, 2010, 8 p.m. – 11 p.m., Local Singer, Songwriter Chad Hollister Performing Acoustic, No Dancing

*waive the reading, accept the communication, place it on file and approve the one day only special event indoor entertainment permit application for 156 Bistro

3.06. COMMUNICATION: Paul Dettman, Burlington Housing Authority to Board of Commissioners, Subject: AMENDMENT TO BHA BY-LAWS

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

3.07. COMMUNICATION: Paul Robar, President, Morf Transit/Benways Transportation, re: Number of Taxi Cabs

*waive the reading, accept the communication, place it on file and send copies to the Mayor, Chief of Police, Airport Manager, Airport Commission Members, Taxi Cab Committee Members and Assistant City Attorney Fuller

3.08. COMMUNICATION: Tom & Deb Miller, Miller Properties LLC, Kens Pizza and Pub, re: Proposed Smoking Ban, Sunday, February 7, 2010

*waive the reading, accept the communication, place it on file and send copies to the Ordinance Committee Members and the Church Street Marketplace Commission Members

3.09. COMMUNICATION: Deb Miller, Ken's Pizza and Pub, re: Compromise regarding Smoking Ban, Monday, February 15, 2010

*waive the reading, accept the communication, place it on file and send copies to the Ordinance Committee Members and the Church Street Marketplace Commission Members

3.10. COMMUNICATION: Mayor Kiss (information from Brian Pine, CEDO), re: Update on Champlain College Student Housing Plans

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

3.11. COMMUNICATION: Patricia J. Crowley, Clerk/Burlington Electric Commission, re: BED-First Wind LLC Power Purchase Agreement Amendment

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

3.12. COMMUNICATION: Patricia J. Crowley, Clerk/Burlington Electric Commission, re: New England Central Railroad Contract Approval

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

3.13. TOBACCO LIQUOR LICENSE RENEWALS (**2010-2011**): see attached list

*waive the reading, accept the communication, place it on file and approve the 2010-2011 Tobacco License Renewals

3.14. COMMUNICATION: Jonathan P.A. Leopold, Jr., Chief Administrative Officer, re: Preliminary Results for the fiscal year ending June 30, 2009 for the major City funds

*waive the reading, accept the communication, place it on file and have CAO Leopold give an oral report regarding this item at the March 8, 2010 City Council Meeting

3.15. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance February 8, 2010 Minutes

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

3.16. COMMUNICATION: Sue Trainor, Assistant to the Chief Administrative Officer, re: Budget Consultant RFP

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

3.17. COMMUNICATION: Rene Kaczka-Valliere, Member, Conservation Board, re: Resignation

*waive the reading, accept the communication, advertise the vacancy and send a letter of appreciation thanking Rene Kaczka-Valliere for his time served on the Conservation Board

4. TOBACCO LICENSE RENEWAL (2009-2010): Kountry Kart Deli, 155 Main Street

Councilor Davis made a motion, seconded by Councilor Dober, to approve the Tobacco License Renewal. The motion passed by a vote of 11 to 1 with Councilor Caldwell voting against.

5. RESOLUTION: Execution of an RFP for Independent Legal Counsel to Assist the City Council with Respect to the Development Agreements with Moran Center Tenants (Councilors Paul, Decelles, Dober, Kaplan, Shannon, Ellis)

Councilor Paul made a motion, seconded by Councilor Dober, to approve the resolution which directed the CAO to issue an RFP attaining counsel to review and advise on development agreements with Moran Project tenants. Councilor Caldwell asked for a cost estimate and noted her discomfort approving the resolution if the full Council did not have access to the information provided. Councilor Paul did not know the costs associated with the resolution and deferred to Attorney Schatz. Attorney Schatz stated that the resolution's intent would be to retain an attorney who would be present during the negotiation process. Therefore, how protracted the negotiations were would impact the costs.

The Mayor stated his concerns with the resolution as being that the City needed to have one position when moving forward with the Moran Project. Attorney Thomas Maloney and Mr. David G. White are already being used as outside consultants to negotiate and review contracts. There has already been an investment in outside legal review. The Mayor believed that for the Council now to call for another legal review, separate from the City Attorney's Office and Attorney Maloney, was a dangerous trend. He noted the posture that was developing was counterproductive to the City and potentially costly.

Councilor Decelles stated that times have changed economically and the perception of City government has changed. He believed if adding one more layer to the process made the residents of the City more comfortable it was worth it. Councilor Shannon stated she shared the Mayor's concerns. However, she believed that appropriate counsel should be involved throughout the process. Councilor Kehoe stated her opinion that the resolution was premature and it potentially set up an adversarial relationship between the City Administration and the City Council that would not be good for the project. She stated that Mr. Maloney would serve as an independent reviewer of the contracts. Councilor Davis agreed with and reiterated Councilor Kehoe's statements. Councilor Bushor did not believe the splintering of the effort to move Moran forward was helpful. She applauded CEDO for answering both the public's and the Council's questions and concerns.

City Attorney Schatz agreed that expert legal advice was required for this project as it is a complicated matter. Due diligence, additional expertise, and a labor capacity above and beyond what the City Attorney's Office currently has, was required to work on the issue and that was the reason Attorney

Maloney was hired. Agreeing with Councilor Kehoe, Attorney Schatz reminded Councilors that an attorney's advice did not vary according to who they were talking to. He also explained there needed to be one voice as a City during negotiations and that the Council and Administration's goals were the same.

At this time, 7:55 p.m., Councilor Ellis requested a 5 minute recess. The meeting reconvened at 8:05 p.m.

Councilor Decelles asked that a roll call be taken.

Councilor Shannon then made a motion, seconded by Councilor Ellis, to postpone this resolution to the next meeting when Mr. White and Mr. Maloney could possibly speak to the Council. The motion failed by a vote of six to six with Councilors Ellis, Shannon, Keogh, Bushor, Caldwell, and Davis voting to postpone.

The resolution then failed by a vote of 7 nays, 5 ayes, and 1 absent:

Aye: Councilors Berezniak, Kaplan, Paul, Decelles, Dober.

Nay: Councilors Bushor, Caldwell, Davis, Ellis, Shannon, Keogh, Kehoe.

Absent: Councilor Adrian.

6. RESOLUTION: Request to Charter Change Committee to Review Power of the Chief Administrative Officer (CAO) to Vote on the Board of Finance and Re-appointment of Department Heads (Councilors Paul, Decelles, Dober, Kehoe, Kaplan)

Councilor Paul made a motion, seconded by Councilor Kehoe, to adopt the resolution. The resolution asked the Charter Change Committee to revisit the issue of the voting rights of the CAO on the Finance Board by researching 5 to 10 municipalities similar in size to Burlington and review how their Finance Boards are configured. This same research would be done on the issue of the re-appointment of Department Heads. The report would then return to the City Council.

While Councilor Davis supported researching the information, he did not support binding a different Council or Charter Change Committee with this research and report. Councilor Kehoe disagreed with Councilor Davis and appreciated the research that had been done so far on the issue as evidenced by the resolution. Councilor Berezniak stated that his desire would be for any potential change to occur after the next Mayoral election. Councilor Ellis expressed his support for the resolution.

Councilor Bushor made a motion to divide the question and the resolution so that the CAO portion and the reappointment of Department Heads could be voted on separately. The motion passed by a vote of 11 to 1 with Councilor Davis voting against.

The Council then discussed the portion of the resolution that dealt with the CAO Voting Rights on the Board of Finance. The Mayor explained that the CAO plays a leadership role on the Board and provides a great deal of information and expertise to the members of the Board. He reminded the Council that all Board of Finance decisions are brought to the City Council for additional review and ultimately voted on. In speaking of the reappointment of Department Heads, the Mayor noted that the executive and legislative branch of City government must find a balance. He reminded the Council that any new department heads went through an extensive interview process with residents, commissions and council members. After new department heads have been selected, they become part of a team that should not have to be vulnerable to the whims of a City Council. He believed there needed to be some protection for people in order to allow them to do their work without fear or favor.

Councilor Shannon voiced her concern that the City Council had no control over appointments and that there was no way to remove someone from office. Councilor Paul stated that this resolution only discusses researching this information and does not support making a change.

The vote on the CAO portion of the resolution passed by a vote of 10 to 2, with Councilors Caldwell and Davis voting against.

Prior to the vote on the reappointment of department heads, Councilor Bushor noted that she would not be supporting this portion of the resolution because she believed it had not been clearly articulated by the Council what the issue actually was. Councilor Davis also stated he would not be supporting this portion of the resolution. He believed it would be more appropriate for the incoming Council to vote on this. Councilor Caldwell stated she would not support the resolution because, during her time on the Council, politics has ruled the day. She believed that these resolutions supported that theory. Councilors Shannon, Paul, Kehoe and Decelles chastised Councilor Caldwell and did not agree with her view.

The amended resolution then passed by a vote of 9 to 3, with Councilors Davis, Caldwell and Bushor voting against.

7. RESOLUTION: Approval of 2010 Parks & Recreation Boat Slip Fees (Board of Finance)

Council President Keogh made a motion, seconded by Councilor Dober, to accept the resolution. Councilor Davis noted his dissenting vote on the Board of Finance, explaining that the fees were reasonable but, due to the fact that fees were due on March 15th, the timing of the notification was inadequate. Anyone who might want to move to another marina would not have enough time to do so.

The Mayor explained that the new rate system was developed to be more fair and equitable. The rates are now based on dock footage, so that in some cases residents will be charged less. Councilor Paul then asked for a recess at 8:50 p.m., reconvening at 8:55 p.m. Councilor Paul then explained her reasons for supporting the rate increases, but noted that the process was not done well.

Mari Steinbach, Director of the Department of Parks and Recreation, spoke to the Council and explained the reasons for the rate changes. She also noted that traditionally the boat owners annually received a \$100 increase on the boat slips. With this rate structure, some boat owners will see a decrease this year while others will see an increase. The largest increase to one resident boat owner is 11%. An extended payment schedule would be offered. Additionally, a task force will be developed to look at value-added items.

Councilor Bushor expressed appreciation for the offer of an extended payment schedule and Councilor Davis stated that Ms. Steinbach and Erin Moreau's (Interim Manager of the Boathouse) additional work on the extension of fee payments had changed his vote. The motion then passed by a vote of 11 to 1, with Councilor Decelles voting against.

7.01. COMMUNICATION: Mari Steinbach, Director, Department of Parks and Recreation,
re: Conveyance of Resolution for Boat Slip Fees

With no objection from the remaining Council, President Keogh made a motion to waive the reading, accept the communication and place it on file.

7.5 (was 3.04.) RESOLUTION: Strengthening Noise Ordinance (Councilor Paul & Berezniak)

Councilor Paul made a motion, seconded by Councilor Berezniak, to waive the reading and approve the resolution.

Councilor Paul explained that the resolution asks the Ordinance Committee to review the noise ordinance and to study published guidelines as well as reviewing cities that have successfully worked with students and noise (Boulder, Denver and Mesa, AZ). Councilor Davis made a motion to amend the resolution, seconded by Councilor Dober, revising the section relating to motorcycles. This was not considered

friendly by the maker. Councilor Shannon preferred to keep the motorcycle reference in. Councilor Davis withdrew the motion. Councilor Caldwell supported the resolution but asked the Committee to determine a way this could be easily enforced.

Councilor Berezniak then proposed several amendments, primarily dealing with alcohol-related noise, adding increased penalties for alcohol related complaints, and determining the legal authority for enforcement agencies to enter properties and inspect the noise source. These amendments were considered friendly by the maker and seconder of the resolution. Councilor Decelles asked for clarification on the legal authority of agencies to enter properties. Councilor Shannon made a motion to add that the resolution be forwarded to the Police Chief with a request for additional enforcement suggestions.

Councilor Bushor noted that this was an important issue to work on. She was concerned that the Ordinance Committee already had a number of items to work through prior to the end of the Council session and hoped the Committee would produce nothing less than their best effort.

Councilor Dober called the question, seconded by Councilor Decelles. The motion passed by a vote of 11 to 1 with Councilor Caldwell voting against. The amended resolution passed unanimously.

7.6. (was 3.03.) RESOLUTION: Extending Contract for Service Installation and Repair Work from Eustis Cable Enterprises, Ltd. (Board of Finance)

Councilor Shannon made a motion, seconded by Councilor Berezniak, to adopt the resolution. The motion passed unanimously.

7.7. (was FIO) COMMUNICATION: DIMASALANG F. JUNIO, Colonel, USAF, Chief, Programs Division (A7P), re: F-35A Operational Basing Environmental Impact Statement (EIS)

Councilor Bushor made a motion, seconded by Councilor Kaplan, to waive the reading, accept the communication and place it on file. Councilor Bushor then asked Brian Searles from the Airport to speak to the Council. She was concerned about the March 1, 2010 deadline for comments regarding the Air National Guard's Operational Basing Statement EIS. Mr. Searles stated that this communication pertained to the orderly replacement of aircraft assigned at the National Guard. He noted that the F-16 is being phased out over time and it appears the F-35A will be the successor aircraft. The Airport may see the newer planes within the next five years. Director Searles stated he will be involved with the EIS report and in particular will review the noise aspects of the new plane. The motion then passed unanimously.

8. COMMITTEE REPORTS

Councilor Shannon outlined the work being done on the smoking ban in the Parks and Marketplace areas. The Pesticide Ordinance was returned to the Board of Health to do additional work on it.

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

Councilor Davis reminded residents of the Mardi Gras parade that will raise money for the Women's Rape Crisis Center.

Councilor Decelles reminded residents to vote on March 2, 2010.

Councilor Ellis commended the Fire Department for the work they did in containing a fire on North Champlain and North Street.

Councilor Caldwell commented on the number of phone calls and e-mails she received after the last meeting which included the Blue Ribbon Committee Report. These individuals asked that Burlington Telecom remain a municipally run, City-wide entity, not-for-profit, and owned by the people of Burlington just as Burlington Electric Department is.

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

The Mayor announced the \$3.14 million Tiger Grant award that Burlington received. This was a difficult grant to receive and CEDO was due a great deal of credit for putting the package together. The funds will solidify the work that needs to be done at the north end of the waterfront and around Moran. Burlington was only one of 3% of applications that won the award.

The Mayor also reported that public participation will begin on the City's proposal for Google support.

The Mayor stated he attended the Carbon War Room in Vancouver. The Carbon War Room is aimed at finding environmental solutions to addressing climate change issues. They work on creating funding to support municipalities in encouraging efficiency. It is anticipated that \$500 million in funds will be available through this group.

11. ADJOURNMENT

On a motion by Councilor President Keogh, the Council moved on to the Board of Civil Authority at 9:39 p.m.

Attest:

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

BOARD OF CIVIL AUTHORITY
MONDAY, FEBRUARY 22, 2010
9:39 P.M.

PRESENT: See above.

MAYOR KISS PRESIDING:

1. AGENDA

Note written material and title change for consent agenda item 2.01. Councilor Bushor made a motion, seconded by Councilor Keogh, to approve the agenda. The motion passed unanimously.

2. CONSENT AGENDA

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

2.01. RESOLUTION: Appointment of Assistant Election Officials for the Annual City Election March 2, 2010(Councilor Keogh)

*waive the reading and adopt the resolution

3. ADJOURNMENT

On a motion by Board of Civil Authority Members Davis and Paul, the Board of Civil Authority voted unanimously to adjourn at 9:40 p.m.

Attest:

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