
 DELIBERATIVE AGENDA

REGULAR MEETING, CITY COUNCIL

MONDAY, OCTOBER 18, 2010

7:05 P.M.

PRESENT: Councilors Brennan, Mulvaney-Stanak, Bushor, Kaplan (departed at 9:21 p.m.), Kranichfeld, Adrian, Keogh, Shannon, Kehoe, Paul (arrived at 7:20 p.m.) Berezniak, Dober, Decelles, Wright and Mayor Kiss (arrived at 7:06 p.m.)

CITY ATTORNEY'S OFFICE: Ken Schatz and Gene Bergman (arrived at 7:14 p.m.; departed at 8:26 p.m.)

CLERK/TREASURER'S OFFICE: Jonathan P.A. Leopold, Jr. (arrived at 7:06 p.m.; departed at 9:00 p.m.), Scott Schrader and Lori Olberg

PRESIDENT KEOGH PRESIDING:

1. AGENDA

On a motion by Councilor Adrian, with no second, the agenda was unanimously amended as follows: add Councilor Bushor and Mulvaney-Stanak as co-sponsors to item 5. RESOLUTION: November 2, 2010 Election Day – Parking Holiday (Councilors Adrian, Kaplan, Shannon, Keogh, Kehoe, Berezniak, Paul and Kranichfeld) and add to agenda item 6.5. COMMUNICATION: Bob Kiss, Mayor, re: Veto Message – Proposed Charter Change Re Mayoral Appointment, Reappointment and Removal of Department Heads.

2. PUBLIC FORUM

President Keogh opened the public forum at 7:31 p.m. Because there were members of the public who wanted to speak about the 18+ policy, Council President Keogh allowed Councilor Dober to give a brief review of the policy.

<u>Name</u>	<u>Ward/Affiliation</u>	<u>Subject</u>
Alex Nief		Disagreed with Change in 18+ Policy in Bars
Jeffrey Bryant		Disagreed with Change in 18+ Policy in Bars
Daniel Hamlin	Owner, Lift	Disagreed with Change in 18+ Policy in Bars
Peter Potts	Chair, Planning Commission	Quarterly Commission Report
Ron Ruloff	Ward 3 Candidate	Independent City Audit Required
Matt Lash	IBEW	Supported the Moran Plant Project Labor Agreement
Jason Laramey	Union Ironworker	Supported the Moran Plant Project Labor Agreement
Michael Morelli	Union Ironworker	Supported the Moran Plant Project Labor Agreement

There being no one further coming forward, President Keogh closed the public forum at 7:51 p.m.

3. CONSENT AGENDA

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

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

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

3.02. RESOLUTION: Reclassification of CEDO Parallel Justice Specialist Positions (Board of
Finance)

*waive the reading and adopt the resolution

3.03. RESOLUTION: Extending Residential Occupancy Limits to the RH Zone (Councilors
Shannon, Bushor)

*waive the reading and adopt the resolution

3.04. RESOLUTION: Authorization to Amend Leases at Burlington International Airport for
Financing Purposes (Board of Finance)

*waive the reading and adopt the resolution

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

*waive the reading, accept the communication, place it on file and re-advertise all vacancies due to no applications submitted for consideration

3.06. COMMUNICATION: Ned Tanton, re: 18 plus nights

*waive the reading, accept the communication, place it on file and send copies to Lt. Cyr and the License Committee Members

3.07. COMMUNICATION: Sam Kimunya, re: Club Lift

*waive the reading, accept the communication, place it on file and send copies to Lt. Cyr and the License Committee Members

3.08. COMMUNICATION: Domenic Franco, re: 18 plus events

*waive the reading, accept the communication, place it on file and send copies to Lt. Cyr and the License Committee Members

3.09. COMMUNICATION: AJ Bugbee, re: Church Street 18 + Dance nights

*waive the reading, accept the communication, place it on file and send copies to Lt. Cyr and the License Committee Members

3.10. COMMUNICATION: Jessica Manchester, re: 18 + events at Club Lift

*waive the reading, accept the communication, place it on file and send copies to Lt. Cyr and the License Committee Members

3.11. COMMUNICATION: Jeffrey Bryant, re: People Under 21

*waive the reading, accept the communication, place it on file and send copies to Lt. Cyr and the License Committee Members

- 3.12. COMMUNICATION: Kyle Tansley, re: Eliminating 18 + nights at Clubs in Burlington
*waive the reading, accept the communication, place it on file and send copies to Lt. Cyr and the License Committee Members
- 3.13. COMMUNICATION: Gail Champnois, Director, The University of Vermont Office of Student and Community Relations, re: Initiatives, Programs and Services
*waive the reading, accept the communication and place it on file
- 3.14. COMMUNICATION: Gary W. Evans, Burlington Telecom Consultant to Ms. Barbara L. Grimes, General Manager, BED, re: Smart Grid
*waive the reading, accept the communication and place it on file
- 3.15. COMMUNICATION: Peter L. Potts, Chair, Burlington Planning Commission, re: Update on Planning Commission Activities, July – September 2010
*waive the reading, accept the communication and place it on file
- 3.16. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance Minutes for May 27, 2010
*waive the reading, accept the communication and place it on file
- 3.17. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance Minutes for October 4, 2010
*waive the reading, accept the communication and place it on file
- 3.18. COMMUNICATION: Telecommunication Advisory Committee, re: Quarterly Report to the City Council Third Quarter, 2010
*waive the reading, accept the communication and place it on file
4. RESOLUTION: March 1, 2011 Annual City Meeting—Proposed Charter Change Re: Election of Mayor by Majority of Voters (Councilors Decelles, Kehoe, Shannon: Charter Change Committee)

Councilor Shannon made a motion, seconded by Councilor Kehoe, to waive the reading and adopt the resolution. As Councilor Shannon began to speak, Councilor Decelles asked for a point of order, asking that this item be dealt with later in the evening so that the public forum could take place at its normal time. The Council President asked if members of the audience wanted to speak to this issue. No one came forward.

Councilor Shannon explained that many individuals who may not have agreed with Instant Runoff Voting wanted the mayoral candidate to receive at least 50% of the vote. This resolution would increase the current threshold of 40%. She reminded the Council that approving this resolution would allow the voters to make the decision as to whether they want a majority to elect the mayor.

Councilor Dober stated he believed that approving this concept would require more runoff elections, prompting people to complain about the cost of elections. This would then allow people to start the conversation of bringing IRV voting back to Burlington. Therefore, he would not support this resolution.

Councilor Decelles stated the voters repealed IRV in the hopes of putting the previous system back in place. Adding this 50% requirement goes against what the voters wanted when they voted against Instant Runoff Voting.

Councilor Berezniak supported the change, stating IRV eliminated the possibility of having a mayor elected by only 40% of the voters. With the recent charter change, the voters were asked merely whether

to keep IRV. This puts the City back in the position that was being corrected by instituting Instant Runoff Voting.

The Mayor stated, as a reminder, that 5 of the 7 wards in Burlington voted to retain IRV. He believed the citizens wanted a mayor that was elected by 50% +1 and that had been an important element of IRV. He felt there had been a certain amount of demagoguery involved in the discussion of IRV. Further, he continued to believe that the people of Burlington supported IRV and it would be an issue that would be revisited.

Councilor Bushor agreed that voters in her ward who were not supportive of IRV did feel that the 50% threshold mattered. Her view was this question was distinct and separate from the issue of IRV. She said prior to IRV there had been discussion of the 40% threshold not being enough. She believed this was a timely issue to put forward to the voters.

Councilor Wright stated he was deeply disappointed in the comments made by the Mayor. He believed the City should be viewed in its totality rather than by ward. He also chastised the Mayor for calling the voters of the New North End “negative naysayers” following the election. He went on to explain that while he would support this resolution, other communities in Vermont elect candidates by the most votes achieved.

Councilor Kaplan noted her support for the resolution but stated her disagreement with the Mayor’s comments about the New North End.

The resolution then passed by a vote of 11 to 2 with Councilors Dober and Decelles voting against.

5. RESOLUTION: November 2, 2010 Election Day – Parking Holiday (Councilors Adrian, Kaplan, Shannon, Keogh, Kehoe, Berezniak, Paul, Kranichfeld, Bushor and Mulvaney-Stanak)

Councilor Adrian made a motion, seconded by Councilor Kaplan, to waive the reading and adopt the resolution. Councilor Adrian explained that he brought this resolution forward in order to help a constituent who had received a parking ticket during a recent election. Councilor Dober applauded Councilor Adrian for bringing this resolution forward, stating that this would help constituents to come out to vote. Councilor Mulvaney-Stanak asked if the Clerk’s Office still provided free bus passes to those who had no vehicle.

Councilor Berezniak called the question, seconded by Councilor Kehoe. The resolution passed unanimously.

6. REPORT: Douglas J. Wacek, Chair, Audit Task Force to Mayor Bob Kiss and Members of the City Council, re: Final Report Containing Recommendations Concerning the City of Burlington’s Current Audit Process and Procedures

Councilor Paul made a motion, seconded by Councilor Shannon to accept the report. Douglas Wacek, Kim Pinkham and Marcia Merrill, members of the Audit Task Force, presented to the Council.

Mr. Wacek explained that a group of five CPAs met for a month and a half, reviewed the audit process, interviewed the Mayor, CAO, current auditor, and Business Manager at the Airport. A report which included nine recommendations was provided to the Council.

The primary recommendation was that an Independent Audit Committee be established which would possibly include a Councilor along with outside experts who understood the function and procedures

involved in an audit. The Committee would meet three to four times a year. This is commonplace in the private sector and considered to be best practice. The Committee would meet in executive session with the City's auditor and then again meet with the audit teams in executive session.

A key structural change recommended was the Audit Committee would hire and fire the independent auditor. The selection and termination of a contract would not rest with the executive branch of City Government. Further, until this year, Burlington had not had a separate audit for the School Department or Burlington Telecom. It was recommended the City change this practice. However, Mr. Wacek noted that from 2011-2015 separate reports had already been scheduled for Telecom and the Schools. He outlined the potential for initiating mini-audits of functions within the budget. Mr. Wacek explained the city was a very complicated environment that because of its complexity could only be serviced by three auditors in the State. Mini-audits would open up the audit to other firms. It was recommended that the Councilors be educated more fully on the budget. Systems and staffing levels need to be addressed and investments in systems and technology would be needed in order to have a well-functioning government.

Councilor Kaplan expressed appreciation to the CPAs for their work for the City. She then made a motion to amend the original motion to include language to refer the report to the Charter Change Committee for implementation, with that Committee holding at least one public hearing. The motion to amend was not considered friendly by Councilor Paul. Councilor Wright seconded the motion.

Councilor Bushor expressed her support of most of the recommendations but was not in agreement with the entirety of the report. Her opinion was that some details needed more discussion and she was not ready to make these changes to the Charter. Councilor Wright agreed with the recommendations but agreed with both Councilors that some items may need to be discussed further.

Councilor Paul noting that most of the recommendations had nothing to do with the Charter Change Committee, thought a motion to do anything with the report at this meeting was premature. She did, however, believe the Committee could determine the next steps to implement the recommendations in the report.

Councilor Dober asked City Attorney Schatz if the Charter Change Committee was the appropriate committee to deal with this. City Attorney Schatz stated the Council could work with the Charter Change Committee or create an advisory committee by resolution. Councilor Kranichfeld thanked the Task Force for the impressive report, noting the recommendations were exactly what the Council was looking for. Councilor Berezniak then proposed an amendment that the Charter Change Committee consider the recommendations and report back to the City Council on their findings as far as implementing any and all recommendation in the report. A five-minute recess was called as the President of the Council attempted to word the amendment accurately.

Councilor Shannon, using the language proposed by the City Attorney, proposed the Audit Task Force Report be referred to the Charter Change Committee which would report back to the Council with recommendations for action. The amendment was considered friendly by the maker and the seconder.

Councilor Dober was disappointed the Council was referring this when action could be taken immediately. Councilor Shannon stated her opinion that the first recommendation was the one that needed to be implemented immediately and how everything else fell in place was in question.

Councilor Bushor asked the CAO where they were currently with the audit. CAO Leopold stated the City had largely completed the compilation of financial statements/trial balances and auditors had begun their work. She asked Mr. Wacek if it would be a good time for the Committee's recommendation to be implemented. She believed that it was important to see how the process worked prior to setting it into a charter change. The Audit Committee could be set up immediately to work while the Council was formalizing the structure of the Committee.

Mr. Wacek mentioned that at present the Board of Finance was responsible for the audit. Implementation of the recommendations would result in three independent Councilors being members of the interim committee with an outside auditor. Councilor Bushor remarked on the amount of work the Board of Finance was currently responsible for and thought the recommendation was worth considering. She asked the Council President to determine who would be interested in participating on the Committee and asked that an ad-hoc audit committee be formed during this audit cycle.

CAO Leopold agreed in general with the report of the Task Force. He explained that considerable progress had been made to implement the recommendations. He suggested that the Board of Finance should weigh in on the report as well, especially about the other recommendations cited in the report. He stated he had given the Task Force the suggestion to not consider a charter change until the concept had been field tested and the Council gathered information and experience on how it may work. There were still questions as to the appropriate make-up of the committee, whether there should be one committee or separate committees for each entity (BED, Schools). Following a year or two, the Council could go to the voters with a well crafted document based on experience.

Councilor Paul agreed with Councilor Bushor and CAO Leopold about not referring this item to the Charter Change Committee. She agreed the recommendations could be put into practice for a year or two prior to institutionalizing it. Councilor Berezniak then called the question, seconded by Councilor Wright. The motion to call the question passed unanimously.

The motion to refer the Audit Task Force Report to the Charter Change Committee with the request that they report back to the Council with recommendations for action passed by a vote of 13 to 1, with Councilor Paul voting against.

6.5. COMMUNICATION: Bob Kiss, Mayor, re: Veto Message – Proposed Charter Change Re Mayoral Appointment, Reappointment and Removal of Department Heads

Mayor Kiss spoke to the Council about his decision to veto the above-mentioned proposed charter change. The language in the charter change that most specifically concerned and offended him was “the City Council may remove any city officer or department head for such causes as to which shall seem sufficient.” This would give the City Council unilateral authority to remove a department head which he found to be problematic. The current proposal would subject any department head to an undefined removal process based on the call for action from as few as just one of the Council’s thirteen members. He noted there was no review process outlined in the proposal and no review of the decision to remove a department head which would be based solely on the vote of the Council.

He cautioned that the City has had an effective City government for the last 35 years and was recognized across the country as an effective and efficient City. Department heads must have the ability to do their jobs and his concern was that the Council may intervene at an inappropriate time. He saw this as a move away from good government.

Councilor Shannon asked the City Attorney when the Mayor vetoed a resolution whether the Council can take the matter up another time. City Attorney Schatz stated that when the Mayor vetoed a resolution it automatically came back to the Council. At that time the Council can choose to modify the resolution. However, it was not something that can be brought up at any time. It should be dealt with in a timely manner. Through the moderation of the resolution, it became a new resolution and the Mayor could choose to veto that resolution as well.

Councilor Shannon then asked the Council President that this resolution be placed on the agenda for the next meeting for consideration.

7. COMMITTEE REPORTS

Councilor Kaplan reported the Parks, Arts and Culture Committee would be meeting to include public comment on the Moran Plant. She encouraged the public to attend with questions.

Councilor Shannon provided an update on Burlington Telecom. She reported there would be a work session for the Councilors with updates on the progress. Overall, she believed the news was positive.

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

Councilor Wright congratulated Council President Keogh on his 80th birthday.

Councilor Dober announced the Ward 4/7 NPA would be meeting to vote on the YMCA moving into the Miller Center. He encouraged participation from the residents.

Councilor Mulvaney-Stanak informed the public that vouchers would be available to ride the bus to the polls. She then discussed the troubling trend of teen-related suicides related to bullying by youth who were either perceived as or do identify as gay, lesbian, bisexual or transgendered. She noted this was a local issue and provided statistics relating to teen suicides or suicide attempts in Vermont.

During her remarks she was interrupted by Councilor Dober asking for a point of order. He questioned if this was the forum for his education. Council President Keogh stated this was the forum for any matter a Councilor wished to address. President Keogh then asked Councilor Mulvaney-Stanak to continue.

Councilor Mulvaney-Stanak noted that growing up in Barre with little outside support, it was particularly challenging for her to hear of the lack of support for youth. She explained that she had been harassed in Burlington while walking with her partner and she believed no one should have this experience, especially a young person. She expressed her opinion that it does not get better until adults stand up and refuse to let this continued bullying behavior.

Council President Keogh noted that October was Breast Cancer Awareness Month.

Councilor Bushor complimented the Planning Commission for their updates. She found them to be very informative and useful. She mentioned she was hearing positive comments about the Colchester Avenue redesign. She expressed her concern with the decision about the 18+ nights. She stated there was a need for these events and asked the Chair of the License Committee what would happen now that the recommendations have been implemented. She had always believed the City did not provide enough activities for those from ages 13 to 20. The 18+ events had been very successful. She hoped the Council would be creative and look into how to continue to offer events for this age group. She also questioned whether UVM could help in these matters.

Councilor Berezniak explained that the License Committee had not cancelled all 18+ events. Because they had become such a regular occurrence the Police Department had asked if the City could stagger the approvals. He sympathized with those who wrote letters and reiterated that events could still be held by businesses on an individual basis. There would no longer be blanket agreements. He expressed appreciation to Councilor Mulvaney-Stanak for her eloquent comments.

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

Mayor Kiss thanked Councilor Mulvaney-Stanak for her comments. He stated that bullying and bigotry had no place in Burlington or Vermont. He then spoke about the Legacy Program, a program developed in 1999 and 2000 to provide a sustainability plan for the City. Now 10 years later, the Program was beginning a re-engagement of the community in order to move forward on a revitalized Legacy Plan

He was pleased to report that last year, when a waste sort was done at City Hall, three days of garbage was collected at City Hall. A year ago 81% of the material thrown away could have been compostable or recyclable. This year it was down to 30%. He added that Fire Station #1 was recognized for a national award for including composting as an important element of what they do.

10. ADJOURNMENT

On a motion by Councilor Decelles, the Regular Meeting of the City Council was adjourned at 9:35 p.m.

Attest:

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