

DELIBERATIVE AGENDA

CITY COUNCIL WORKSESSION  
CONFERENCE ROOM 12, CITY HALL  
MONDAY, OCTOBER 25, 2010  
6:00 P.M. – 7:00 P.M.

- 1. AGENDA
- 2. COMMUNICATION: Ken Schatz, City Attorney, re: Burlington Telecom (oral)

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

- 3. ADJOURNMENT

ADJOURNED MEETING, CITY COUNCIL  
MONDAY, OCTOBER 25, 2010  
CONTOIS AUDITORIUM, CITY HALL  
7:12 P.M.

PRESENT: Councilors Mulvaney-Stanak, Bushor, Kaplan, Kranichfeld, Adrian, Keogh, Shannon, Kehoe (via phone), Berezniak, Paul, Dober, Wright, Decelles and Mayor Kiss

CITY ATTORNEY’S OFFICE: Ken Schatz

CLERK/TREASURER’S OFFICE: Richard Goodwin, Scott Schrader and Lori Olberg

PRESIDENT KEOGH PRESIDING:

- 1. AGENDA

On a motion by Councilor Adrian with no second, the agenda was adopted unanimously as amended: remove from the consent agenda item 3.02. RESOLUTION: Authorization of a Contract for Purchase of Internet Bandwidth Services from Level 3 (Board of Finance); add Councilors Kranichfeld, Berezniak and Shannon as co-sponsors to consent agenda item 3.07. ORDINANCE: OFFENSES AND MISCELLANEOUS PROVISIONS Re City Hall Park Ordinance (Police Department); amend the action for consent agenda item 3.08. COMMUNICATION: Gary W. Evans, Burlington Telecom Consultant to Kenneth A. Nolan, Director of Resource Planning, re: Smart Grid to “waive the reading, accept the communication, place it on file and refer it to the Board of Finance;” remove from the consent agenda item 3.13. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Budget Impact of Moody’s Downgrade and place it on the November 8, 2010 City Council Deliberative Agenda (per Council President Keogh); note proposed amendment for item 7. RECONSIDERATION BASED ON MAYOR’S VETO OF RESOLUTION ON 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.

<u>Name</u>	<u>Ward/Affiliation</u>	<u>Subject</u>
Jeff Potvin	VT Building Trades Council	Project Labor Agreement
Phil LaVigne	7	Appreciated Police Investigation

Laura Hale	AmeriCorps/VISTA Program	Highlight of Programs
Albert Petrarca	3	Disappointed in Council's Decisions on IRV and Hemp
Elizabeth Meyer	Director, Child Care Resource	Child Care in New North End
Elizabeth Sanders	Registered Child Care Provider	Effect of YMCA in North End
Tiffany Bergeron	Frog and Toad Center, Colchester	Miller Building/YMCA
Lea Terhune	4, NPA	Child Care Needs/YMCA
Sandy Wynne	Fair Trade Burlington Member	Fair Trade Forum

There being no one further coming forward, President Keogh closed the public forum at 7:57 p.m.

### 3. CONSENT AGENDA

On a motion by Councilors Adrian and Mulvaney-Stanak, the consent agenda was unanimously adopted, as amended, thus taking the following actions as indicated. Councilor Mulvaney-Stanak noted that item 3.07. ORDINANCE: OFFENSES AND MISCELLANEOUS PROVISIONS Re: City Hall Park Ordinance (Police Department; Councilors Kranichfeld, Berezniak & Shannon) did not have consistent fees and asked that the Ordinance Committee review the actual problem they were addressing.

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

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

3.03. 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

3.04. COMMUNICATION: Erin Demers, Project Manager, DPW, re: Lower Church Street and St. Paul Street Improvements STP 5000 (16) Bid Results and Contract Award

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

3.05. RESOLUTION: Authorization to Execute Lower Church Street and St. Paul Street Improvements Project Contract for Construction (Board of Finance)

\*waive the reading and adopt the resolution

3.06. RESOLUTION: Creation of a Classified Limited Service Full Time Position – Human Resources Department - Project Manager (Board of Finance)

\*waive the reading and adopt the resolution

3.07. ORDINANCE: OFFENSES AND MISCELLANEOUS PROVISIONS Re City Hall Park Ordinance (Police Department; Councilors Kranichfeld, Berezniak & Shannon)

\*consider 1<sup>st</sup> reading and refer to the Ordinance Committee

3.08. COMMUNICATION: Gary E. Evans, Burlington Telecom Consultant to Kenneth A. Nolan, Director of Resource Planning, BED, re: Smart Grid

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

3.09. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance June 7, 2010 Minutes

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

3.10. COMMUNICATION: Jonathan P.A. Leopold, Jr., CAO, re: Board of Finance October 18, 2010 Minutes

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

3.11. COMMUNICATION: Margaret Bozik, Assistant Director for Community Development, CEDO, re: Volunteer and Service Programs

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

3.12. COMMUNICATION: Thomas Hyde, Member, BTAC, re: Resignation

\*waive the reading, accept the communication, place it on file, advertise the vacancy and send a letter of appreciation to Thomas Hyde thanking for his time served on BTAC

4. RESOLUTION: March 1, 2011 Annual City Meeting—Proposed Charter Change Re: City Council Rules, Legal Majority (Councilors Decelles, Kehoe, Shannon: Charter Change Committee)

Councilor Decelles made a motion, seconded by Councilor Shannon, to waive the reading and adopt the resolution. The change being introduced was read into the record by Councilor Decelles. He explained that the quorum would be determined by those present and voting. Councilor Bushor asked the City Attorney to ensure that the language provided to the voter was understandable. City Attorney Schatz noted the draft language would be forwarded to the Council for review. Councilor Wright reminded voters that this language clarified the past practice and custom and was not a change.

Councilor Mulvaney-Stanak expressed her concern that a quorum was eight. She asked the City Attorney if this would mean that five people could take a vote on an item. City Attorney Schatz stated that was correct. There were other options available and she was concerned about putting this officially into the Charter. She believed that a higher threshold should be put in place.

Councilor Wright explained if the change took place, eight members of the Council would have to be present. Councilor Shannon noted the concern was that it would only take one person to block necessary legislation which could disrupt government process. Councilor Dober asked if there had ever been a case where only eight people had been present. City Attorney Schatz stated he did not believe the Charter Change Committee had researched the issue.

Mayor Kiss stated his opposition to the change. Councilor Kranichfeld stated if Councilors were not going to be present at the meetings they were not being effective representatives of their constituents. The ability to do business efficiently outweighed having the vote of the majority of the Council.

Councilor Mulvaney-Stanak asked how this ordinance change conflicted with State law. City Attorney Schatz explained that general state law provided that in order for actions to be taken by a public body there had to be a majority of the total membership and that was the reason the issue came up. The practice of the Council historically had been different. He explained the majority of those present and voting had been enough to take action which was based on the City Charter. If a vote were contested it was unclear which law would take precedent. This was an effort to clarify the decision and after being

approved by the voters and the Legislature it would be special law which would apply specifically to the City.

The motion then passed unanimously.

5. RESOLUTION: Proposed Amendment to Appendix B, Rules and Regulations of the City Council—Majority of Quorum Required to Take Action (Councilors Decelles, Kehoe, Shannon: Charter Change Committee)

Councilor Decelles made a motion, seconded by Councilor Shannon, to waive the reading and adopt the resolution. The motion passed unanimously.

6. ORDINANCE: GENERAL PROVISIONS Rules of Construction (Councilors Decelles, Kehoe, Shannon: Charter Change Committee)

Councilor Decelles made a motion, seconded by Councilor Shannon, to waive the reading and adopt the ordinance. Councilor Shannon then made a motion to suspend the rules and place the ordinance in all stages of passage.

Councilor Bushor asked for an explanation of the ordinance and noted that it would be helpful if the Ordinance Committee had noted that three resolutions on this agenda dealt with the same issue.

The motion then passed unanimously.

7. RESOLUTION: RECONSIDERATION BASED ON MAYOR'S VETO OF RESOLUTION ON PROPOSED CHARTER CHANGE RE MAYORAL APPOINTMENT, REAPPOINTMENT AND REMOVAL OF DEPARTMENT HEADS

Councilor Wright made a motion, seconded by Councilor Shannon, to waive the reading and adopt the resolution. Councilor Shannon then made a motion to amend the resolution allowing for the consideration of a complaint (of a department head) by a minimum of at least five City Councilors who were not all members of the same political party. The amendment was considered friendly by Councilor Wright.

Councilor Adrian stated his opinion that it was a bad policy idea to require interparty agreement. It would mean that there would already be a coalition before the matter was brought to the Council. Councilor Shannon then asked for a point of order stating the discussion was only to be about the resolution and not the amendment. Council President Keogh disagreed and allowed Councilor Adrian to continue. He believed this was a dangerous way to proceed with democracy.

Councilor Kranichfeld believed it was a bad idea for the legislative branch to have direct management of personnel who were within the executive branch. He stated it confused lines of authority and accountability and confused the dynamic to have the Council involved. The department heads were answerable to the Mayor and the Mayor was answerable to the voters. He asked what the standard of proof would be, what the process would look like and whether the department head would be allowed to put on a defense. He noted the language was too broad and there was too much potential for political abuse of this process.

Mayor Kiss agreed that the amendment did not improve the resolution and explained again that the current system in place for the removal of a department head required concurrence of the Mayor and the Council. He believed the current language was appropriate. He stated that this resolution would reduce the effectiveness of city government.

Councilor Adrian asked for a point of information as to whether a majority vote was needed to pass the resolution. City Attorney Schatz stated it was; that the resolution would be going back to the Mayor to either approve or veto.

Councilor Bushor agreed with Councilor Kranichfeld's comments. She highlighted the fact that the Governor and the President were able to elect their own appointees and she was not clear why the Council was moving in this direction. The language in the resolution stating "as it shall seem sufficient" was problematic for her and asked "what was the bar for "sufficient"?"

Councilor Wright explained the reason this was being considered was because of examples where the Mayor ignored the Council's wishes. He believed the amendment was a reasonable approach but suggested others should offer language amendments they felt would be appropriate. Councilor Shannon then asked Susan Leonard, HR Director, to answer questions of the Council. Ms. Leonard noted that changing the language in the resolution from bad conduct to malfeasance had reassured some department heads, but with the recent veto from the Mayor and the addition of the term "as the Council deems sufficient" the action gave with one hand and took with another. She explained that department heads would be the only employees of the City who were truly "at-will" employees. Further, a department head's career could be tarnished at the whim of one Councilor. Finally, she stated it was inaccurate to say department heads supported the resolution as it stands.

Following these comments, Councilor Shannon asked for a recess to determine where the Council wished to go with the resolution. The Council recessed at 8:20 p.m. and resumed at 8:35 p.m. Following the recess, Councilor Shannon made a motion to withdraw her amendment. This action was considered friendly by the seconder.

Councilor Decelles asked the City Attorney what the timeline was for overriding the Mayor's recent veto. City Attorney Schatz stated that while the Charter gave no specific timeline, the action could not be tabled indefinitely. Councilor Shannon then made a motion to postpone action until the November 15<sup>th</sup> meeting and referred the item to the Charter Change Committee in the meantime, seconded by Councilor Wright. Councilor Decelles expressed frustration with the decision to refer the item again.

Councilor Bushor, referring to Susan Leonard's comments, explained that following the Council's vote more department heads became engaged and her opinion was that this resolution put the department heads in a very difficult spot. Councilor Wright stated that with the new information from HR Director Leonard it was important to send the matter back to Committee. Councilor Adrian agreed with Councilor Decelles.

The motion to postpone action passed by a vote of 10 to 3 with Councilors Adrian, Decelles and Dober voting against.

8. CONSIDERATION OF RESOLUTION CREATING AN INDEPENDENT AUDIT COMMITTEE **\*need two-thirds vote\***

City Attorney Schatz stated this item addressed subject matter that was referred to the Charter Change Committee. This resolution proposed to address one of those items.

Councilor Wright stated he would not vote to move this item forward. Councilor Mulvaney-Stanak called a point of order, noting that no motion regarding this resolution had been put forward. Councilor Paul made a motion to consider a resolution creating an Independent Audit Committee, seconded by Councilor Bushor.

Councilor Paul explained there was a difference between a motion to refer and a resolution. She asked that Councilors indulge the option for discussion. Councilor Wright noted that a vote of 12-1 has

occurred to forward this item to the Charter Change with the action being to return to the Council with a recommendation. He questioned the need to vote to bring it to the next level and noted that the proposed resolution was not the same as the recommendation made by the Audit Task Force.

Councilor Kranichfeld agreed with Councilor Wright. He did not agree with passing a resolution when the recommendation from the Charter Change Committee was pending. He believed it muddied the process and stated that initial recommendations from the Committee were due in November. Councilor Berezniak stated his opinion that the resolution was premature and did not adequately address the structure of the Task Force.

Councilor Bushor explained that the City was in the beginning phase of the annual audit and believed it was important to take advantage of the timing. She did not believe this resolution was disrespectful to the Charter Change Committee and by waiting the City would not have an Audit Committee. She believed it was a responsibility of the Council to have this in place and addressed as soon as possible.

Councilor Dober agreed the Charter Change Committee had been tasked with this and he believed it should happen as quickly as possible but that it must be well thought out and there was no benefit in having the Council work on it. Councilor Adrian noted, best intentions aside, there was an inherent conflict in the Administration weighing in on whether it should be audited and what the oversight process of the audit would be. Councilor Paul was disturbed that a fellow Councilor would say a resolution was disrespectful and expressed her frustration with the process and timelines involved in moving projects forward. Councilor Kaplan explained her reasons for co-sponsoring the resolution and believed they could move the process along in both a timely and thoughtful fashion.

Mayor Kiss wanted to be sure people were aware that the Council and the Administration did not have an adversarial role in terms of having a clean audit. He stated it was appropriately the response of the administration to work day-to-day with the auditor to get to the end of the audit. The Audit Committee was another element of the process ensuring for the Council, the Administration and the public that the audit was a good one. He believed the City was on the right track and the process did not have to be sped up. In the end it was important to have a process everyone was comfortable with. He explained that other organizations have audit task forces, citing UVM as one, and noted this was not a unique concept.

Councilor Wright stated the recommendations were due back to the Council on November 15<sup>th</sup> and, therefore, his opinion was it would not delay the process to wait. Further, he believed that passing the resolution was disrespectful to the process already in place.

The motion to approve consideration of a resolution creating an independent audit committee failed by a vote of 9 to 4, less than the 2/3 required of the entire Council. Councilors Bushor, Mulvaney-Stanak, Paul and Kaplan voted in favor. Thus, agenda item 8.01.RESOLUTION: Creation of an Independent Audit Committee (Councilors Paul, Bushor, Mulvaney-Stanak, Kaplan) failed.

9. COMMUNICATION: Kenneth A. Schatz, Esq., City Attorney, re: Proposed Charter Change on Composition of Board of Finance

Councilor Adrian made a motion, seconded by Councilor Shannon, to waive the reading, accept the communication and place it on file.

Following a question from Councilor Bushor as to the need for the communication, City Attorney Schatz stated a resolution could be brought forward to the Council or referred to a committee by a member of the City Council using the attached communication. He stated this item had been referred to him for recommendations and aside from that there was no indication of what else should happen with the communication. Councilor Bushor made a motion to refer the communication back to the Charter

Change Committee for their consideration as to which option would be in the best interests of the City as a whole.

Following a question from Councilor Decelles, City Attorney Schatz stated the resolution did not need to go back to the Charter Change Committee. Councilor Bushor explained there needed to be some forum for communication on this issue. Councilor Shannon called a point of information, stating this was an amendment to the motion. The motion was seconded by Councilor Kaplan. The amendment was not considered friendly by the seconder of the original motion.

Councilors Berezniak and Kranichfeld noted their lack of support for the amendment. Councilor Bushor again stated she hoped for some forum for Councilors to debate this issue. Councilor Dober supported Councilor Bushor's position stating it needed the input of all the Councilors and it should be directed to a committee for discussion. Councilor Shannon stated this item had already been discussed at great length and the Charter Change Committee's recommendation had not been well received. Everyone on the Council had the ability to communicate and it behooved others to develop and propose new language. Councilor Decelles agreed, stating committee recommendations had been deferred and referred too often with no decisions being made.

Councilor Berezniak made a motion to call the question, seconded by Councilor Shannon. The motion passed unanimously. The motion to refer this item to the Charter Change failed by a vote of 9 to 3, with Councilors Bushor, Mulvaney-Stanak, Dober voting in favor. The motion to waive the reading, accept the communication and place it on file passed unanimously.

#### 10. COMMITTEE REPORTS

Councilor Decelles reported the Charter Change Committee would be meeting and discussing the report from the Audit Task Force.

Councilor Paul reported the Transportation, Energy and Utilities Committee would be meeting to discuss Colchester Avenue and the Transportation Plan.

Councilor Kaplan reported the Parks, Arts and Culture Committee would be meeting to discuss Moran Plant issues. An additional item being reviewed was the concept of drinking fountains on Church Street and City Hall Park as art work.

Councilor Shannon reported the Ordinance Committee would be meeting to discuss the Cemetery and Miscellaneous Offenses, City Hall Park/Livable Wage ordinances.

#### 11. COMMUNICATION: City Councilors, re: General City Affairs

Councilor Wright encouraged everyone to vote in the November election.

Councilor Mulvaney-Stanak reminded people to register to vote. She discussed the recent death of Kathleen Smith and that people in her Ward had been on edge. She informed the public of the Police Department's alert system which could be found at [NIXLE.com/City of Burlington](http://NIXLE.com/City of Burlington). She expressed appreciation to the Police Department, noting their diligence in informing the public and increased patrols in Ward 3.

Councilor Shannon concurred with Councilor Mulvaney-Stanak's comment about the Police Department. She stated that community policing was needed now more than ever. She reminded the community that their help was also needed to augment community awareness. She then stated that in reviewing Burlington Housing Committee minutes it was reported that BHA would be providing exclusive marketing support for Comcast services for their housing units. She was shocked this was occurring as

the City worked through Burlington Telecom issues and she hoped the Mayor would speak to this item with BHA officials.

Councilor Berezniak expressed appreciation to the Police Department.

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

Mayor Kiss reported that Burlington had recently won a highly competitive grant and a Sustainable Communities Award for Local Planning from HUD.

He stated the Phoenix House would be opening the following day, October 26, and hoped that Councilors would take the time to drop in and see the facility.

Finally, the Mayor, in addressing Councilor Shannon's comments, stated there were always details that may not be obvious or apparent. He stated that Comcast was the cable provider at 230 St. Paul Street and at present Burlington Telecom was not in a position to make an offer to supplant Comcast. He asked that people be sure to seek further information on items.

13. ADJOURNMENT

Without objection, the Council President adjourned the the Adjourned City Council Meeting at 9:36 p.m.

Attest:

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