

SPECIAL MEETING, CITY COUNCIL
MONDAY, APRIL 25, 2011
7:00 P.M.

PRESENT: Mayor Kiss, Councilors Adrian, Hartnett, Blais, Paul, Berezniak, Dober, Wright, Mulvaney-Stanak, Bushor, Decelles and Paul (left at 9:15 p.m.)

ABSENT: Councilors Shannon, Brennan and Keogh

CITY ATTORNEY'S OFFICE: Ken Schatz and Nikki Fuller (departed at 7:44 p.m.)

CLERK/TREASURER'S OFFICE: Jonathan P.A. Leopold, Jr., Scott Schrader, Rich Goodwin and Lori Olberg

CHIEF ADMINISTRATIVE OFFICER LEOPOLD PRESIDING:

Councilor Berezniak nominated Councilor Adrian to serve as Acting City Council President.

Councilors Berezniak and Paul made a motion to recess the Special City Council Meeting. The Special City Council Meeting recessed at 7:12 pm.

DELIBERATIVE AGENDA

LOCAL CONTROL COMMISSION
MONDAY, APRIL 25, 2011
CONTOIS AUDITORIUM, CITY HALL
7:12 P.M.

PRESENT: See above

ACTING CITY COUNCIL PRESIDENT ADRIAN PRESIDING:

1. AGENDA

On a motion by Commissioners Dober and Bushor, the agenda was adopted as amended: add Sky Burgers to consent agenda item 2.11. 2011-2012 OUTSIDE CONSUMPTION PERMIT RENEWALS with the consent action to "waive the reading, accept the communication, place it on file and approve the 2011-2012 Outside Consumption Permit Renewals."

2. CONSENT AGENDA

Commissioner Dober stated the primary reason for the noted extensions were due to businesses owing taxes, not filing taxes, or had some kind of pending violations.

On a motion by Commissioners Dober and Decelles, the Local Control Commission adopted the consent agenda, as amended, thus taking the following actions as indicated:

2.01. COMMUNICATION: Carole Bourneuf, Executive Secretary, re: License Committee Minutes for December 15, 2010

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

2.02. COMMUNICATION: Carole Bourneuf, Executive Secretary, re: License Committee Minutes for March 23, 2011

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

2.03. 2010-2011 FIRST CLASS CABARET LICENSE EXTENSIONS: see attached list
*waive the reading, accept the communication, place it on file and grant the 2010-2011 First Class Cabaret Liquor License Extensions

2.04. 2010-2011 FIRST CLASS RESTAURANT LICENSE EXTENSIONS: see attached list
*waive the reading, accept the communication, place it on file and grant the 2010-2011 First Class Restaurant Liquor License Extensions

2.05. 2010-2011 SECOND CLASS STORE LICENSE EXTENSION: see attached list
*waive the reading, accept the communication, place it on file and grant the 2010-2011 Second Class Store Liquor License Extension

2.06. 2010-2011 OUTSIDE CONSUMPTION PERMIT EXTENSIONS: see attached list
*waive the reading, accept the communication, place it on file and grant the 2010-2011 Outside Consumption Permit Extensions

2.07. 2011-2012 FIRST CLASS CABARET LICENSE RENEWALS: see attached list
*waive the reading, accept the communication, place it on file and approve the 2011-2012 First Class Cabaret Liquor License Renewals with all standard conditions

2.08. 2011-2012 FIRST CLASS HOTEL LICENSE RENEWALS: see attached list
*waive the reading, accept the communication, place it on file and approve the 2011-2012 First Class Hotel Liquor License Renewals with all standard conditions

2.09. 2011-2012 FIRST CLASS RESTAURANT LICENSE RENEWALS: see attached list
*waive the reading, accept the communication, place it on file and approve the 2011-2012 First Class Restaurant Liquor License Renewals

2.10. 2011-2012 SECOND CLASS STORE LICENSE RENEWALS: see attached list
*waive the reading, accept the communication, place it on file and approve the 2011-2012 Second Class Store Liquor License Renewals

2.11. 2011-2012 OUTSIDE CONSUMPTION PERMIT RENEWALS: see attached list
*waive the reading, accept the communication, place it on file and approve the 2011-2012 Outside Consumption Permit Renewals

3. FIRST CLASS RESTAURANT LIQUOR LICENSE APPLICATION (2011-2012):

PJSC, LLC, d/b/a Scuffer Steak and Ale House, 148 Church Street

3.01. OUTSIDE CONSUMPTION PERMIT APPLICATION (2011-2012):

PJSC, LLC, d/b/a Scuffer Steak and Ale House, 148 Church Street

On a motion by Commissioners Dober and Decelles, the Local Control Commission voted to approve the 2011-2012 First Class Restaurant Liquor License Application and the 2011-2012 Outside Consumption Permit Application for Scuffer Steak and Ale House.

Commissioner Bushor inquired as to who the owner was and who was applying for the license. Commissioner Dober stated the ownership had recently changed. Commissioner Bushor inquired what the responsibilities were for the applicants and for the licensees in regards to back taxes owed to the City. Assistant City Attorney Fuller stated there were Gross Receipt taxes owed to the City and a new license

could not be issued until the back taxes were paid. The new owners were responsible to pay the taxes that were owed in the event that the previous owner failed to do so.

The motion passed unanimously.

4. ADJOURNMENT

On a motion by Commissioners Kranichfeld and Dober, the Local Control Commission unanimously adjourned at 7:19 p.m.

Attest:

Lori Olberg, Licensing, Voting & Records Coordinator and Amy Bovee, Executive Secretary to the CAO

SPECIAL MEETING, CITY COUNCIL
MONDAY, APRIL 25, 2011
7:19 P.M.

ACTING CITY COUNCIL PRESIDENT ADRIAN PRESIDING:

1. AGENDA

On a motion by Councilors Mulvaney-Stanak and Dober, the agenda was amended as follows: remove from the consent agenda item 3.13. REPORT: Christina B. McCaffrey, Chair, Board for Registration of Voters, re: Annual Report; add Breakwater’s, Three Needs and Vermont Pub Brewery to consent agenda item 3.20. 2011-2012 TOBACCO LICENSE RENEWALS with the consent action to waive the reading, accept the communication, place it on file and approve the 2011-2012 Tobacco License Renewals;” add to the consent action item 3.25. 2010-2011 TOBACCO LICENSE EXTENSION: Kountry Kart Deli with the consent action to “waive the reading, accept the communication, place it on file and grant the 2010-2011 Tobacco License Extension for Kountry Kart Deli;” remove from the consent agenda item 3.15. COMMUNICATION: SULLIVAN, POWERS & CO., Certified Public Accountants, re: Responses related to the Larkin report questions asked by the Council and place it on the Deliberative Agenda as item 5.5. per Councilor Paul on the floor; add Councilor Dober as a co-sponsor to agenda item 6. RESOLUTION: Requesting Update on the Mayor’s Moran Plant Project (Councilor Decelles); add Councilor Dober as a co-sponsor to agenda item 7. RESOLUTION: Recall of Local Elected Officials (Councilors Wright, Decelles, Hartnett); note proposed written amendment for agenda item 7. RESOLUTION: Recall of Local Elected Officials (Councilors Wright, Decelles, Hartnett). The agenda was approved unanimously as amended.

2. PUBLIC FORUM

Acting City Council President Adrian opened the public forum at 7:20 p.m.

<u>Name</u>	<u>Ward/Affiliation</u>	<u>Subject</u>
Ken Lawless	Ward 3 Resident	Opposed Lockheed Martin Partnership
Susan Dorn	Ward 6 Resident	Tax Assessments
Jim Carter	Coach	UVM Baseball – Team of 1893
Ben Aleshire	Ward 3 Resident	Opposed Lockheed Martin Partnership

Peter Garrantano	Self	Opposed Lockheed Martin on Earth Day
Michael Rooney	Ward 6 Resident	BED Bonding Revenue, Personal Property Tax
Liza Cowan	Ward 6 Resident	Opposed Lockheed Martin Partnership
Jonathan Leavitt	Ward 2 Resident	Opposed Lockheed Martin Partnership
Ron Ruloff	Ward 3 Resident	Burlington Telecom – Recall Ordinance
Lea Terhune	North End NPA	Openings and Appointments to Boards and Commissions
Dylan Kelley	Ward 2 Resident	Opposed Lockheed Martin Partnership

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

3. CONSENT AGENDA

On a motion by Councilors Kranichfeld and Decelles, the Council voted unanimously to adopt the consent agenda 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: Approving the Engagement Letter with TD Securities (USA) LLC
(Board of Finance)
*waive the reading and adopt the resolution
- 3.03. RESOLUTION: Approving and Accepting Keybank National Association’s Summary
Proposal of Terms and Conditions for Grant Anticipation Borrowing
(Board of Finance)
*waive the reading and adopt the resolution
- 3.04. RESOLUTION: Approval of Burlington School District’s Purchase of 118 North
Champlain Street (Board of Finance)
*waive the reading and adopt the resolution
- 3.05. RESOLUTION: Authorization for Land Purchase and Relocation Services in
Anticipation of AIP Grant Funds for Burlington International Airport
(Board of Finance)
*waive the reading and adopt the resolution
- 3.06. RESOLUTION: Authorization for Land Purchase and Relocation Services in
Anticipation of AIP Grant Funds for Burlington International Airport
(Board of Finance)
*waive the reading and adopt the resolution
- 3.07. REPORT: Lisa Jones, Board Clerk, Burlington Housing Board of Review, Annual Report
for 2010
*waive the reading, accept the report and place it on file

- 3.08. COMMUNICATION: Janice D. Badeau, Transcriber, Court Reporters Associates –
Transcription Service, re: Board of Finance 2/14/11 Minutes
*waive the reading, accept the communication and place it on file
- 3.09. COMMUNICATION: Lori Olberg, Licensing, Voting & Records Coordinator & Sue Trainor,
Assistant to the CAO, re: Minutes, City Council, December 13, 2010
*waive the reading, accept the communication, place it on file and adopt the minutes at the May 2, 2011
City Council Meeting
- 3.10. COMMUNICATION: The Vermont Animal Cruelty Response Coalition, re: Alleged drowning
of an unclaimed stray cat by a municipal official
*waive the reading, accept the communication and place it on file
- 3.11. REPORT: City Assessor John Vickery, Board of Assessors Commission Report
*waive the reading, accept the report and place it on file
- 3.12. REPORT: William A. Mason, Chairperson Board of Tax Appeals, re: Board of Tax
Appeals – 2010 Annual Report
*waive the reading, accept the report and place it on file
- 3.14. COMMUNICATION: Susan Leonard, Director of Human Resources, re: Institutions and
Human Resources Policy Committee Status at Term End 4/2011
*waive the reading, accept the communication and place it on file
- 3.16. 2010-2011 INDOOR ENTERTAINMENT PERMIT EXTENSIONS: see attached list
*waive the reading, accept the communication, place it on file and grant the 2010-2011 Indoor
Entertainment Permit Extensions
- 3.17. 2010-2011 OUTDOOR ENTERTAINMENT PERMIT EXTENSIONS: see attached list
*waive the reading, accept the communication, place it on file and grant the 2010-2011 Outdoor
Entertainment Permit Extensions
- 3.18. 2011-2012 INDOOR ENTERTAINMENT PERMIT RENEWALS: see attached list
*waive the reading, accept the communication, place it on file and approve the 2011-2012 Indoor
Entertainment Permit Renewals
- 3.19. 2011-2012 OUTDOOR ENTERTAINMENT PERMIT RENEWALS: see attached list
*waive the reading, accept the communication, place it on file and approve the 2011-2012 Outdoor
Entertainment Permit Renewals
- 3.20. 2011-2012 TOBACCO LICENSE RENEWALS: see attached list
*waive the reading, accept the communication, place it on file and approve the 2011-2012 Tobacco
License Renewals
- 3.21. COMMUNICATION: Ilene Lemieux, 131 Intervale Avenue to Mayor Kiss & Fire Chief
Lasker, re: Compassion for the Firefighters of Burlington
*waive the reading, accept the communication and place it on file
- 3.22. COMMUNICATION: Lori Olberg, Licensing, Voting & Records Coordinator and Sue Trainor,
Assistant to the CAO, re: Minutes, City Council, December 6, 2010,
Draft
*waive the reading, accept the communication, place it on file and adopt the minutes as received at the
April 11, 2011 City Council Meeting

3.23. COMMUNICATION: Lori Olberg, Licensing, Voting & Records Coordinator and Sue Trainor, Assistant to the CAO, Minutes, City Council, January 10, 2011, Draft
*waive the reading, accept the communication, place it on file and adopt the minutes as received at the April 11, 2011 City Council Meeting

3.24. COMMUNICATION: Lori Olberg, Licensing, Voting & Records Coordinator, re: Minutes, Organization Day, April 4, 2011, Draft
*waive the reading, accept the communication, place it on file and adopt the minutes as received at the April 11, 2011 City Council Meeting

4. INDOOR ENTERTAINMENT PERMIT APPLICATION (2011-2012):

PJSC, LLC, d/b/a Scuffer Steak and Ale House, 148 Church St.

On a motion by Councilor Dober and Decelles, the Council voted unanimously to approve the 2011-2012 Indoor Entertainment Permit Application for the Scuffer Steak and Ale House. The motion passed unanimously.

At this time Councilor Dober and Decelles made a motion to suspend the rules and go into the Public Forum prior to 7:30 p.m. The motion passed unanimously.

5. 2010 CITY AUDIT REPORT: Fred Duplessis, CPA, Auditor for the City of Burlington

5.01. REPORT: CITY OF BURLINGTON, VERMONT TELECOM FUND AUDIT REPORT, JUNE 30, 2010 (**part of the March 7, 2011 City Council Packet**)

5.02. REPORT: CITY OF BURLINGTON, VERMONT AUDIT REPORT AND REPORTS ON COMPLIANCE AND INTERNAL CONTROL, JUNE 30, 2010

5.03. COMMUNICATION: SULLIVAN, POWERS & COMPANY, Certified Public Accountants, re: Management Letter

On a motion by Councilors Kranichfeld and Mulvaney-Stanak, the Council voted to waive the reading, accept the communications and place them on file. The motion passed unanimously.

Fred Duplessis, City Auditor, was present to speak with the Council. Councilor Bushor asked the Auditor to provide the Council with a description of what an audit was. City Auditor Duplessis stated the Auditor's responsibility was to perform an examination of financial statements and provide an opinion on whether those financial statements were fairly presented in conformance with accepted accounting practices. Further, single audits were performed in order to test for compliance as a result of federal funds received.

Councilor Bushor, after reviewing agenda item 5.5, a transcript of Mr. Duplessis' comments to the Board of Finance, reiterated comments made that audits done for the City from 2007-2010 did not address legal aspects of the relationship with Burlington Telecom as that was outside the purview of the audit and was left to be addressed by the City directly. Mr. Duplessis stated it was not their responsibility to determine if there had been any direct and material violation of any law. Councilor Bushor noted that Sullivan & Powers had referenced in previous years where a draw down on pooled of cash had occurred and had stated the intent was to refinance and pay back the pooled cash. Mr. Duplessis stated the circumstances were different from year to year.

Councilor Bushor explained that when the City rejected the Piper-Jaffrey financing, there was a note in the audit that there was no way to make whole the draw down from pooled cash. Mr. Duplessis stated that in the 2008 audit there was a footnote which explained the consequences if the City could not obtain financing. In spite of the City's confidence and the confirmation from Municipal Leasing that the City would be able to refinance, the City felt it was important to have a footnote explaining that if refinancing were not an option, it would have a significant impact on the General Fund. Councilor Bushor stated the transcript, which should be available to the public, showed the tracking of a series of events that the public might not be aware of.

Councilor Bushor then spoke about comments made about the Larkin Report by Mr. Duplessis at a Board of Finance meeting. Mr. Duplessis had stated he had been surprised to read in the report that records were not available or accurate and that the City could not generate reports that showed monthly balances. Mr. Duplessis stated that Sullivan & Powers had always been able to get information at any time. Mr. Duplessis stated that if the City were asked, they would print them out immediately. Again, he noted his surprise the Larkin Report would state that. He reported that Larkin never asked Sullivan & Powers for information and he found it unfortunate there were erroneous statements in that report. Asked by Councilor Bushor if he stood by his comments made at the Board of Finance, Mr. Duplessis stated he did. He found it very frustrating to everyone involved that inaccurate statements, false inferences and items taken out of context were part of the report. He was disappointed that a draft of the report had not been circulated to the City for review prior to publication, because it could have been a more useful document if they had taken steps to ensure inaccuracies were eliminated.

Councilor Kranichfeld, in the interest of full disclosure, stated that his fiancée was Mr. Duplessis' niece. He then asked for clarification on a statement about internal controls noted in the cover letter. Mr. Duplessis explained that internal control reviews were much more detailed and were secondary to the audit. He also noted that auditors often change testing strategies so management does not know in advance how they will be audited.

Regarding the Burlington Telecom audit, Councilor Paul asked Mr. Duplessis why Sullivan & Powers did not cite the ability of the City to replace the CitiCapital assets as a concern within the audit report. Mr. Duplessis stated it had been disclosed within the audit as a subsequent event. Referring to the audit, Mr. Duplessis explained that two major subsequent events mentioned in the audit were first, the Public Service Board determining violations and second, that the City was negotiating with CitiCapital regarding taking possession of secured assets. He reminded the Council again that the Auditor's role was to ensure the appropriate disclosures were noted. Councilor Paul then asked why replacement of the funds were not listed as a concern in the audit report. Mr. Duplessis stated that question had not been part of what an audit would be because it was a concern in the future.

Councilor Paul asked if the value of the fiber network were being depreciated. Mr. Duplessis stated it was and those values were described in the audit. Councilor Paul credited the Council for making an issue of the audit process and holding departments accountable. Mr. Duplessis stated that a lot of the remaining issues noted in the last Management Letter had been handled since the issuance of the report.

Councilor Paul then asked Mr. Duplessis if he stood by his April letter, noting that six questions had not been answered individually as they were presented. Mr. Duplessis stated he could answer all of them separately but it would require a lot of repetition and it would not change the answers. Councilor Paul stated what she asked had not been done and that if it had been done as she asked they could have eliminated the many drafts. Councilor Paul asked Mr. Duplessis if he felt he had alerted the City to the best of his abilities regarding pooled cash deficiencies. Mr. Duplessis stated it was in a footnote in the audit and based on what he knew it was disclosed. He noted though that the Council did not get those reports. It was repeated in the Management Letters from 2007-2009 and the auditors did ask the City to get a legal opinion on the deficiencies.

Councilor Hartnett inquired as to what the comment “review of spreadsheets” meant. Mr. Duplessis stated that many were not reviewed by a second individual and this could result in formula problems not being caught. Councilor Hartnett asked if there were a better way to do this. Mr. Duplessis stated a recommendation had been made that Burlington Telecom should purchase fixed asset software that would do these calculations. He noted there were functions that were good for spreadsheets but he just wanted to ensure the spreadsheets were reviewed.

In reviewing the packet material, Councilor Hartnett stated his opinion that the City’s accounting methods were outdated. Mr. Duplessis did not agree, noting the software being used was a municipal accounting software. He noted an audit was not an evaluation of the accounting system, just financial statements. He also stated that the City was researching new software programs and developing an RFP to address this.

Councilor Wright noted that Mr. Duplessis had indicated that the Piper-Jaffrey proposal would have replenished the cash pool and brought the City into compliance. Mr. Duplessis agreed, however, he stated there may have been other issues associated with the Piper-Jaffrey deal. He did not want to imply that the City Council should have gone with Piper-Jaffrey, but if the Council had done so, it would have allowed the General Fund to be replenished. He believed the debt to Burlington Telecom would have stayed the same or gone up if they had gone with Piper-Jaffrey.

Councilor Wright then referred to the Board of Finance transcript in which Mr. Duplessis spoke about the Larkin Report and asked if Mr. Duplessis had ever had a chance to speak with Larkin. Mr. Duplessis stated he had not contacted Larkin and would not unless he was asked. Councilor Wright asked when the auditors talked to the administration about a violation of the Certificate of Public Good. Mr. Duplessis stated Sullivan & Powers met with Burlington Telecom staff annually because Sullivan & Powers were aware they were not monitoring the Certificate and any violation of any condition could have a direct material effect on the financial statements. It was the assertion of management that it could not have a direct impact. At that time there had been no discussion of fines and even to this point he was unsure there were fines being imposed. So at that point in time the auditors were looking to determine if there were going to be fines levied, thus necessitating the need to record a liability.

Councilor Wright asked at what point \$17 million missing from cash flow would impact other departments. Mr. Duplessis replied that money was not missing. He could account for where it all was, noting it was in the streets, in the lines, in the payroll, etc. Mr. Duplessis stated it would be speculation on his part to say when other departments might be impacted. It depended on what happened with partners or buyers of the telecom business and when the City replenished the pooled cash. Councilor Wright referred to comments made earlier by Mr. Duplessis in which the City stated that Burlington Telecom was expected to run out of money in the spring but that had not set off alarm bells to the auditor because the City was expected to refinance. Mr. Duplessis stated that in 2007 refinancing was achieved. In 2008 refinancing did not occur but Sullivan & Powers received assurance from the City and the City’s financial consultants that they could refinance and in 2009 a qualification had to be put in the audit because no one in the City could be sure.

CAO Leopold inquired if Mr. Duplessis were aware that the City Administration issued a rebuttal to the Larkin Report and asked if the City Administration reviewed with him the responses pertaining to audits and to the findings about the City’s accounting. Mr. Duplessis stated he did review the responses pertaining to accounting and finances, but not the entire rebuttal. CAO Leopold stated that Larkin found that based on Sullivan & Powers’ field notes and papers that the City knew prior to November 2008 that there was a violation of Condition 60. Mr. Duplessis stated Larkin made inferences based on the process used by Sullivan & Powers. He again noted his frustration with the final Larkin Report. Mr. Duplessis stated if his auditing firm had known it were a violation it would have been ridiculous for the auditors to ask the City to get a legal opinion on that. However, it was unclear so they suggested getting a legal opinion. That opinion was issued in June of 2009.

CAO Leopold then asked Mr. Duplessis to clarify statements made in the Larkin Report. One statement noted the City utilized unconventional accounting practices. Mr. Duplessis stated he would have asked for a list of what practices they were referring to and why they believed they were unconventional. There was not enough information in the report to answer that question specifically. CAO Leopold asked, after auditing the City for over a decade, if Mr. Duplessis believed the City utilized generally accepted accounting practices. Mr. Duplessis stated the City utilized appropriate accounting principles and the City was in full conformance with generally accepted accounting principles.

CAO Leopold then stated that Larkin asserted they could not verify the City was properly calculating the amount of the debit to pooled cash. Mr. Duplessis explained that when the auditors begin, all entries, allocations, inter-fund distributions have been made. If there were differences they probably would not be material. It may only affect the calculation of the inter-fund interest on a monthly basis. The auditors look at year end financials, not monthly financials. Based on the City's system, those charges were in the pooled cash for all funds. CAO Leopold asked the auditor if most municipalities presented their financial statements on a year-end basis. Mr. Duplessis stated most municipalities do and it was not considered unconventional. Mr. Duplessis reminded the Council that Burlington is unique in Vermont for the complexity of the financials.

CAO Leopold then reminded the Council that the City's audited financial statements were published each year in the annual report and were on the City's website. He urged people to review the reports for 2007, 2008 and 2009 if they had not followed the chronology. The 2008 Annual Report stated that in the event that pooled cash were not replenished it would have an adverse effect. In 2009 a specific disclosure was published that financing was even more uncertain and the likelihood of replenishing pooled cash was less certain because a planned financing did not occur.

Councilor Blais asked about Burlington Telecom's obligation to CitiCapital for \$31.5 million that was reflected in the City's audit. Mr. Duplessis stated that was the only debt at that time. Mr. Blais inquired if that was a legitimate liability of Burlington Telecom. Mr. Duplessis stated as of June of 2010 it was. Councilor Blais noted that there were pronouncements from the Mayor's Office that was not a debt that the City had to be concerned about. Mr. Duplessis said that would be inconsistent with the letter signed by the City for the financial statements. He reminded the Council that the numbers within the financial statements were from the City. The auditor's job was to verify that balance. Councilor Blais asked if in addition to \$17 million owed to pooled cash there was also \$31 million owed to CitiCapital. Mr. Duplessis stated there was a footnote in the 2010 audit that stated subsequent to the end of the year the City exercised their right to non-appropriation.

Councilor Dober inquired about the comment made that the Council was not given the Management Letter. Mr. Duplessis stated it was his understanding, based on discussions at the Board of Finance, that they were not provided. However, he did not know if that was the case. The audit letters were addressed to either the City Council and Mayor or the Board of Finance and Mayor. He could confirm they were delivered to the City. When the Council actually received them he did not know. Councilor Dober then noted there was no accounting code for Burlington Telecom and it did not have its own bank account. The Council eventually put something together to make sure funds could be identified as Burlington Telecom funds. Councilor Dober asked if using pooled cash could have been what the Larkin Report considered unconventional. Mr. Duplessis stated the pooled cash practice was used throughout the nation and was a very common financing device that municipalities use. He reiterated that if the City decided each fund would have its own bank accounts they would not be able to pool their cash, interest rates received would be low and borrowing rates would be high. It would not be in the best interest of the city. Councilor Dober then asked what size an entity should be to have its own accounting system. Mr. Duplessis stated that the only City department that had its own separate accounting system was Burlington Electric. All other funds were within the City system.

Acting City Council President Adrian inquired if the Airport was still using its own accounting system. CAO Leopold stated that only the School Department and Burlington Electric were separate. CAO Leopold, in response to Councilor Blais' earlier question clarified that the lease with CitiCapital was not a debt of the City. It was considered a lease obligation and the distinction was important because if it were legally a debt it would have required voter approval. Leases which were cancellable on an annual appropriation basis do not constitute legal debt. He thought that may clarify the distinction when CitiCapital lease obligation was described as not a legal debt of the City.

5.5. (was 3.15.) COMMUNICATION: SULLIVAN, POWERS & CO., Certified Public Accountants, re: Responses related to the Larkin report questions asked by the Council

On a motion by Councilors Berezniak and Mulvaney-Stanak, the Council voted to waive the reading, accept the communication, and place it on file. The motion passed unanimously.

6. RESOLUTION: Requesting Update on the Mayor's Moran Plant Project (Councilor Decelles and Dober)

Councilors Decelles and Wright made a motion to waive the reading and adopt the resolution.

Councilor Decelles stated that with two new Councilors and the length of time since the last update, he asked the Council to adopt the resolution. Councilor Dober spoke in favor of the resolution, stating this was a leading question from his constituents. Councilor Mulvaney-Stanak stated she did not feel a resolution was necessary on this matter as a request of the President of the Council to add it to the agenda would have been sufficient.

Councilors Mulvaney-Stanak and Decelles made a motion to call to question. The motion passed by a vote of 10 to 1 with Councilor Paul voting against.

The motion then passed unanimously.

7. RESOLUTION: Recall of Local Elected Officials (Councilors Wright, Decelles, Hartnett and Dober)

Councilor Wright made a motion, seconded by Councilor Decelles, to waive the reading and adopt the resolution.

Councilor Wright stated this resolution revisited a previous resolution dealing with a recall provision which would hopefully be on the ballot next March. He amended the resolution and changed the "report back" date to the second meeting in June. He added that many citizens have been interested in this issue.

Councilor Bushor asked about a clause in the resolution that stated other communities in Vermont have a provision allowing for voter recall. She stated she would like to know what other communities allow recall and asked that this information be resubmitted to the Council.

Councilor Kranichfeld stated he appreciated the amendments. He raised concerns about the recall provision. These concerns included the fact that it would defeat the purpose of a regular election cycle, it raised the possibility of removing someone from office for political reasons, and it would weaken government with officials constantly being concerned about recall. In order for this to be effective, there would need to be minimum grounds for recall. Councilor Kranichfeld moved to amend the resolution to add language that requested what constituted grounds for recall. The amendment was considered friendly by the maker and seconder.

Councilor Wright stated the Charter Change Committee would come back with information about different municipalities that have a recall provision. In response to Councilor Kranichfeld's concern, Councilor Wright stated the idea of the recall would be to have a petition process and this would only happen on rare occasions. There could be limits in place as to when this could occur and would have a high threshold for petitions. This would be an option if the Mayor was doing a terrible job and voters wished to shorten the term.

Councilor Hartnett stated recall made for better government when done right. Further, he believed there was no question that the people of Burlington would like to see this on the ballot.

Councilor Berezniak stated he appreciated the amendments that were made but felt the passage of this charter change had the potential to disrupt the way government functions. Councilor Berezniak proposed an amendment to the resolution, adding a clause stating "Be it further resolved that the Charter Change Committee be authorized to use up to \$5,000 of the Councilor's Fund to have the Vermont League of Cities and Towns research this issue." This was not considered friendly by the seconder of the original motion. Acting City Council President Adrian seconded the motion.

Councilor Wright did not accept this amendment as friendly, as he did not feel it was necessary to spend money to get this information. Councilor Bushor spoke against the amendment, stating it was the criteria that mattered. She added that she would support the overall resolution, but would not necessarily support what the Charter Committee would ultimately present and had severe reservations about the resolution. She raised concerns that two year terms were short and having a recall may be counterproductive.

The amendment failed with Councilors Berezniak and Adrian voting in favor.

Councilor Dober asked the Charter Change Committee to also revisit the impeachment resolution, as it should correspond with this.

Mayor Kiss stated that recall was political in nature and invariably disruptive and costly. He provided the examples of Michigan and Wisconsin as places where this had been the case. He stated recall was not good government for the City of Burlington and portended a dismal course if that were the course taken.

Councilor Decelles stated that this could work well and voters should be allowed to determine if they want this in place or not.

Councilor Berezniak spoke against the resolution stating he believed it would be a waste of time. Councilors Berezniak and Hartnett made a motion to call the question and have a roll call. The motion passed.

The amended resolution passed by a vote of 6-4 with 4 Councilors absent.

Ayes: Councilors Adrian, Bushor, Decelles, Dober, Hartnett, and Wright

Nays: Councilors Berezniak, Blais, Kranichfeld, and Mulvaney-Stanak

Absent: Councilors Brennan, Paul, Shannon, and Keogh

8. RESOLUTION: Special City Meeting—Re: Burlington Electric Department Authority To Issue Revenue Bonds for Purchase of Additional Equity in Vermont Transco, LLC, Investment in Smart Grid Technology and Highgate Station Improvements (Board of Finance)

Councilors Hartnett and Mulvaney-Stanak made a motion to waive the reading and adopt the resolution.

Barbara Grimes, General Manager, Daryl Santerre and Ken Nolan of Burlington Electric Department, stated that Burlington Electric would like to have a special election to ask questions that were defeated in March. The March question was in regard to a General Obligation Bond, whereas this question would be asking for a Revenue Bond. This question would ask for more money because a portion of the Revenue Bond would be used for the Debt Reserve Fund. Additionally, this would help fund an upgrade to the Highgate Converter, which Burlington Electric was a partial owner of. Finally, the State received stimulus money for the enhancements that require matching funding. This would provide Burlington's share of the matching funds.

Councilor Dober stated he would not support this resolution. At an NPA meeting, Burlington Electric management told his constituents before the March vote that if it failed, they would raise rates. He felt that his constituents have already stated they did not want this.

Councilor Wright inquired what this would mean for voters if it were not put on the ballot and did not pass. Ms. Grimes stated this bond would allow Burlington Electric to buy equity in VELCO which would bring down the cost of transmission. Burlington Electric had already started investing in Smart Meters because it was a requirement of a grant. If this did not pass, BED would have to stop this project and determine how to cover what had already been spent and would lose income generated by the VELCO equity.

Councilor Berezniak asked if this would allow access to federal money to pay for a project that was going to have to be built. Further, if the money did not come from this bond, would it have to come from the rate payers. Ms. Grimes stated that was correct.

Councilor Bushor inquired if rolling the debt service reserve fund into the borrowing was common. Ms. Grimes stated it was. Councilor Bushor stated she had heard negative comments from residents City-wide about Smart Meters due to privacy concerns and radio frequency emissions. Ms. Grimes stated there was information on the BED website regarding the issue. Ken Nolan stated there would be information going out in the June bills and a summary of a study done by the Electric Power Research Institute on the meters. The conclusion was that the output from these meters was significantly less than from microwaves or baby monitors. The Vermont Department of Health would be also evaluating the meters.

Councilor Bushor inquired about privacy concerns. Mr. Nolan stated that would be addressed in the July bill stuffer. Burlington Electric would be able to see total consumption across a home every 15 minutes, but it could not be broken down by appliances. The consumer would be able to track their own appliances within their home but that information would not be available for BED to review. Within the Electric Department those who were tracking consumption were not the same people that interact with customers. Councilor Bushor stated she had heard concerns that ultimately BED would be able to have control over how what could be done and when. Mr. Nolan stated Burlington Electric had controlled electric water heaters and these meters would give the option for Burlington Electric to control other appliances, but the customer would be allowed to choose to participate or not.

Councilor Hartnett asked if money was being spent that BED did not have. Ms. Grimes stated that was true. She noted that they went in this direction at the advice of regulators. When the award was provided, BED had three years to complete the project. Money was spent in anticipation of revenues and there had been every expectation that would happen. If the revenues do not come, the program would be stopped until action was required. Councilor Hartnett stated BED had a bad public reputation in terms of communicating with the public and it would take a lot of work to convince citizens that this was good for Burlington. Bill stuffers and NPA meetings would not be sufficient to educate Burlington citizens. Ms. Grimes noted that in March 61% of the voters approved the package. She reminded Councilor Hartnett that BED was not allowed by the Public Service Board to advertise or write an article in support of an item.

Councilor Dober asked Ms. Grimes who authorized the use of funds so far. Ms. Grimes stated it was the Electric Light Commission.

Councilor Wright asked about the time sensitivity of this issue and why it required a special election. Ms. Grimes stated BED had to move forward with purchasing and deployment in order to meet the deadlines. If deadlines were not met there were consequences with Department of Energy (DOE) as far as repayment goes. Mr. Nolan noted that the Commission and the Council have approved this project and they now have reached a point where the meters either need to be installed or the project needed to be stopped. He explained that an agreement was signed with the Department of Energy in April of 2010 that said smart grid projects would be implemented. Smart Meters would be \$6.8 million of the \$14 million project. The other improvements would be a backup emergency building and other projects, including marketing funds. BED now had two years to complete these projects or the money would go away. He noted that all other utilities were doing this, and they would be happy to get this money if Burlington does not spend it. That would leave Burlington behind other utilities.

Councilor Wright noted it was supported by 61% of voters in March. This question would not require a two-third vote, as the March vote did. Ms. Grimes stated revenue bonds only require the support of a majority. Unlike General Obligation Bonds, Revenue Bonds would not impact the revenue of the City.

Mayor Kiss stated building infrastructure attracted business and this was a good investment. He also stated Smart Meter was part of a climate change response and would help to use energy more efficiently. The availability of federal money should be taken advantage of.

Councilor Berezniak asked if this made economic sense for the rate payers of Burlington. Ms. Grimes stated that as a stand-alone investment, it did not make sense for Burlington Electric to invest in Smart Meters. However, with a matching grant supplying 50% of the cost, it was just above breaking even. Additionally, because it was a technology on the rise, it made sense to implement this program. Councilor Berezniak inquired if the long term benefit of the meters was that rate payers would have a better sense of their energy consumption. Ms. Grimes stated that was correct.

Councilor Adrian asked who decided to use a Revenue Bond versus a General Obligation bond. Ms. Grimes stated it was CAO Leopold. Councilor Adrian asked for the breakdown of how much money would be saved per kilowatt hour per household per year. Mr. Nolan stated they have not given that number out. Rates would be adjusted based on the time of day that energy was used. For Burlington Electric this would save \$1 to 2 Million over a 20 year period. Councilor Adrian asked Ms. Grimes if she had concerns should this question appear on the same ballot as a requested tax increase. Ms. Grimes stated she would prefer not to comment.

The resolution passed by a vote of 6-3 with Councilors Decelles, Dober, and Hartnett voting against.

9. COMMITTEE REPORTS

Councilor Bushor stated that the Ordinance Committee was going to present the Livable Wage Ordinance the following week.

Councilor Kranichfeld stated the Public Safety Committee was planning to meet soon to discuss the Fire Station Consolidation Issue, determine a mission statement, and discuss traffic safety issues.

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

Councilor Hartnett stated he was visiting the Ward 4 and 7 NPAs and some neighbors on Stirling Place were affected by a burst pipe that caused damage to their basements. He hoped the City would help them through this process. He encouraged Councilors to participate in the COTS walk.

Councilor Dober stated the Ward 4 and 7 NPAs was trying to establish a partnership with Burlington High School and Local Motion to clean up the North 40. Burlington High School alumni would own that project and do it on Green Up Day. This would take place be on May 7.

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

Mayor Kiss stated that mayors across the country were working on budgets and outlined the huge deficits that other mayors were dealing with. In Burlington, the gap was \$750,000 and he believed that a 2 cent general tax increase would be sufficient to close this gap. It would provide the City with momentum to move forward. He believed that the people of Burlington should be encouraged by the Council to make this investment. Without this increase, there would be reductions in staff at Police, Parks and Recreation and would change the flow of the City.

12. ADJOURNMENT

On a motion by Councilors Dober and Blais, the Special City Council Meeting unanimously adjourned at 10:19 p.m.

Attest:

Lori Olberg, Licensing, Voting & Records Coordinator and Amy Bovee, Executive Secretary to the CAO