

Resolution Relating to

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CITY OF BURLINGTON

In the year One Thousand Nine Hundred and
Resolved by the City Council of the City of Burlington, as follows:

That
occurs, shall appoint one commissioner. Each commissioner shall hold office from the first day of July next following his appointment. Provided, if the first five commissioners are appointed subsequent to October 1, 1979 but prior to the first Monday in June, 1980, they shall hold office from the date of appointment and for the purposes of determining the duration of their terms they shall be deemed to have been appointed on the first Monday in June, 1979. Appointments shall be so made that no more than three of the commissioners shall at any one time be from the same political party. One member at all times shall be a proprietor or manager of a retail establishment which is within the District and such member need not be a resident of Burlington. The Commission shall organize by the election of a chairman and vice-chairman and by the appointment of a clerk and a treasurer. The clerk shall keep a written record of the proceedings of the Commission, such record to be the property of the city. The clerk need not be a member of the commission. The manner of removal of commissioners and filling of vacancies shall be as provided in Sections 129 and 130 of this charter, and the commissioners shall, except as otherwise herein expressly provided, be subject to all other provisions of this charter relating to public officers.

Sec. 323. Expansion of District and/or Marketplace.

(a) Upon recommendation of a majority of the Commission to the ^{Board of Aldermen} ~~city council~~, the boundaries of the District may be expanded. Said boundaries may be expanded only if all the following conditions are met:

- (1) Notification of the consideration of the expansion is give in writing to all persons owning property in the contemplated area of expansion;
- (2) A legally warned public hearing on the question is conducted;
- (3) Two-thirds of the membership of the Board of Aldermen present and voting approve the extension; and
- (4) The expanded boundaries do not extend beyond the boundaries of the central business district more precisely shown on a plan entitled "Comprehensive Zoning Map of Burlington, Vermont" recorded with the City Clerk of the City of Burlington on April 26, 1973.

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That

(b) Upon advice of the Commission to the ~~city council~~, ^{Ord. of A. Robinson} that section of the

District now or hereafter defined as the Marketplace may be expanded or not within the District, subject to the same restrictions listed under (a) above.

Sec. 324 Purposes and Powers.

(a) Subject to the orders and ordinances of the ~~city council~~, ^{Ord. of C.} the Commission shall have the responsibility to establish, improve and maintain a marketplace within the District, provided that the Commission shall not undertake to assume its responsibilities, rights, powers and duties until given such authority pursuant to a fully adopted resolution of the ~~city council~~. ^{Ord. of C.}

(b) In furtherance of its purpose, the Commission shall, subject to the orders and ordinances of the ~~city council~~ ^{Ord. of C.} have the following rights, powers and duties:

(1) to exercise the powers of the board of street commissioners set forth in the first paragraph of Section 231 of this charter with respect to the Marketplace; provided that, in relation to the board of water commissioners, the board of light commissioners and the water pollution control commissioners, the Commission shall have the same status as a private user;

(2) to acquire on behalf of the city, with the approval of the ~~city council~~, ^{Ord. of A. Robinson} by gift, purchase, exercise of the power of eminent domain by the ~~city council~~, ^{Ord. of C.} or otherwise, all types of interests in real property and rights of way which will become part of the Marketplace to be used in connection therewith;

(3) to construct or contract for the construction of improvements of any kind or nature necessary or convenient for the establishment or operation of the Marketplace;

(4) to pay, from the funds provided for herein, the whole or any portion of the cost of constructing and maintaining such improvements, including the cost of preliminary planning for the Marketplace;

(5) to prohibit in whole or in part vehicular traffic, other than motor vehicle traffic on the Marketplace, and to recommend to the Traffic Commission the prohibition or regulation of motor vehicle traffic within the District;

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- (6) to recommend to the Planning Commission the imposition of restrictions on the height, use and exterior appearance, including restrictions on the use of signs, for buildings fronting on the Marketplace; such restrictions to be imposed only after notice and public hearings and, except for the use of signs, such restrictions to be prospective in nature;
- (7) to make such improvements within the District as are necessary or convenient to the operation of the Marketplace; agencies, including without limitation the Chittenden County Transportation Authority and the Federal Urban Mass Transportation Administration, as may be necessary or convenient to carry out the purposes of this act;
- (8) to lease space, including air rights, in, below, and above the Marketplace but only in compliance with Section 55 of this charter;
- (9) to appoint a manager and such other employees and agents as it may deem necessary or expedient for the operation of the Marketplace;
- (10) to enter into management and maintenance contracts to facilitate the carrying out of any of its powers and duties enumerated herein, such contracts to be, where the Commission deems it appropriate and practicable, with operating departments of the city;
- (11) to issue permits for various uses in the Marketplace, and to adopt regulations and charge fees for such issuance;
- (12) to charge rentals and fees for its services and for use of space in the Marketplace;
- (13) to receive and expend voluntary contributions for the carrying out of its purposes;
- (14) to advertise and promote the Marketplace and its activities pursuant to this section when the Commission determines that such advertisement and promotion will promote the prosperity and general welfare of the citizens of the City of Burlington and of the state;

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(15) to do all other things necessary or convenient to carrying out the purposes of this act. Nothing herein shall be construed to mean that the Commission may interfere with or regulate the internal management of properties within the District in any manner which is in conflict with or contrary to the laws of the United States of America, the State of Vermont and/or the orders and ordinances of the ^{Ed. of C.} ~~city council~~.

Sec. 325. Annual Budget.

The Commission shall prepare an operating budget for each fiscal year showing the proposed expenditures and anticipated receipts of such year. The estimated net cost of operation of the Marketplace, after taking account of all anticipated receipts available to meet such cost, shall, on or before the first day of May, 1980, and annually thereafter, be reported to the mayor to be incorporated, with such changes as he deems expedient, into the annual budget to be submitted to the ^{Ed. of C.} ~~city council~~ for the next fiscal year. In adopting an appropriation for operation of the Marketplace, the ^{Ed. of C.} ~~city council~~ shall not determine that any portion thereof be raised by the city tax levy.

Sec. 326. Common Area Fees.

(a) Common area fees are charges levied upon the owners of taxable properties (defined as those properties appearing on the regular property tax lists of the city) located in the District which shall be used to defray the expenses incurred by the Commission in connection with the operation, maintenance and repair of the Marketplace.

(b) Any amount appropriated under Section 325 which is not anticipated from gifts, grants, voluntary contributions, and rentals and fees other than common area fees shall be raised by common area fees. The Commission after not less than one duly warned public hearing shall ^{prepare separate} ~~establish~~ standards to aid in the determination of the benefit described herein and shall recommend such standards as well as individual common area fees to the ^{Ed. of C.} ~~city council~~. The ~~city council~~ after public hearing

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That *establish standards to be used in the determination of the benefit*
and after considering the advice of the Commission shall ^{decree} levy such common area ~~shall~~ *shall*

fees upon such properties in the proportion that it judges such properties to be benefitted by the construction and operation of the Marketplace. The amount raised by such assessments shall be appropriated to the Commission.

^{ord. of C.} (c) The ~~city council~~ shall set such common area fees no later than September 15 in each fiscal year, and in doing so shall have given twelve days' notice of the time and place of hearing to the parties interested and shall set forth in its notice a complete schedule of all common area fees set by it and of the properties so assessed. During the twelve days' notice period all parties so assessed, if aggrieved, may appeal, in writing, the assessment to the Commission. ^{Ord. of C.} The ~~city council~~, immediately following termination of the twelve days' notice period and acting upon advice of the Commission, shall make final determination of common area fees and shall cause such decision to be recorded in full by the city clerk; and when such decision is so recorded, the amount so assessed shall be and remain a lien in the nature of a tax upon the properties so assessed, until the same shall be paid, or such lien is otherwise discharged by operation of law. The city assessor, at the Commission's expense, shall thereupon forthwith notify in writing the owner or owners of record as of August 1 of each year of properties so assessed, their agents or attorneys, stating therein the amount of such fees, and such fees shall be due and payable to the city treasurer in four installments, on the fifteenth day of November, January, March and May following the making thereof. Notice shall be deemed adequate if made by publication of notice not less than three times not less than five days nor more than twelve days preceding each installment date.

The foregoing provisions of this subsection notwithstanding, during the 1979-80 fiscal year the ^{Ord. of C.} ~~city council~~ may set the common area fees at any time in an amount it deems adequate to meet the expenses for said fiscal year as described in subsection (a) above, and to provide for the collection thereof according to a schedule it deems appropriate therefor.

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(d) Any person owning or interested in properties so assessed who is dissatisfied with the amount of such fee shall have the right to judicial review of the ^{City of B.} ~~city council's~~ decision. Such review shall be initiated by filing a notice of appeal in the Chittenden Superior Court within twenty days of receipt of the notice of appeal in the Chittenden Superior Court within twenty days of receipt of the notice of such assessment. A copy of such notice of appeal shall be served upon the Burlington city clerk. The proceeding before the Superior Court shall be de novo and the appellant may demand trial by jury. An appeal from the determination of the Superior Court may be taken to the Vermont Supreme Court, pursuant to the Vermont Rules of Civil and Appellate Procedure. The pendency of such proceedings shall not vacate the lien created upon the properties assessed, but shall suspend the same until the final determination of such proceedings. When such proceedings shall be finally determined, a duly certified copy thereof shall be duly recorded by the city clerk in the records of streets and highways in said city clerk's office, within twenty days after the final determination of such proceedings. The amount assessed in such proceedings shall be and remain a lien in the nature of a tax upon the properties so assessed until such assessments are fully paid to the treasurer of the city. In case no assessment shall be made in such proceedings, such records shall discharge said properties from all liens created by the assessments thereon made by the ^{s.d. of C.} ~~city council~~ as aforesaid.

(e) If the owner or owners of any property so assessed shall neglect to pay to the city treasurer any quarterly installment of such fee on the date such installment is due and payable, the amount of such installment shall be increased by five percent (5%), and for any amount not paid by May 30 of each year the city treasurer shall issue his warrant to the constable for the collection thereof, and such constable shall proceed to collect the same in the manner prescribed in this charter for the collection and enforcement of assessments made in laying out or altering streets and highways.

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That

(f) The mayor, two members of the board of aldermen and two members of the Commission, on appointment of the board of aldermen, shall constitute a board for the abatement of assessments whenever the same are illegal or in the judgment of the board cannot be collected or are manifestly unjust.

Meetings of such board shall be convened in the manner herein prescribed for calling special meetings of the board of aldermen; and notice thereof signed by the mayor or city clerk, and shall be given to all persons paying common area fees by the publication of notice for two days in all the daily newspaper printed in the city, the first of which publications shall be not more than ten days, and the last not less than three days prior to said meeting. Whenever any common area fee, or any part thereof, is abated, the city clerk shall make a minute of such abatement on the original assessment on file in his office on the margin of the record thereof.

Sec. 327. Powers Supplemental; Construction.

- (a) The powers conferred by Sections 321 - 326 hereof are supplemental and alternative to other powers conferred by law, and these sections are intended as an independent and comprehensive conferral of powers to accomplish the purposes set forth herein.
- (b) The provisions of these sections shall be liberally construed in order to effect their purpose.
- (c) If any provision of these sections shall be held invalid in any circumstance, such invalidity shall not affect any other provisions or circumstances.
- (d) These sections shall be construed in all respects so as to meet all constitutional requirements. In carrying out the purposes and provisions of these sections, all steps shall be taken which are necessary to meet constitutional requirements whether or not such steps are required by statute.

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That

AN BE IT FURTHER RESOLVED that in accordance with the requirements of
17 V.S.A. §2645 a public hearing be held upon the above proposals for change
to the Burlington City Charter on July 25, 1979 at 7:30 p.m. at the Raymond A.
Contois City Council Room, City Hall, Burlington, Vermont.

* Material underlined added.

RECEIVED
CITY CLERK
JUL 26 1979