

CITY OF BURLINGTON

4.0

ORDINANCE ~~Councilors Mason,~~
~~Sponsor:~~ ~~Dobler, Bushor:~~ Ordinance Com.

In the Year Two Thousand Thirteen

Public Hearing Dates _____

First reading: 03/26/12

Referred to: Ordinance Committee

Rules suspended and placed in all
stages of passage: _____

Second reading: 02/11/13

Action: amended; adopted

Date: 02/11/13

Signed by Mayor: 02/14/13

Published: 02/20/13

Effective: 03/13/13

An Ordinance in Relation to

OFFENSES & MISCELLANEOUS PROVISIONS –
CHURCH STREET MARKETPLACE DISTRICT
TRESPASS AUTHORITY

It is hereby Ordained by the City Council of the City of Burlington, as follows:

That Chapter 21, Offenses & Miscellaneous Provisions, of the Code of Ordinances of the City of Burlington be and hereby is amended by adding a new section thereto, Sec. 21-49, Church Street Marketplace District Trespass Authority, to read as follows::

Sec. 21-49. - Church Street Marketplace District Trespass Authority.

(a)

Purpose - The Burlington City Council finds and declares that the following substantial government interests will be advanced by the ability to issue a no trespass order created by this ordinance, based on conditions the Police Department and the Church Street Marketplace District Commission have identified and confront in the Church Street Marketplace District on a regular basis:

- (1) The abatement or removal of nuisances determined to be against the public health, safety or welfare of citizens;
- (2) The protection of citizens from physical threats or injury and from damage to property;
- (3) The prevention of harassment and intimidation of any member of the public;
- (4) The prevention of violent crime;
- (5) The orderly control and safety of pedestrian, car and cart traffic on Church Street; and
- (6) The provision and maintenance of a safe, attractive environment in areas designed to attract tourist revenue.

An Ordinance in Relation to OFFENSES & MISCELLANEOUS PROVISIONS –
CHURCH STREET MARKETPLACE DISTRICT
TRESPASS AUTHORITY

(b)

Findings - The substantial government interests identified in subsection (a) above are undermined by unlawful and inappropriate behavior in the Church Street Marketplace District. Such behaviors include, but are not limited to, disorderly conduct, unlawful mischief, the possession and consumption of intoxicating liquor, and the possession and use of regulated drugs.

Specifically:

(1) Unlawful behavior within the Church Street Marketplace District diminishes this public asset and deprives citizens and visitors of its full use and enjoyment;

(2) In addition to more serious criminal acts that threaten personal injury and property damage, a wide range of illegal disorderly behaviors can and often do transform the Church Street Marketplace District into an unwelcoming, unattractive and ultimately unsafe public space requiring increased expenditures for public safety and maintenance;

(3) Laws intended to preserve and protect public spaces like the Church Street Marketplace District for the benefit of all people are effective only if those present on the space obey the law. The current criminal and civil penalties for violating these types of laws are frequently inadequate to deter the illegal behavior, to prevent its recurrence, or to provide for the removal of offenders from the public space;

(4) Compliance with behavior laws within the Church Street Marketplace District will be enhanced by the immediate administrative sanction of removing offenders from the Church Street Marketplace District in addition to issuing tickets to them. For repeat offenders and for more serious offenses, exclusion for extended periods will further provide a necessary additional remedy to protect the public;

(5) The failure to comply with these and other laws creates a public nuisance.

OFFENSES & MISCELLANEOUS PROVISIONS –
CHURCH STREET MARKETPLACE DISTRICT
An Ordinance in Relation to TRESPASS AUTHORITY

(c)

Prohibited activities. Notwithstanding other laws, ordinances, rules and regulations, the following activities are prohibited within the Church Street Marketplace District and may result in a no trespass order authorized under this section.

(1) Disorderly conduct as defined by BCO §21-46;

(2) Unlawful mischief as defined by BCO §21-47;

(3) Possession of open or opened intoxicating liquor as defined by 23 V.S.A. § 1200(4), except as permitted pursuant to a valid liquor license and/or an outdoor consumption permit for properly organized and supervised activities or events held within the limits of the Church Street Marketplace District.

(4) Possession of a regulated drug as defined in 18 V.S.A. § 4201(29).

(d)

Enforcement.

(1) First offense. Any person ticketed for a prohibited activity noted in subsection (c) above as a first offense may also be issued an order of no trespass, and will not be permitted within the Church Street Marketplace District for the balance of the day on which the alleged offense occurred.

(2) Second offense. Any person ticketed for a prohibited activity noted in subsection (c) above as a second offense may also be issued an order of no trespass prohibiting the recipient from entering the Church Street Marketplace District for a period of up to 90 days, commencing immediately upon said issuance.

(3) Third and subsequent offense. Any person ticketed for a prohibited activity noted in subsection (c) as a third or subsequent offense may also be issued an order of no trespass prohibiting the recipient from entering the Church Street Marketplace District for a period of up to one (1) year commencing immediately upon said issuance.

An Ordinance in Relation to
OFFENSES & MISCELLANEOUS PROVISIONS –
CHURCH STREET MARKETPLACE DISTRICT
TRESPASS AUTHORITY

(4) Hearing procedure and staying of order of no trespass.

a. Recipients of an order of no trespass issued pursuant to sections (d) (2) and (d)(3) above may appeal said order to a Hearing Panel designated by the Church Street Marketplace Commission pursuant to the procedure detailed below. Any such appeal shall stay the order of no trespass pending the hearing and written decision of the Hearing Panel.

b. Any individual subject to the trespass provisions of sections (d)(1), (d)(2), or (d)(3) above may request in writing that a Hearing Panel of the Church Street Marketplace Commission hold a public hearing for the purpose of challenging the issuance of the order of no trespass and/or to request a waiver to access the Church Street Marketplace District for purpose of work, residence, access to government services, the exercise of constitutionally protected activities, and/or for any other good reason as determined by a Hearing Panel.

c. Recipients shall have thirty (30) days from the date of issuance of an order of no trespass to request a hearing. Requests shall be sent to the Executive Director of the Marketplace Commission at 2 Church Street, Suite 2A, Burlington, VT 05401-4457.

d. If a hearing is requested, the hearing shall be scheduled within ten (10) calendar days of receipt of the request, and a written notice of the hearing shall be sent to the recipient at least seven (7) calendar days prior to the hearing.

e. The Hearing Panel shall consist of three (3) people designated by the Church Street Marketplace Commission or its designee, and be comprised of one representative from the business community, one representative from the social services community, and one representative from the general public.

f. The Hearing Panel shall allow for oral and/or written testimony and evidence from the recipient of the order of no trespass, the issuing police officer, and any other witnesses requesting to be heard.

g. The Hearing Panel shall issue a written decision within ten (10) calendar days of the hearing.

ORIGINAL

AN ORDINANCE

IN RELATION TO

OFFENSES & MISCELLANEOUS PROVISIONS - CHURCH
STREET MARKETPLACE DISTRICT TRESPASS AUTHORITY

Introduced by

~~Admitted~~ Ordinance Committee

Read in City Council first time

March 26, 2012

Attest,



, Clerk

Rules suspended, and ordinance placed in all stages of passage.

, 20

Attest,

, Clerk

Read in City Council second time

February 11, 2013

Attest,



, Clerk

Passed in City Council at meeting held

February 11, 2013

Attest,



, Clerk

Approved February 14, 2013

, Mayor

I, ACAO Schrader, City Clerk of the City of Burlington and Clerk of the City Council of said City, do hereby certify that the within written Ordinance has been duly published according to Law and the Charter of the City, and in compliance with said Charter this certificate is hereto attached.

And the within Ordinance was ordered published for Wednesday day, namely the 20th day of February, 2013.

Adopted 02/11/13 Published 02/20/13 Effective 03/13/13

ACAO

, City Clerk

* * * * *

Distribution

I hereby certify that this Ordinance has been sent to the following department(s) on

Linda Blanchard, City Attorney's Office
Gregg Meyer, Assistant City Attorney
CSM Director Redmond
Chief Schirling, Police

Attest:

Boyd Olberg

Licensing, Voting & records Coordinator

* * * * *