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# MEMO

**TO:** Burlington City Council

**FROM:** Ad Hoc Committee on the Use of Executive Sessions (Councilor Sharon Bushor/Chair, Councilors Kurt Wright and Bram Kranichfeld)

**RE:** Committee Report

**DATE:** January 19, 2011

The Committee has met, reviewed and considered the City Council's practice and procedure for executive sessions. State law, 1 V.S.A. Sec. 313, and City Council Rule 13 (attached), set forth the legal standards and process for executive sessions. The Committee agrees that while meeting in public is critical to the democratic process, there are exceptional circumstances that require the City Council to meet in confidential executive session, as authorized by state law.

Historically, the Burlington City Council has utilized executive sessions to discuss litigation, contract and collective bargaining negotiations "where premature general public knowledge would clearly place the City at a substantial disadvantage." Executive sessions have also been used to discuss personnel matters and real estate negotiations. The Committee recognizes that recent executive sessions regarding Burlington Telecom have been more extensive than the usual executive sessions, although there have also been a substantial amount of public meetings regarding Burlington Telecom in the last year and a half. The Committee agrees that in matters such as Burlington Telecom, the Council should hold periodic public presentations to keep the public informed.

Going forward, the Committee makes the following recommendations to improve the Council's practice and procedure for executive sessions:

- The Administration and/or City Attorney's Office should inform the City Council President and Mayor in advance of the request and reason for a proposed executive session.
- A request to go into executive session should provide as much detail as possible explaining the basis for going into executive session, including the topic and potential

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- harm that would occur from public disclosure. Whenever possible such a request should be in writing.
- The Administration is asked to make every effort to share as much information as possible in public regarding the matter, before going into executive session.
- Prior to the vote to go into executive session, the City Council President should remind the Council that a 2/3rds majority is required to approve going into executive session.
- Executive sessions should be held, whenever possible, prior to the commencement of other business, although it is understood there may be circumstances when the session must be held later.
- All Councilors are encouraged to participate in executive sessions, unless a conflict of interest is present.
- The City Council President and the City Attorney's Office are encouraged to assist the Council by ensuring that the discussion in executive session is limited to the confidential matter.
- It should be clearly understood that all information disclosed or discussed in executive session must be kept confidential by all, regardless of whether a Councilor voted in favor or not of going into executive session. If there is any question about whether information may be disclosed, a request to the City Attorney's Office for clarification is the appropriate process.
- In a timely manner after the executive session, as much information as possible regarding the matter should be made public so long as the City's interests are not harmed.
- Adoption of an amendment of City Council Rule 13 providing that while in executive session a Councilor may ask for a vote to determine whether a 2/3 rds majority of the Council supports staying in executive session, and if not the Council will go out of executive session.

We look forward to discussing these recommendations at a future meeting.

Enclosures

lb/c: KAS 2011/Ad Hoc Com. on Use of Executive Sessions – Report to City Council

# The Vermont Statutes Online

## Title 1: General Provisions

### *Chapter 5: COMMON LAW; GENERAL RIGHTS*

### 1 V.S.A. § 313. Executive sessions

**§ 313. Executive sessions**

(a) No public body described in section 312 of this title may hold an executive session from which the public is excluded, except by the affirmative vote of two-thirds of its members present in the case of any public body of state government or of a majority of its members present in the case of any public body of a municipality or other political subdivision. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter may be considered in the executive session. Such vote shall be taken in the course of an open meeting and the result of the vote recorded in the minutes. No formal or binding action shall be taken in executive session except actions relating to the securing of real estate options under subdivision (2) of this subsection. Minutes of an executive session need not be taken, but if they are, shall not be made public subject to subsection 312(b) of this title. A public body may not hold an executive session

except to consider one or more of the following:

(1) Contracts, labor relations agreements with employees, arbitration, mediation, grievances, civil actions, or prosecutions by the state, where premature general public knowledge would clearly place the state, municipality, other public body, or person involved at a substantial disadvantage;

(2) The negotiating or securing of real estate purchase options;

(3) The appointment or employment or evaluation of a public officer or employee;

(4) A disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;

(5) A clear and imminent peril to the public safety;

(6) Discussion or consideration of records or documents excepted from the access to public records provisions of subsection 317(b) of this title. Discussion or consideration of the excepted record or document shall not itself permit an extension of the executive session to the general subject to which the record or document pertains;

(7) The academic records or suspension or discipline of students;

(8) Testimony from a person in a parole proceeding conducted by the parole board if public disclosure of the identity of the person could result in physical or other harm to the person;

(9) Information relating to a pharmaceutical rebate or to supplemental rebate agreements, which is protected from disclosure by federal law or the terms and conditions required by the Centers for Medicare and Medicaid Services as a condition of rebate authorization under the Medicaid program, considered pursuant to 33 V.S.A. §§ 1998(f)(2) and 2002(c).

(b) Attendance in executive session shall be limited to members of the public body, and, in the discretion of the public body, its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed.

(c) The senate and house of representatives, in exercising the power to make their own rules conferred by Chapter II of the Vermont Constitution, shall be governed by the provisions of this section in regulating the admission of the public as provided in Chapter II, { 8 of the Constitution. (Amended 1973, No. 78, { 2, eff. April 23, 1973;

## APPENDIX B RULES AND REGULATIONS OF THE CITY COUNCIL

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Sec. 13. Meetings to be public, exception.

All meetings of the council shall be public except that executive sessions may be held as authorized by Vermont's Open Meeting Law, so-called, as such law may be amended from time to time. Members of the city council with mayor presiding and all persons invited to attend an executive session of the city council with mayor presiding or the city council shall not discuss in any fashion the discussions occurring in executive session with any person who is not a member of such council and who was not present in the executive session except as such discussion may be compelled by proper legal process. The foregoing sentence shall not be applicable to any subsequent consideration of such discussions in a public session of the council. Any member of the city council with mayor presiding who violates the foregoing standards shall be subject to censure by the city council with mayor presiding if it is established that such violation has placed the city at a substantial disadvantage in its official business dealings. The burden of proof in such situations shall be borne by the member who makes the contention that another member should be censured. Any other city official who violates the foregoing standards shall be considered to be guilty of negligence or bad conduct, as the case may be and subject to official reprimand. If such violation places the city at a substantial disadvantage in its official business dealings, or if the violating official has previously been reprimanded for improperly discussing executive session proceedings, such official shall be subject to disciplinary proceedings pursuant to section 129 of the City Charter.