

## Chapin Spencer

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**From:** Solveig Overby  
**Sent:** Wednesday, July 24, 2019 7:33 AM  
**To:** Tiki-Jon Archambeau  
**Cc:** Chapin Spencer  
**Subject:** FW: Consent Agenda item C: Designate the New Marina Lot as a City Managed Lot  
**Attachments:** Burlington Harbor Marina Private Parking\_Pages 10 to 21 from July PWC 2019 Packet.pdf

Tiki,

This is the EMAIL I sent this to you before last week's meeting to explain my reasons for pulling Consent Agenda Item C about the Burlington Harbor Marina area parking so we could discuss it..

Can you have DPW post this EMAIL and attachment with the other documents for the 7/17/2019 PWC meeting?

Thanks.

Solveig

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**From:** Solveig Overby  
**Sent:** Wednesday, July 17, 2019 5:35 PM  
**To:** Tiki-Jon Archambeau  
**Cc:** Chapin Spencer  
**Subject:** Consent Agenda item C: Designate the New Marina Lot as a City Managed Lot

Tiki,

I will be asking that we pull Consent Agenda item C from the Consent Agenda and move it to the deliberative agenda.

As I read the packet for this item, despite the title being about the parking kiosk for part of the parking lot behind the Water Treatment Plant, the rest of the document is endorsing extensive exclusive parking for Marina guests at the new Burlington Harbor Marina. Did the PWC have any input on this deal to transfer most of the parking to exclusive use of the Burlington Harbor Marina guests and employees? There seems to be no expiration date on the arrangement, rather it's to exist in perpetuity as long as the land lease exists. Perhaps I missed the meeting where this was discussed and approved prior to the consummation of the October 25, 2017 lease referred to in the packet. Can you recall? Perhaps Chapin can address this?

My concern is that this situation sets a precedent where CEDO might make commitments to give away public resources, in this case public parking at the waterfront, and then come to the PWC after the fact, as possibly is happening in this case, and say the PWC needs to approve what's already been committed to.

See my attached annotated version of the Consent Agenda Item C.

My questions are:

How many parking spots are in the Marina and East Parking Lots affected by this agenda item? How many spots will have kiosk-payment parking for the general public?

I don't know if I have this right but it appears there may be 68 spaces in what seems to be called the "East Parking Lot," 23 of them for the exclusive use of the Marina, and another 19 for exclusive use of the Marina on weekends and

holidays. That leaves 26 for the public. The documents also say that the City may use 10 of those 26 spots for "another project" and up to 24 of those spots for "exclusive use of another project between October 16 and May 14 each year." So, that would potentially leave 2 spots for the public between Oct. and May.

I need help with the math on these parking spots and which are "exclusive" for the Marina and which the public can use.

There is also a lot between the Coast Guard and Burlington Water Treatment plant. It's not clear if this parking is also allocated in some way between the Marina and the Coast Guard. From the diagram, it appears 4 spots might be marked off at the west end of that parking lot.

Our packet documents refer to both the "Marina Lot" and the "East Parking Lot." Are these the same thing? Different lots?

I'm cc'ing Chapin as he likely can clarify things.

Solveig

Please note that this communication and any response to it will be maintained as a public record and may be subject to disclosure under the Vermont Public Records Act.



City of Burlington  
Department of Public Works

Technical Services Engineering Division  
645 Pine Street, Suite A  
Burlington, VT 05402  
P 802-863-9094 / F 802-863-0466 / TTY 802-863-0450  
[www.burlingtonvt.gov/DPW](http://www.burlingtonvt.gov/DPW)

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# Memo

*Date:* July 12, 2019

*To:* Public Works Commission

*From:* Phillip Peterson, Associate Public Works Engineer *PWA 7/12/19*

*CC:* Jeff Padgett, Interim Assistant Director - Parking & Traffic

*Subject:* Designate New Marina Lot as a City Managed Lot and Set Hourly Rate

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**Staff recommends the DPW Commission adopt:**

**(18) Parking facility designations.**

*(a) Metered lot locations:*

- The city-owned lot more commonly understood to be the Marina Lot located north of Penny Lane.

**(19) Parking rates.**

*(b) The rate of charge for parking in metered city lots shall be as follows:*

- Marina Lot: One dollar (\$1.00) per hour for a maximum of three (3) hours from May 1 through October 31 and forty cents (\$0.40) per hour for up to ten (10) hours from November 1 through April 30 with the exception of spaces designated as Marina Parking.

**Purpose & Need:**

The purpose of this request is to implement **the approved parking agreement** (see Attachment 1) between the City of Burlington and Burlington Harbor Marina, LLC, a Vermont limited liability company. The need is to provide local businesses and residents with a City regulated parking lot.

**Project Checklist:**

	N/A	Yes	No	Reference
Aligns with MUTCD standards and/or established City Policy?		X		Vermont Public Trust Doctrine
Aligns with City plans?		X		Parking Agreement between the City of Burlington and Burlington Harbor Marina, LLC. Downtown Parking and Transportation Management Plan
Followed Public Engagement Plan?		X		These Traffic Regulation changes are defined as an INVOLVE project in the Public Engagement Plan (PEP).

**Summary and Conclusion:**

The new Marina Lot is a City of Burlington municipal lot. The rate structure and installation of kiosks at the Marina Lot meets the recommendations of the December 2015 Downtown Parking and Transportation Management Plan, "Build new parking capacity and/or new development along the waterfront..." Staff recommends the Commission approves the installation of parking kiosks to manage the lot. Staff recommends the Commission adopt: the following rate structure for the Marina Lot. \$1.00 per hour for a maximum of three (3) hours from May 1st – October 31st & \$0.40 per hour for up to nine (9) hours from November 1st – April 30<sup>th</sup>; with the exception of 23 parking spaces designated for use of the Marina, this is in accordance with the Parking Agreement between the City of Burlington and the Burlington Harbor Marina, LLC.

**Public Engagement:**

The City of Burlington has conducted an extensive amount of public outreach in regards to the new Burlington Harbor Marina. Specifically, the City of Burlington Community and Economic Development Office (CEDO) has managed public relations tasks associated with this project. The overall determination by CEDO is that the new Marina Lot provides public access to the lake at a cost commensurate with City owned marina facilities, and under terms which meet the Public Trust Doctrine.

**Attachments:**

1. Parking Agreement.
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## Parking Agreement

This Parking Agreement is made by and between the **City of Burlington**, a Vermont municipal corporation (“City”) and **Burlington Harbor Marina, LLC**, a Vermont limited liability company (“BHM”) as of this 27th day of October, 2017.

WHEREAS, the parties have entered into a Development Agreement dated October 25, 2017 (“Development Agreement”); and

WHEREAS, the City has leased a parcel of land at the northern waterfront in Burlington, Vermont being a portion of a parcel used by the Burlington Water Department (“Marina Lot”) to the Marina by Ground Lease dated October 25, 2017 (the “Lease”); and

WHEREAS, BHM has constructed the “Project” as defined in the Lease, including the “East Parking Lot”, the “Public Park”, the “Plaza”, and the “Marina”; and

WHEREAS, BHM shall have access to parking spaces in the East Parking Lot, and employee parking and temporary and handicapped accessible parking spaces in the Plaza, all on the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto agree as follows:

1. **General.**

The parties agree that the terms and conditions contained herein will govern the overall rights and responsibilities for use and maintenance of the East Parking Lot, the Public Park, the Plaza, and the employee parking spaces, all as shown on the plan attached hereto as Exhibit A (collectively, the “Parking Facilities”), and that it will be mutually beneficial to come to agreement on the day to day operations of their respective facilities. Therefore the parties agree to enter into an Operating Memorandum of Understanding, to be amended from time to time (“OMOU”), that will address those details and provide for periodic meetings to assess the ongoing operations of the Parking Facilities.

2. **Use of East Parking Lot.** The following provisions shall govern the use of the East Parking Lot:

- A. During the period of May 15 to October 15, each year, Marina guests shall have the exclusive right to park vehicles in any of the 23 parking spaces designated for use of the Marina, and located in the western section of the East Parking Lot (the “Marina Parking Spaces”), at no additional charge to the Marina. The general public shall be prohibited from parking in the Marina Parking Spaces from May 15 to October 15 of each year. Designation of the Marina Parking Spaces via signage, or otherwise, shall be by agreement of the City and BHM and included in the OMOU.

In addition, 19 of the remaining 45 spaces in the East Parking Lot shall be restricted to exclusive use by the Marina on weekends and City Holidays during the period from May 15 through October 15 of each year (“Marina Weekend Spaces”). A weekend period shall be deemed to commence at 6:00 pm on each Friday and terminate at 8:00 am on each following Monday morning. A holiday shall be deemed to commence at 6:00 pm the day before the holiday, and terminate at 8:00 am on the day following the Holiday. In the event a Holiday falls adjacent to a weekend the periods shall run sequentially as one period. BHM will pay the City for the use of the Marina Weekend Spaces. The rate for the Marina Weekend Spaces shall be established by calculation of the number of weekend days and holidays applicable annually multiplied by the Burlington Department of Public Works Daily Parking rate as established for the applicable year multiplied by nineteen (19). The Daily parking Rate shall not exceed the rate charged at the Perkins Pier Lot. BHM may elect to reduce its number of weekend/holiday spaces upon delivery of thirty (30) days’ written notice to the City. BHM agrees that it will implement a policy of prioritized use of the Marina Parking Spaces plus the Marina Weekend Spaces. Methodology for assuring such prioritized use shall be addressed in the OMOU. The remaining 45 parking spaces in the East Parking Lot (26 on weekends and holidays) will be managed by the City for short-term parking and made available to the public on a first-come first-served basis and in a manner designed to maximize parking efficiencies, working with other Waterfront stakeholders at rates commensurate with nearby hourly and daily public parking rates. The City shall provide BHM with four designated parking spaces in the East Parking Lot for use by BHM during periods between October 16 and May 14 each year, when the “Employee Parking Spaces” (as defined below) are used for the storage of snow.

- B. Notwithstanding the City’s obligations under 2(A) above, the City may, in its discretion, (i) allocate up to 10 parking spaces in the East Parking Lot for the exclusive use of another project; and (ii) allocate up to 24 additional parking spaces in the East Parking Lot during the period of October 16 to May 14, each year, for the exclusive use of another project (“Designated Use Spaces”). Such designation shall be subject to the same shared usage goals and objectives described above, namely, to maximize parking efficiencies for all Waterfront stakeholders.
- C. BHM shall manage and control the use of the Marina Parking Spaces and the Marina Weekend Spaces during the time periods dedicated to BHM. The balance of the parking spaces shall be managed and controlled by the City, all in accordance with the OMOU.

3. **The Plaza.** The following provisions shall govern the use of the Plaza:

- A. The parking spaces at the Plaza shall be designated as either short term public access spaces or handicapped accessible spaces, 24 hours per day, 7 days per week, except during events hosted by the Marina and open to the public, in

which case, there shall be no public access to parking spaces in the Plaza. It is understood by the parties that Marina guests, who are not handicapped, will use the Plaza only for dropping off passengers and gear, and that such use shall be at no additional charge to the Marina.

4. **Employee Parking.**

The Marina employees shall have exclusive access to 4 designated spaces located in the parking area located on the Marina Lot, adjacent to the Burlington Water Department Building ("Employee Parking Spaces"), at no additional charge to the Marina. The Marina shall cooperate with the Water Department in order to allow for deliveries to the Water Department, in accordance with the OMOU. In addition, BHM acknowledges that the Employee Parking Spaces may be relocated to the East Parking Lot in winter months, when needed by the City for snow storage.

5. **Hours and Dates of Operations.**

The Marina Parking Spaces shall be open and available to Marina guests 24 hours per day, 7 days per week from May 15<sup>th</sup> through October 15<sup>th</sup>. The Public Parking Spaces (all parking spaces in the East Parking Lot not designated as Marina Parking Spaces, Marina Weekend Spaces, or Designated Use Spaces) shall be open and available to the public daily from May 15<sup>th</sup> through October 15<sup>th</sup> on a schedule to be set annually on or before April 1 for each upcoming year by the Marina and the Burlington Department of Public Works.

6. **Signs.**

City shall permit BHM to erect signs, on City property within reasonable proximity of Marina Lot, directing clients and the public, to the Marina Lot and the East Parking Lot and Plaza, subject to all Permits and Approvals.

BHM shall, at its expense, obtain any and all Permits and Approvals before erecting such sign.

All signage (including but not limited to signage on the dock and wave attenuator directing boat traffic and boaters) shall be constructed, erected and/or installed solely at BHM's expense and shall comply in all respects with all applicable Federal, State and municipal permits regulating the appearance and placement of such signs.

7. **Street and East Parking Lot Lighting.**

The City shall be responsible for all costs and expenses related to utility metering and maintenance of lighting of the East Parking Lot and shall be reimbursed by the Marina for its pro rata share of the cost incurred for such lighting during the period from May 15<sup>th</sup> to October 15<sup>th</sup> each year.

The Marina shall be responsible for all costs and expenses related to utility metering and maintenance of lighting of the Plaza and the Employee Parking Spaces.

8. **Staffing, Security, and Revenue Management.**

The City shall be responsible for staffing, security, parking enforcement and revenue management of the all parking spaces in the East Parking Lot other than the Marina Parking Spaces and the Marina Weekend Spaces. The Marina shall be responsible for staffing and security, management and parking enforcement of the Marina Parking Spaces, Marina Weekend Spaces, Plaza and the Employee Parking Spaces.

9. **Cleaning.**

The East Parking Lot, Employee Parking Spaces, including all parking areas and sidewalks, shall be maintained by the City in clean and in presentable condition at all times at a standard at least equal to then applicable City parking lot standards.

The Plaza, including all parking areas and sidewalks, shall be maintained by the Marina in clean and in presentable condition at all times at a standard at least equal to then applicable City parking lot maintenance standards.

10. **Trash Removal.**

Rubbish from trash receptacles which service the East Parking Lot shall be removed by the City, at a frequency consistent with City policy for parking lots.

Rubbish from trash receptacles which service the Plaza shall be removed by the Marina as the party responsible for the maintenance of the Plaza.

11. **Snow Removal.**

Snow and ice shall be promptly removed from the East Parking Lot by the City consistent with City parking lot use policy and City snow removal policy in accordance with the OMOU. Snow and ice shall be promptly removed by the Marina from all portions of the Plaza, and the Employee Parking Spaces, including all entrances, driveways, parking areas and sidewalks to ensure accessibility in accordance with the OMOU.

12. **Repair and Maintenance.**

- A. The City shall be responsible for the repair and maintenance of the East Parking Lot at its sole cost and expense, consistent with then applicable City parking lot maintenance policy, and subject to partial reimbursement by the Marina in accordance with the OMOU.

- B. The Marina shall be responsible for the repair and maintenance of the Plaza and the Employee Parking Spaces, at its sole cost and expense, consistent with then applicable City parking lot maintenance policy and the OMOU
- C. The paving, revenue control equipment, painting, lighting, plumbing, utility lines (sewer, water, electric), curbs, gutters and all other improvements required during the operation of the East Parking Lot and the Plaza shall be of a quality at least equal to then applicable City parking lot maintenance policy.
- D. The City shall advise the Marina of any planned renovation or improvements to the East Parking Lot that would affect Marina guests or employees access to the Marina. The City shall make reasonable efforts to limit the impact of any renovation or improvement on the number of Marina Spaces or Marina Weekend Spaces, the Plaza or the Employee Parking Spaces.

13. **Access During City Waterfront Events.** A schedule of events shall be provided and approved in accordance with the OMOU.

14. **Dispute Resolution.**

- A. Should a dispute arise between the parties as to the meaning or intent of any provision of this Agreement, or as to an obligation of a party hereunder, the parties to the dispute will first attempt to resolve such dispute by mutual negotiations and, if the dispute persists, the utilization of any experienced independent mediator. Should the dispute continue notwithstanding the efforts of the mediation process, the parties to the dispute agree to submit the dispute to final binding arbitration.
- B. In the event of a material breach of this Agreement, which is discovered by the non-breaching party during the period in which this Agreement is being actively performed, a non-breaching party shall notify the alleged breaching party of the alleged material breach. Any non-breaching party may first endeavor to remedy the breach by direct discussions with the alleged breaching party. If such discussions fail to cure the breach within a reasonable period of time, not to exceed sixty (60) days, or if the circumstances require immediate action, the non-breaching party and the alleged breaching party will submit the matter to an experienced independent mediator for resolution of the matter. Should the parties fail to reach an agreement as a result of mediation, the matter shall be submitted to final binding arbitration. Claims for damages or other remedy for any breach of this Agreement that are discovered subsequent to the completion of this may be pursued directly through arbitration. Claims which do not involve breach of this Agreement shall be subject to arbitration and a party may pursue its judicial remedies for such claims.
- C. Arbitration: Arbitration shall be initiated by written notice to the other side or sides involved in the dispute of intent to seek arbitration. Arbitration under this

Restated Agreement shall be governed by the Vermont Arbitration Act, except that any arbitration shall be completed and a decision rendered within 90 days of notice invoking arbitration. The parties to the dispute shall try to agree upon an arbitrator within ten (10) business days of the notice invoking arbitration. If the parties to the dispute cannot agree upon an arbitration, then, within three (3) additional business days, each party to the dispute shall select an arbitrator and the selected arbitrator shall select a third arbitrator. The parties to the dispute shall equally share the cost of arbitration.

15. **Notices.**

All notices hereunder shall be given in writing and shall be deemed delivered only upon receipt of the original or an email transmission, with evidence of deliver, at the addresses listed below, or at such other addresses provided to the other party hereunder in writing:

To the Marina: Burlington Harbor Marina, LLC  
25 Cherry Street  
Burlington, VT 05401  
Attn: Jack Wallace  
Email: jwallace@gmavt.net

To the City: City of Burlington  
149 Church Street  
Burlington, VT 05401  
Attention: Noelle Mackay  
Email: nmackay@burlingtonvt.gov

15. **Miscellaneous.**

This Agreement shall be binding on and shall benefit the parties hereto and their respective successors and assigns. **This agreement shall run with the land and benefit the Marina Property until such time as the Ground Lease is terminated.** This Agreement shall not be amended or restated without the express written consent of the parties hereto. In the event any term, covenant or condition herein contained is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice either party in their respective rights and obligations contained in the valid terms, covenants or conditions hereof. This Agreement shall be governed by and construed in accordance with the laws of the State of Vermont.

**Acknowledgement of Arbitration**

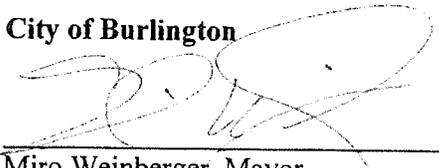
**WE UNDERSTAND THAT THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE. AFTER SIGNING THIS DOCUMENT, WE UNDERSTAND THAT WE WILL NOT BE ABLE TO BRING A LAWSUIT CONTAINING ANY DISPUTE THAT MAY ARISE WHICH IS COVERED BY THE ARBITRATION AGREEMENT, UNLESS IT INVOLVES A QUESTION OF CONSTITUTIONAL LAW OR CIVIL RIGHTS. INSTEAD, WE AGREE TO SUBMIT ANY SUCH DISPUTE TO AN IMPARTIAL ARBITRATOR.**

IN WITNESS WHEREOF, this Agreement is executed by the duly authorized officers or representatives of the parties hereto.

Signature Page Follows

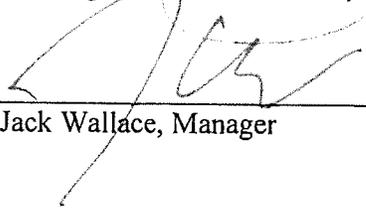
**City of Burlington**

By:

  
\_\_\_\_\_  
Miro Weinberger, Mayor

**Burlington Harbor Marina, LLC**

By:

  
\_\_\_\_\_  
Jack Wallace, Manager

**Exhibit A**

**Site Plan**

**See attached**

