

TITLE VIII. GENERAL PROVISIONS

ARTICLE 89. CHURCH STREET MARKETPLACE; DISTRICT AND COMMISSION

321 Creation of downtown improvement district, church street marketplace district and marketplace.

(a) There is hereby created in the City of Burlington a special district to be known as the downtown improvement district, such district to be bounded by the shoreline of Lake Champlain on the west, the north property lines of properties fronting on Pearl Street on the north, the east property lines of properties fronting on South Winooski Avenue on the east, and the south property lines of properties fronting on Main Street to the intersection of Battery Street and then extending southerly to include properties fronting on Maple Street, on the south. The Church Street Marketplace District defined below shall also be included within the downtown improvement district.

(b) There is hereby created in the City of Burlington and within the downtown improvement district a special district to be known as the Church Street Marketplace District (district) which includes all of Church Street and the properties which have frontage thereon bounded on the north by the northernmost property line of properties bounded by Church and Pearl Streets, and bounded on the south by the southernmost property lines of properties at the northern corners of the Church and Main Street intersection, and more precisely shown on a plan entitled "Church Street Marketplace District" recorded with the chief administrative officer of the City of Burlington on June 27, 1979.

(c) The Church Street Marketplace (marketplace) shall be that section of the district now or hereafter under the direct control of the City of Burlington including but not limited to the Church Street right-of-way and adjacent sidewalks.

322 Establishment of commission.

There shall be maintained in the City of Burlington a Church Street Marketplace Commission consisting of nine legal voters of the State of Vermont, not less than five of whom must be legal voters of the city, who shall be appointed by the city council. On the first Monday in June, 1993 the city council shall appoint four commissioners, three for a three-year term and one for a four-year term. On the first Monday in June, 1994, the city council shall appoint one commissioner for a three-year term and on the first Monday in June, 1995, the city council shall appoint two commissioners for three-year terms. On the first Monday in June, 1999, the city council shall appoint two commissioners for a two-year term. Thereafter, all appointments shall be for three-

year terms and commissioners shall serve from the first day of July following their appointment and until their successors are duly appointed and have qualified. Appointments shall be made so that no more than four of the commissioners shall at any one time be from the same political party. Two members at all times shall be proprietors or managers of retail businesses which are within the Church Street Marketplace District and such members need not be residents of Burlington. Two members at all times shall be proprietors or managers of retail businesses which are within the downtown improvement district, with one of such members being located within the downtown improvement district but outside the boundaries of the Church Street Marketplace and such members need not be residents of Burlington. The commission shall organize by the election of a chair and vice-chair 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.

323 Expansion of church street marketplace district and/or marketplace.

(a) Upon recommendation of a majority of the commission to the city council, the boundaries of the Church Street Marketplace 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 given 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 city council present and voting approve the extension;
and
- (4) The expanded boundaries do not extend beyond the boundaries of the downtown improvement district above defined.

(b) Upon advice of the commission to the city council, that section of the district now or hereafter defined as the marketplace may be expanded or not within the downtown improvement district, subject to the same restrictions listed under (a) above.

324 Purposes and powers.

(a) The city council shall have authority and responsibility for the management of the Church Street marketplace district, its services and facilities. The city council shall have the responsibility to establish, improve and maintain a marketplace within the district.

(b) In furtherance of its purpose, the city council shall have the following rights, powers and duties:

(1) To exercise the powers set forth in the first paragraph of section [231](#) of this Charter with respect to the marketplace; provided that, in relation to the electric light department, the commission shall have the same status as a private user;

(2) To acquire on behalf of the city by gift, purchase, exercise of the power of eminent domain, 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 public works commission the prohibition or regulation of motor vehicle traffic within the downtown improvement district;

(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 Church Street Marketplace district as are necessary or convenient to the operation of the marketplace;

(8) To enter into contracts in the name of and on behalf of the city with state or federal agencies, including without limitation the Chittenden County Transportation Administration, as may be necessary or convenient to carry out the purpose of this article;

- (9) To lease space, including air rights, in, below and above the marketplace but only in compliance with section [55](#) of this Charter;
- (10) To appoint such employees and agents as it may deem necessary or expedient for the operation of the marketplace. The director shall be appointed by the mayor in accordance with the requirements of section [127](#) of this Charter. The director shall have the special and immediate care and practical supervision of the marketplace, subject to the authority of the mayor as chief executive officer and the orders and ordinances of the city council;
- (11) 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;
- (12) To issue permits for various uses in the marketplace, and to adopt regulations and charge fees for such issuance;
- (13) To charge rentals and fees for its services and for use of space in the marketplace;
- (14) To receive and expend voluntary contributions for the carrying out of its purposes;
- (15) 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;
- (16) To do all other things necessary or convenient to carrying out the purposes of this article. Nothing herein shall be construed to mean that the city council may interfere with or regulate the internal management of properties within the district.

(c) The city council may by resolution delegate any of the powers relating to the downtown improvement district and the Church Street marketplace district to the Church Street marketplace commission.

325 Annual taxation for downtown improvement district; free parking for two hours in public lots and garages; annual budget of church street marketplace district.

(a) The Church Street Marketplace commission shall annually recommend and the city council shall annually assess upon nonresidential properties (as defined in Sec. 81 hereof) located within the downtown improvement district a tax upon the dollar of the property grand list to be used for the herein enumerated purposes of the

downtown improvement district, which tax shall not exceed \$0.12 unless a larger amount has been authorized by the city council upon affirmative recommendation of the Church Street Marketplace commission. The revenues from such tax will be utilized for the purpose of providing a parking program which shall include not less than two free hours of parking for anyone parking in any designated municipally or privately owned or operated parking garage or parking lot located within the downtown improvement district pursuant to regulations to be established by the public works commission.

(b) Annual budget. The commission shall prepare a proposed 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 fifteenth day of April, 1980, and annually thereafter, be reported to the mayor to be incorporated, with such changes as he or she deems expedient, into the annual budget to be submitted to the city council for the next fiscal year. In adopting an appropriation for operation of the marketplace, the city council shall not determine that any portion thereof be raised by the city tax levy.

326 Common area fees.

(a) Common area fees are charges levied upon the owners of taxable properties located in the district which shall be used to defray the expenses incurred by the city in connection with the operation, maintenance and repair of the marketplace.

(b) Any amount appropriated under section [325](#) of this Charter 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 city council after not less than one duly warned public hearing shall propose standards to aid in the determination of the benefit described herein. The city council after public hearing and after considering the advice of the commission shall establish standards to aid in the determination of the benefits described herein and shall levy such common area fees upon such properties in the proportion that it judges such properties to be benefited by the construction and/or operation of the marketplace. An important but not necessarily exclusive factor in determining the extent to which the fair market value of such property has been enhanced by virtue of the construction and/or operation of the marketplace. The amount raised by such assessments shall be appropriated to the Church Street marketplace district.

(c) The city council shall set such common area fees for the ensuing fiscal year no later than June 15 of each 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 city council. The city council, immediately following termination of the twelve days' notice period and after soliciting the advice of the commission, shall make final determination of common fees and shall cause such decision to be recorded in full by the chief administrative officer; 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 expense of the district, shall thereupon forthwith notify in writing the owner or owners of record as of April 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 chief administrative officer in four installments, on the fifteenth day of August, November, March and June 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. Such notice may also be given by including such common area fees upon the property tax bill mailed to the owners of taxable properties within the district.

(d) [Reserved.]

(e) 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 council's decision. Such review shall be initiated by first paying the first installment of the fee so assessed under protest and by filing a notice of appeal in the Chittenden Superior Court within twenty days following August 12 of each year. Notwithstanding the filing of a notice of appeal, all subsequent installments of such fee must also be paid under protest before the court shall have subject matter jurisdiction to render a judgment affecting any such installment. A copy of such notice of appeal shall be served upon the Burlington chief administrative officer. 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. Should the court find that a common area fee assessed against an appellant to have been excessive, it shall order the excess payment to be refunded together with such interest thereon that it shall deem appropriate. When such proceedings shall be finally determined, a duly certified copy thereof shall be duly recorded by the chief administrative officer in the records of streets and highways in said chief administrative officer'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 chief administrative officer 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 city council as aforesaid.

(f) If the owner or owners of any property so assessed shall neglect to pay to the chief administrative officer any quarterly installment of such fee on the date such installment is due and payable, the amount of such installment shall be increased by a penalty of five percent. If such installment increased by the five percent penalty is not paid by the 15th day of the month after the date upon which it became due and payable, it shall be delinquent and the chief administrative officer shall increase the amount due by an additional one percent of the original installment. On the 15th day of every month thereafter that the installment or any part thereof remains due, the chief administrative officer shall add to the total amount due an additional amount equal to one percent of the original installment, or any portion thereof, remaining unpaid. The chief administrative officer shall issue a warrant for the collection thereof. The amount due from any person against whom a common area fee has been assessed shall thereafter be deemed to be the amount of any such installment or delinquent portion of such original common area fee increased by all penalties and interest accruing thereon to date and also twelve percent interest, compounded annually on all of such delinquent amounts and any penalties and interest added thereto, from the date of such warrant. The city 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.

(g) The mayor, two members of the city council and two members of the commission, on appointment of the city council, 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.

(h) Meetings of such board shall be convened in the manner herein prescribed for calling special meetings of the city council; and notice thereof signed by the mayor or chief administrative officer, and shall be given to all persons paying common area fees by the publication of notices for two days in all the daily newspapers printed in the city, the first of which publication 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 chief administrative officer shall make a minute of such abatement on the original assessment on file in his or her office on the margin of the record thereof.

327 Powers supplemental; construction.

(a) The powers conferred by sections [321](#) through [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 purpose 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.