

Current Efforts to Revise Inclusionary Housing

Tuesday, January 15, 2019

Burlington Development Review Board
Joint Meeting with the Design Advisory Board,
Planning Commission, and Conservation Board

Presentation Overview

- On 12/17, the City Council Resolution directed the planning commission to develop changes to the IZ ordinance
- What I'll talk about:
 - IZ overview
 - Process to date
 - Specific recommended changes

My Role

- Housing Program Manager at CEDO since 2002
- Since 2015, responsible to day-to-day administration of IZ
- Staffed:
 - IZ Working Group
 - Joint Committee of Ordinance and CDNR

Inclusionary Housing (Zoning) Overview

- Created in 1990
- Intent:
 - “Create housing opportunities for all of Vermont’s citizens as required by State law”;
 - “To ensure the provision of housing that meets the needs of all economic groups by precluding construction of only market rate housing on the limited supply of available land within the City”; and
 - “To improve the quality of life for all residents by having an economically integrated housing supply throughout the City”
- Creates permanently affordable units for people up to median income.

Summary of Process to Date (1 of 2)

- Housing Action Plan (HAP) (2015)
 - Identified a need to evaluate IZ ordinance
 - “Consider Revisions to the Inclusionary Zoning Ordinance TO Better Meet Housing Goals and Better Complement the Housing Trust Fund.”
- IZ Report (2017)
 - Private consultant czb did extensive research and made recommendations. Concluded that IZ was successful in creating inclusion, but that there were unintended impacts of the ordinance and modifications needed to be made.
 - Particularly called out offsets as a “critical part of the current ordinance that has failed to function as intended.”
 - Offsets (bonuses and waivers) are required by State law for IZ and are intended to provide some relief for additional costs of IZ compliance

Summary of Process to Date (2 of 2)

- IZ Working Group (IZWG) (2017-18)
 - Group composed of elected and appointed officials, private and non-profit developers, City staff, and housing advocates addressed each recommendation of report
 - Reinforced that the intent was to create inclusion, introduced geographic component
 - Ensure that the offsets were appropriate, payment in lieu, feasibility scales
 - Report and resolution
- Joint Committee (2018)
 - Ordinance and CDNR specifically addressed each of the recommendations of the IZWG. Final report 12/12/18
- City Council Adopted Joint Committee Report on 12/17/18
- Excluding HAP process, total of 17 meetings, 3 public hearings + 2 City Council Meetings

12/17/18 City Council Resolution

- City Council “referred recommendations specifically identified in the Report of the Joint Committee pertaining to ordinance changes to the Planning Commission to develop recommended changes to the Burlington Inclusionary Zoning Ordinance and other relevant provisions as required”
 - Total of 10 recommendations referred
- Council referred “the additional, more general recommendations of the report” to Community Development and Neighborhood Revitalization Committee.

Recommendation of the Joint Committee referred to Planning Commission

#2: Eliminate numerical standards for minimum area

IZ units must be comparable to market rate units with a floor area no less than 90% of the average market rate units within the project of the same number of bedrooms.

Current CDO Section: 9.1.14 General Requirements for Inclusionary Units

(c) The gross floor area of the inclusionary units is not less than the following minimum requirements, unless waived by the DRB using the following criteria:

1. All of the units being provided with a specific bedroom count are smaller than the standards outlined below; 2. More than the required number of inclusionary units are provided on site, not all shall be subject to bedroom mix and size requirement; or, 3. The units have an efficient floor plan (meaning that less than 5% of the square footage is devoted to circulation) and the bedroom size(s) is a minimum of 144 sf or 12'x12'.

One bedroom	750 square feet
Two bedroom.....	1,000 square feet
Three bedroom.....	1,100 square feet
Four bedroom	1,250 square feet

Recommendations of the Joint Committee referred to Planning Commission

#3: Monitoring & Administration

Housing Trust Fund (HTF) and its Manager can designate responsibility to the new consolidated permitting and inspections department.

Current CDO Section: 9.1.20 Administration

The Housing Trust Fund and its Manager shall monitor activity under this article and shall provide a report no less than every year to the city council, setting forth its findings, conclusions, and recommendations for changes that will render the program more effective. The report described above shall be presented to the city council at a legally warned public hearing.

Recommendations of the Joint Committee referred to Planning Commission

#4: Provide Density bonuses by right

Ensure the provision of the density allowance by-right, but still ensure opportunity for the DRB/DAB to seek other modifications to a project to address site and architecture design standards. See Section 14.6.4 of the planBTV Downtown Code.

Example from 14.6.4 (f) of the Plan BTV Downtown Code

f) Design and Public Space Standards Required for Additional Building Height: Applications seeking approval from the Development Review Board for Building Height above that which may be permitted administratively in a Form District shall comply with the following:

i. Design Standards: The maximum Building height and mass is permitted By-Right by the underlying Form District, as may be modified by the chosen Building Type and Frontage Type. However, there are a number of ways that Building shape, articulations, and choice of materials can be used to reduce the perceived height and mass of taller Buildings, and ensure a high quality of design that complements the character of the Downtown and Waterfront area. After consultation with the Design Advisory Board and a Public Hearing, the Development Review Board shall evaluate any proposal seeking additional Building height under each of the following additional design standards, and affirmatively find that:

Recommendations of the Joint Committee referred to Planning Commission (continued from previous slide)

a. The proposed Building presents a design that emphasizes slender, vertically-oriented proportions to assure a rich visually interesting experience as viewed within the context of the downtown skyline; reinforces opportunities for establishing points of reference for visual orientation; and, provides visual interest and human scale at the pedestrian level through the use of a variety of scales, materials, fenestration, massing, or other architectural design techniques;

b. Step backs, horizontal and vertical variation, selection of materials, and/or other architectural design technics are used to reinforce the street wall, create transitions from Buildings of a smaller mass and height, and reduce the perceived height and mass of upper stories from the street level; and,

c. Upper story proportions of the Building are oriented and tapered and/or separated into separate masses in order to retain sky view between individual Building elements from the public Thoroughfare.

The DRB may condition approval of additional Building height by reducing the By-Right Building mass by no more than 10% of the total floor area of the new floors enabled by granting the additional Building height. In no case shall the maximum By-Right Building height be reduced.

Recommendations of the Joint Committee referred to Planning Commission

#4.1: Density bonus in CDO Article 4.4.5 should be reviewed and if meaningful made by-right.

Review this section which provides density bonus for an applicant providing an additional 5% inclusionary units.

Current CDO Section: 4.4.5(d)7A.

A. Inclusionary Housing Requirement.

Inclusionary Housing units shall be provided, with applicable additional lot coverage and density allowances, in accordance with the provisions of **Article 9, Part 1**. A maximum of an additional 10-feet of building height may be permitted for an additional 5% inclusionary housing units provided in excess of the requirements of **Article 9, Part 1**. The total gross floor area dedicated to the additional inclusionary housing shall be equivalent to the gross floor area resulting from the additional allowance.

Additional lot coverage and residential densities allowances shall not exceed the following:

Table 4.4.5-4: Inclusionary Housing Allowances

District	Maximum Coverage	Maximum Density
RL/RL-W	44%	8.75 du/ac
RM	48%	25 du/ac
RM-W	72%	25 du/ac
RH	92%	46 du/ac

Recommendations of the Joint Committee referred to Planning Commission

#4.2 : Eliminate parking requirement for IZ units.

Current CDO Section: 9.1.12 Additional Density and Other Development Allowances

(b) Other possible allowances for the provision of Inclusionary Units may include:

1. A waiver of up to 50% waiver of parking spaces as outlined in Article 8, Sec. 8.1.14,

Recommendations of the Joint Committee referred to Planning Commission

#4.3: IZ units should receive 100% waiver of fees (CDO Article 3.3.3 (c)).

Current CDO Section: 9.1.12 Additional Density and Other Development Allowances

(b) Other possible allowances for the provision of Inclusionary Units may include:

2. A waiver of a portion of the impact fees associated with the Inclusionary units, pursuant to the Art. 3, Part 3 Impact Fee Administrative Regulations.

Recommendations of the Joint Committee referred to Planning Commission (continued from previous slide)

(c) **Affordable Housing Waivers:**

Any residential project containing newly constructed units or substantially rehabilitated housing units that are affordable for households as described in subsections (1), (2) or (3) below are eligible for a waiver of impact fees for that portion of the project. The terms, rules, and regulations used herein shall be the same as those defined and specified in this Ordinance pertaining to Inclusionary Zoning (**Article 9**). For purposes of determining median income, the income levels specified in **Article 9** of this Ordinance, or the most recent amendment thereto, shall be applicable.

1. 25% Waiver of Fees: Twenty-five percent (25%) of the fees will be waived for any unit in a project that initially sells for a price that is affordable for households below 90% of median income or that initially rents for a three year period for a price (including utilities) that is affordable for households below 75% of median income.
2. 50% Waiver of Fees: Fifty percent (50%) of the fees will be waived for that portion of a residential project that meets the dual test of initial affordability and continuing affordability. For the purposes of this section, "initial affordability" would be defined as a unit that sells for a price that is affordable for households earning less than 75% of median income or that rents for a price (including utilities) that is affordable for households earning below 65% of median. "Continuing affordability" would be defined as affordability that lasts for a period of 99 years.
3. 100% Waiver of Fees: One hundred percent (100%) of the fees will be waived for that portion of a residential project that initially sells or rents for a price that is affordable for households earning less than 50% of median income and that remains continually affordable as defined above.

Recommendations of the Joint Committee referred to Planning Commission

#5: Lower the Payment in Lieu Fee- make payment correspond to scale of project and geography of inclusion

Proposed that in census block groups where less than 51% of the residents are below 80% HUD Area Median Income ('less inclusive' areas) Payment in Lieu not be allowed at certain project scales (see #5.1) because these areas are in need of more inclusion. See attached map.

- (5- 16 units) \$35,000 / unit - allowed citywide except waterfront
- (17-49 units) \$70,000 / unit - not allowed in 'less inclusive' areas or waterfront
- (50+ units) \$85,000 / unit - not allowed in 'less inclusive' areas or waterfront

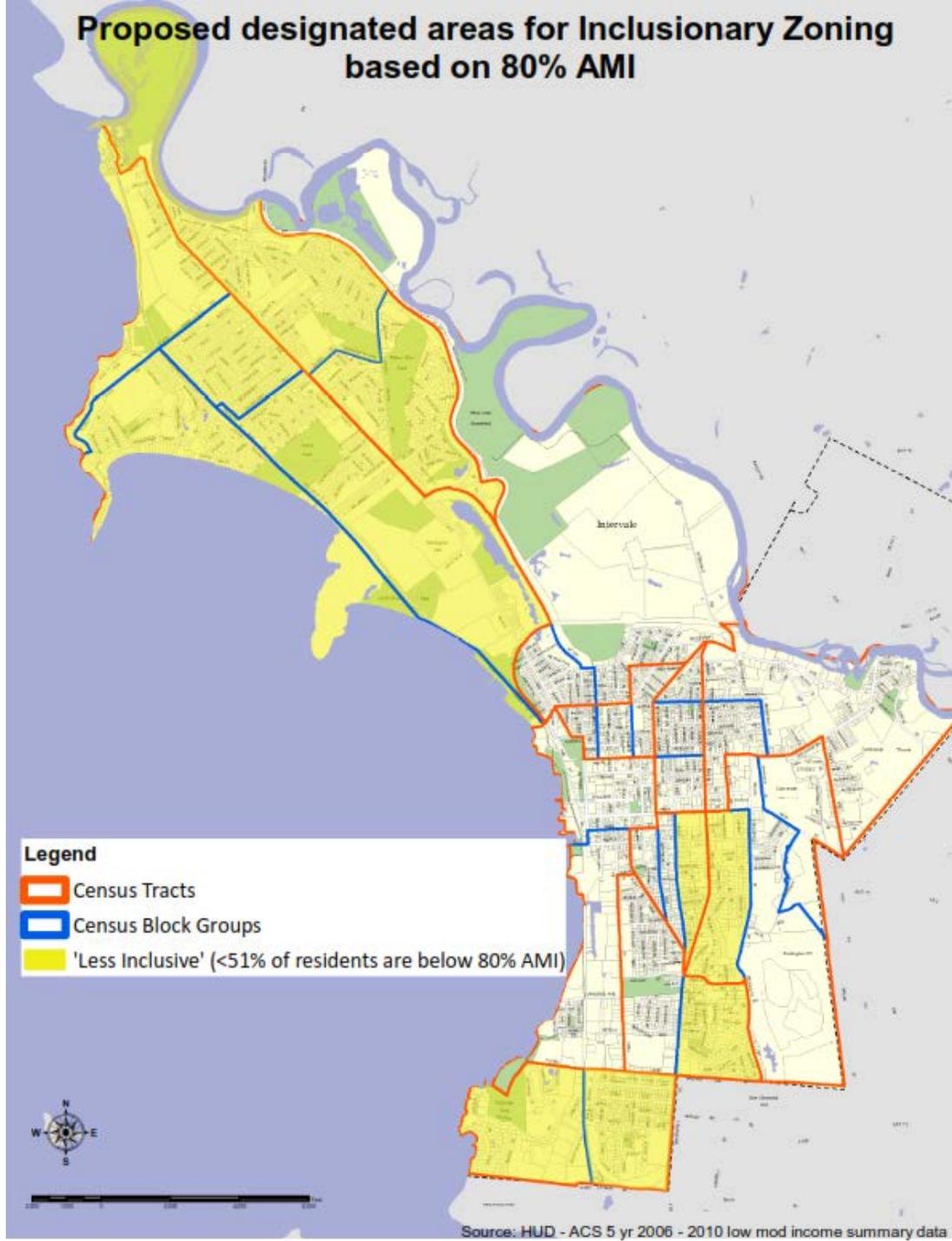
Current CDO Sections: 9.1.13 Off-Site Option

The DRB, upon a finding that unique, difficult and/or challenging site conditions exist that prevent the inclusionary units from being constructed upon the same site as the market units, may allow any developer of a covered project to comply constructing inclusionary units on a site within the City of Burlington other than that on which the covered project is located, subject to the following conditions:

(a) The number of inclusionary units to be provided by the developer or by the developer's designee through off-site development shall be no fewer than 1.5 times the number otherwise required by this Article;

(f) Should the City Council decide that a payment in lieu is acceptable in exchange for not providing the inclusionary units on or off of the site, the payment shall be \$100,000, adjusted annually in accordance with the CPI, commencing January 1, 2007, per the number of units required in (a) above.

Proposed designated areas for Inclusionary Zoning based on 80% AMI



Recommendations of the Joint Committee referred to Planning Commission

#6: Offer a less restrictive off-site option

IZ units should be allowed off-site by-right if the project is located in a designated area based on attached map (see #5.1). Remove 1.5 unit multiplier for IZ units required when exercising the off-site option which also applies to Payment in Lieu in order to clarify and simplify.

Current CDO Section: 9.1.13 Off-Site Option

The DRB, upon a finding that unique, difficult and/or challenging site conditions exist that prevent the inclusionary units from being constructed upon the same site as the market units, may allow any developer of a covered project to comply constructing inclusionary units on a site within the City of Burlington other than that on which the covered project is located, subject to the following conditions:

- (a) The number of inclusionary units to be provided by the developer or by the developer's designee through off-site development shall be no fewer than 1.5 times the number otherwise required by this Article;

Recommendations of the Joint Committee referred to Planning Commission

#7: Adjust the sale price for owner-occupied units from 75% of AMI to 70% of AMI

Current CDO Section: 9.1.11 Calculating Rents and Selling Prices

(b) Inclusionary units for sale, including cooperative units and the carrying costs associated therewith, shall be sold at a price which is affordable for a household with an annual income that is seventy-five percent (75%) of median income adjusted for household size;

Recommendations of the Joint Committee referred to Planning Commission

#12: Codify IZ requirements for student housing outside the Institutional zone

Develop ordinance language based on the terms that Champlain College met to satisfy the IZ requirement for the 194 Saint Paul project that included demonstrating that over 15% of the undergraduate population fall under 65% AMI on a yearly basis and a covenant to ensure compliance with article 9 in the unlikely event that the property ceases to be used for dedicated student housing. In cases where this standard cannot be met, the IZ requirement must be met on-site.

Questions?

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Additional Information

Quick and dirty summary of consultant's recommendations

1. Which projects are covered: exempt more small projects from the requirement ("increase the threshold project size" that law applies to)
2. How many units/for whom: allow developers to build MORE units, but for higher-income households than in current law; or FEWER units, but for lower-income households than in current law
3. Other options: create a meaningful payment in lieu option (allow developer to meet obligation by making a payment to the City's Housing Trust Fund instead of building the required units on site)

Payment in lieu: what did the consultant say?

- Lower the payment in lieu. It is too high to be a true option (it is much higher than the cost to developer of building the on-site inclusionary unit), as shown by the fact that it has not been exercised in 10 years.
- It is an important option since it provides flexibility for developers, and the revenue can be used to support other affordable housing strategies through the City's Housing Trust Fund.

Membership of IZWG

Membership was stipulated in the April 2017 Resolution, appointments made by Council President in consultation with the Mayor.

- 1 City Council Member to serve as chair (Jane Knodell)
- 1 Representative from the Planning Commission (Bruce Baker)
- 2 For-Profit Developers (Erik Hoekstra, Eric Farrell)
- 2 Not-for-Profit Developers (Nancy Owens, Housing Vermont; Michael Monte, CHT)

- 2 Affordable Housing Advocates (John Davis, Brian Pine)
- 1 CEDO Director or designee (Noelle MacKay)
- 1 Planning & Zoning Director or designee (David White)

Summary of IWG recommendations: who is covered, and how many affordable homes?

- Which projects are covered: Joint Committee recommends no change to current law, which applies to any housing development of 5 or more units
- How many affordable homes: Joint Committee recommends no change to current law, which says 15% of all dwelling units in the project must meet affordability requirement. In Waterfront district, 25%. If project is targeted to very high end of market, 20-25% of all dwelling units must meet affordability requirement.

Summary of recommendations: how is “affordable” defined?

Affordable for whom?

- For rental units, Joint Committee recommends no change to current law. Price homes so they are affordable to households at 65% of Area Median Income (AMI).
- For owner-occupied units: Recommend reducing target income from 75% of AMI to 70% of AMI.

Summary of recommendations: other options to meet requirement

Payment in lieu option: current ordinance

- If Development Review Board finds that there are “unique, difficult, and/or challenging site conditions” that prevent the construction of on-site inclusionary units, then the DRB may allow the developer to make a payment instead, subject to approval of the City Council.
- The payment per required affordable home that is not built on site = approx. \$180,000.

Payment in lieu, Joint Committee recommendation

- The Joint Committee agreed with the Consultant and IZWG that this is an important option, and one that has not been viable.
- Joint Committee agrees with the IZWG and recommends that the payment in lieu option should be available "by right", but on a restricted basis. "By right" means it is not subject to the discretion of a City board or official.
- Restrictions on the payment in lieu option are based on the size of the project and the location of the project.
- Regardless of size of project, no payment in lieu option in the Waterfront district – a continuation of the existing policy.

Payment in lieu recommendation

- The Joint Committee offers an innovative recommendation on the payment in lieu option that seeks to address two big issues:
- The challenging economics of the IZ requirement for small projects, given the significant fixed costs involved in developing new housing (costs that are about the same whether you are building 5 units or 50 units).
- The striking geographic concentration of IZ units built to date in parts of Burlington that already have a healthy mix of households across the income spectrum in their neighborhoods.

Payment in lieu, recommendation

- Small projects (5-16 units) have a payment in lieu option, except if the project is in the Waterfront district. The per unit payment is \$35,000.
- Medium (17-49 units) and large (50+ units) pay more per unit (\$70,000 and (\$85,000 respectively), recognizing their greater ability to absorb the cost of the inclusionary units. Only incremental units pay higher rate: 17-unit project pays \$35K for 2 units and \$70K for the 3rd IZ unit and so on.
- AND medium and large projects can **only** use the payment in lieu option for projects located in parts of the City that have inclusive neighborhoods today. *If their project is in a less inclusive part of the City, we want them to build their affordable homes on site.*

Rationale for Payment in Lieu proposal

- Addresses the difficult economics of IZ for small projects, while capturing resources from small projects for the Housing Trust Fund.
- Addresses lack of neighborhood inclusion shortcoming of IZ to date in Burlington: while it has succeeded in fostering inclusive projects/buildings, it has not fostered inclusive neighborhoods throughout the City.
- Allows payments from market-rate housing to be leveraged with other funding sources through the HTF to support the creation of more homes, and more deeply affordable homes, than would have been built on-site.

Density Bonus proposal

- Addresses the fact that many development projects are unable to utilize the existing density bonus despite being required to comply with IZ.
- The Joint Committee endorsed the IZWG recommendation that developers be granted by-right density bonuses.
- Final language from the Planning Commission should address the provision of by-right density, but still ensure opportunity for the DRB/DAB to seek other modifications to a project to address site plan concerns and architectural design standards.

Other recommendations

- Unit comparability – IZ units at par with market units
- Compliance monitoring – explore option to transfer duty to new dept.
- Increase funding for affordable housing – refer CDNR
- Accessory units – refer to CDNR
- Privately developed university housing built outside the Institutional Zoning District – draft an ordinance codifying Champlain College

Recommendation	Description	Ordinance Section
Eliminate numerical standards for minimum area	IZ units must be comparable to market rate units with a floor area no less than 90% of the average market rate units within the project of the same number of bedrooms.	9.1.14 (c)
Monitoring & Administration	Housing Trust Fund (HTF) and its Manager can designate responsibility to the new consolidated permitting and inspections department.	9.1.20
Provide Density bonuses by right	Ensure the provision of the density allowance by-right, but still ensure opportunity for the DRB/DAB to seek other modifications to a project to address site and architecture design standards. See Section 14.6.4 of the planBTV Downtown Code.	9.1.12 Ex: 14.6.4 (f)
Density bonus in CDO Article 4.4.5 should be reviewed and if meaningful made by-right.	Provides density bonus for additional 5% inclusionary units.	4.4.5.(d) 7 A
Eliminate parking requirement for IZ units.	Currently allowance for 50% waiver of parking spaces.	9.1.12(b); 8.1.15(a)
IZ units should receive 100% waiver of impact fees	The current IZ rent price target only allows for a 50% waiver.	9.1.12(b)2; 3.3.3(c)

Recommendation	Description	CDO Section
<p>Lower the Payment in Lieu Fee- make payment correspond to scale of project and geography of inclusion</p>	<p>In Census Block Groups where less than 51% of the residents are below 80% HUD Area Median Income ('less inclusive' areas) Payment in Lieu not be allowed at certain project scales because these areas are in need of more inclusion. See map.</p>	<p>9.1.13</p>
	<p>(5- 16 units) \$35,000 / unit - allowed citywide except waterfront (17-49 units) \$70,000 / unit - not allowed in 'less inclusive' areas or waterfront (50+ units) \$85,000 / unit - not allowed in 'less inclusive' areas or waterfront</p>	<p>p.1.13(a)(f)</p>
<p>Offer a less restrictive off-site option</p>	<p>IZ units should be allowed off-site by-right if the project is located in a designated area.</p>	<p>9.1.13</p>
	<p>Remove 1.5 unit multiplier for IZ units which also applies to Payment in Lieu.</p>	<p>9.1.13(a)</p>
<p>Adjust the sale price for owner-occupied units from 75% of AMI to 70% of AMI</p>	<p>Allows condos to be more competitive with the market outside of Burlington that is similarly priced but has no shared equity restrictions on sale of unit.</p>	<p>9.1.11(b)</p>

Recommendation	Description	CDO Section
Codify IZ requirements for student housing outside the Institutional zone	Based on the terms that Champlain College met to satisfy the IZ requirement for the 194 Saint Paul project and a covenant to ensure compliance with article 9 in the unlikely event that the property ceases to be used for dedicated student housing.	9.1.6 (a)