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**TO:** Burlington Planning Commission  
**FROM:** Scott Gustin, Principal Planner  
**DATE:** April 23, 2019  
**RE:** CDO Amendment ZA-19-XX: Inclusionary Zoning

**Overview & Background**

This amendment revises the standards for inclusionary housing in Article 9 and related provisions in other articles of the *Comprehensive Development Ordinance* (CDO). The amendment adjusts the sale price of inclusionary units from 75% of Area Median Income (AMI) to 70% of AMI and replaces square footage provisions for inclusionary units with a percentage (90%) relative to the average size of market rate units. The amendment also facilitates utilization of off-site and payment in lieu options for inclusionary units in more inclusive areas of the city while limiting their utilization in less inclusive areas of the city. The amendment articulates inclusionary standards of off-campus student housing. Furthermore, the amendment specifies by-right development “bonuses” associated with inclusionary housing and eliminates impact fee and minimum off-street parking requirements. Lastly, the amendment includes a number of procedural clarifications.

Significant process precedes this amendment. The 2015 Housing Action Plan identified the need to review the inclusionary zoning standards. A private consultant provided an initial report evaluating the inclusionary zoning standards in 2017. The report contained some initial recommendations. The inclusionary zoning working group was then established to build on the consultant’s report with a focus on greater inclusion with consideration given to geographic distinctions within the city (i.e. more versus less inclusive areas). Finally, in 2018, the joint committee (Ordinance and CDNR) was established to specifically address each of the recommendations of the inclusionary zoning working group. The City Council adopted the final report of the joint committee in December 2018. The Planning Commission is now tasked with amending the inclusionary zoning language in the CDO to incorporate the recommendations of the joint committee.

**Proposed Amendment**

**Amendment Type**

Text Amendment	Map Amendment	Text & Map Amendment
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**Purpose Statement**

The purpose of this amendment is to make corrections to the *Comprehensive Development Ordinance* consistent with the list of recommendations forwarded to the Planning Commission by the City Council’s joint Ordinance & CDNR Committee.

- Recommendation 1- *Reduce payment for in lieu for smaller projects.* See changes to Sec. 9.1.13.

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- Recommendation 2- *Replace numerical standards for minimum IZ unit requirements with a 90% of market rate unit size standard.* See changes to Sec. 9.1.14.
- Recommendation 3- *Transfer IZ administration from Housing Trust Fund manager to new Permitting & Inspections Department.* See changes to Sec. 9.1.20.
- Recommendations 4 & 4.1- *Make density and dimensional bonuses by right.* See changes to Sec. 9.1.12 and 4.4.5.
- Recommendations 4.2 & 4.3- *Eliminate minimum off-street parking and impact fee requirements for IZ units.* See changes to Sec. 3.3.3 & 8.1.8.
- Recommendations 5 & 5.1- *Allow for payment in lieu option based on HUD AMI and restructure payments based on project size.* See changes to Sec. 9.1.13.
- Recommendations 6 & 6.1- *Allow for off-site option by right based on HUD AMI and remove 1.5-unit multiplier.* See changes to Sec. 9.1.13.
- Recommendation 7- *Adjust sale price for owner-occupied IZ units from 75% AMI to 70% AMI.* See changes to Sec. 9.1.11.
- Recommendations 10 & 10.1- *Maintain the current IZ target rent price of 65% AMI, and maintain the current income eligibility level of up to 100% AMI.* See Sec. 9.1.11 and 9.1.10.
- Recommendation 12- *Develop ordinance language for meeting IZ requirements for institutional student housing projects outside of the institutional zones.* See changes to Sec. 9.1.19.

Further, this amendment incorporates a number of changes to address procedural and administrative issues forward by City Staff regarding this section of the CDO:

- *Required number of units – rounding.* See Sec. 9.1.9.
- *Distribution of units within a building/project-* See Sec. 9.1.14.
- *Unit sales (preference)-* See Sec. 9.1.14.
- *Unit marketing (initial or ongoing; first or every resale)-* See Sec. 9.1.16.
- *Rents and Section 8 vouchers-* See Sec. 9.1.10 & 9.1.11.
- *Housing Trust Fund manager involvement in prices for resale of units-* See Sec. 9.1.16.

### **Proposed Amendments**

To achieve the goals identified above, the proposed amendment affects the sections of the *Burlington Comprehensive Development Ordinance* as outlined in the following pages.

**[BEGIN TEXT AMENDMENTS]**  
*Draft v3.0 updated for 4-23-2019 meeting*

Deleted language is ~~crossed out~~, and new language is underlined in red.

**ARTICLE 3. APPLICATIONS, PERMITS, AND PROJECT REVIEWS**

**PART 3: IMPACT FEES**

**Sec. 3.3.1 Purpose**

As written.

**Sec. 3.3.2 Applicability**

As written.

**Sec. 3.3.3 Exemptions and Waivers**

**(a) Exemptions:**

The following types of development are exempt from this Part:

1. additions to existing dwelling units, provided such additions are for residential purposes;
2. alterations to an existing use provided that such alteration occurs entirely within an existing building and within the same square footage;
3. land development which does not result in new building square footage (e.g. parking lots, facade renovations, signs, etc.);
4. additions to existing buildings for which the sole purpose is to provide additional means of egress (e.g. stair towers, elevators, etc).

**(b) School Impact Fee Exemption:**

That portion of impact fees attributable to school impacts shall not be required for senior citizen housing projects or for that portion of a project where certain units are reserved specifically for the elderly. Any project, or portion thereof, which meets either state or federal guidelines for elderly housing, shall be deemed a senior citizen housing project and eligible for a full or partial waiver of school impact fees.

**(c) Inclusionary Housing Exemption:**

Inclusionary housing units per Article 9: Part 1 shall be exempt from this Part.

**(e) (d) 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~~ qualifies for a waiver of impact fees for that portion of the project containing affordable housing units in excess of the minimum inclusionary housing requirements of Article 9. 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~~ qualifying units 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~~ qualifying units in a 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~~ qualifying units in a 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.

**(d)(e) Community Garden Waivers:**

As written.

**ARTICLE 4. ZONING MAPS AND DISTRICTS  
PART 4: BASE ZONING DISTRICT REGULATIONS**

**Sec. 4.1.1 Intent – Sec 4.4.4 Institutional District**

As written.

**Sec. 4.4.5 Residential Districts**

**(a) – (c)** As written.

**(d) District Specific Regulations:**

**1 - 6** As written.

**7. Residential Development Bonuses**

The following exceptions to maximum allowable residential density and dimensional standards in Tables 4.4.5-2 and 4.4.5-3 may be approved in any combination subject to the maximum limits set forth in Table 4.4.5-8 at the discretion of the DRB. Any bonuses that are given pursuant to this ordinance now or in the future shall be regarded as an exception to the limits otherwise applicable.

**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-foot 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

B. – E. As written (except for re-lettered following deletion of A).

**ARTICLE 8. PARKING**

**PART 1: GENERAL REQUIREMENTS**

**Sec. 8.1.1 – 8.1.7** As written.

**Sec. 8.1.8 Minimum Off-Street Parking Requirements**

Parking for all uses and structures shall be provided in accordance with Table 8.1.8-1.

- (a) Where no requirement is designated and the use is not comparable to any of the listed uses, parking requirements shall be determined by the DRB upon recommendation by the administrative officer based upon the capacity of the facility and its associated uses.
- (b) When the calculation yields a fractional number of required spaces, the number of spaces shall be rounded to the nearest whole number.
- (c) The minimum off-street parking requirement for a development with inclusionary housing units provided on site shall be reduced by the percentage of inclusionary units required by Article 9.

*(Example: A 100-unit residential development with a requirement of 15% inclusionary units shall provide minimum off-street parking based on 85 dwelling units.)*

	Neighborhood Districts	Shared Use Districts	Downtown Districts
<b>RESIDENTIAL USES<sup>1</sup></b>	<b>Per Dwelling Unit except as noted</b>		
Multi-unit attached dwelling units, studio units or 1-bedroom dwelling unit.	2	1	1
Single Family detached and Duplex	2	2	1
<i>1. Adjusted for development with inclusionary housing units per Sec. 8.1.8 (c).</i>			
<b>RESIDENTIAL USES – SPECIAL<sup>1</sup></b>	<b>Per Dwelling Unit except as noted</b>		
Assisted Living	0.5	0.5	0.4
Bed and Breakfast (per room, in addition to single-family residence)	1	0.75	0.5
Boarding House (per two (2) beds)	1	0.75	0.5
Community House	1	0.75	0.5
Convalescent Home (per four (4) beds)	1	1	1

<b>Table 8.1.8-1 Minimum Off-Street Parking Requirements</b>			
	<b>Neighborhood Districts</b>	<b>Shared Use Districts</b>	<b>Downtown Districts</b>
Dormitory (per two (2) beds)	1	1	1
Emergency Shelter	0	0	0
Group Home (per two (2) beds)	1	1	1
Historic Inn (per room, in addition to single-family residence)	1	0.75	0.5
Sorority & Fraternity (per two (2) beds)	1	1	1
<u>1. Adjusted for development with inclusionary housing units per Sec. 8.1.8 (c).</u>			
<b>NON-RESIDENTIAL USES</b>	<b>Per 1,000 square feet of gross floor area (gfa) except as noted</b>		
As written.			

**Sec. 8.1.9 – 8.1.5** As written.

**ARTICLE 9. INCLUSIONARY AND REPLACEMENT HOUSING**

**PART 1: INCLUSIONARY ZONING**

**Sec. 9.1.1 Intent**

The intent of these regulations is:

- (a) To meet the specific mandates of 24 V.S.A. Chapter 117 related to housing opportunities for all of Vermont’s citizens, particularly for those citizens of low or moderate income;
- (b) 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;
- (c) To improve the quality of life for all residents by having an economically integrated housing supply throughout the City; and,
- (d) To prevent overcrowding and deterioration of the limited supply of affordable housing, and thereby promote the public health, safety and general welfare.

**Sec. 9.1.2 Authority**

These regulations are enacted under the authority of 24 V.S.A. Chapter 117.

**Sec. 9.1.3 Inclusionary Units, General Description**

Inclusionary units shall include those units in a covered project, which are regulated in terms of:

- (a) Selling price or rent level;
- (b) Marketing and initial occupancy; and,
- (c) Continued requirements pertaining to re-sale, rent or carrying cost increases, as specified in this article.

#### **Sec. 9.1.4 Miscellaneous Definitions**

~~“Affordable housing” or “Affordable” shall refer to a housing in which the that is owned or rented by its inhabitants whose gross annual household income does not exceed 80 percent of the county median income or 80 percent of the standard metropolitan statistical area (MSA) income, as defined by the US Department of Housing and Urban Development, and the total cost of the housing, including principal, interest taxes and insurance and condominium association fees, if owned housing, or the total cost of the housing, including rent, utilities and condominium association fees, if rental housing, is not more than thirty per cent (30%) of the household’s gross annual income.~~

~~“Area Median Income” shall refer to the income for the Burlington MSA set forth in or calculated by regulations promulgated by the United States Department of Housing and Urban Development, pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974. The median income consists of all households in the geographic area. The median is the middle value when all are arranged from highest to lowest. The median income that is current on the first day of March of any year shall be used throughout the subsequent twelve (12) months in calculating the general requirements for affordable housing under this article.~~

~~“Carrying charges” refer to costs associated with housing co-operatives.~~

~~“Certificate of Inclusionary Housing Compliance” shall refer to a certificate issued by the Manager of the Housing Trust Fund, which certificate provides legal assurance that a developer’s obligations under this article are being satisfied.~~

~~“Housing Trust Fund (HTF)” shall refer to a special revenue account established by the Burlington City Council for purposes related to the creation, promotion, and preservation of long-term affordable housing for very low, low, or moderate income households.~~

- ~~• “Housing Trust Fund Administrative Committee” shall refer to an administrative committee consisting of the Manager of the Housing Trust Fund, an appointee of the City Council President and a designee of the Mayor responsible for the administration of the HTF by resolution of the City Council.~~
- ~~• “Manager of the Housing Trust Fund” or “Manager” shall be the Director of the City’s Community and Economic Development Office, unless otherwise designated by the City Council by resolution.~~

~~“Median Income” shall refer to the income for the Burlington MSA set forth in or calculated by regulations promulgated by the United States Department of Housing and Urban Development, pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974. The median income consists of all households in the geographic area. The median is the middle value when all are arranged from highest to lowest. The median income that is current on the first day of March of any year shall be used throughout the subsequent twelve (12) months in calculating the general requirements for affordable housing under this article.~~

#### **Sec. 9.1.5 Applicability**

This ordinance provision shall apply to any development of five or more residential units in a single structure shall be subject to the standards of this article. Multiple developments or projects by the same applicant or responsible party within any consecutive twelve (12) month period that in the aggregate equal or exceed the above criteria shall be subject to these regulations.

Except as otherwise provided in this ordinance, these regulations shall apply in the instances specified below.

- (a) The creation of five (5) or more residential units or twenty (20) or more rooming units in a co-living project through new construction and/or substantial rehabilitation of existing structures, including the development of housing units utilizing development provisions other than those specified in Sec 9.1.5 (b).
- (b) Where units are created using the Adaptive Reuse or Residential Conversion criteria pursuant to the provisions of Art 4, Sec 4.4.5, this article shall be applicable when at least ten (10) or more dwelling units are created.
- (c) An applicant may elect to be subject to the provisions of this article when developing fewer than 5 residential units in a single structure, or when~~An applicant may elect to be subject to the provisions of this article if~~ any new units are added to existing units ~~for a total of 5 or more units.~~

**Sec. 9.1.6 Exemptions**

Exempt from the requirements of this article are:

- (a) ~~On-campus projects~~ that are located within an Institutional (I) zoning district that are ~~developed by an educational institution~~ for the exclusive residential use and occupancy by that institution's students;
- (b) Those dwelling units in a covered project that are produced as "replacement units," pursuant to Article 9, Part 2 and which do not produce any net new units; and,
- (c) Projects created using the Senior Housing Development Bonus pursuant to the provisions of Article 4.

**Commented [SG1]:** Sharon Bushor comment. Reflects the intent, but could be construed as a policy change from the literal interpretation of present wording.

**Sec. 9.1.7 Certificate of Inclusionary Housing Compliance**

Notwithstanding any other provision of this ordinance, no certificate of occupancy for a project covered by this chapter shall be granted unless and until a Certificate of Inclusionary Housing Compliance has been issued by the Manager of the city's Housing Trust Fund.

**Sec. 9.1.8 Inclusionary Units, Rental and Sales**

For covered projects in which units are offered for rent or sale, a base of fifteen percent (15%) of all of the dwelling units in the project, graduated as specified in Table 9.1.9-1, shall be designated as inclusionary units

This includes any covered project where units are offered for sale via the conveyance of a deed or share for individual units, including fee simple ownership, condominium ownership and cooperative ownership.

<b>Table 9.1.8-1 Inclusionary Zoning Percentages</b>	
If the average sale and rental price of project units is affordable to a household earning:	The percentage of units which are subject to rent and sales prices as per Sec. 9.1.9 and are subject to marketing and continued affordability provisions (Sec. 9.1.10 and Sec. 9.1.11) shall be:
Less than 139% of median income	15%
140%-179% of median income	20%

Development in any Waterfront district (RM-W, RL-W, NAC-CR and FD5 west of Battery St) or 180% of median income and above in any other district	25%
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**Sec. 9.1.9 Percentage of Inclusionary Units**

Except as provided for below for institutional student housing projects outside of an Institutional (I) zoning district, All covered projects shall meet the percentage requirements for inclusionary units as specified above, calculated as follows:

Using the units/acre allowed for a covered project (i.e. 46 in the RH, 24 in the RM or 5.5 in the RL), the total number of units proposed is multiplied by the required percentage of Inclusionary units (15%, 20% or 25%, depending on the rent/selling price of the units). When the calculation yields a fractional number of required inclusionary units, the number of units shall be rounded up or down to the nearest whole number.

*(Example: a moderately-priced, multi-family housing development with no commercial space on a one-acre lot in the RH would be able to provide 46 units on-site. Of those, 46 x .15 (15%) = 6.9 (rounded up to 7) units of a total of 46 must be inclusionary units. If the applicant can only provide 20 of such moderately priced units on the site, 15% of the 20 units, i.e. 20 units x .15 = 3 units shall be Inclusionary units).*

Student housing projects outside of the Institutional (I) zoning district for the exclusive residential use and occupancy by that institution’s students shall meet the percentage requirements for inclusionary units by documenting that 15% or more of the undergraduate student body eligible for occupancy of the project falls under 65% Area Median Income on a yearly basis. An annual report shall be filed with the Manager of the Housing Trust Fund demonstrating that the undergraduate student population continues to meet the 15% inclusionary requirement and also including the percentage of residents within the project qualifying under the standards for inclusionary housing. In cases where the 15% inclusionary requirement cannot be met, the percentage requirements for inclusionary units shall be met as noted above. A written covenant between the educational institution and the City shall be executed guaranteeing that, in the event that the institutional student housing project ceases to be used as such, the percentage requirements for inclusionary units shall be met as noted above.

**Sec. 9.1.10 Income Eligibility**

Inclusionary Units required under this Article, shall be marketed for purchase or rent to households earning less than the median income for the Burlington Metropolitan Statistical Area, adjusted for household size, as specified in Sec 9.1.12. The median income shall be determined on the basis of the data which is most recent to the time that the units are ready for occupancy. Inclusionary units occupied by households receiving Section 8 vouchers can be presumed to satisfy the income eligibility requirements of this section.

**Sec. 9.1.11 Calculating Rents and Selling Prices**

The following provision shall apply to the calculation of rents, selling prices and carrying charges, and to the relationship between unit size and household size:

- (a) Inclusionary rental units shall be rented at a price which is affordable for a household with an annual income that is sixty-five percent (65%) of median income adjusted for household size;
- (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;
- (c) In calculating the rents or carrying charges of inclusionary units, the following relationship between unit size and household size shall apply:

Unit Size	Household Size Equivalent
Efficiency Units:	1 Person Household;
One-Bedroom Units:	1.5 Person Household (average of one and two-person household incomes);
Two-Bedroom Units:	3 Person Household;
Three-Bedroom Units:	4.5 Person Household (average of four and five-person household incomes);
Four-Bedroom Units:	6 Person Household.

With respect to inclusionary units offered for sale, prices will be calculated on the basis of:

- (d) An available fixed-rate thirty-year mortgage, consistent with a “blended rate” for Burlington banks plus the Vermont Housing Finance Agency as determined and declared semi-annually (January and July) by the Housing Trust Fund Manager. A lower rate may be used in calculating affordable prices if the developer can guarantee the availability of a fixed-rate thirty-year mortgage at this lower rate from the Vermont Housing Finance Agency for all of the required inclusionary units;
- (e) A down payment of no more than five percent (5%) of the purchase price;
- (f) Annual property taxes; and
- (g) Homeowner insurance, homeowner association fees or condo fees. Homeowner association fees shall be calculated in the same manner as the fees for the market units in the same development. The Housing Trust Fund Manager may modify the amount used in the calculation of condominium fees for the determination of the initial sale price limit for condominium inclusionary units. This modification shall be for the purposes of removing costs, such as plowing, maintenance, insurance, electricity, which are not included in the calculation of the sale price limit for single family inclusionary units.

**Sec. 9.1.12 Additional Density and Other Development Allowances**

All covered projects shall be entitled to increases in the development allowances of the underlying zoning district in accordance with the provisions of this section.

- (a) Any covered project shall be entitled by right to an increase in the maximum lot coverage, density/intensity, and, where applicable, height allowed for the site lot(s) on which the project is located. Applicable design standards in Articles 6 and 14 shall not be construed such that the by-right provisions of this section are reduced following the calculation of density, height, lot coverage, setbacks, and parking improvements for the site. Calculations for these entitlements shall be based on the following tables:

Zoning District	Additional Allowance	Maximum Units/Acre	FAR/Height	Maximum Lot Coverage
RH	15%	46	n/a 120' height set back 10' along street facade <sup>1</sup>	92%
RM, RM-W	20%	25	n/a	48%
<b>RM-W</b>		<b>25</b>	<b>120' height set back 10' along street facade<sup>1</sup></b>	<b>72%</b>
RL, RL-W	25%	8.75	n/a	44%
FD6, FD5	n/a	n/a	0.5 FAR	100%
NMU, NAC, NAC-R, NAC-CR, BST	n/a	n/a	0.5FAR+120' height set back 10' along street facade	92%
<b>NAC-CR</b>		<b>n/a</b>	<b>0.5FAR+120' height set back 10' along street facade</b>	<b>72%</b>

1. In the RH and RM-W residential zones an additional 120 feet of building height shall be allowed by right only for an additional 5% inclusionary housing units provided in excess of the minimum requirements of Sec. 9.1.8.

Zoning District	Additional Allowance	Maximum Lot Coverage
<b>RH, NMU, NAC, NAC-R</b>	15%	92%
<b>RM-W, NAC-CR</b>	20%	72%
<b>RM</b>	20%	48%
<b>RL, RL-W</b>	25%	44%

- ~~(1) Design requirements for Additional density, intensity, and/or height:~~
- ~~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 buildings, and ensure a high quality of design that complements the character of a project's surrounding area. After consultation with the Design Advisory Board, the Development Review Board shall evaluate any proposal seeking to increase units per acre, lot coverage, and height per the following design criteria:~~
    - ~~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.~~

~~ii. Stop backs, horizontal and vertical variation, selection of materials, and/or other architectural design techniques 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,~~

~~iii. 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.~~

~~ii. The DRB may condition the approval of additional units per acre, lot coverage, and height by reducing the building(s)' massing or requiring alterations to design features, but in no case shall the maximum number of units, lot coverage, or height be reduced.~~

(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,

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.

(c) ~~(b)~~ The allowances provided for herein may be declined at the option of the applicant;

(d) ~~(c)~~ With the approval of the DRB, units added to a project as market rate units may be substituted by nonresidential uses wherever such nonresidential uses are otherwise permitted in the district where the project is located. Approved substitution for nonresidential uses shall occur at the following rate: 1 market-rate dwelling unit = 1,500 square feet nonresidential space

(e) ~~(d)~~ All provisions of Sec. 9.1.8 through 9.1.11 shall apply, without exception, to any inclusionary units that are constructed.

### **Sec. 9.1.13 Off-Site and Payment In Lieu Options**

#### **(a) Off-Site Option**

The developer of a covered project may construct inclusionary units on a lot (or lots) within the City of Burlington other than that on which the covered project is located as determined by HUD's Low- and Moderate-Income Summary Data as updated annually. The offsite option may be utilized by-right per the following scenario.

(1) Covered projects located in a census block where more than fifty-one percent (51%) of the residents are below eighty percent (80%) HUD Area Median Income as determined by HUD's Low- and Moderate-Income Summary Data may utilize the off-site option by right.

(2) In areas where less than fifty-one percent (51%) of the residents are below eighty percent (80%) HUD Area Median Income as determined by HUD's Low- and Moderate-Income Summary Data, utilization of the off-site option shall not be allowed. 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:

In all cases, utilization of the off-site option shall be subject to the following conditions:

- ~~(a)~~ (1) 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~~ equivalent to the number otherwise required by this Article;
- ~~(b)~~ (2) No additional development provisions as outlined in ~~this Article~~ Sec. 9.1.12 shall be granted to the development of units constructed off-site or to the project constructed on-site;
- ~~(c)~~ (3) Off-site inclusionary units must be located within the City of Burlington;
- ~~(d)~~ (4) All of the provisions of Sections 9.1.8 through 9.1.11 shall apply without exception to off-site inclusionary units under the provisions of this section;
- ~~(e)~~ (5) Waiver of provisions from the HTF with regard to minimum square footage and bedroom count relative to average size and bedroom count in a covered project is not permitted; and
- ~~(f)~~ (6) ~~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.~~

The off-site option shall not apply to a project located within a waterfront zoning district ~~or the NAC-CR district~~. For the purposes of this Sec. 9.1.13, "site" shall consist of all adjacent ~~lands~~ lots which are the subject of a PUD or other single development application.

**(b) Payment In-Lieu Option**

The developer of a covered project may provide a payment in lieu to the Housing Trust Fund rather than construct inclusionary units on or offsite contingent on HUD Area Median Income as determined by HUD's Low- and Moderate-Income Summary Data. The payment in lieu option may be utilized by right under the two following scenarios

(1) Covered projects located in a census block where more than fifty-one percent (51%) of the residents are below eighty percent (80%) HUD Area Median Income as determined by HUD's Low- and Moderate-Income Summary Data may utilize the payment in lieu option by right subject to the following standards:

- i. The payment in lieu fee shall be \$35,000 per dwelling unit for projects containing 5-16 dwelling units.
- ii. The payment in lieu fee shall be \$70,000 per dwelling unit for projects containing 17-49 dwelling units.
- iii. The payment in lieu fee shall be \$85,000 per dwelling unit for projects containing 50 or more dwelling units.

A marginal fee approach shall be used in payment of the in lieu fees.

(Example: A 17-unit project would pay a total of \$140,000 {\$35,000 for each of the first two inclusionary units and \$70,000 for the third inclusionary unit}.)

(2) Covered projects located in a census block where less than fifty-one percent (51%) of the residents are below eighty percent (80%) HUD Area Median Income as determined by HUD's Low- and Moderate-Income Summary Data may utilize the payment in lieu option by right per the following standards:

- i. The payment in lieu fee shall be \$35,000 per dwelling unit for projects containing 5-16 dwelling units.
- ii. The payment in lieu fee shall not be allowed for projects containing 17 or more dwelling units.

The payment in lieu option shall not apply to a project located within a waterfront zoning district. For the purposes of this Sec. 9.1.13, "site" shall consist of all adjacent lots which are the subject of a PUD or other single development application.

**Sec. 9.1.14 General Requirements for Inclusionary Units**

All covered projects must comply with the requirements set forth below.

- (a) In order to assure an adequate distribution of inclusionary units by household size, the bedroom mix of inclusionary units in any project shall be in the same ratio as the bedroom mix of the non-inclusionary units of the project;
- (b) Rental inclusionary units within a covered project may "float" (as opposed to designating specific units). Owner-occupied inclusionary units within a covered project must be specifically designated. In either case, inclusionary units may be grouped together or distributed throughout a covered project;
- (c) Covered projects including both rental and owner-occupied dwelling units shall provide inclusionary units proportionate to the numbers of rental and owner-occupied dwelling units;
- (d) Inclusionary units may differ from the market units in a covered project with regard to interior amenities and gross floor area, provided that:
  - 1. These differences, excluding differences related to size differentials, are not apparent in the general exterior appearance of the project's units; ~~and~~
  - 2. These differences do not include insulation, windows, heating systems, and other improvements related to the energy efficiency of the project's units; and,
  - 2-3. Inclusionary units are afforded the same opportunity for parking that the market units are afforded.
- (e) The gross floor area of the inclusionary units is not less than ninety percent (90%) of the average gross floor area of the market rate units within the project and of the same number of bedrooms. ~~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 144sf 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
- (f) Upon demonstration of inability to sell units to income eligible residents earning 75% ~~70%~~ of the median income, the Manager of the HTF may extend income eligibility to allow priority in the sale of inclusionary units to households earning as much as eighty percent (80%) of median income, adjusted for household size and to households residing in Burlington at the time that these units are offered for sale or lease. In extending income eligibility, priority of the purchase of for-sale inclusionary units shall be given to the lowest income household who qualifies for purchase;

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**Commented [SG2]:** Sec. 9.1.11 articulates a relationship between unit size and household size only for rentals. This provision refers to for-sale units with no such relationship articulated in 9.1.11 or anywhere else. Seemingly, priority could be based on income alone.

- (g) Except for household income limitations as set forth herein, occupancy of any inclusionary unit shall not be limited by any conditions that are not otherwise applicable to all units within the covered project unless required under federal law, e.g. local use of the Low Income Housing Tax Credit, or in conflict with the stricter bylaws of the designated housing agency; and
- (h) The final calculations for the number of inclusionary units shall be determined by the Manager prior to the issuance of the zoning permit. If there is any change in the project due to sales prices for these units that increases the number of inclusionary units required, such modifications shall be determined by the Manager and communicated to the administrative officer prior to the issuance of a certificate of occupancy for the covered project. The rental or sales price of the inclusionary units shall also be determined by the Manager prior to the issuance of a certificate of occupancy.

**Sec. 9.1.15 Marketing of Inclusionary Units**

Any applicant developing a covered project shall adhere to the following provisions with respect to the initial offering of inclusionary units for sale or rental:

**(a) Trust Fund Notification.**

The developer shall notify the Manager of the HTF, as defined in Section 18-400 of the Burlington Code of Ordinances, of the prospective availability of any inclusionary units at the time that the building permit is issued for such units in a covered project;

**(b) Trust Fund Option.**

The Manager of the HTF, in consultation with the other members of the HTF Administrative Committee, shall then have an exclusive option for one hundred twenty (120) days to purchase each inclusionary unit offered for sale from the developer unless waived or assigned;

**(c) Trust Fund Waiver.**

If the Manager of the HTF, in consultation with the other members of the HTF Administrative Committee or its designee, fails to exercise its option by failing to negotiate and sign a purchase and sale agreement for the inclusionary units, or if the Manager declares its intent not to exercise its option, the developer shall offer the units for purchase to households earning less than the median income referenced in Section 9.1.11. If requested by the developer, the Manager of the HTF shall execute documents that may be recorded in the Burlington Land Records to evidence said waiver of the option;

**(d) Time of Closing.**

Closing on inclusionary units purchased by the Housing Trust Fund Manager shall occur on or after the time of issuance of the certificate of occupancy. If the Housing Trust Fund Manager fails to close on these inclusionary units, the developer shall offer the unit for purchase or rent to households earning less than the median income referenced in Section 9.1.11, adjusted for household size;

**(e) Transfer of Option.**

On or before a purchase and sale agreement is executed between the developer and the manager, the Manager may assign the options specified in this section to any "designated housing agency," as defined by the provisions of Article 5 of Chapter 18 of the Burlington Code of Ordinances, in which event it shall notify the developer of such assignment and the agency to which it has assigned the option, which agency shall deal directly with the developer, and shall have all of the authority of the Manager, as provided under this section.

**(f) Rentals.**

In the case that the inclusionary units are being offered for rent rather than for sale, the Manager shall also be notified in the manner prescribed by subsection (a) regarding Trust Fund Notification, and the Manager and developer shall cooperate in order to rent such units to individuals meeting the income guidelines of Sec 9.1. 11(a).

**Sec. 9.1.16 Continued Affordability Requirements**

All covered projects shall comply with the following provisions to ensure continued affordability of inclusionary units provided under this article and units required to be continually affordable under Section 9.1.16.

**(a)99-Year Requirement.**

All inclusionary units shall remain affordable for a period of no less than ninety-nine (99) years commencing from the date of initial occupancy of the units. Where a developer can establish that regulatory or other considerations make it impossible to provide the required inclusionary units if subject to the full extent of this requirement, the development review board may modify the duration of the period of continued affordability only to the extent necessary to render the development feasible;

**(b)Deed Restrictions.**

Provisions to ensure continued affordability of inclusionary units shall be embodied in legally binding agreements and/or deed restrictions satisfactory to the City Attorney's office, which shall be prepared by the developer, but which shall not be recorded or filed until reviewed and approved by the Housing Trust Fund Manager with such modifications as it may deem necessary to carry out the purpose of this article. Such review and approval shall be completed within forty-five (45) days following date of submission of such documents to the Manager of the HTF. Failure of the Manager to respond within the forty-five (45) day period as set forth herein shall constitute approval of the documents;

**(c)Resale Restrictions.**

Provisions to ensure continued affordability of inclusionary units offered for sale shall include a formula for limiting equity appreciation to an amount not to exceed twenty-five percent (25%) of the increase in the inclusionary unit's value, as determined by the difference between fair market appraisal at the time of purchase of the property and a fair market appraisal at the time of resale, with such adjustments for improvements made by the seller and necessary costs of sale ~~as may be approved by the Manager, with a recommendation from the Administrative Committee of the HTF;~~

**(d)Rent Increases**

Provisions for continued affordability of inclusionary rental units shall limit annual rent increases to the percentage increase in the median household income within the Burlington Metropolitan Statistical Area (MSA), except to the extent that further increases are made necessary by hardship or other unusual conditions, and shall provide that no rent increase may take effect until it has received the approval of the Housing Trust Fund Administrative Committee in writing;

**(e)Purchase Option**

Provisions for continued affordability of inclusionary units shall provide that the Housing Trust Fund Administrative Committee or its designee shall have an exclusive option to purchase any owner-occupied inclusionary unit when it is first offered for resale for a period of one hundred twenty (120) days from the date on which the HTF Administrative Committee is notified of the availability of the unit; and

**(f) Sublet Restrictions.**

Provisions for continued affordability of inclusionary units shall prohibit subletting rental units for a price exceeding that which is affordable for a household with an annual income that is ~~seventy-five percent (75%)~~ <sup>70.5%</sup> of median for the County or the City, whichever is less, consistent with the relationship between unit size and household size set forth in Section 9.1.11.

**Sec. 9.1.17 Review of Proposal for Phasing**

Proposals for projects to be constructed in phases shall be reviewed as a component of the initial project review and shall be included in any conditions of approval. A schedule setting forth the phasing of the total number of units in a covered project, along with a schedule setting forth the phasing of the required inclusionary unit(s), shall be presented for review and approval as part of the permitting process, for any development subject to the provisions of this article. If phasing is not included as part of the review process, no phasing of the inclusionary units shall be allowed.

If a covered project is approved to be constructed in phases, the requirements of the following section shall be applicable to each such phase.

**Sec. 9.1.18 Timeline for Availability/Phasing of Inclusionary Units for Issuance of Certificate of Occupancy**

Inclusionary units shall be made available for occupancy on approximately the same schedule as a covered project's market units, except that certificates of occupancy for the last ten percent (10%) of the market units shall be withheld until certificates of occupancy have been issued for all of the inclusionary units; except that with respect to covered projects to be constructed in phases, certificates of occupancy may be issued on a phased basis consistent with the conditions of approval set forth in Sec. 9.1.17.

**Sec. 9.1.19 Enforcement**

Violations of this article shall be punishable as provided by Article 2 of this Ordinance.

**Sec. 9.1.20 Administration**

The Housing Trust Fund and its Manager or designee 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.

**END TEXT AMENDMENTS**

**Relationship to planBTV**

*This following discussion of conformance with the goals and policies of planBTV is prepared in accordance with the provisions of 24 V.S.A. §4441(c).*

**Compatibility with Proposed Future Land Use & Density**

This amendment is aimed purely at housing affordability and has little, if any, impact on the proposed future land use and densities proposed in the *Municipal Development Plan (planBTV)*.

**Impact on Safe & Affordable Housing**

This amendment is aimed at improving the city’s inclusionary housing standards and procedures with greater flexibility and geographic sensitivity in meeting inclusionary housing requirements consistent with the policies regarding affordable housing articulated in the *Municipal Development Plan (planBTV)*.

**Planned Community Facilities**

This amendment is not expected to have an impact on any planned community facilities.

**Process Overview**

The following chart summarizes the current stage in the zoning amendment process, and identifies any recommended actions:

<b>Planning Commission Process</b>				
Draft Amendment prepared by: Staff, referred by City Council	<b>Presentation to &amp; discussion by Commission</b> 3/26/2019 4/9/2019 4/23/2019	Approve for Public Hearing	Public Hearing	Approve & forward to Council
				Continue discussion
<b>City Council Process</b>				
First Read & Referral to Ordinance Cmte	Ordinance Committee discussion	Ordinance Cmte recommends to Council [as is / with changes]	Second Read & Public Hearing	Approval & Adoption
				Rejected