

ARTICLE 9. INCLUSIONARY AND REPLACEMENT HOUSING

Introduction: This Article of the Burlington Comprehensive Development Ordinance establishes requirements for including affordable housing units within certain residential developments, and ensures the replacement of housing units that may be lost as a result of redevelopment.

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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” shall refer to housing in which 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 (AMI)” shall refer to the income for the Burlington Metropolitan Statistical Area (MSA) set forth in or calculated by regulations promulgated by the United States Department of Housing and Urban Development

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(HUD), pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974. The area median income (AMI) shall be calculated based on all households in the geographic area. The median is the middle value when all are arranged from highest to lowest. The AMI shall be updated annually, as of the effective date of the revised AMI provided by HUD, and shall be used until the next annual revision of AMI by HUD where AMI is applicable in the general requirements under this article.

“Campus” shall mean the grounds and buildings of a post-secondary educational institution.

“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.

“Exclusive Use by Students” shall mean that fewer than 5% of beds within an off-campus student housing project are leased to individuals not enrolled with the institution.

“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 (HTF) Administrative Committee” shall refer to an administrative committee consisting of the Housing Trust Fund Manager, 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.

“Housing Trust Fund Manager” or **“Manager”** shall be the Director of the City’s Community and Economic Development Office, unless otherwise designated by the City Council by resolution.

“Off-Campus Housing Cost” shall refer to the estimated cost of off-campus housing per student per academic year as calculated each year by the post-secondary educational institutions for the purposes of financial aid awards.

“Off-Campus Student Housing” shall mean housing projects developed and managed by a post-secondary educational institution, or are developed, managed, or leased in partnership between the institution and a private developer, for the exclusive use and occupancy by that institution’s students.

“Metropolitan Statistical Area (MSA)” shall mean a geographic entity delineated by the federal Office of Management and Budget for use by federal statistical agencies. Metropolitan statistical areas consist of the county or counties associated with at least one urbanized area of at least 50,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties. The Burlington Metropolitan Statistical Area consists of Chittenden, Franklin, and Grand Isle counties.

Sec. 9.1.5 Applicability

This ordinance provision shall apply to any development of five or more residential units in a single structure. 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 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 new units are added to existing units notwithstanding the applicability in the first paragraph of this section.
- (d) Off-campus student housing projects, created through new construction and/or substantial rehabilitation of existing structures, for exclusive use by students.

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 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.

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 Housing Trust Fund Manager.

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 9.1.8-1, 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.

Table 9.1.8-1 Inclusionary Zoning Percentages	
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. 9.1.15 and Sec. 9.1.16) shall be at least:
Less than 139% of AMI	15%
140%-179% of AMI	20%
Development in any Waterfront district (RM-W, RL-W, NAC-CR and FD5 west of Battery St) or 180% of AMI and above in any other district	25%
Off-campus student housing	15% of total beds

Sec. 9.1.9 Calculating Percentage of Inclusionary Units

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).

For off-campus student housing projects, the percentage of inclusionary beds shall be calculated based on the total project bed count.

When the calculation yields a fractional number of required inclusionary units, the number of units shall be rounded up to the nearest whole number if the fractional number is .50 or greater, and down to the nearest whole number if the fractional number is .49 or less.

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(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, $46 \times .15$ (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. $20 \text{ units} \times .15 = 3 \text{ units}$ shall be Inclusionary units).

Sec. 9.1.10 Income Eligibility

Except as provided for in the second paragraph below, Inclusionary Units required under this Article, shall be marketed for purchase or rent to households earning less than the AMI for the Burlington Metropolitan Statistical Area, adjusted for household size, as specified in Sec 9.1.12. The AMI shall be determined per the definition in Sec. 9.1.4. 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 AMI 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 percent (70%) of AMI 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 and electricity, which are not included in the calculation of the sale price limit for single family inclusionary units; and
- (h) With respect to off-campus student housing projects:

At least 15% of beds shall be provided at or below 80% of that institution's annual estimated off-campus housing cost.

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 lot(s) on which the project is located when all required Inclusionary Units are constructed on the same lot, or lots subject to Article 11 Planned Development. Calculations for these entitlements shall be based on the following tables:

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Zoning District	Maximum Units/Acre	FAR/Height	Maximum Lot Coverage
RH	46	12' height set back 10' along street facade ¹	92%
RM	25	n/a	48%
RM-W	25	12' height set back 10' along street facade ¹	72%
RL, RL-W	8.75	n/a	44%
FD6, FD5	n/a	0.5 FAR	100%
NMU, NAC, NAC-R	n/a	0.5 FAR+12' height set back 10' along street facade	92%
NAC-CR	n/a	0.5 FAR+12' height set back 10' along street facade	72%
E-LM-SEID	n/a	0.25 FAR	n/a

¹. In the RH and RM-W residential zones an additional 12 feet of building height shall be allowed by right only for an additional 5% of inclusionary housing units provided in excess of the minimum requirements of Sec. 9.1.8.

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

In no event may a covered project which benefited from additional density or development allowances per Sec. 9.1.12 that has been constructed and occupied utilize the following 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%) AMI 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%) AMI as determined by HUD's Low- and Moderate-Income Summary Data, utilization of the off-site option shall not be allowed.

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

- i. The number of inclusionary units to be provided by the developer or by the developer's designee through off-site development shall be equivalent to the number otherwise required by this Article;
- ii. No additional development provisions as outlined in Sec. 9.1.12 shall be granted to the development of units constructed off-site or to the project constructed on-site;
- iii. Off-site inclusionary units must be located within the City of Burlington;
- iv. 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; and,
- v. 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.

The off-site option shall not apply to a project located within a waterfront zoning district or the South End Innovation District overlay (E-SEID), nor shall it apply to off-campus student housing projects as defined by this Article. 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.

(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 AMI 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%) AMI as determined by HUD's Low- and Moderate-Income Summary Data may utilize the payment in lieu option 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%) AMI as determined by HUD's Low- and Moderate-Income Summary Data may utilize the payment in lieu option 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 or the South End Innovation District overlay (E-SEID). 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) The bedroom mix requirements established in Section 9.1.14(a) do not apply when the ratio of the gross floor area of all inclusionary dwelling units to the total gross floor area of all dwelling units within the project exceeds the required percent of inclusionary units as established in Table 9.1.8-1, based on the project's average unit sale and rental price (e.g. where at least 15.5 percent of a project's residential gross floor area is composed of inclusionary units when the project's average sale and rental price is affordable to a household earning less than 139% of AMI);
- (c) 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;

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- (d) 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;
- (e) 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;
 - 2. These differences do not include insulation, windows, heating systems, and other improvements related to the energy efficiency of the project's units; and,
 - 3. Inclusionary units are afforded the same opportunity for parking that the market units are afforded.
- (f) The 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 with the same number of bedrooms, except when the ratio of the gross floor area of all inclusionary dwelling units to the total gross floor area of all dwelling units within the project exceeds the required percent of inclusionary units as established in Table 9.1.8-1, based on the project's average unit sale and rental price (e.g. where at least 15.5 percent of a project's residential gross floor area is composed of inclusionary units when the project's average sale and rental price is affordable to a household earning less than 139% of AMI).
 - 1. When the gross floor area ratio described above is proposed, the minimum gross floor area of inclusionary units by bedroom count is as follows:
 - i. Studio: 350 sf
 - ii. 1 bedroom: 550 sf
 - iii. 2 bedroom: 750 sf
 - iv. 3 bedroom: 950 sf
 - v. 4+ bedroom: 1,150 sf
- (g) Upon demonstration of inability to sell units to income eligible residents earning 70% of the AMI, the Manager of the HTF may extend income eligibility to allow priority in the sale of inclusionary units to households earning as much as AMI, adjusted for household size and to households residing in Burlington at the time that these units are offered for sale. In extending income eligibility, priority shall be given to the lowest income household who qualifies for purchase, all else being equal;
- (h) 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
- (i) 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 Housing Trust Fund Manager, as defined in Section 18-403 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 Housing Trust Fund Manager, 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 Housing Trust Fund Manager, 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 AMI referenced in Section 9.1.11. If requested by the developer, the Housing Trust Fund Manager 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 AMI 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 Housing Trust Fund 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 Housing Trust Fund Manager shall also be notified in the manner prescribed by subsection (a) regarding Housing Trust Fund Notification, and the Housing Trust Fund Manager and developer shall cooperate in order to rent such units to individuals meeting the income guidelines of Sec 9.1. 11(a) or (h).

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. 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;

(d) Rent Changes

Provisions for continued affordability of inclusionary rental units shall limit annual rent changes to the percentage change in the AMI within the Burlington MSA

which shall become effective when approved by the Housing Trust Fund Manager. Further changes made necessary by hardship or other unusual conditions shall require 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 percent (70%) of AMI consistent with the relationship between unit size and household size set forth in Section 9.1.11.

(g) Off-Campus Institutional Student Housing.

For off-campus student housing projects, annual reporting by the institution or the developer to the Housing Trust Fund Manager shall verify continuing affordability of beds per Section 9.1.11 and continuing exclusive use by students. Upon written request by the Manager, applicable records as to continuing affordability and exclusive use by students shall be made available for review by the Manager.

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 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.

**PART 2: HOUSING PRESERVATION AND
REPLACEMENT/DEMOLITION AND CONVERSION****Sec. 9.2.1 Intent**

The intent of these regulations is:

- (a) To prevent the demolition and conversion to a nonresidential use of residential structures, many of which contain the city's most affordable housing, and to maintain housing that meets the needs of all economic groups within the city;
- (b) To meet the specific mandates of 24 V.S.A. Section 4302 related to housing opportunities for all of Vermont's citizens, particularly for those citizens of low or moderate income;
- (c) To support the retention of housing units in the city;
- (d) To preserve the residential character of neighborhoods in which the expansion of commercial, professional or educational activities is likely to eliminate existing housing units;
- (e) To offset the loss of housing by requiring replacement of housing units with new construction, conversion, or creation of assisted housing; and
- (f) To mitigate the impact on tenants displaced or threatened with displacement by demolition or conversion to a nonresidential use.

Sec. 9.2.2 Applicability

Except as otherwise provided for in Section 9.2.10, this Part is applicable to the loss, demolition, or conversion to a nonresidential use of any housing unit in the City,

including those demolished or declared unfit for habitation pursuant to any order, decision or other action of the city's office of inspection services.

The conversion to a nonresidential use of any housing unit located on the ground floor of a building within a form or mixed-use zoning district shall be exempt from the provisions of this Part.

Sec. 9.2.3 Approval

Notwithstanding any other provision of this ordinance, a person who proposes to remove, demolish, or to convert to a nonresidential use, any housing unit or units, in a zone where such a use is otherwise permitted, must obtain approval pursuant to all applicable provisions of this Ordinance.

In addition to the permit application requirements contained in Article 3, the applicant must also submit:

- (a) A statement certifying the number of housing units to be demolished or converted to a nonresidential use and the number of bedrooms existing within each of these units; and
- (b) A list containing the name of each tenant currently residing in the housing units to be demolished or converted, as well as verification by affidavit of compliance with the tenant notice requirements of this section.

Sec. 9.2.4 Relocation Requirements; Notice and Relocation Costs

Prior to demolition or conversion, the owner shall:

- (a) Deliver to every tenant who occupies a housing unit slated for demolition or conversion, written notice to vacate the unit due to the owner's intent to demolish or convert the unit to nonresidential use. The notice to tenants shall consist of the written notice that an owner is required to send by certified mail and by regular mail or hand delivery to the current tenants of any housing unit that is slated for demolition or conversion to a non-residential unit, announcing the owner's intent to demolish or convert the unit to non-residential use, required under the Federal Uniform Relocation Act. As previously noted, this notice to tenants shall be sent certified mail, return receipt requested, and by either regular mail or hand delivery, and shall provide the tenant not less than one hundred eighty (180) days to vacate the rental unit. Evidence of receipt of notice to each affected tenant shall be required prior to approval by the development review board; and
- (b) Be responsible for paying the costs of relocation for any tenant(s) displaced from any housing unit demolished or converted to a nonresidential use. The costs that are included and the manner in which these costs are paid shall be identical to the relocation services that are required for displaced persons under Section 18-2 of the Burlington Code of Ordinances.

Sec. 9.2.5 Housing Replacement Requirement

Notwithstanding the housing replacement in-and-of-itself does not require Development Review Board review and approval, an owner shall replace any housing units that are demolished or converted to a nonresidential use in accordance with and subject to all other applicable requirements of the Comprehensive Development Ordinance.

Replacement units may be provided by the owner or by the owner's designee fully in any of the following ways:

- a. New Construction. Construction of housing units within a new structure or new addition;
- b. Residential Conversion. Conversion of all or a portion of a nonresidential building to residential use; or,
- c. Subsidy. Creation of affordable housing units that have not been affordable to low-income households for the twenty-four (24) months preceding the date of application for conditional use approval.

An applicant may use any of the three methods to partially fulfill their replacement requirements, until the total requirement is met.

Sec. 9.2.6 Replacement Unit Requirements

In addition to the foregoing, all replacement units must meet the following requirements:

- (a) Each unit shall have at least the same number of bedrooms as the unit being replaced;
- (b) These units must be provided within the City of Burlington;
- (c) These units must be ready for occupancy within eighteen (18) months of the date on which the conditional use approval is granted;
- (d) These units must remain assisted housing, as either rental housing or limited equity housing, for a period of not less than ten (10) years from the date of first occupancy;
- (e) These units must be sold or leased to prospective occupants who qualify as low-income households at the time they first lease or purchase the unit; and
- (f) These units shall contain at least the same number of accessible units being replaced, or the number of accessible units that may otherwise be required by statute or regulation, or one accessible unit, whichever is greater.

Sec. 9.2.7 Performance Bond

Owners must post a performance bond, letter of credit, or other security acceptable to the city attorney in an amount equivalent to the estimated cost of producing the replacement unit(s) required by this section, as determined by the administrative officer. Should the owner fail to provide the replacement unit(s) required within the time period specified in Section 9.2.6(c), the performance bond, letter of credit or other security shall be forfeited and the proceeds placed in the city's Housing Trust Fund.

Sec. 9.2.8 Adjustment for Increased Units

A downward adjustment of fifty percent (50%) in the number of years that replacement units must remain assisted housing may be approved by the Zoning Administrative Officer where the owner creates on site, through new construction or by the conversion of a nonresidential building to residential use, at least twice the number of housing units as the number being lost through units required by this Article.

Sec. 9.2.9 Relief

Any owner who has applied for approval for demolition or conversion of a housing unit or units may apply to the DRB for relief from the housing replacement requirements of Section 9.2.5. Such relief may be a downward adjustment of up to fifty percent (50%) of the owner's housing replacement obligation if the owner establishes to the board's satisfaction that:

- (a) The literal interpretation and strict application of the housing replacement requirement would be impossible for the owner;
- (b) The requested relief would be consistent with the spirit and purpose of this Article; and
- (c) The requested relief does not constitute a grant of special privilege inconsistent with the limitations upon similar properties.

The DRB must make positive findings on each of the three (3) criteria above in order for any such adjustment to be valid.

Sec. 9.2.10 Exemptions

This article shall not be applicable to:

- (a) A loss or change of use lasting less than one (1) year, where residential use is restored within that same one (1) year period, shall not be subject to the replacement requirements of this Part.
- (b) Any housing unit ordered demolished or declared unfit for habitation by the office of inspection services because of damage caused by civil commotion, malicious mischief, vandalism, natural disaster or other causes beyond the owner's control shall not be subject to these regulations. Any housing unit ordered demolished, or declared unfit for human habitation, by the office of inspection services because of deterioration caused by neglect or deferred maintenance by the existing or prior

owner(s) shall not be exempt. A determination of neglect or deferred maintenance shall be made by the administrative officer based on evidence of one or more of the following:

1. The deterioration of exterior walls or other vertical support;
2. The deterioration of roofs or other horizontal members;
3. The deterioration of external chimneys;
4. The deterioration or crumbling of exterior mortar;
5. The ineffective waterproofing of exterior walls, roofs and/or foundations; and/or
6. The existence of broken windows or doors.

In the event that any unit is demolished prior to obtaining conditional use approval, enforcement action in accordance with Article 2 shall commence immediately and the requirements of this Article shall apply in addition to any enforcement penalties.

- (c) The demolition or conversion to a nonresidential use of a single attached or detached housing unit or duplex that is occupied by the owner as his or her primary residence for the twelve-(12) month period preceding the date of application for conditional use approval. Nor shall this section be applicable in its replacement requirement to that portion of a multi-unit building of three (3) units or more that is occupied by the owner as his or her primary residence for the thirty-six-(36) month period preceding the date of application for conditional use approval. Any exemption allowed under this provision shall be void if the owner sells any of the applicable units within twenty-four (24) months of the date of conditional use approval; and,
- (d) The demolition or conversion of a housing unit that has rented, for the twenty-four (24) months preceding the date of application for conditional use approval, for a monthly charge in excess of twice the HUD Fair Market Rent for the Burlington MSA, adjusted for unit size.

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