

### **9.1.1 Intent.**

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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.

### **9.1.2 Authority.**

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These regulations are enacted under the authority of [24](#) V.S.A. Chapter [117](#).

### **9.1.3 Inclusionary units, general description.**

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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.

### **9.1.4 Miscellaneous definitions.**

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*Affordable housing or affordable* shall refer to a housing 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.

*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.

### **9.1.5 Applicability.**

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This ordinance provision applies to any development of five (5) or more residential units in a single structure and 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 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 if new units are added to existing units for a total of 5 or more units.

(Ord. of 8-10-15(3))

#### **9.1.6 Exemptions.**

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Exempt from the requirements of this article are:

- (a) 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.

#### **9.1.7 Certificate of inclusionary housing compliance.**

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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.

#### **9.1.8 Inclusionary units, rental and sales.**

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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**

<p><b>If the average sale and rental price of project units is affordable to a household earning:</b></p>	<p><b>The percentage of units which are subject to rent and sales prices as per Sec. <a href="#">9.1.9</a> and are subject to marketing and continued affordability provisions (Sec. <a href="#">9.1.10</a> and Sec. <a href="#">9.1.11</a>) shall be:</b></p>
<p>Less than 139% of median income</p>	<p>15%</p>
<p>140%-179% of median income</p>	<p>20%</p>
<p>Development in any Waterfront district (RM-W, RL-W, DW) or 180% of median income and above in any other district</p>	<p>25%</p>

(Ord. of 8-10-15(3). Formerly 9.1.9)

**Editor’s note**—An ordinance adopted Aug. 10, 2015, repealed § 9.1.8 which pertained to conditional use approval. The ordinance adopted Aug. 10, 2015, also renumbered the sections following.

**9.1.9 Percentage of inclusionary units.**

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).

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

(Ord. of 8-10-15(3). Formerly 9.1.10)

### 9.1.10 Income eligibility.

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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. 9.1.11. 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.

(Ord. of 8-10-15(3). Formerly 9.1.11)

### 9.1.11 Calculating rents and selling prices.

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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);

Unit Size	Household Size Equivalent
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.

(Ord. of 8-10-15(3). Formerly 9.1.12)

**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 to an increase in the maximum coverage allowed for the site on which the project is located 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:

**Table 9.1.12-1. Density/Intensity Allowance Table**

<b>Zoning District</b>	<b>Additional Allowance</b>	<b>Maximum Units/Acre</b>	<b>FAR</b>
RH	15%	46	n/a
RM, RM-W	20%	25	n/a
RL, RL-W	25%	8.75	n/a
D, DT, DW	n/a	n/a	0.5 FAR+10' height set back 10' along street facade
NMU, NAC, NAC-R, BST	n/a	n/a	0.5 FAR+10' height set back 10' along street facade

**Table 9.1.12-2. Lot Coverage Allowance Table**

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

(b) Other possible allowances for the provision of inclusionary units may include:

1. A waiver of up to fifty (50) percent waiver of parking spaces as outlined in 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) The allowances provided for herein may be declined at the option of the applicant.

(d) 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: one (1) market-rate dwelling unit equals one thousand five hundred (1,500) square feet nonresidential space.

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

(Ord. of 8-10-15(3). Formerly 9.1.13)

### **9.1.13 Off-site option.**

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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 that is not located within a waterfront zoning district to comply with the requirements of Sec. [9.1.8](#) and 9.1.11 by 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;

(b) No additional development provisions as outlined in this Article shall be granted to the units constructed off-site or to the project;

(c) Off-site inclusionary units must be located within the City of Burlington;

(d) 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) 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) 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.

(Ord. of 8-10-15(3). Formerly 9.1.14)

#### **9.1.14 General requirements for inclusionary units.**

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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) 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

(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 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

(d) Upon demonstration of inability to sell units to income eligible residents earning 75% 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;

(e) 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 (see Sec. [9.1.15\(e\)](#)); and

(f) 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.

(Ord. of 8-10-15(3). Formerly 9.1.15)

### **9.1.15 Marketing of inclusionary units.**

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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 Sec. [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\(a\)](#).

(Ord. of 8-10-15(3). Formerly 9.1.16)

### **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 Sec. [9.1.8](#).

(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 inclusionary unit when it is 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%) 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.

(Ord. of 8-10-15(3). Formerly 9.1.17)

#### **9.1.17 Review of proposal for phasing.**

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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.

(Ord. of 8-10-15(3). Formerly 9.1.18)

#### **9.1.18 Timeline for availability/phasing of inclusionary units for issuance of certificate of occupancy.**

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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 (10) percent 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](#).

(Ord. of 8-10-15(3). Formerly 9.1.19)

**9.1.19 Enforcement.**

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

(Ord. of 8-10-15(3). Formerly 9.1.20)

**9.1.20 Administration.**

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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.

(Ord. of 8-10-15(3). Formerly 9.1.21)