Summary of Inclusionary Zoning Working Group's (IZWG) Draft Recommendations

June 11, 2018 Public Hearing

General background for tonight's public hearing

- IZWG created by April 2017 City Council Resolution, started work in September 2017
- Charged with reviewing recommendations in January 2017 consultant report, "Evaluation of the City of Burlington's Inclusionary Zoning Ordinance"
  - Identify pros and cons, financial feasibility
  - Prioritize recommendations
  - Identify supporting partners
  - Address other implementation issues

Membership of IZWG

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

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

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

Burlington’s Inclusionary Zoning Ordinance

- A City ordinance adopted in 1990, one piece of Burlington’s housing strategy, which directed taxpayer-funded subsidies to the creation and preservation of permanently affordable housing, in line with State of Vermont policy
- By 2013, one-quarter of rental units in Burlington had been made affordable through public subsidy (funding for homes created by non-profit housing development organizations), regulation, or deed restriction
- IZ ordinance applies to new housing developments (and “substantial rehab” projects) over a certain size; its requirements must be met in order for City to issue a permit

Burlington’s Inclusionary Zoning Ordinance

Legislative intent:

- Create housing opportunities for all of Vermont’s citizens as required by State law
- “To ensure the provision of housing that meets the needs of all economic groups by precluding construction of only market rate housing on the limited supply of available land within the City”
- “To improve the quality of life for all residents by having an economically integrated housing supply throughout the City”

Key elements of IZ ordinances

- IZ ordinances require developers to include a certain # or % of all the homes in their projects that are "affordable" to moderate income households
- In drafting an IZ ordinance, policy makers must decide
  - Applicability: Does the law apply to all projects, or only some projects?
  - How many: How many affordable homes must be included?
  - For whom: How should "affordable" be defined?
  - Other options: Can a developer meet the obligation in some way other than on-site affordable homes (payment in lieu, off-site affordable homes)?

Summary of recommendations: applicability

- Current law: ordinance applies to any housing development of 5 or more dwelling units
- Consultant report: Increase development threshold from 5 to 10, to "decrease likelihood that small projects -- which generally have a harder time absorbing the inclusionary mandate than larger ones – will be rendered infeasible."
- IZWG recommendation: Keep threshold at 5, adopt a workable payment-in-lieu option for small projects. Ensures that even small projects contribute to affordable housing.

Summary of recommendations: how many affordable homes must be included?

- Current ordinance: 15% of all dwelling units in the project must meet affordability requirement. In Waterfront district, 25%. If project is targeted to very high end of market, 20-25% of all dwelling units must meet affordability requirement.
- Consultant report: Recommends creating flexibility by lowering the % of required affordable homes IF the IZ homes serve lower income households than ordinance currently requires, but increasing the % if the IZ homes serve higher income households than currently required.
- IZWG recommendation: No change.

Summary of recommendations: how to define “affordable”? Inclusionary units are affordable for whom?

- Current ordinance: Inclusionary units for rent must be priced so they are affordable for a household with annual income = 65% of area median income (AMI, meaning midpoint household in Chittenden County), adjusted for size. Owner-occupied homes must be priced so that they are affordable for a household with annual income = 75% of AMI.
- Consultant’s report: Adjust income targets for rentals from 65% to a range of 50% to 80%, and adjust # of required units accordingly (say 10% if units are at 50% of AMI, 15% if at 65% of AMI, 20% if at 80% of AMI). Adjust income target for owner-occupied to 80%-100%.

IZWG recommendation on “affordability” definition

- For rental units: Maintain 65% of AMI. See next slide for rationale.

- For owner-occupied units: Reduce target income from 75% of AMI to 70% of AMI. Reason: owner-occupied homes created through IZ, priced for 80-100% of AMI, will not be viable option as these homes will be about same price as market rate condos in Chittenden County that do not have restrictions on resale value. Better to reduce target income and target price, to reach an underserved group of households.

Rationale for IZWG view on affordability definition (keep it at 65% of AMI)

- There is a supply of market rate units affordable to households at 80% of AMI, upper end of range consultant recommended, but there is not an adequate supply of rental housing affordable to households at 65% of AMI.
- Today, an IZ unit priced to be affordable to a household at 80% of AMI, would result in rents that are about the same as the average rents in Chittenden County. The purpose of IZ is to meet housing needs of a defined group of households that cannot afford market-level rents.
- At 65% of AMI, IZ rents are below, but close to, the market average (old and new units), but they are lower than rents on new units being built.

Other options to meet requirement: payment in lieu

- Payment in lieu means developer makes a payment to the City's Housing Trust Fund in place of ("in lieu" of) creating on-site affordable units. Monies in the Housing Trust Fund are leveraged with other funding sources available to non-profit developers, and used exclusively to support the creation or rehab of units that are permanently affordable to very low, low, and moderate income households.
- Current ordinance: if Development Review Board finds that there are "unique, difficult, and/or challenging site conditions" that prevent the construction of on-site inclusionary units, then the DRB may allow the developer to make a payment instead, subject to approval of the City Council.

Payment in lieu, continued

- Under the current ordinance, the payment per unit that is not built on site = approx. $180,000.
- Consultant recommendation: Lower the payment in lieu. It is too high to be a true option (it is much higher than the cost to developer of the on-site inclusionary unit), as shown by the fact that it has not been exercised in 10 years. It is an important option since it provides flexibility for developers, and the revenue can be used to support other affordable housing strategies. Experiment by lowering to $75,000; if it becomes the “go-to option for developers”, then increase it. If never used, lower it.

Payment in lieu, continued

- IZWG recommendation: The IZWG agreed with the Consultant that this is an important option, and one that has not been viable.
- The IZWG offers an innovative recommendation on the payment in lieu option that seeks to address two big issues:
  - The challenging economics of the IZ requirement for small projects, given the significant fixed costs involved in developing new housing (costs that are about the same whether you are building 5 units or 50 units).
  - The striking geographic concentration of IZ units built to date, in low and moderate income parts of Burlington. See map.

IZWG payment in lieu recommendation

In our recommendation, the payment in lieu option is either available by right (that is, is not subject to discretion of a City board or official), or not at all. We recommend no payment in lieu option for projects in the Waterfront zoning district.

Whether a project has a payment of lieu option depends on two factors:

- Size of project: if small, yes, and can be exercised anywhere in the City (except the waterfront)
- Location of project: if a medium or large project, can only be exercised on projects located in areas of the City that already have good economic integration (are “more inclusive”). Otherwise, no payment in lieu option.

IZWG payment in lieu recommendation, continued

Definition of ”more inclusive” and ”less inclusive” areas (see map)

- In “more inclusive” areas, at least 51% of residents have an income below 80% of AMI. In 2018, that means a family income of around $70,000.
- In “less inclusive” areas (yellow areas of map), less than 51% of residents have an income below 80% of AMI. No payment in lieu option for projects in these areas.

How much a developer must pay, per unit, in place of building on site depends on the size of her project:

- A small project, defined as 5-16 units, pays $35,000 per unit.
- A medium project, 17-49 units, pays $70,000 per unit.
- A large project, 50 and more units, pays $85,000 per unit.

IZWG payment in lieu recommendation, continued

Rationale for proposal on payment in lieu:

- Acknowledges difficult economics of IZ for small projects, while captures resources from small projects for the Housing Trust Fund
- Limits payment in lieu option to projects in areas that are already "inclusive", while saying that we want projects in less inclusive areas to build their affordable units on site
- Incorporates ability to pay into the fee: larger units that enjoy economies of scale and have more construction flexibility, pay more per unit and have less ability to opt out of on-site construction.
- Lowers fee from current level, making it a true option.

Other options? Off-site option?

- Current ordinance: If DRB finds “unique, difficult, and/or challenging conditions”, it may allow developer of a project to meet the requirement by building the units off-site
    - Multiplier of 1.5 (if 6 on-site units, 9 off-site units)
    - Must be located within Burlington
    - Not an option in Waterfront District
- Consultant report: Offer less restrictive (no multiplier, one-for-one exchange) off-site option if the off-site homes are to be located in “low-poverty receiving areas” (poverty rate < 10%).

IZWG recommendation on off-site option

- Generally agree in principle with Consultant.
- Allow off-site units by right (not subject to administrative or legislative discretion) if:
    - Project is located in a lower-income/more-inclusive area, with the off-site units to be constructed in either a lower or higher income area
- No off-site option if:
    - Project is located in an upper-income area
    - Project is located in the Waterfront District

- Remove multiplier

Other elements: density bonuses

- Current ordinance: provides that “all covered projects shall be entitled to increases in the development allowances of the underlying zoning district”, and defines these allowances (maximum units/acre, lot coverage, parking requirements, impact fees)
- Consultant recommendation: Make changes to ensure the density bonuses are in fact by right. Observed that this is a “critical part of the current ordinance that has failed to function as intended.”
- IZWG recommendation: Agrees with Consultant, proposes specific changes to accomplish (see p 9 of draft report).

Other recommendations (see report)

- Unit comparability
- Monitoring of compliance
- Funding plan to boost production of affordable housing, possibility of an affordable housing levy or bond
- Accessory units
- Privately developed housing built for college students