

# ARTICLE 1: GENERAL PROVISIONS

*Introduction: This Article of the Burlington Comprehensive Development Ordinance explains the City’s authority to enact zoning and other development bylaws, and describes the process by which these regulations are prepared and modified.*

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## PART 1. GENERAL PROVISIONS

### Sec. 1.1.1 Title

This Appendix shall be known, and may be cited, as the *Burlington Comprehensive Development Ordinance and/or the Burlington Zoning and Subdivision Ordinance.*

**Sec. 1.1.2 Intent and Purpose**

It is the intent and purpose of this ordinance:

- (a) to encourage the use and development of lands in Burlington in a manner which will promote the public health, safety and welfare;
- (b) to implement the goals of the Burlington Municipal Development Plan;
- (c) to protect agricultural, forest and other environmentally significant lands;
- (d) to facilitate the growth of Burlington and its neighborhoods so as to create an optimum environment, with good urban and civic design;
- (e) to encourage appropriate architectural design and the conservation and protection of historic resources;
- (f) to encourage the conservation, utilization and development of renewable energy resources;
- (g) to encourage development of a rich cultural environment and to foster the arts.
- (h) to encourage the continued economic growth and vitality of the city; and
- (i) to create a model city for people to live and work in.

**Sec. 1.1.3 Authority**

This ordinance is adopted pursuant to the authority contained in the Vermont Municipal and Regional Planning and Development Act, also designated as **Title 24, V.S.A. Chapter 117**. Whenever any provision of this ordinance refers to or cites a section of **Title 24 V.S.A. Chapter 117**, and this section is later amended or superseded, this ordinance shall be deemed to refer to the amended section or the section that most nearly corresponds to the superseded section.

**Sec. 1.1.4 Jurisdiction**

This ordinance shall be effective for all land within the City of Burlington, VT.

**Sec. 1.1.5 Relationship to Existing Regulations**

To the extent that the provisions of this ordinance are the same in substance as the previously adopted provisions that they replace in the city's zoning and/or subdivision regulations, they shall be considered as continuations thereof and not as new enactments unless otherwise specifically provided. In particular, a situation that did not constitute a lawful, nonconforming situation under the previously adopted zoning ordinance does not achieve lawful nonconforming status under this ordinance merely by the repeal of the zoning ordinance or other applicable regulations. Likewise, any situation for which a lawful zoning permit was not obtained under the

previously adopted zoning ordinance shall be deemed to be in violation of this ordinance.

### **Sec. 1.1.6 Relationship to Municipal Development Plan**

It is the intention of the city council that this ordinance implements the planning policies adopted for the city as reflected in the Municipal Development Plan as the same may be amended from time to time as well as other planning documents adopted by the city. While the city council reaffirms its commitment that this ordinance and any amendment to it be in conformity with its planning policies, the city council hereby expresses its intent that neither this ordinance nor any amendment to it may be challenged on the basis of any alleged nonconformity with any planning document.

### **Sec. 1.1.7 No Use of Land or Buildings Except in Conformity With Ordinance**

Except as otherwise provided in this ordinance, no person may use or occupy any land or buildings or authorize or permit the use or occupancy of land or buildings under his or her control except in accordance with the applicable provisions of this ordinance. For purposes of this section, the “use” or “occupancy” of a building or land relates to anything and everything that is done to, on, or in that building or land.

### **Sec. 1.1.8 Greater Restrictions**

Where this ordinance imposes a greater restriction upon the use, height, setback and the area of structures or the use of premises or the intensity of development than is imposed by other ordinances, the provisions of this ordinance shall control. Where one provision of this ordinance conflicts with another provision within this ordinance, the more restrictive shall apply unless otherwise specified.

### **Sec. 1.1.9 Severability**

It is hereby declared to be the intention of the city council that if any article, part, section, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any of the remaining articles, parts, sections, paragraphs, sentences, clauses, or phrases of this ordinance.

### **Sec. 1.1.10 Computation of Time**

Where an event is required or permitted to occur by this ordinance before, on, or after a specified period of time measured from another event, in calculating the period:

- (a) The first day shall not be counted;

- (b) The final day shall be counted; and
- (c) Weekend days and holidays shall be counted.

**Sec. 1.1.11 Warning of Disclaimer of Liability**

These regulations shall not create any liability on the part of the city, its officials, agents, employees, or representatives including but not limited to any liability for any damages or other legal remedy or any equitable remedy claimed to have accrued as a result of reliance on this ordinance or any determination/decision lawfully made there under.

**Sec. 1.1.12 Effective Date**

The provisions in this ordinance were originally adopted on 7 January 2008 and became effective on 30 January 2008.

**PART 2: AMENDMENT AND ADOPTION PROCEDURES**

**Sec. 1.2.1 Purpose**

The intent of this Part is to set forth the procedures to be followed when amendments are proposed to the text of this ordinance or to the zoning map.

**Sec. 1.2.2 Amendment Preparation**

Any amendment to the City of Burlington’s zoning ordinance shall be prepared by or at the direction of the planning commission and shall have the purpose of implementing the Municipal Development Plan as the same may be amended from time to time or as otherwise authorized by statute. An amendment of this ordinance may be prepared by the commission, or any other person or body pursuant to **Sec. 1.2.3** below.

**Sec. 1.2.3 Amendment by Others**

Proposed amendments prepared by a person or body other than the planning commission shall be submitted in writing along with any supporting documents to the planning commission. The planning commission may then proceed under this article as if the amendment had been prepared by the commission.

**Sec. 1.2.4 Amendment by Petition or Requested by the City Council**

If a proposed amendment is requested by the city council and/or is supported by a petition signed by not less than five percent (5%) of Burlington voters, the commission shall correct any technical deficiency and shall, without otherwise substantively changing the meaning or intent of the amendment, promptly proceed in accordance with this article as if it had been prepared by the commission.

### **Sec. 1.2.5 Planning Commission Report**

When considering an amendment to this ordinance, the planning commission shall prepare and approve a written report on the proposal. The report shall provide a brief explanation of the proposed bylaw, amendment, or repeal and shall include a statement of purpose as required for notice under **24 VSA §4444**, and shall include findings regarding how the proposal:

- (a) Conforms with or furthers the goals and policies contained in the municipal plan, including the effect of the proposal on the availability of safe and affordable housing.
- (b) Is compatible with the proposed future land uses and densities of the municipal plan.
- (c) Carries out, as applicable, any specific proposals for any planned community facilities.

### **Sec. 1.2.6 Public Hearing by Planning Commission**

The planning commission shall hold at least one public hearing within the municipality after public notice on any amendment proposed by the city council, the planning commission or by petition.

### **Sec. 1.2.7 Notice to Municipalities and Agencies**

At least fifteen (15) days prior to the first public hearing, a copy of the proposed amendment and any written report shall be delivered with proof of receipt, or mailed by certified mail, return receipt requested, to each of the following:

- (a) The chairs of the planning commissions of Colchester, South Burlington and Winooski;
- (b) The executive director of the Chittenden County Regional Planning Commission; and
- (c) The Department of Housing and Community Affairs within the Vermont Agency of Development and Community Affairs.

Any of these bodies may submit comments on the proposed bylaw or amendment to the commission, or may be heard in any proceeding with respect to the adoption of the proposed bylaw or amendment.

**Sec. 1.2.8 Submission to the City Council**

The planning commission may then make revisions before submitting the proposed bylaw or amendment and the written report to the city council. If requested by the city council, or if a proposed amendment is supported by a petition as outlined in **Sec 1.2.4** above, the planning commission shall promptly submit the amendment, with changes only to correct technical deficiencies, to the city council, together with any recommendation or opinion it considers appropriate. Simultaneously with the submission, the planning commission shall file with the city clerk a copy of the proposed bylaw or amendment and the written report for public review.

**Sec. 1.2.9 Public Hearing Notice Contents**

Where a public hearing is called concerning an amendment to this ordinance, the planning commission shall publish and post either the full text of the proposed material or a notice including:

- (a) A statement of purpose;
- (b) The geographic areas affected;
- (c) A table of contents or list of section headings; and
- (d) A description of a place within the municipality where the full text may be examined.

No defect in the form or substance of any public hearing notice shall invalidate an amendment to this ordinance. However, the action shall be invalidated if the notice is materially misleading in content or fails to include one of the elements required by this section or if the defect was the result of a deliberate or intentional act.

**Sec. 1.2.10 Public Hearing by City Council**

Not less than fifteen (15) nor more than one hundred twenty (120) days after a proposed amendment or bylaw is submitted to the city council, the city council shall hold the first of one or more public hearings, after public notice, on the proposed amendment or bylaw and shall make copies of the proposal and any written report of the planning commission available to the public upon request. Failure to hold the public hearing within one hundred twenty (120) days shall not invalidate the adoption of the bylaw or amendment or the validity of any repeal.

**Sec. 1.2.11 Changes by City Council**

The city council may change the proposed amendment, but shall not do so less than fourteen (14) days prior to the final public hearing. If the city council at any time makes substantial changes in the concept, meaning, or extent of the proposed amendment, it shall warn a new public hearing or hearings under **Sec. 1.2.10**. If any part of the proposal is changed, the city council, at least ten (10) days prior to the hearing, shall file a copy of the changed proposal with the city clerk and with the

planning commission. The planning commission shall amend the report pursuant to **Sec. 1.2.5** to reflect the changes made by the city council and shall submit that amended report at or prior to the public hearing.

### **Sec. 1.2.12 Routine Adoption**

Except as provided in **Sec. 1.2.13 and 1.2.14** below, an amendment shall be adopted by a majority of the members of the city council at a meeting that is held after the final public hearing, and shall be effective twenty-one (21) days after the same has been approved by the Mayor or adopted notwithstanding the Mayor's veto and published in a newspaper of general circulation within the City.

### **Sec. 1.2.13 Popular Vote**

Notwithstanding **Sec. 1.2.12** above, a vote by the city council on an amendment or bylaw shall not take effect if five percent (5%) of Burlington voters petition for a meeting of the municipality to consider the bylaw or amendment, and the petition is filed within twenty (20) days of the vote. In that case, a meeting of the municipality shall be duly warned for the purpose of acting upon the bylaw or amendment by Australian ballot.

### **Sec. 1.2.14 Time Limit for Adoption**

If the proposed amendment or bylaw is not approved or rejected within one year of the date of the final public hearing of the planning commission, it shall be considered disapproved unless five percent (5%) of Burlington voters petition for a meeting of the municipality to consider the amendment or bylaw, and the petition is filed within sixty (60) days of the end of that year. In that case, a meeting of the municipality shall be duly warned for the purpose of acting upon the bylaw or amendment by Australian ballot.

### **Sec. 1.2.15 Repeal**

Repeal of this ordinance or any of its provisions shall follow the same procedures as an amendment to this ordinance.

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