

Department of Planning and Zoning

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MEMORANDUM

TO: Jane Knodell, City Council President
Burlington City Councilors
Mayor Miro Weinberger

FROM: David E. White, AICP, Director of Planning & Zoning

DATE: Monday, December 21, 2015

RE: Proposed Zoning Amendment **ZA-16-01 Thresholds for Major Impact Review**

For your consideration you will please find attached a proposed amendment to the *Burlington Comprehensive Development Ordinance* for your consideration and adoption as recommended by the Burlington Planning Commission on November 24, 2015 regarding Major Impact Review and specifically the thresholds that trigger this type of review process. This amendment comes as part of a series of amendments aimed at reducing duplication and unnecessary steps (and time and cost for both applicants and the City) in our regulatory review and to modernize our permitting process.

Background

Major Impact Review (a.k.a. "mini Act 250") was first established in the 1980's, and is one of two regulatory tools used to consider larger and/or more complicated projects by the Development Review Board:

- Conditional Use Review which is primarily *triggered by the nature of the proposed use*, and is *focused on addressing the potential impacts that make be created by that use*; and,
- Major Impact Review which is primarily *triggered by the scale of the proposed development overall*, and is *focused on protecting important natural and cultural resources and ensuring the City's ability to provide municipal services*.

Over the past 30+ years since Major Impact was first adopted, our regulations have gotten much more sophisticated and comprehensive making Major Impact Review redundant in many situations. We have created several very specific sets of regulations to ensure the protection of steep slopes, shorelands, wetlands, historic buildings, critical habitats and open space, and flood-prone areas; or provide very detailed review of development involving brownfield remediation, wireless telecommunications, stormwater and erosion control, parking, inclusionary housing and housing replacement to name a few. Because of the breadth of projects currently subject to Major Impact Review, the current ordinance forces many projects subject to these regulations to also go through the Major Impact Review process. The result is both applicants and planning staff are required to prepare significant reports that more-often-than-not indicate many of the review criteria are redundant with other sections of the ordinance (that in-fact do a much better job at actually protecting a resource or regulating an activity).

When it comes to the ability of the City serve new development, Burlington is Vermont's largest city and has an extensive and comprehensive array of municipal infrastructure (water, wastewater, streets, etc) and community services (schools, parks, fire, police, EMS, etc). As a result, it really takes a significantly

large development to even come close to having an impact on our ability to provide services. In our staff's experience, these situations are very rare given the extremely low threshold that triggers Major Impact Review. So once again the current process forces applicants and staff to prepare significant reports that indicate many of the review criteria are simply not applicable. And in the few situations where there may be an impact, we already have an Impact Fee assessed that is intended to address the additional cost of providing these services.

As a result, the requirement for Major Impact Review in many of these situations is duplicative and wasteful of time and resources. Staff time is better spent on focusing on the projects that really can have an impact on the community rather than generating unnecessary staff reports, and the applicant's money could be better spent on making their projects better and more affordable. Ultimately, more regulation does not mean better development. We need to have the right tools in the right places in order to ensure that future development reflects City objectives.

Proposed Amendment

With this in mind, the proposed amendment accounts for the fact that the impact new development may have is very context-sensitive. Instead of the citywide one-size-fits-all approach we currently use (simply put, creating 5 or more dwelling units or 15,000 sqft of new non-residential space), the Commission has created a series of thresholds for different parts of the community that are more reflective of the ability of different parts of the city to absorb new development. By example, 5 new housing units added downtown has no impact at all on our ability to provide services, but this may not be the case in less dense and developed parts of the City.

As such, in areas where (1) City land use and development policy seeks to concentrate mixed use development, and (2) extensive public infrastructure already exists (e.g. downtown and institutional core campuses) the Commission is recommending that Major impact Review no longer be applicable. These are places where we want new development, so our ordinance should reflect that policy objective and not create unnecessary barriers and expense to new development. Further, if there are limitations in our ability to serve new development in these areas, our focus should be on addressing the deficiency rather than discouraging new development. In other places, (Neighborhood Mixed Use, Enterprise and Institutional Districts; Residential Districts; and RCO Districts) the amount of residential or non-residential development that triggers Major Impact Review is scaled according to the context of these areas and their ability to easily absorb new development.

Development involving important natural and cultural resources, brownfield remediation, wireless telecommunications, etc. will still undergo a thorough review by the DRB based on existing regulatory requirements. This is because the ordinance already either explicitly requires review and approval by the DRB, or they are treated as a Conditional Use. In either case, the current public notification and opportunity to participate in the regulatory process is maintained.

One thing that does still need to be considered however is how best to maintain the Neighborhood Meeting requirement in situations where Major Impact Review may no longer be applicable or the threshold has been increased. We have suggested that the current Major Impact Review trigger (>5 dwelling units or 15,000 sqft of non-residential development) be retained for this purpose alone, but it is not explicitly incorporated into the amendment as currently proposed. This is something that the Council's Ordinance Committee can take up and discuss further.

This amendment and others like it are critical steps towards implementing the City's Municipal Development Plan which directs us to find ways to "facilitate infill (development)...and simplify the public approvals process". We feel that this amendment will effectively remove unnecessary duplication and complication from Burlington's regulatory process without sacrificing a thorough review and opportunities for meaningful community engagement. Thank you for your consideration.

Burlington Comprehensive Development Ordinance

PROPOSED: ZA-16-01 – Thresholds for Major Impact Review

As recommended by the Planning Commission on July 14, 2015.

Changes shown (underline to be added, strike-out to be deleted) are proposed changes to the Burlington Comprehensive Development Ordinance.

Purpose: The purpose of this proposed amendment is to create varying thresholds that trigger Major Impact Review based on the location of the proposed development project. Instead of the current one-size-fits-all approach, this proposal creates four groups based on similar types of zoning districts. Different thresholds for each group are based on the proposed scale of the project relative to the intent of the zoning district and its capacity to accommodate new development.

PART 5. CONDITIONAL USE AND MAJOR IMPACT REVIEW

Sec. 3.5.1 Purpose

unchanged

Sec. 3.5.2 Applicability

(a) Conditional Use Review:

unchanged

(b) Major Impact Review:

In addition, Major Impact Review shall be required for the approval of all development involving:

	<u>Zoning Districts</u>			
	<u>Downtown Mixed Use, Institutional Core Campus</u>	<u>Neighborhood Mixed Use, Institutional, Enterprise,</u>	<u>Residential- Medium Density, Residential- Low Density, Residential – High Density</u>	<u>RCO-A, RCO-C, RCO-RG, UR</u>
Dwelling Units	<u>NA</u>	<u>Creation of twenty-five (25) or more dwelling units</u>	<u>Creation of five ten (105) or more dwelling units—or—the creation through</u>	<u>NA</u>

			adaptive reuse, substantial rehabilitation or conversion of ten (10) or more dwelling units;	
Land Subdivision	<u>NA</u>	<u>NA</u>	<u>Creation of five ten (105) or more lots;</u>	<u>NA</u>
Non-residential or Mixed Use Development	<u>NA</u>	<u>A development footprint¹ of twenty thousand (20,000) s.f. or more, or the creation of forty thousand (40,000) s.f. or more of gross floor area.</u>	<u>A development footprint¹ of eight thousand (8,000) s.f. or more, or the construction or substantial rehabilitation of fifteen thousand (15,000) s.f. or more of gross floor area of non-residential development.</u>	<u>Creation of five thousand (5,000) s.f. or more of gross floor area²</u>

¹ Development Footprint: total area of impervious coverage – buildings and parking.

² Farm structures are exempt per 10 VSA 6001.

Land disturbance			one acre or more;	
Site improvements involving			fifty (50) or more parking spaces;	
Natural Areas	Site improvements and land development on parcels that contain designated wetlands as regulated pursuant to Article 4, or natural areas of state or local significance as identified in the municipal development plan;			

Brownfields	Site improvements and land development on parcels seeking a waiver under Article 5, Part 4, Sec. 5.4.9 – Brownfields; or		
Cumulative Impact:			Multiple projects by the same applicant or responsible party within any consecutive twelve (12) month period on the same property or on a property within 1000 feet of the subject property that in the aggregate equal or exceed the above criteria.

Major Impact Review shall not be applicable in the Downtown Mixed Use Districts and the Institutional Core Campuses

Multiple projects undertaken by the same applicant or responsible party within any consecutive twelve (12) month period on the same or directly adjacent property that in the aggregate equal or exceed the above criteria.

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Jay Appleton, Project Planner/GIS
Mary O'Neil, AICP, Senior Planner
Anita Wade, Planning & Zoning Clerk
Elsie Tillotson, Department Secretary



Burlington Planning Commission Report Municipal Bylaw Amendment

ZA-16-01 Thresholds for Major Impact Review

This report is submitted in accordance with the provisions of 24 V.S.A. §4441(c).

Explanation of the proposed bylaw, amendment, or repeal and statement of purpose:

The purpose of this proposed amendment is to create varying thresholds that trigger Major Impact Review based on the location of the proposed development project rather than the current one-size-fits-all approach. This proposal creates four groups based on similar types of zoning districts. Different thresholds for each group are based on the proposed scale of the project relative to the intent of the zoning district and its capacity to accommodate new development.

Conformity with and furtherance of the goals and policies contained in the municipal development plan, including the availability of safe and affordable housing:

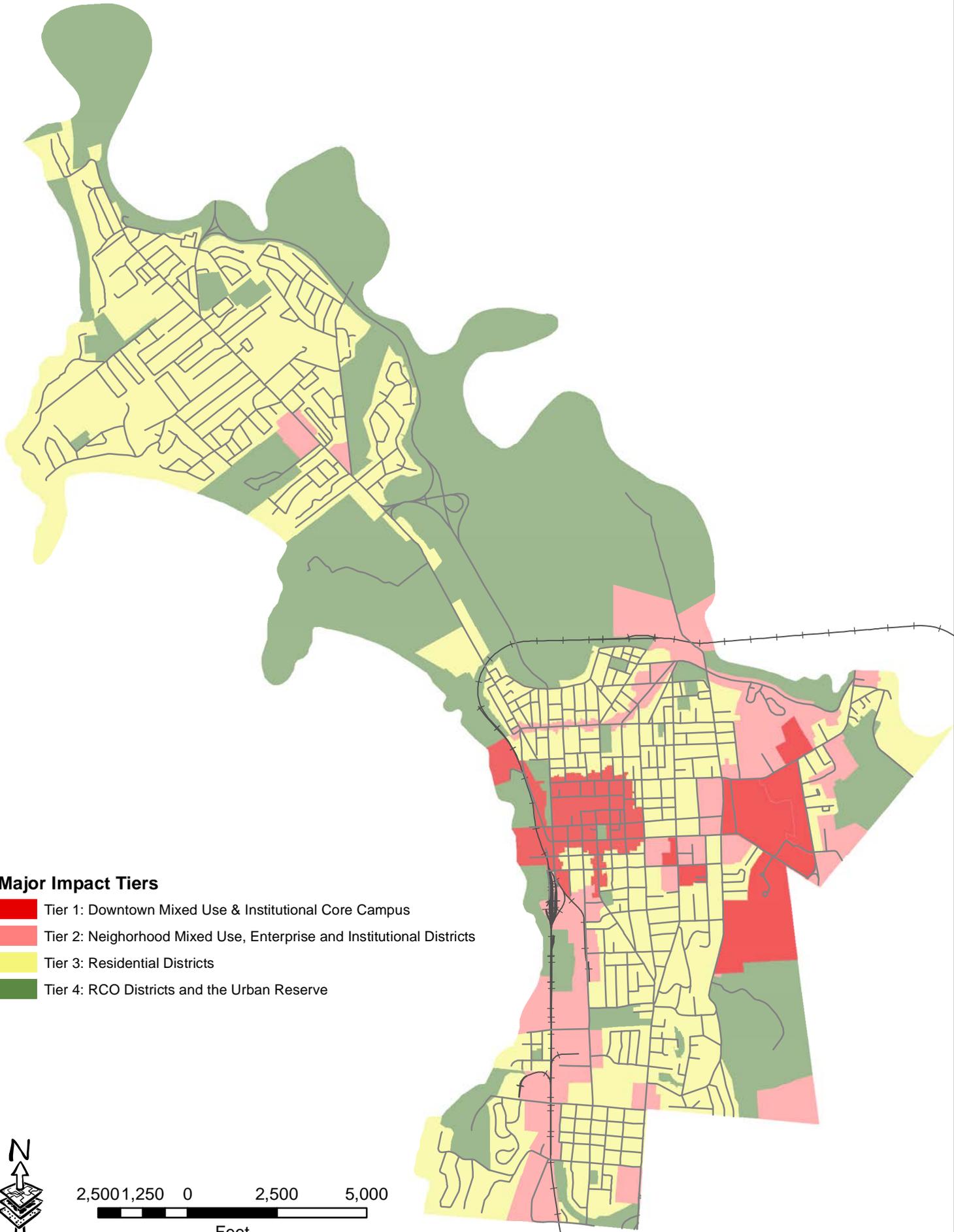
This proposed amendment to the Comprehensive Development Ordinance (CDO) directly supports and helps to implement portions of the City's Municipal Development Plan by working to ensure that the development review process itself is fair and efficient. Further, ensuring the development review process is as efficient and effective as possible is a contributing factor in supporting the availability of safe and affordable housing throughout the city.

Compatibility with the proposed future land uses and densities of the municipal development plan:

This proposed amendment does not impact future land uses and densities of the Municipal Development Plan.

Implementation of specific proposals for planned community facilities:

This proposed amendment does not implement a plan for community facilities.



Major Impact Tiers

- Tier 1: Downtown Mixed Use & Institutional Core Campus
- Tier 2: Neighborhood Mixed Use, Enterprise and Institutional Districts
- Tier 3: Residential Districts
- Tier 4: RCO Districts and the Urban Reserve

North arrow and scale bar (0 to 5,000 Feet).

CITY OF BURLINGTON

ORDINANCE _____

Sponsor: Planning Department,
 Planning Commission
 Public Hearing Dates: _____

In the Year Two Thousand Sixteen

First reading: _____
 Referred to: _____

An Ordinance in Relation to

COMPREHENSIVE DEVELOPMENT ORDINANCE –
 Thresholds for Major Impact Review
 ZA 16-01

Rules suspended and placed in all
 stages of passage: _____
 Second reading: _____
 Action: _____
 Date: _____
 Signed by Mayor: _____
 Published: _____
 Effective: _____

It is hereby Ordained by the City Council of the City of Burlington as follows:

1 That Appendix A, Comprehensive Development Ordinance, of the Code of Ordinances of the City of
 2 Burlington be and hereby is amended by amending Section 3.5.2 to read as follows:

3 **Sec. 3.5.2 Applicability**

4 (a) *Conditional Use Review*: As Written.

5 (b) *Major Impact Review*:

6 In addition, Major Impact Review shall be required for the approval of all development involving:

7

	<u>Zoning Districts</u>			
	<u>Downtown Mixed Use, Institutional Core Campus</u>	<u>Neighborhood Mixed Use, Institutional, Enterprise,</u>	<u>Residential-Medium Density, Residential- Low Density, Residential – High Density</u>	<u>RCO-A, RCO-C, RCO-RG, UR</u>
<u>Dwelling Units</u>	<u>NA</u>	<u>Creation of twenty-five (25) or more dwelling units.</u>	<u>Creation of ten (10) or more dwelling units.</u>	<u>NA</u>
<u>Land Subdivision</u>	<u>NA</u>	<u>NA</u>	<u>Creation of ten (10) or more lots.</u>	<u>NA</u>
<u>Non-residential or Mixed Use Development</u>	<u>NA</u>	<u>A development footprint¹ of twenty thousand (20,000) s.f. or more, or the creation of forty thousand (40,000) s.f. or more of gross floor area.</u>	<u>A development footprint¹ of eight thousand (8,000) s.f. or more, or the creation of fifteen thousand (15,000) s.f. or more of gross floor area.</u>	<u>Creation of five thousand (5,000) s.f. or more of gross floor area.²</u>

¹ Development Footprint: total area of impervious coverage – buildings and parking.

² Farm structures are exempt per 10 VSA 6001.

ORIGINAL

AN ORDINANCE
IN RELATION TO

Introduced by

Councilor _____

Read in City Council first time

_____, 20_____.

Attest,

_____, Clerk.

Rules suspended, and ordinance placed in all stages of passage.

_____, 20_____.

Attest,

_____, Clerk.

Read in City Council second time

_____, 20_____.

Attest,

_____, Clerk.

Passed in City Council at meeting held

_____, 20_____.

Attest,

_____, Clerk.

Approved _____, 20_____

_____, Mayor.

* * * * *

Distribution

I hereby certify that this Ordinance has been sent to the following department(s) on _____

_____, City Clerk

I, _____, City Clerk of the City of Burlington and Clerk of the City Council of said City, do hereby certify that the within written Ordinance has been duly published according to Law and the Charter of the City, and in compliance with said Charter this certificate is hereto attached. And the within Ordinance was ordered published for _____ day, _____, 20_____. namely the _____ day of _____, 20_____. Adopted _____ Published _____ Effective _____

Attest:

* * * * *

9 Major Impact Review shall not be applicable in the Downtown Mixed Use Districts and the Institutional Core Campuses

10
11 ~~1. The construction of five (5) or more dwelling units or the creation through adaptive reuse, substantial~~
12 ~~rehabilitation or conversion of ten (10) or more dwelling units;~~

13 ~~2. The creation of five (5) or more lots;~~

14 ~~3. The construction or substantial rehabilitation of fifteen thousand (15,000) s.f. or~~
15 ~~more of gross floor area of non-residential development;~~

16 ~~4. Land disturbance involving one acre or more;~~

17 ~~5. Site improvements involving fifty (50) or more parking spaces;~~

18 ~~6. Site improvements and land development on parcels that contain designated wetlands as regulated pursuant to~~
19 ~~Article 4, or natural areas of state or local significance as identified in the municipal development plan;~~

20 ~~7. Site improvements and land development on parcels seeking a waiver under Article 5, Part 4, Sec. 5.4.9—~~
21 ~~Brownfields; or~~

22 ~~8. Multiple projects undertaken by the same applicant or responsible party within any consecutive twelve (12)~~
23 ~~month period on the same or directly adjacent property or on a property within 1000 feet of the subject property~~
24 ~~that in the aggregate equal or exceed the above criteria.~~

25
26
27 ** Material stricken out deleted.

28 *** Material underlined added.

ORIGINAL

AN ORDINANCE
IN RELATION TO

Introduced by

Councilor _____

Read in City Council first time

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Attest,

_____, Clerk.

Rules suspended, and ordinance placed in all stages of passage.

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Read in City Council second time

_____, 20____.

Attest,

_____, Clerk.

Passed in City Council at meeting held

_____, 20____.

Attest,

_____, Clerk.

Approved _____, 20____.

_____, Mayor.

* * * * *

Distribution

I hereby certify that this Ordinance has been sent to the following department(s) on

_____, City Clerk

Adopted _____ Published _____ Effective _____

namely the _____ day of _____, 20____.

And the within Ordinance was ordered published for _____ day,

I, _____, City Clerk of the City of Burlington and Clerk of the City Council of said City, do hereby certify that the within written Ordinance has been duly published according to Law and the Charter of the City, and in compliance with said Charter this certificate is hereto attached.

Attest:

* * * * *