

## 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.*

### 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 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.

### **Sec. 9.1.5 Applicability**

This ordinance provision applies to all subdivisions and planned unit development (PUD) pursuant to **Articles 10** and **11** respectively. Any development of five or more residential units in a single structure shall be considered “minor” planned unit developments 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.

**Sec. 9.1.6 Exemptions**

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**.

**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 Manager of the city’s Housing Trust Fund.

**Sec. 9.1.8 Conditional Use Approval**

A covered project, except subdivisions approved by the DRB pursuant to the provisions of the **Article 10**, must first receive approval of such board under conditional use criteria pursuant to the requirements of **Article 3, Part 5**.

**Sec. 9.1.9 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 9.1.9-1**, 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.

<b>Table 9.1.9-1 Inclusionary Zoning Percentages</b>	
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 <b>Sec. 9.1.10</b> and are subject to marketing and continued affordability provisions ( <b>Sec. 9.1.11</b> and <b>Sec. 9.1.12</b> ) shall be:

Less than 139% of median income	15%
140%-179% of median income	20%
Development in any Waterfront district (RM-W, RL-W, DW) or 180% of median income and above in any other district	25%

**Sec. 9.1.10 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.  $20 \text{ units} \times .15 = 3 \text{ units}$  shall be Inclusionary units).*

**Sec. 9.1.11 Income Eligibility**

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 9.1.12**. 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.

**Sec. 9.1.12 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 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);
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.

**Sec. 9.1.13 Additional Density and Other Development Allowances**

All covered projects, except as outlined under (b) below, 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:

<b>Table 9.1.13-1 Density/Intensity Allowance Table</b>			
<b>Zoning District</b>	<b>Additional Allowance</b>	<b>Maximum Units/Acre</b>	<b>FAR</b>
<b>RH</b>	15%	46	n/a
<b>RM, RM-W</b>	20%	25	n/a
<b>RL, RL-W</b>	25%	8.75	n/a
<b>D, DT, DW</b>	n/a	n/a	0.5 FAR+10' height set back 10' along street facade
<b>NMU, NAC, NAC-R, BST</b>	n/a	n/a	0.5FAR+10' height set back 10' along street facade

<b>Table 9.1.13-2 Lot Coverage Allowance Table</b>		
<b>Zoning District</b>	<b>Additional Allowance</b>	<b>Maximum Lot Coverage</b>
<b>RH, NMU, NAC, NAC-R</b>	15%	92%
<b>RM-W</b>	20%	72%
<b>RM</b>	20%	48%
<b>RL, RL-W</b>	25%	44%

(b) Major and Minor PUD shall be treated as follows:

1. “Minor” PUD shall be exempt from the standards of **Article 11**, but shall be subject to the requirements of this article and all development standards as otherwise required by this ordinance.
2. “Major” PUD as described in **Sec.11.1.3**, shall be subject to the provisions of this Article and **Article 11**. Planned Unit Development. No additional allowances under the provisions of this article shall be permitted for the construction of the required inclusionary units. Inclusionary units in any major PUD shall be provided in accordance with **Table 9-A**.

(c) Other possible allowances for the provision of Inclusionary Units may include:

1. A waiver of up to 50% waiver of parking spaces as outlined in **Article 8, 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**.

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

- (e) With the approval of the DRB, applying conditional use criteria, 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
- (f) All provisions of **Sec. 9.1.9** through **9.1.12** shall apply, without exception, to any inclusionary units that are constructed.

**Sec. 9.1.14 Off-Site Option**

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. 9.1.9** and **9.1.12** 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 9.1.9** through **9.1.12** 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.

**Sec. 9.1.15 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) 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 9.1.16(e)**); and
- (f) The final calculations for the number of inclusionary units shall be determined by the DRB 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. 9.1.16 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 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 **Section 9.1.12**. 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 9.1.12**, 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 9.1.12(a)**.

**Sec. 9.1.17 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 9.1.9**.

**(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 9.1.12**.

**Sec. 9.1.18 DRB      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 DRB 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 to the DRB 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. 9.1.19      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 by the DRB in **Sec. 9.1.18**.

**Sec. 9.1.20      Enforcement**

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

**Sec. 9.1.21      Administration**

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.

## **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 mixed-use zoning district shall be exempt from the provisions of this Part.

### **Sec. 9.2.3 Conditional Use 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 first obtain conditional use approval from the development review board pursuant to the provisions of Article 3, Part 5.

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**

In addition to applicable requirements for a conditional use, the DRB shall require, as a condition of approval, that an owner shall replace any housing units that are demolished or converted to a nonresidential use.

An owner shall meet the replacement requirement by creating new housing units pursuant to a plan approved by the DRB. The plan shall be in accordance with the provisions of this Article. 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, subject to approval by the DRB.

### **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 conditional use 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, except for Section 9.2.4 pertaining to conditional use approval, 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.