



City of Burlington, VT  
 149 Church Street, 3<sup>rd</sup> Floor  
 Burlington, VT 05401  
 Phone: (802) 865-7144

[www.burlingtonvt.gov/plan](http://www.burlingtonvt.gov/plan)

**TO:** Burlington City Council  
 Mayor Miro Weinberger  
**FROM:** Charles Dillard, AICP, Principal Planner  
 Mary O'Neil, AICP, Principal Planner, Dept. of Permitting & Inspections  
**DATE:** July 27, 2022  
**RE:** Proposed CDO Amendment – ZA-22-09: Public Art

**Overview & Background**

Public art is an important element of Burlington's built environment and cultural identity. In fact, *planBTV* states that public art, "enhances the overall quality of the built environment," and that, "these creative expressions should continue to be encouraged." Consistent with the Plan, Burlington's longstanding support for and inclusion of public art in the built environment remains strong. However, following the adoption of the *planBTV Downtown Code*, the City currently operates with no standards governing or related to public art.

Prior to the adoption of the Downtown form code, the *Comprehensive Development Ordinance* governed public art in the following ways:

- Bonus height provisions were offererd in exchange for qualifying public art installations,
- Permitted public art as an acceptable encroachment in the required waterfront setback
- Provided standards and guidance on public art funding, location and maintenance

Recognizing public art's valued contribution to Burlington's built environment and residents, the Planning CDO proposes a zoning amendment to define public art in the CDO and amend the ordinance to exempt public art from zoning permit requirements provided six standards relating to safety, appropriateness, historic resources, urban design, accessibility and compliance with local and state law. In summary, the proposed amendment would provide needed transparent public art standards that encourage and facilitate public art.

**Proposed Amendment**

**Amendment Type**

<b>Text Amendment</b>	Map Amendment	Text & Map Amendment
-----------------------	---------------	----------------------

**Purpose Statement**

The purpose of this amendment is to define public art, exempt public art from requiring a zoning permit, and to outline standards for its installation.

**Proposed Amendments**

The following amendments to the *Burlington Comprehensive Development Ordinance* are included in this proposal:

**1. Define Public Art**

Provides a new definition for public art that recognizes the broad applications and settings for these installations.

**2. Establish public art as exempt from the requirement to obtain a zoning permit**

Establishes six standards that must be provided for compliance with the zoning permit exemption. The six standards are summarized as follows:

*The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact the City Planning department or 711 if you are hearing or speech impaired.*

- Public Art shall meet applicable building code to protect public health and safety;
- No public art that is threatening, discriminatory, hateful, violent or personally insulting shall be installed;
- Public art installed on or near historic resources shall ensure the continued integrity and preservation of such historic structures;
- Public art shall not cause or increase non-conformity to required urban design standards;
- Public art shall be accessible and not obstruct any paths, ingress, or egress, and;
- Public art shall conform to local and state ordinances.

\*\*\*Begin proposed amendments\*\*\*

### Section 13.1.2 Definitions

**Public Art:** Public art is a general term for forms of community expression. Public Art may be located in the public domain (rights-of-way), or on private property yet available for community viewing. Public art may be cast, carved, built, assembled, or painted, and include murals, sculpture, memorials, integrated architectural or landscape architectural work, painting, tapestry, mosaics, ceramics, stained glass, community art, digital new media, Earthworks, assemblage, installation art and performance. Installations may be transient or permanent.

### Sec. 3.1.2 Zoning Permit Required

#### (c) Exemptions

The following shall be exempt from the requirements of this Ordinance and shall not be required to obtain a zoning permit:

#### 1. 1-18 as written

19. Public art on private property shall not be required to obtain a zoning permit. If the art does not meet the standards below, it shall not be displayed.
  - a. The installation meets applicable building code for wind load, structural stability, mounting and any anchoring, to protect public health and safety;
  - b. The specific installation shall not be obscene, threatening based on characteristics that are protected under antidiscrimination laws, represent hate, or contain fighting words or incite violence;
  - c. If mounted on a historic structure, shall be installed so as to avoid damage to historic materials and shall be removable without causing permanent damage or diminish the integrity of the structure. If mounted to a masonry building, the fasteners shall penetrate mortar rather than masonry units so as to be repairable.
  - d. Within the Form Districts, the proposed art may not cause or increase any non-conformity to required dimensional standard under Section 14.4.13, Urban Design Standards (including, but not limited to Façade voids, transparency of glazing) nor under Section 14.3.13 Shopfront (Ground floor façade voids.)
  - e. Any public art installation shall not obstruct any path of ingress or egress, nor any identified ADA accessible route.
  - f. Any public art installation shall comply with all standards and factors set forth in existing City Bylaws and city and state ordinances.

\*\*\*End proposed amendments\*\*\*

**Relationship to planBTV**

*This following discussion of conformance with the goals and policies of planBTV is prepared in accordance with the provisions of 24 V.S.A. §4441(c).*

<b>Theme:</b>	<b>Dynamic</b>	<b>Distinctive</b>	<b>Inclusive</b>	<b>Connected</b>
<b>Land Use:</b>	<b>Conserve</b>	<b>Sustain</b>		<b>Grow</b>

Compatibility with Proposed Future Land Use & Density

Public art is an integral component of many land use types in Burlington, particularly to the extent that it supports and promotes Burlington’s character as a cultural and arts center. As stated in *planBTV*, public art, “enhances the overall quality of the built environment.” Further, the Plan promotes public art as, “personalizing the city and activating its streets, providing a sense of community, and offering seeds for contemplation and conversation.” The amendment promotes public art that is consistent with a wide range of built environment types.

Impact on Safe & Affordable Housing

The proposed amendment has no impact on housing safety and affordability.

Planned Community Facilities

The proposed amendment has an important impact on the continued encouragement and facilitation of public art, a defining characteristic of the city as established in *planBTV*. One of the Plan’s goals is to, “strengthen the city’s role as a cultural and arts center, and supporting efforts to expand public art and placemaking within the built environment.” Burlington City Arts also promotes public art at a variety of locations throughout the community. The proposed amendment provides necessary transparency to the development and installation of public art on both public and private property.

**Process Overview**

The following chart summarizes the current stage in the zoning amendment process, and identifies any recommended actions:

<b>Planning Commission Process</b>				
Draft Amendment prepared by: Staff, upon request of PC Ordinance Committee	Presentation to & discussion by Commission 3/3/22 (OC), 4/7/22 (OC), 5/25/2022	Approve for Public Hearing 5/25/2022	Public Hearing 7/26/2022	Approved & forwarded to Council 7/26/22
<b>City Council Process</b>				
<b>First Read &amp; Referral to Ordinance Cmte</b> 8/15/22	Ordinance Cmte discussion	Ordinance Cmte recommend	Second Read & Public Hearing	Council Approval & Adoption