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Community Development and Neighborhood Revitalization Committee
c/o CEDO
City Hall
149 Church Street
Burlington, VT 05401

March 20, 2017

RE: Evaluation of the City of Burlington's Inclusionary Zoning Ordinance

Dear Councilors Roof and Ayres:

We'd like to start by thanking you for the hard work of the Community Development and Neighborhood Revitalization committee, and the staff at CEDO for the very thoughtful approach to evaluating the inclusionary zoning ordinance. We think there are several good ideas, but also note some areas of concern. We are grateful for the opportunity to comment on this important policy.

Vermont Legal Aid, Inc. (VLA) is a private, non-profit legal services organization that provides free civil legal services statewide to Vermonters in a wide variety of civil legal matters. The Housing Discrimination Law Project (HDLP) is a project of Vermont Legal Aid. The HDLP receives funding from the U.S. Department of Housing and Urban Development (HUD) to conduct testing, analysis, education and enforcement of the federal Fair Housing Act. We do not own, manage or develop housing or infrastructure. The HDLP may represent clients of any income; however, the vast majority of our clients are low income.

We are encouraged by The Evaluation of the City of Burlington's Inclusionary Zoning Ordinance. The report provides a significant amount of evidence showing that Burlington's inclusionary zoning ordinance has been a great benefit to the residents of Burlington. It has increased the number of affordable housing units that otherwise wouldn't have been produced, and ensures that when new housing is developed, it occurs in such a way that it promotes socio-economically and ethnically diverse neighborhoods.

We would like to commend CEDO and the Mayor's office for taking immediate action when it became clear that provisions of the ordinance were not being enforced. We hope that the City will dedicate the resources required to ensure enforcement of the IZ ordinance, particularly when units turn over so as not to erode its effect over time.

Affirmatively furthering fair housing

As you know, in 2016, the City of Burlington has dispersed over a million dollars in federal funds through the CDBG and HOME programs¹ (not including the lead paint program). Receipt of these funds obligate the city to affirmatively further fair housing policies. Affirmatively furthering fair housing means that the city has an *affirmative duty* to institute policies that go beyond the requirements of the federal Fair Housing Act to affirmatively promote inclusion and combat segregation. The duty to affirmatively further fair housing is about improving opportunity and quality of life through housing and community development either through improving neighborhoods, or adding opportunity such as better schools or jobs in what HUD refers to as “low opportunity areas,” or improving access to affordable housing in high opportunity neighborhoods.

Although Vermont’s population remains very white (93%), Burlington has seen a dramatic shift in demographics since 2000: a 130% increase in people of color between 2000 and 2010²; however, people of color still live in just a few neighborhoods within Burlington, notably the Old North End and the Pine and King corridors.

The 2015 American Communities Survey (ACS) data indicates that the census tract in the northern most part of the Old North End has the highest concentration of people of color in Burlington—36%.³ The adjacent census tract directly to its south has about 26% people of color.⁴ Contrast this to the southernmost section of Burlington (around Ferguson, Home and Pine Streets) which is 94% white and the 2 census tracts the comprise the Hill Section which are both 89% white.⁵ Drilling down into even smaller data subsets (block data) is even more revealing, showing that a neighborhood just east of Shelburne Street is 95% white⁶ and the neighborhood adjacent to Oakledge Park is 97% white.⁷

While these datasets are based on very small numbers, they confirm trends that we’ve monitored for a long time: the low vacancy rate in Burlington (though currently moving in the right direction) combined with extremely expensive rents, discrimination against families and people of color in the private rental market, and city policies that don’t allow for dense, multifamily construction in large swaths of Burlington, perpetuate a de facto policy of segregation. We are concerned that, if left unaddressed, the city will see increasingly entrenched segregation along socioeconomic, racial and ethnic lines.

Inclusionary zoning, in our view, is the cornerstone of Burlington’s commitment to fair housing precisely because it is the only tool in place that can directly mitigate some of the trends towards the concentration of people of color and poor people into very few neighborhoods. We believe that any

¹ 2016 Action Plan for Housing & Community Development City of Burlington, Vermont P. 25-26
<https://www.burlingtonvt.gov/sites/default/files/u309/Final%202016%20Action%20Plan%20.pdf>

² Chittenden County Fair Housing Assessment 2014 <http://www.ccrpcvt.org/wp-content/uploads/2016/01/Chittenden-County-Fair-Housing-Equity-Assessment-2014.pdf>

³ CensusReporter.org <https://censusreporter.org/profiles/14000US50007000300-census-tract-3-chittenden-vt/>

⁴ CensusReporter.org <https://censusreporter.org/profiles/14000US50007000400-census-tract-4-chittenden-vt/>

⁵ CensusReporter.org: <https://censusreporter.org/profiles/14000US50007003900-census-tract-39-chittenden-vt/> and <https://censusreporter.org/profiles/14000US50007000900-census-tract-9-chittenden-vt/>

⁶ <https://censusreporter.org/profiles/15000US500070008002-block-group-2-chittenden-vt/>

⁷ Census Reporter.org <https://censusreporter.org/profiles/15000US500070011002-block-group-2-chittenden-vt/>

changes that weaken the inclusionary zoning ordinance would significantly impair Burlington's commitment to fair housing and its duty to affirmatively further fair housing.

Intent of the ordinance

The ordinance states the intent of inclusionary zoning is “[t]o ensure the provision of housing that meets the needs of all economic groups by precluding the construction of only market rate housing on the limited supply of available land within the City; [t]o improve the quality of life for all residents by having an economically integrated housing supply throughout the City; and [t]o prevent overcrowding and deterioration of the limited supply of affordable housing, and thereby promote the public health, safety and general welfare.”⁸ In other words, the goal of the inclusionary zoning ordinance is to ensure that when any new multifamily housing is developed in Burlington, it includes some affordable housing. While the explicit focus of the ordinance is to ensure socio-economic integration wherever new housing is built, because there is a high degree of statistical correlation between income and being discriminated against in housing, the effect of the ordinance is also to promote integration for people of color, families, people with disabilities, and others who are discriminated against.

We are concerned by some of the measures the consultant uses to evaluate the ordinance. Some of the evaluation factors implicitly incorporate a goal of affordable housing production into the ordinance. As discussed above, maximizing production of affordable units is not the goal of the ordinance, inclusionary housing is. On page 14 of the report, a section begins called “Has the policy led to the production of housing that meets the needs of all economic groups—especially citizens of low and moderate incomes?” In this section, it's stated that the IZ ordinance has not “changed the underlying dynamics of supply and demand that make the Burlington market unaffordable for a large portion of the city's households...” We agree that the ordinance has not done this; however, changing the underlying market conditions was not an explicit or implicit goal of this ordinance, and as such, it is an inapt measure for determining its success. This ordinance has done well by the measure it was enacted to address: ensuring that middle and low income Burlingtonians are not deprived of highly desirable neighborhoods that are otherwise available only to the most well off among us and that all Burlingtonians have the opportunity to live in inclusive, vibrant neighborhoods.

Zoning

We were disappointed that the report didn't review current parts of the city where the inclusionary zoning ordinance hasn't been as effective. Based on our review of city planning documents, we note that zoning in most of the South End and New North End precludes multifamily housing. We urge the city to modify zoning in these and other zoning-restricted neighborhoods to allow for greater density and more multifamily housing to further the goal of integrated housing. If denser development can be facilitated in these sections of town, it would lessen the effects of gentrification in the Old North End and provide more opportunities for lower income Burlingtonians to live in other parts of the city. Inability to achieve greater density in the most affluent parts of the city makes the inclusionary zoning ordinance less effective.

⁸ Article 9 Inclusionary Zoning and Replacement Housing 9.1.1(b)(c)(d)
https://www.burlingtonvt.gov/sites/default/files/CEDO/Housing/Lead_Paint/Inclusionary%20zoning.pdf

General requirements of Inclusionary Zoning

We fully support the recommendations of the consultant that IZ units be dispersed throughout a building rather than concentrated into one floor or section of the building. We believe that the consultant's recommendation to replace specific language about the square footage requirements with more general language that IZ units must be comparable in size, appearance and bedroom mix is reasonable so long as other zoning requirements for minimum size and other features are maintained. We believe that the provision of the ordinance that calls for roughly the same ratio of bedroom mix for inclusionary and market rate units is essential and just as important as other provisions of the ordinance. If, for example, the ordinance were to allow all of the inclusionary units produced to be one bedroom units, that would constrict the supply of affordable housing that is available for families with children. Data from the state shows that family housing for low-income Vermonters with children has a significantly higher unmet need than affordable housing that is restricted to elders. (See Attachment A.) Our own testing also suggests that familial status discrimination is a widespread barrier to finding housing in Burlington.

Housing Trust Fund

We are concerned by the consultant's recommendations to lower the amount of money developers would have to contribute for Payment in Lieu to the Housing Trust Fund (HTF). The goal of the Payment in Lieu is to provide a financial disincentive for developers to forgo building the inclusionary units. If developers can more easily pay to avoid the ordinance, the goal of socio-economic and racial integration will be subverted. The amount of money a developer must pay into the HTF should be enough to act as a real disincentive, and, if a developer is still unwilling to build units for low income people, the amount of money that goes into the HTF needs at least be enough to actually produce or stabilize new or existing units. We support maintaining the current levels tied to the CPI and believe the recommendation to lower the amount is counterproductive to the goals of the ordinance and could "move the needle" in the wrong direction.

Building offsite units

We believe it's a sign that the ordinance is working as intended that the off-site option to build inclusionary units has not been widely utilized. We believe that keeping the units integrated in the same building is best, but building the inclusionary units in close proximity to the market rate units (as in the case of 88 King and Hind Lofts, as well as Cambrian Rise) is a less optimal but still reasonable compromise. We do not support the consultant's recommendation to make accessing the offsite option easier. Again, the ordinance is doing the job it was designed to do: create inclusionary housing. Any changes that weaken the disincentives to building inclusionary affordable housing weakens the purpose of the ordinance and the city's efforts to affirmatively further fair housing.

Density bonuses by right

We would support changes to the ordinance that make the density bonuses less discretionary on the part of the Design Review Board. We agree that predictability in the planning process is important in determining the feasibility of a project.

Target AMI

Using the city's AMI data and formulas for determining the cost of rent for inclusionary units⁹, we calculated the change in rent for the current fiscal year if the target AMI is changed to a range topping out at 80%:

	Efficiency	1 BR	2 BR	3 BR	4 BR	5 BR
50% AMI	\$735	\$788	\$945	\$1093	\$1219	\$1344
65% AMI (current target)	\$956	\$1024	\$1229	\$1420	\$1584	\$1748
80% AMI	\$1150	\$1232	\$1478	\$2185	\$1906	\$2103

As evidenced above, the rent for 80% of AMI is very close to current market rates for efficiencies, one two and three bedroom apartments, and well within the range of what is already available in Burlington. The affordability crisis, as presented by this consultant, will not be addressed by targeting people whose incomes fall into the 80% AMI range, instead it will deepen the crisis by making fewer below market rentals available.

At the current rental rate for inclusionary units, it is often possible to use a section 8 voucher to help pay the rent in an inclusionary unit. Pushing the target rate up to 80% AMI would put the rent out of reach for section 8 voucher holders. This is problematic for two reasons. First, it is already difficult for people with portable section 8 vouchers to find housing within Burlington, partly due to market rates, but also due to discrimination against people who use vouchers. Secondly, we are very likely about to see a drastic reduction in federal funding for all of the programs that support low income housing, including section 8. The Vermont State Housing Authority has stopped issuing section 8 vouchers as a result of the lack of certainty around federal funding. As a result, the Vermont Agency of Human Services has also announced they will temporarily stop issuing new Vermont Rental Subsidy program vouchers.¹⁰ It would be shortsighted for Burlington to make changes now that would leave low and moderate income Burlingtonians more vulnerable at the precise moment when the federal government is abandoning them. Given the federal picture, it's time for Vermont and Burlington to find more local solutions to these issues in anticipation of severe austerity from the federal government.

Lastly, we'd also like to note that using a range instead one targeted number to determine rent is going to be administratively more difficult to monitor and enforce. We note this mainly due to the fact the city is already currently under-resourced with regard to enforcing the ordinance and has been challenged in creating systems to monitor private developers who manage their own inclusionary units.

⁹2016-2017 Inclusionary Zoning Maximum Rents

<https://www.burlingtonvt.gov/sites/default/files/u477/IZ%20rents%206%201%2016%20to%206%201%2017.pdf>

¹⁰ Vermont Coalition to End Homeless Vermont Rental Subsidy Update

<http://helpingtohousevt.org/2017/02/09/vermont-rental-subsidy-update/>

The VRS program helps families pay who are on the waitlist for section 8 vouchers by paying the portion that would otherwise be covered by section 8, if the voucher was available. It's a stop gap measure to prevent homelessness while families are waiting for federal assistance.

Housing Levy

We are interested in the idea of a Housing Levy and would support efforts to increase Burlington property owners' contributions to the HTF. We assume that there would be a larger discussion about the best way to structure and utilize additional funds and will wait to comment until such time as a proposal is developed.

We look forward to working with City Council and the mayor's office to strengthen Burlington's tools to affirmatively further fair housing and make Burlington a more livable city for everyone. We would be happy to discuss our comments in further detail.

Sincerely,



Devon Ayers

Paralegal



Current Demographic Allocation of Vermont's Below-Market Rental Housing

Families with children are underrepresented in subsidized housing in Vermont. While **73% of the need for affordable rental housing for elderly renters in Vermont is met, just 18% of non-elderly renters' need is met.**¹ This disparity is an impediment to fair housing choice for families with minor children.

About half of Vermont's subsidized rental units are restricted to elders or people with disabilities.² This results in a large amount of unmet need for families with minor children. This impact is exacerbated by the fact that seniors are more likely than younger people to own their homes.³

In Vermont, 54% of people below the poverty line are neither seniors nor have disabilities⁴ but this group makes up just:

- 30% of all housing assistance recipients.⁵
- 17% of public housing tenants;
- 31% of tenant-based voucher holders; and
- 39% of project-based voucher holders.

Perhaps unsurprisingly, people who are ineligible for restricted housing make up the majority – over 60% – of those on the Vermont State Housing Authority's Section 8 tenant-based voucher wait list.⁶

¹ Vermont HUD 2010-2015 Consolidated Plan, p. 33.

http://accd.vermont.gov/strong_communities/housing/planning/consolidated_plan

These percentages are based on the 2010 figures of 6,489 units of assisted rental housing available for 35,554 non-elderly renters, versus 6,324 units of assisted rental housing available to 8,713 elderly renters.

² Vermont Housing Needs Assessment, p. V-5

<http://accd.vermont.gov/sites/accd/files/Documents/strongcommunities/housing/05-%20rental.pdf>

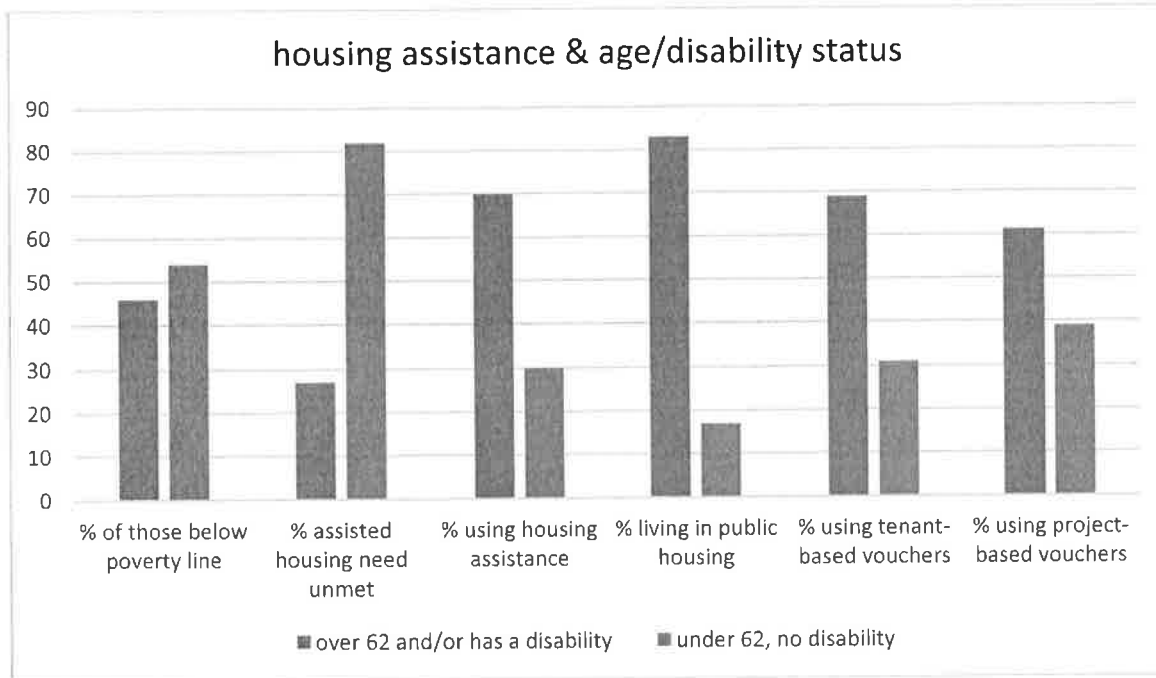
³ Vermont Housing Needs Assessment, Elders

<http://accd.vermont.gov/sites/accd/files/Documents/strongcommunities/housing/06-%20elderly.pdf>

⁴ American Fact Finder, <http://factfinder.census.gov/>

⁵ HUD Resident Characteristics reports for Vermont, <https://pic.hud.gov/pic/RCRPublic/rcrmain.asp>

⁶ Vermont State Housing Authority, Streamlined Annual PHA Plan, 2016, p.2 <http://www.vsha.org/wp/wp-content/uploads/2016/05/VSHA-Draft-Annual-Plan-FY-2017-05-24-16.pdf>



% of housing need unmet:

18% of the assisted rental housing need for non-elderly renters is met, while 73% of the need for elderly renters is met (VT HUD 2010-2015 Consolidated Plan, p. 33)

% of those below poverty line:

46% of people below the poverty line are over 62 or under 62 and have a disability
54% of people below the poverty line are under 62 and do not have a disability (ACS)

% using housing assistance

70% of people receiving housing assistance in VT are classified as senior/disabled
30% of people receiving housing assistance in VT are not seniors/ do not have disabilities (VT HUD Resident Characteristics report)

% living in public housing

83% of families living in public housing in VT are classified as senior/disabled
17% are not seniors/don't have disabilities (VT HUD Resident Characteristics report)