

18. AFFORDABLE HOUSING STANDARDS

18.01 Inclusionary Zoning

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18.01 Inclusionary Zoning

A. Purpose. Inclusionary zoning to provide affordable and moderate income housing in the City Center Form Based Codes District of the City of South Burlington has been adopted pursuant to 24 VSA § 4414(7) for the following purposes:

- (1) To implement policies that support achievement of housing goals, objectives, and targets included in the South Burlington Comprehensive Plan as most recently amended;
- (2) To affirmatively address the current and anticipated need for affordable housing units among low- and moderate-income South Burlington households that pay more than 30% of their income on housing, as described in state law (24 VSA § 4303(1));
- (3) To mitigate the impacts of market-rate housing development that is unaffordable to low- and moderate-income households on the cost and supply of land and infrastructure available for affordable housing development in the City Center Form Based Codes District;
- (4) To promote the integrated development of mixed-income housing in the City Center Form Based Codes District, including a range of housing options needed to strengthen, diversify, and contribute to the vitality of City Center and the South Burlington community;
- (5) To ensure that affordable housing opportunities are available in the City Center Form Based Codes District, which is or will be accessible to goods and services and served by existing or planned public transit services;
- (6) To ensure that affordable housing units developed under inclusionary zoning remain affordable.
- (7) To provide integrated development incentives that contribute to the economic feasibility of providing affordable housing units, including eliminating maximum residential densities, minimum lot sizes, and minimum parking requirements for residential units within the City Center Form Based Codes District.

B. Applicability

- (1) Covered Development.** Except as otherwise provided in this bylaw, the provisions of this section shall apply within the City Center Form Based Codes District to any development, notwithstanding any phasing of the development, that will result in the creation of twelve (12) or more total dwelling units through subdivision, new construction, or the conversion of an existing structure or structures from non-residential to residential use. For purposes of this requirement, two or more developments shall be aggregated and considered as one development subject to this section if:
- (a) The developments are located on abutting properties; and
 - (b) The developments are owned or controlled by the same person; and
 - (c) Either:

- (i) The developments will undergo subdivision, construction, or conversion of an existing structure or structures from non-residential to residential use within the same five-year period, which period shall be measured from the date a proper and complete application is first submitted, or
 - (ii) A master plan exists, as approved by the City, which includes two or more of the developments.
- (2) Exemptions.** The following developments are exempt from these requirements:
- (a) Projects that are developed by an educational institution for the exclusive residential use and occupancy of its students.
 - (b) Institutional, group homes or group quarters housing, including long-term care facilities.
 - (c) The redevelopment of existing dwelling units in a project that produces no additional units.

C. Inclusionary Units

(1) For covered development, at least five percent (5%) of the total dwelling units offered for rent or sale, including units offered for sale in fee simple, shared, condominium or cooperative ownership, shall be affordable to households having incomes no greater than 80% of the area median income (AMI) adjusted for household size. An additional five percent (5%) of the total dwelling units shall be affordable to households having incomes no greater than 100% of the AMI adjusted for household size. An additional five percent (5%) of the total dwelling units shall be affordable to households having incomes no greater than 120% of the AMI adjusted for household size.

- (a) Where the application of this formula results in a fractional dwelling unit, that fractional dwelling unit shall be rounded to the nearest whole number (fractions that are greater than $n.00$ but less than $n.50$ are rounded down; fractions that are greater than or equal to $n.50$ but less than $n+1.00$ are rounded up).
- (b) When the developer proposes to build at least 12 but fewer than 17 housing units, the requirement will be to include two (2) affordable dwelling units one of which shall be affordable to households whose incomes are no greater than 80% of AMI adjusted for household size and the other shall be affordable to households whose income is no greater than 100% of AMI adjusted for household size.
- (c) When the developer is required to build a number of affordable dwelling units where the number of affordable dwelling units calculated by multiplying the total number of units by 15% is not evenly divisible by three, the first “remaining” dwelling unit must be affordable at the 80% AMI level adjusted for household size and, where applicable, the second “remaining” dwelling unit must be affordable at 100% AMI level adjusted for household size.

Example: The developer is required to build 13 affordable dwelling units. Four dwelling units must be affordable at the 80% of AMI adjusted for household size, four dwelling units must be affordable at the 100% of AMI adjusted for household size; four dwelling units must be affordable at the 120% of AMI adjusted for household size; and the “remaining” dwelling unit must be affordable at the 80% AMI adjusted for household size.

(2) Inclusionary units required under this section shall be:

- (a) Constructed on site, unless off-site construction is approved under Subsection (E)(1)(b) (Off-Site Construction) of this Article, and integrated among market rate units in the development.
- (b) Similar in architectural style and outward appearance to market rate units in the proposed development.
 - (i) Inclusionary units shall be constructed with the same exterior materials and architectural design details used in market rate construction. Similar exterior amenities and landscaping shall also be provided. However, the exterior dimensions of the inclusionary units may differ from those of the market rate units.
 - (ii) Inclusionary units shall be no less energy efficient than market rate units; inclusionary units may differ from market rate units with regard both to interior amenities and to gross floor area. The average (mean) gross floor area of all inclusionary units, however, shall not be less than 70% of the average (mean) gross floor area of market rate units.
 - (iv) Inclusionary units developed as part of a single-family housing development may be accommodated in duplexes or multi-family dwellings that resemble market rate single-family dwellings, as allowed within the City Center Form Based Codes District.
- (c) Constructed and made available for occupancy concurrently with market rate units. Buildings containing the last 10% of market rate units shall not receive certificates of occupancy until certificates of occupancy are issued for all buildings containing inclusionary units, including when the inclusionary units are provided off-site as provided for in Subsection (E)(1)(b) (Off-Site Construction) of this Article.

D. Affordability Requirements**(1) Affordability Determinations.** Inclusionary units required under this section shall be affordable and marketed to income-eligible eligible households as follows:

- (a) Housing costs for inclusionary units shall not exceed 30% of annual household income, adjusted for household size. Housing costs used to calculate the affordability of inclusionary units shall include:
 - (i) For rental units – rent (inclusive of any condominium or homeowners' association fees) and utilities (water, electricity and heating costs).
 - (ii) For sale units – mortgage principal and interest, annual property taxes, homeowner's insurance, and condominium or homeowners' association fees.
- (b) Income eligibility shall be determined based on income guidelines, as adjusted for household size, published annually by the U.S. Department of Housing and Urban Development (HUD) for the Burlington-South Burlington Metropolitan Statistical Area (MSA), or on program-based income eligibility requirements established by a partnering housing organization. The AMI shall be determined using the most recent income guidelines available at the time a unit is available for occupancy.
- (c) The maximum rent or sale price of an inclusionary unit shall be calculated based on unit size (i.e. number of bedrooms) and the HUD formula of 1.5 persons per bedroom, which are used to establish the "Household Size Equivalent":

Table 18-1 HUD Formula for Determining Maximum Rents and Purchase Prices	
Unit Size	Household Size Equivalent¹
Efficiency/Studio	1
One-Bedroom Unit	1.5
Two-Bedroom Unit	3
Three-Bedroom Unit	4.5
Four-Bedroom Unit	6

(d) With respect to inclusionary units offered for sale, sale prices shall be calculated based on an available fixed rate, 30-year mortgage, consistent with a blended rate for banks or other lending institutions offering mortgages in South Burlington, or a lower Vermont Housing Finance Agency (VHFA) rate if the developer can guarantee the availability of VHFA mortgages at this rate for all required inclusionary units. The calculated price shall assume a down payment of no more than 5% of the purchase price.

(2) Continued Affordability. An inclusionary unit shall remain affordable in perpetuity commencing from the date of initial occupancy, through a deed restriction, restrictive covenant, or through purchase by or a contractual agreement with a local, state or federal housing authority or nonprofit housing agency, to be reviewed by the City Attorney and approved by the City Manager prior to recording in the City of South Burlington Land Records. Any deed restriction, covenant or other instrument or agreement ensuring the continued affordability of inclusionary units shall include:

(a) **Resale Restrictions.** Provisions to ensure the affordability of units offered for sale shall include a formula for limiting equity appreciation to an amount not to exceed 25% of the increase in the unit's value, as determined by the difference between fair market appraisals of the unit at the time of purchase and the time of resale, with adjustments for improvements made by the seller and the necessary costs of sale, as may be approved by the City Manager;

(b) **Rent Increases.** Provisions to ensure the affordability of rental units shall limit annual rent increases to the percentage increase in the median household income within the Burlington-South Burlington MSA, except to the extent that further increases are made necessary by documented

¹ The maximum allowable rent or sales price is based on the designated AMI level (80%, 100%, or 120%) corresponding to the "Household Size Equivalent" in the table above that matches the number of bedrooms in the housing unit. The result is that the maximum rent or sales price for a particular affordable unit is the same for all eligible households seeking to rent or purchase that affordable housing unit.

For example, the maximum rent or sales price for a one-bedroom unit is determined using the average of the applicable AMI level for one- and two-person households. Note that the applicant household's income is not used to determine the maximum rent or sales price of a particular housing unit.

hardship or other unusual conditions, and shall provide that no rent increase may take effect until it has received the written approval of the City Manager;

(c) Sublet Restrictions. Provisions for inclusionary rental units shall prohibit the subletting of units at rental rates that exceed affordability limits established pursuant to this section.

(3) Reporting Requirements. Annually, the owner of a project that includes inclusionary rental units shall prepare and submit a report to the City Manager that lists the gross rents charged for inclusionary units and the household incomes of unit tenants, and certifies that unit affordability has been maintained as required.

E. Developer Options

(1) Options (a) and (b) below are available to developers upon request, as necessary to address documented financial hardships or physical site constraints that limit or preclude the incorporation of inclusionary units within a covered development. Options (c) and (d) are available to the developer at his or her discretion. A payment or contribution in lieu of constructing required inclusionary units shall be prohibited.

(a) Dedication. The South Burlington City Council, in consultation with the entity designated by the City Council (for example, a permanent South Burlington Housing Committee or South Burlington Affordable Housing Board), may accept as an alternative to the development of inclusionary units, a dedication by the developer of equal or greater value that furthers the purposes of this section. An example might be the donation of developable land in the City Center Form Based Codes District that provides accessibility to transit, employment opportunities, and services.

(b) Off-Site Construction. The developer of a covered development may comply with the requirements of this section by constructing, within two years of receiving a permit for the covered development, the required number of inclusionary units on another site within the City Center Form Based Codes District, or contracting with another entity to construct the required number of units in the City Center Form Based Codes District.

(c) A developer who constructs inclusionary units having three bedrooms shall receive credit for three inclusionary units for every two three-bedroom inclusionary units constructed.

(d) A developer who constructs inclusionary units having four bedrooms shall receive credit for four inclusionary units for every two four-bedroom inclusionary units constructed.

F. Administration and Compliance

(1) Application Requirements. In addition to other submission requirements applicable to proposed projects specified within this bylaw, applications under this section shall include the following information:

(a) A site or subdivision plan that identifies the number, locations, types, and sizes of inclusionary units in relation to market rate units;

(b) Documentation supporting the allocation of inclusionary and market rate units, including inclusionary unit set aside calculations;

(c) A description of each unit's type, floor area, number of bedrooms, estimated housing costs, and other data necessary to determine unit affordability;

(d) A list of proposed options, if any, to be incorporated in the plan, as provided for under Subsection (E) (Developer Options) of this Article;

- (e) Documentation regarding household income eligibility;
- (f) Information regarding the long-term management of inclusionary units, including the responsible party or parties, as required to ensure continued affordability;
- (g) Draft legal documents required under this section to ensure continued affordability;
- (h) Construction timeline for both inclusionary and market rate units; and
- (i) Other information as requested by the Administrative Officer to determine project compliance with inclusionary zoning requirements.

(2) Compliance Officer. The Administrative Officer (AO) is responsible for certifying, in writing, whether a development application is in compliance with the inclusionary zoning requirements specified in Subsection (F)(1) (Application Requirements) of this Article. In cases in which the AO determines the application is not in compliance, he or she shall specify the areas of non-compliance.

(3) Program Evaluation. In order to monitor and track the success of inclusionary zoning in meeting the purposes of this section and the City's affordable housing goals and targets, the City Manager shall:

- (a) Collect and maintain income eligibility guidelines, mortgage interest rate information, and other information necessary to meet the requirements of this section;
- (b) Monitor and maintain records regarding the status of inclusionary units developed under this Section 18.01; and
- (c) Prepare an annual written report for distribution to the South Burlington City Council and Planning Commission and posting on the City's website, to be considered in a public meeting, that summarizes the status of covered projects and inclusionary units approved to date, and sets forth program findings, conclusions, and recommendations for any changes that will increase the effectiveness of inclusionary zoning.

18.02 Affordable Housing Density Bonus

A. Purpose. One of the adopted Comprehensive Plan goals is the availability of quality housing and quality affordable housing to attract and retain a qualified work force. The following provisions are established to enable the City of South Burlington to ensure a supply of standard housing available at below-market rate purchase prices or rents. In this way, a choice of housing opportunities for a variety of income groups within the City can be created in accordance with the Comprehensive Plan and these Regulations.

B. Applicability. This section shall apply in any Zoning District in which residential development is permitted, with the exception of the City Center Form Based Codes District.

C. Density Increase. On a case by case basis and as part of the Planned Unit Development application, the Development Review Board may grant an increase in residential density over the base zoning density, in order to create below market rate housing. The density increases shall be approved on the following criteria and standards:

- (1) Affordable Housing Development. The Development Review Board may grant a density increase of no more than fifty percent (50%) in the total number of allowed dwelling units for an Affordable Housing Development. The total of below market rate units shall be at least half of the total proposed dwelling

units. Where the total proposed dwelling units is an uneven number, the total of below market rate units shall be calculated as at least the total proposed dwelling units, less one (1), divided by two. Such application shall be subject to Article 14, Site Plan and Conditional Use Review, and Article 15, Subdivision and Planned Unit Development Review.

(2) **Mixed Rate Housing Development.** The Development Review Board may grant a density increase of no more than twenty-five percent (25%) in the total number of allowed dwelling units for a Mixed Rate Housing Development. For each additional market-rate dwelling unit produced as a result of the density increase, one (1) comparable below market rate unit must be provided. Such application shall be subject to Article 14, Site Plan and Conditional Use Review, and Article 15, Subdivision and Planned Unit Development Review.

Table 13-9 Example of Affordable Housing Bonus Calculation

Affordable Project: 50% of Total Units Affordable		Mixed-Rate Project: 25% of <i>Bonus</i> Units Affordable
Acres	8.35	8.35
Base Density	12	12
Base Units	100.2*	100.2*
Bonus Units	50	25
Total Units	150	125
Net Density	17.98	14.99
Affordable Units	74	13
Market Rate Units	74	112

**Partial units always round DOWN to the lower whole number of units*

D. Criteria for Awarding Density Increase. In addition to the standards found in Article 14, Site Plan and Conditional Use Review, , and Article 15, Subdivision and Planned Unit Development Review, the following standards shall guide the Development Review Board:

- (1) The density upon which a bonus may be based shall be the total acreage of the property in question multiplied by the maximum residential density per acre for the applicable zoning district or districts.
- (2) Within the Residential 1 and Residential 2 zoning districts, the provisions of this Section 13.14 shall apply only to properties of five (5) acres or more, and the maximum allowable residential density with or without such a density increase shall be four (4) dwelling units per acre.
- (3) **Development Standards.**
 - (a) **Distribution.** The affordable housing units shall be physically integrated into the design of the development in a manner satisfactory to the Development Review Board and shall be distributed among the housing types in the proposed housing development in the same proportion as all other units in the development, unless a different proportion is approved by the Development Review Board as being better related to the housing needs, current or projected, of the City of South Burlington.
 - (b) **Minimum Floor Area.** Minimum gross floor area per affordable dwelling unit shall not be less than comparable market-rate units in the housing development.
 - (c) **Plan for Continued Affordability.** The standards for Section 18.01(D)(2) shall apply.

(4) Administration. The City of South Burlington Housing Authority, if any, or a bona fide qualified non-profit organization shall be responsible for the on-going administration of the affordable housing units as well as for the promulgation of such rules and regulations as may be necessary to implement this program. The Housing Authority or non-profit organization will determine and implement eligibility priorities, continuing eligibility standards and enforcement, and rental and sales procedures.

E. Housing Types. The dwelling units may at the discretion of the Development Review Board be of varied types including one-family, two-family, or multi-family construction, and studio, one-bedroom, two-bedroom, three-bedroom and four-bedroom apartment construction.

18.03 Housing Preservation

A. Purpose. The intent of this Section is to achieve one or more of these goals:

- (1) To promote the health, safety and general welfare of the community by preserving existing housing stock in residential neighborhoods, particularly the supply of affordable and moderately-priced homes through the use of housing retention requirements as referenced in South Burlington's 2016 Comprehensive Plan;
- (2) To reduce and mitigate the demolition and conversion to nonresidential use or nonuse of residential structures, and to maintain housing that meets the needs of all economic groups within the City particularly for those of low and moderate income;
- (3) To meet the specific mandates of 24 V.S.A. Section 4302(11) related to housing opportunities for safe and affordable housing for all Vermonters and to meet the needs of the diverse social and income groups in each Vermont community;
- (4) To support the retention of housing units in the City;
- (5) To promote the health safety and welfare of the community by preserving the residential character of neighborhoods; and,
- (6) To offset the loss of housing by requiring replacement of housing units with new construction, conversion of nonresidential to residential use or a contribution to the City of South Burlington Housing Trust Fund.

B. Applicability. Except as otherwise provided in sub-section C (Exemptions), this Section 18.03 of these Regulations is applicable to the loss, demolition or conversion to a nonresidential use or nonuse (for example a vacant lot) of any dwelling unit in the City. This includes without limitation any of the following:

- (1) any dwelling unit that is demolished, removed, or declared unfit for habitation pursuant to any order, decision or other action of the City or State that is caused by unreasonable neglect or deferred maintenance of an existing or prior owner(s);
- (2) any dwelling unit that is demolished or removed pursuant to any municipal, State or Federal program, including any air traffic or airport noise mitigation and compatibility program; and/or,
- (3) the loss, demolition or conversion to nonresidential use or non-use of any other form of permanent housing, including but not limited to housing units contained within a housing facility that is permitted as a congregate care facility, except group homes, residential care facilities, or skilled nursing facilities as defined in these Regulations.

C. Exemptions. This Section shall not be applicable to:

- (1) The redevelopment of a dwelling unit or any other form of permanent housing, including but not limited to housing units contained within a housing facility that is permitted as a congregate care facility, within a two (2) year period. Any applicant for a demolition permit seeking to avail themselves of this exemption shall be required to obtain a Certificate of Occupancy within two (2) years of the date of issuance of the demolition permit thereby demonstrating redevelopment of the dwelling unit and restoration of the residential use on the same parcel.
- (2) Any dwelling unit ordered demolished or declared unfit for habitation because of damage caused by civil commotion, malicious mischief, vandalism, natural disaster, fire, flood or other causes beyond the owner's control.
- (3) Dwelling units existing in the following zoning districts: City Center Form Based Code, Industrial – Open Space, Mixed Industrial & Commercial, Swift Street, Institutional-Agricultural, Parks & Recreation, Municipal, Commercial 1-AIR, Airport, and Airport-Industrial.
- (4) The conversion of a duplex to a single-family home.
- (5) As of the initial effective date of this Section, any dwelling units:
 - (a) For which the Burlington International Airport / City of Burlington has obtained Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant funding approval for the acquisition, demolition or removal pursuant to the FAA's Part 150 Noise Compatibility Program. This includes the dwelling units identified in FAA AIP grant numbers, AIP-94, AIP-105, and AIP-109 whether or not these dwelling units have been purchased or removed as of January 1, 2018.
 - (b) Indicated on the 2009 Burlington International Airport Part 150 Noise Inventory and Re-Use Plan "Proposed Property Acquisition Program" map, Figure 4: Detailed Acquisition Plan, dated April 23, 2009.See Appendix H for a complete listing of properties by address.
- (6) The removal of accessory dwelling units.

D. Approval. Notwithstanding any other provision of these Regulations and unless otherwise exempt under sub-section C of this Section, no dwelling unit shall be removed, demolished, or converted to a nonresidential use or nonuse, without receipt of a zoning permit in accordance with this Section.

In addition to any other submission requirements in these Regulations, the applicant shall submit as part of a zoning permit application under this Section:

- (1) A statement certifying the number of dwelling units to be demolished or converted to nonresidential use and the number of bedrooms existing within each of these units;
- (2) A demonstration of compliance with tenant or occupant notice and relocation provisions of applicable state and federal law; and
- (3) A demonstration of compliance with sub-section E, F and G (if applicable) of this Section.

E. Housing replacement requirement. In addition to any other requirements for approval under these Regulations, approval of the zoning permit referred to in Sub-section D above requires the replacement of each dwelling unit that is to be removed, demolished, or converted to nonresidential use or nonuse with a replacement dwelling unit. Any dwelling unit approved under Section 18.01 or 18.02 shall not qualify as a replacement dwelling unit. This replacement requirement may be satisfied in one of the following ways:

- (1) Construction of a new dwelling unit in accordance with sub-section F of this Section;

- (2) The conversion of a non-residential building to residential use in accordance with sub-section F of this Section; or,
- (3) Contribution to the Housing Trust Fund. Payment to the City of South Burlington's Housing Trust Fund for each dwelling unit that is removed, demolished, or converted to nonresidential uses or nonuse in an amount equal to twenty-five percent (25%) of the higher of (1) the most recent assessed valuation the premises as modified by the CLA (Common Level of Appraisal) or (2) the most recent sales price of the premises.

F. Replacement Dwelling Unit Requirement. In addition to the foregoing, all replacement dwelling units built pursuant to this Section must meet the following requirements:

- (1) Each replacement dwelling unit shall have at least the same number of bedrooms as the dwelling unit being replaced;
- (2) Each replacement dwelling unit must be located within the City of South Burlington;
- (3) Each replacement dwelling unit must receive a Certificate of Occupancy within eighteen (18) months of the date on which the zoning permit referenced in Sub-section D above is approved;
- (4) Each rental replacement dwelling unit(s) must be maintained either as a Group Home or as a leased "Affordable Housing" unit, as that term is defined in Article 2 of these Regulations to prospective occupants who are income eligible at the time they first lease the unit, for a period of not less than twenty (20) years from the date of first occupancy.
- (5) Each non-rental replacement dwelling unit(s) must be offered for sale either:
 - (a) At or below the fair market value of the dwelling unit that was removed, demolished, or converted to nonresidential use or nonuse, as determined either (i) by an appraisal provided by the applicant, or (ii) by the City's latest assessed value of the premises including the dwelling unit that was removed, demolished, or converted to nonresidential use or to nonuse; or
 - (b) As an "Affordable Housing" unit, as that term is defined in Article 2 of these Regulations, to prospective purchaser/occupants who are income eligible at the time they purchase the unit. Any such unit shall be subject to a covenant restricting the sale of the dwelling unit for a twenty (20) year period to an owner/occupant who qualifies by income.
- (6) Income eligibility for replacement units described in this subsection shall be determined based on income guidelines, as adjusted for household size, published annually by the U.S. Department of Housing and Urban Development (HUD) for the Burlington-South Burlington Metropolitan Statistical Area (MSA), or on program-based income eligibility requirements established by a partnering housing organization. The income eligibility shall be determined using the most recent income guidelines available at the time a unit is available for occupancy.

G. Performance Guaranty/Letter of Credit. When an applicant proposes to construct a new replacement dwelling unit or convert a non-residential building to a replacement residential unit, the applicant must post a performance guaranty in the form of a letter of credit, or other security acceptable to the City Attorney, in the amount equivalent to the amount the applicant would have been required to contribute to the City of South Burlington's Housing Trust Fund if the applicant had chosen that option pursuant to Sub-section E(3), above. Such a performance guaranty shall be valid for no more than two (2) years, after which the full amount due shall be provided to the City of South Burlington's Housing Trust Fund if a replacement dwelling unit satisfying the conditions of this Section has not been granted a Certificate of Occupancy as a dwelling unit.

H. Administration. The City of South Burlington Housing Authority, if any, or a bona fide qualified non-profit organization approved by the City of South Burlington following demonstration of its qualifications shall be responsible for the on-going administration of this section as well as for the promulgation of such rules and regulations as may be necessary to implement this section. The Housing Authority or non-profit organization will determine and implement eligibility priorities, continuing eligibility standards and enforcement, and rental and sales procedures.

I. Violations. In the event of a violation of this Section, an enforcement action in accordance with Article 17 shall commence and the requirements of this Section shall apply in addition to any other remedies available to the City by law.