

18. HOUSING STANDARDS

18.01 Inclusionary Zoning

18.02 [Reserved]

18.03 Housing Preservation

18.01 Inclusionary Zoning

A. Purpose. Inclusionary zoning to provide affordable and moderate income housing in the applicable locations defined in subsection (B)(1) (Applicability – Zoning Districts and Locations) of this article of the City of South Burlington has been adopted pursuant to 24 VSA § 4414(7) for the following purposes:

- (1) To be a City that is affordable for people of all incomes, lifestyles, and stages of life through the preservation and development of a variety of housing in diverse, accessible neighborhoods, consistent with the South Burlington Comprehensive Plan, as most recently amended;
- (2) To implement policies that support achievement of housing goals, objectives, and targets included in the South Burlington Comprehensive Plan as most recently amended;
- (3) 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));
- (4) 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 applicable locations;
- (5) To promote the integrated development of mixed-income housing in the applicable locations, including a range of housing options needed to strengthen, diversify, and contribute to the vitality of the South Burlington community;
- (6) To promote the development of affordable housing opportunities that are available in locations accessible to goods and services and served by existing or planned public transit services;
- (7) To ensure that affordable housing units developed under inclusionary zoning remain perpetually affordable.
- (8) To provide integrated development incentives that contribute to the economic feasibility of providing affordable housing units.

B. Applicability

(1) Zoning Districts and Locations. Inclusionary Zoning shall apply in all zoning districts and overlay zoning districts that permit residential uses.

(2) Covered Development.

(a) Except as otherwise provided in this bylaw, the provisions of this section shall apply in the locations defined in Subsection (B)(1) (Applicability – Zoning Districts and Locations) 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, Planned Unit Development, new construction, or the conversion of an existing structure or structures from non-residential to residential use.

(b) Congregate Care. In addition, the provisions of this section shall apply to any development within the locations defined in Subsection (B)(1) that will result in the creation of twelve (12) or more units

of permanent housing as a congregate care facility, with the exceptions in (3)(b) below. These housing units shall be treated as rental dwelling units for purposes of determining the minimum percentage that must be Inclusionary Rental Units. No Residential Unit Offset or Density Bonus may apply for any type of housing unit for which these regulations do not establish a numerical density limitation. When a development includes both dwelling units and housing units permitted as congregate care housing, the number of required inclusionary units shall be determined by the sum of the dwelling units and the housing units contained in the congregate care facility, and distributed proportionally between the two uses.

Example: in a development with 40 congregate care housing units and 20 rental residential dwelling units, six (6) of the congregate care housing units are required to be Inclusionary units and three (3) of the residential dwelling units are required to be Inclusionary units.

(c) For purposes of this requirement, two or more developments shall be aggregated and considered as one development subject to this section if:

- (i) The developments are located on abutting properties; and
- (ii) The developments are owned or controlled by the same person; and
- (iii) Each of the developments was or is subject to Inclusionary Zoning requirements under Land Development Regulations adopted by the City; and
- (iv) One or more of the developments consists of fewer than twelve (12) dwelling units; and,
- (v) 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.

(d) Previously Approved Master Plans

- (i) The provisions of this section shall apply in the locations defined in Subsection (B)(1) of this Section to any portion of a Master Plan approved after January 1, 2020, that will result in the creation of twelve (12) or more total dwelling units for which the City has not received a complete application for preliminary plat approval and/or site plan approval. The addition of offset residential units allowed under Section F of this Article alone shall not be considered a deviation of an approved master plan approved prior to November 10, 2021.
- (ii) The provisions of this section shall apply in the locations defined in Subsection (B)(1) of this Article to any portion of an approved master plan proposed for an amendment that includes an increase in the number of dwelling units and/or adding land to the master plan.

(3) 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 fifteen percent (15%) of the total dwelling units offered for rent. Inclusionary Rental Units and at least ten percent (10%) of the total dwelling units offered for sale, including units offered for sale in fee simple, shared, condominium or cooperative ownership, shall be Inclusionary Ownership Units. Prior to or upon request for the Certificate of Occupancy the applicant shall notify the City whether the units will be Inclusionary Rental Units or Inclusionary Ownership Units so that the City, or its designee, may confirm that the offered rents or sales prices meet these requirements prior to issuance of the Certificate of Occupancy. In addition:

(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 a covered development results in 12 or more lots that are sold prior to development, 10% of the lots must include deed restrictions that satisfy these inclusionary zoning requirements.

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

(a) Constructed on site, unless off-site construction is approved under Section 18.01(E)(1)(b) (Off-Site Construction).

(b) Integrated into the overall project layout and similar in architectural style and outward appearance to market rate units in the proposed development.

(i) Inclusionary units shall be physically integrated into and complement the overall layout, scale, and massing of the proposed development; this criterion may be achieved in a single building or multiple buildings.

(ii) Inclusionary units shall be constructed with the same exterior materials and architectural design details quality of those of the market rate units in the development. However, the exterior dimensions of the inclusionary units may differ from those of the market rate units.

(iii) Inclusionary units shall be no less energy efficient than market rate units;

(iv) Inclusionary units may differ from market rate units with regard to both interior amenities and amount of Habitable Area. However, the minimum Habitable Area of inclusionary units shall be 450 square feet for studios, 650 square feet for 1-bedroom units, 900 square feet for 2-bedroom units and 1,200 square feet for three (3) or more bedrooms. If the average (mean) area of the Habitable Area of the market rate units is less than the minimum area required for the Habitable Area of inclusionary units, then the Habitable Area of the inclusionary units shall be no less than 90% of the average (mean) Habitable Area of the market rate units.

(v) Inclusionary units developed as part of a housing development of predominantly market rate duplexes and/or multi-family dwellings may be of varied types. Inclusionary units developed as part of a predominantly-single-family housing development may be accommodated in buildings containing up to four (4) dwelling units that have the appearance of single family homes through their scale, massing, and architectural style.

(vi) There shall be no indications from common areas that these units are inclusionary units.

(vii) The average (mean) number of bedrooms in the inclusionary units shall be no fewer than the average number of bedrooms in the market rate units. For projects involving 50 or more

dwelling units, the applicant shall provide a revised estimate to the Administrative Officer at each interval of 50 dwelling units; the revised estimate shall account for the differences in estimates vs. actuals for the units permitted to date and shall apply to inclusionary units for which the Administrative Officer has not issued a zoning permit.

(viii) Unfinished space within an Inclusionary Ownership Unit that is not initially constructed as bedroom, but which can be converted to such, may count as a bedroom. No more than one (1) bedroom per inclusionary ownership unit may be counted in this manner.

(c) Constructed and made available for occupancy concurrently with market rate units. The applicant shall provide a proposed phasing plan demonstrating concurrent development and occupancy of the market rate units and the inclusionary units. The Development Review Board may attach conditions necessary to assure compliance with this section and may, based on documentation from a financial institution denying financing or on physical site constraints, approve a plan allowing non-concurrent construction of the inclusionary units.

D. Affordability Requirements. The basis for determining maximum rental and purchase prices for inclusionary units and applicant rental or purchaser household eligibility for accessing inclusionary units under this section are described below. The data used to determine the incomes, rents and purchase prices is updated annually by U.S. Department of Housing and Urban Development (HUD). The Vermont specific data is updated annually on the Vermont Housing Data website, managed by the Vermont Housing Finance Agency, in a table titled "Maximum rent and purchase price affordability thresholds by income and household size". Refer to this table in administration of this section.

(1) Maximum rent and purchase prices

(a) For Inclusionary Rental Units, the maximum monthly rent that may be charged is one-twelfth of 30% of the targeted Area Median Income (80%) corresponding to the size of the specific unit (measured in number of bedrooms). When any component of the rental housing costs is excluded, the maximum rent that may be charged is reduced accordingly.

(b) For Inclusionary Ownership Units, the maximum monthly housing cost that the owner(s) may be required to pay is one-twelfth of 30% of the targeted Area Median Income (80%) corresponding to the size of the specific unit (measured in number of bedrooms).

(c) Maximum rent and purchase price calculation. Maximum rents and Purchase Prices for Inclusionary Units are calculated based on three components: housing costs, area median income targets, and the number of bedrooms in the inclusionary unit.

(i) Housing shall include:

(I) For Inclusionary Rental Units – rent and utilities (water, electricity and heating costs).

(II) For Inclusionary Ownership Units – mortgage principal and interest, annual property taxes, average annual homeowner's insurance premiums, and average annual mortgage insurance premiums, and 50 % of annual condominium or homeowners' association fees.

(ii) Area Median Incomes (AMI) Targets. HUD estimates the Area Median Income for households residing in the Burlington-South Burlington Metropolitan Statistical Area (MSA) and, in addition, for households of varying sizes residing in the MSA. HUD also calculates AMI ratios, including 80% AMI, for households of varying sizes in the MSA. HUD publishes this AMI-based annual household income information annually. Maximum rents and sales prices

shall be determined using the most recent HUD-published income guidelines available at the time the unit is available for occupancy.

(iii) Number of bedrooms. Rental and purchase prices of inclusionary units are not linked to the size of the household that rents or purchases the inclusionary unit. Number of bedrooms is used to define a household size linked to the specific unit. The use of “number of bedrooms” for this purpose is explained under the Vermont Housing Data website’s annual maximum rent and purchase price tables entitled “Maximum rent and purchase price affordability thresholds by income and household size”.

(2) Renter and Home-buyer Income Eligibility. Income eligibility for an applicant household is determined based on three components: Household Size, Household Income and Annual Median Income (AMI) targets for Inclusionary Units. The AMI amounts for applicants seeking to rent or purchase an Inclusionary Unit shall be determined using the most recent HUD-published income guidelines available at the time the unit is available for occupancy.

(a) For renters, households, regardless of household size, are eligible for inclusionary rental units so long as their combined household income does not exceed 80% AMI.

(b) For home-buyers, households, regardless of household size, are eligible for inclusionary ownership units so long as their combined household income does not exceed 100% AMI.

(3) Flexibility between maximum rent and purchase prices and eligible renter or purchaser households.

(a) Eligible renter or purchaser households may rent or purchase an Inclusionary Unit with a rent or purchase price linked to a household size (derived from number of bedrooms) that is not the same as the eligible Household’s size.

Examples:

- *a two-person household may purchase a three-bedroom house or condominium.*
- *a three-person household may rent a one-bedroom apartment.*

(b) Eligible renter or purchaser households may rent or purchase an Inclusionary Unit with an AMI target that is higher than the eligible Household’s AMI percentage.

Examples:

- *a three-person household whose income is 70% of AMI (for its household size) may rent an apartment for which the rent is targeted to 80% of AMI.*
- *a two-person household whose income is 90% of AMI (for its household size) may purchase a condominium or house for which the purchase price is targeted to 80% of AMI.*

(c) Eligible renter or purchaser households may rent or purchase an Inclusionary Unit for which the housing costs exceed 30% of the eligible Household’s income.

(4) Alternative Eligibility Criteria. When an affordable housing organization is a partner in a covered development, eligibility may be determined in accordance with program-based eligibility requirements established by the partner housing organization.

(5) 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, or their designees, 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 the resale price to whatever is the higher of the purchase price the seller paid plus 2% for each year of ownership (non-compounding), or what is affordable to a household at 80% AMI at the time of resale. Eligible households are those having incomes no greater than 100% AMI at the time of purchase. In addition, the City shall have the option to purchase or transfer its option to purchase Inclusionary Ownership Units at each future time of resale. In addition, any covenant shall have language to ensure the continuing affordability of Inclusionary Rental Units if the unit or property offered for sale instead will be offered for rental.

(i) The seller or his/her representative shall notify the City Manager or his/her designee of the prospective sale of an Inclusionary Ownership Unit;

(ii) The City Manager or his/her designee, in consultation with the members of the Housing Trust Fund Committee, shall then have an exclusive option for thirty (30) days to purchase the Inclusionary Ownership Unit from the seller at a price consistent with the requirements of this subsection unless the City Manager or his/her designee waives the option by declaring in writing an intent not to exercise the option or transfers the option as described in Subsection (D)(5)(a)(iv) of this Article;

(iii) If the City Manager or his/her designee, in consultation with the members of the Housing Trust Fund Committee, fails to exercise such option by failing to negotiate and sign a purchase and sale agreement for purchase of the Inclusionary Ownership Unit, or declaring an intent not to exercise such option, the seller shall offer the Inclusionary Ownership Unit for purchase to income-eligible households in accordance with the requirements of subsection 18.01(D)(5)(a) (Affordability Requirements).

(iv) On or before a purchase and sale agreement is executed between the seller and the City Manager or his/her designee, s/he may assign the City's option specified in this subsection to purchase the Inclusionary Ownership Unit to a 501(c)(3) organization whose primary purpose is the supply of affordable housing in perpetuity. Upon the decision to exercise this transfer option, the City Manager or his/her designee shall notify the seller of such assignment. The organization to which the City has assigned the option shall deal directly with the seller and shall have all of the authority of the City Manager, as provided under this subsection.

(b) Rent changes. Provisions to ensure the affordability of Inclusionary Rental units shall require that annual rent changes do not exceed the percentage change in the median household income within the Burlington-South Burlington MSA, when the change is an increase; and that annual rent changes match the percentage change in the median household income within the Burlington-South Burlington MSA, when the changes is a decrease. An exception to the limit on increases or required decreases is permitted to the extent that further increases or delayed decreases, are made necessary by documented hardship or other unusual conditions. Such exceptions may not take effect until approved in writing by the City Manager or his/her designee;

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

(6) 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 household incomes at move-in based on documentation provided by tenant for owner's completion of form provided by the City, to certify that Inclusionary Rental Unit rent maximums and household income maximums have been maintained as required.

E. Developer Options

(1) Options (a) and (b) below are available to developers upon request, as necessary to address financial hardships based on documentation from a financial institution denying financing 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 South Burlington Affordable Housing Committee), may accept as an alternative to the development of inclusionary units, a dedication by the developer of equal or greater value, including land and expected inclusionary unit 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 the date of the decision approving the covered development, the required number of inclusionary units on another parcel within the same contiguous underlying zoning district in which the covered development is located, or contracting with another entity to construct the required number of within the same contiguous underlying zoning district in which the covered development is located. This condition shall not be considered satisfied until certificates of occupancy have been issued for all off-site inclusionary units. Off-site means outside the boundaries of the lot or PUD on which the covered development is located.

(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. These credit inclusionary units earned under these provisions are ineligible for offset or bonus units.

(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. These credit inclusionary units earned under these provisions are ineligible for offset or bonus units.

F. Offset for Fulfillment of Inclusionary Unit Requirements

(1) Residential Unit Offset, Traditional Neighborhood Development (TND) Planned Unit Development. Offsets for fulfillment of inclusionary unit requirements within are integrated into the standards for TND Planned Unit Developments through the provisions, allowances, lot coverages, densities, and allowed building types permitted by the PUD type.

(2) Residential Unit Offset, all other forms of development. To offset an applicant's fulfillment of this Section's inclusionary unit requirement is an allotment of one additional dwelling unit for each required Inclusionary Rental Unit that is constructed; or an allotment of two additional dwelling units for each required Inclusionary Ownership Unit that is constructed. This offset shall not be provided for any required unit for which the developer receives approval for the Dedication as described in 18.01(E)(1)(a) herein.

(a) Offset residential units are not subject to the inclusionary affordability requirements.

(b) The offset described above shall be approved as long as the total housing units in the specific covered development do not result in non-compliance with dimensional standards applicable to the development).

Example (1): In a 24-unit owner housing development on a six-acre plot in a R4 district, the developer is required to build two (2) inclusionary units. The developer shall receive an offset of four (4) market rate dwelling units, and the project now includes a total of 28 dwelling units.

Example (2): In a 36-unit rental housing development on a three-acre plot in a R12 district, the developer is required to build five (5) inclusionary units. The developer shall receive an offset of five (5) market rate dwelling units, and the project now includes a total of 41 dwelling units.

(c) Where a zoning district establishes a maximum building coverage of less than twenty percent (20%) and/or a maximum overall lot coverage of less than thirty percent (30%), the applicable maximum coverage in that district shall be increased to accommodate the offset units. For Inclusionary Ownership Units, this increase shall be twenty percent (20%) and for Inclusionary Rental Units, this increase shall be fifteen percent (15%).

Example (1): In a zoning district with a maximum building coverage of fifteen percent (15%), the maximum building coverage shall be increased to eighteen percent (18%) to accommodate offset Inclusionary Ownership Units.

Example (2): In a zoning district with a maximum building coverage of fifteen percent (15%), the maximum building coverage shall be increased to seventeen and 25/100 percent (17.25%) to accommodate Inclusionary Rental Units.

G. Density Bonuses for Exceeding Inclusionary Housing Requirements

(1) Applicability. This subsection applies in zoning districts or portions thereof as defined in Subsection (B)(1) (Applicability - Zoning Districts and Locations) , in which residential development is allowed. However, maximum density is not a dimensional requirement in the City Center Form Based Code districts, therefore this section is not relevant in those districts. Furthermore, maximum density is established via Building Type within Traditional Neighborhood Development (TND) Planned Unit Development Type, therefore this section is not relevant to a TND PUD or a TND PUD in association with Conservation PUDs.

(2) Density Bonuses. When an applicant voluntarily includes, in the base zoning density unit-maximum for the development, more than the number of inclusionary units required under Section 18.01(C)(1), then upon the applicant's request, the development shall receive, in addition to the offset units, a density bonus. The density bonus shall be one dwelling unit for each voluntary Inclusionary Rental Unit and two dwelling units for each voluntary Inclusionary Ownership Unit, up to a maximum density of 50% more than the base maximum density permitted in the zoning district. In zoning districts where additional density is permitted via Planned Unit Development, the base density shall be defined as the maximum density for the district without use of PUDs. Density bonus dwelling units are not subject to the inclusionary affordability requirements.

Example (1): In a 24-unit owner housing development on a six-acre plot in a R4 district, the developer is required to build two (2) inclusionary units. The developer shall receive an offset of four (4) market rate dwelling units, and the project now includes a total of 28 dwelling units. In order to receive approval for the maximum 50% density increase (which equates to a maximum of 8 additional units in this example since the offset units need to be accounted for), the developer includes an additional four (4) inclusionary units in the base zoning density unit-maximum (24) for which the developer receives

12 bonus density units. In sum, the total project includes 36 units, 6 of which are inclusionary (17% of the units) and 30 of which are market rate (83% of the units).

Example (2): In a 36-unit rental housing development on a three-acre plot in a R12 district, the developer is required to build five (5) inclusionary units. The developer shall receive an offset of five (5) market rate dwelling units, and the project now includes a total of 41 dwelling units. In order to receive approval for the maximum 50% density increase (which equates to a maximum of 13 additional units in this example since the offset units need to be accounted for), the developer includes an additional thirteen (13) inclusionary units in the base zoning density unit-maximum (36) for which the developer receives 13 bonus density units. In sum, the total project includes 54 units, 18 of which are inclusionary (33% of the units) and 36 of which are market rate (67% of the units).

Example (3): In a 40-unit owner housing development on a ten-acre plot in a R4 district, the developer is required to build four (4) inclusionary units. The developer shall receive an offset of eight (8) market rate dwelling units, and the project now includes a total of 48 dwelling units. In order to receive approval for the maximum 50% density increase (which equates to a maximum of 12 additional units in this example since the offset units need to be accounted for), the developer includes an additional six (6) inclusionary units in the base zoning density unit-maximum (40) for which the developer receives 12 bonus density units. In sum, the total project includes 60 units, 10 of which are inclusionary (17% of the units) and 50 of which are market rate (83% of the units).

Example (4): In a 40-unit rental housing development on a 10-acre plot in a R4 district, the developer is required to build six (6) inclusionary units. The developer shall receive an offset of six (6) market rate dwelling units, and the project now includes a total of 46 dwelling units. In order to receive approval for the maximum 50% density increase (which equates to a maximum of 14 additional units in this example since the offset units need to be accounted for), the developer includes an additional fourteen (14) inclusionary units in the base zoning density unit-maximum (40) for which the developer receives 14 bonus density units. In sum, the total project includes 60 units, 20 of which are inclusionary (33% of the units) and 40 of which are market rate (67% of the units).

H. Affordable Housing Density Bonuses for Developments with Fewer than 12 Dwelling Units

- (1) Applicability.** This subsection applies in zoning districts or portions thereof as defined in Subsection (B)(1) (Applicability - Zoning Districts and Locations), in which residential development is allowed. However, since density is not a dimensional requirement in the City Center Form Based Code District, this section is not relevant in that District. Furthermore, maximum density is established via Building Type within Traditional Neighborhood Development (TND) Planned Unit Development Type and therefore this section is not relevant to TND PUDs or a TND PUD in association with Conservation PUDs.
- (2) Density Bonus.** For applications that include at least three (3) but fewer than twelve (12) dwelling units (calculated using the base zoning density unit-maximum for the development), where the developer has opted to construct one or more inclusionary units any approval shall, upon request of the applicant, include a density bonus over the base zoning density. The density bonus shall be one dwelling unit for each inclusionary rental unit and two dwelling units for each inclusionary ownership unit included voluntarily, up to a maximum density of 50% more than the base density. The density bonus units are not subject to the inclusionary affordability requirements.

I. 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) Ongoing Compliance. The City of South Burlington Housing Authority, if any; or City Manager or his/her designee or another municipal entity; or a bona fide qualified non-profit organization, as determined by the South Burlington City Council, shall be responsible for the on-going administration of the inclusionary units as well as for the promulgation of such rules, regulations, and/or procedures as may be necessary to implement this program. The Housing Authority, or City Manager or his/her designee, or other municipal entity, or non-profit organization shall define and implement eligibility priorities, continuing eligibility standards and enforcement, and rental and sales procedures.

(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 or his/her designee 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.

J. Maximum Density Achievable with Inclusionary Zoning and Transferable Development Rights

(1) Maximum density in Table 19-1 can be achieved through receipt of TDRs, use of Inclusionary Zoning offsets or bonuses, or a combination of TDRs and Inclusionary Zoning.

(2) Total density through use of TDRs and Inclusionary Zoning cannot exceed the limits in Table 19-1.

18.02 [reserved]

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.
- (7) Conversion of a dwelling unit to a licensed, non-residential child care facility. Any approval for such a conversion, however, shall be accompanied by the following:
 - (a) A calculation of the amount of the Contribution to the Housing Trust Fund, as specified in Section 18.03E(3), that would otherwise have applied; and,
 - (b) A condition that any subsequent conversion to another non-residential use will require compliance with the housing replacement requirements of Section 18.03E. If the applicant at that time selects the Contribution option specified in Section 18.03E(3), the contribution amount shall be that calculated pursuant to this subsection 18.07C(7)(a).

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.