

Burlington Planning Commission

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7144 (TTY)

www.burlingtonvt.gov/pz

*Andy Montroll, Chair
Bruce Baker, Vice-Chair
Yves Bradley
Alexander Friend
Michael Gaughan
Emily Lee
Julia Randall*

Burlington Planning Commission

Thursday, February 16, 2023, 6:30 pm

Remote & Virtual Meeting via Zoom

In-Person Option Available:

Bushor Conference Room (Room 102), 1st Floor of City Hall, 149 Church St.

To Join the Meeting on a Computer

Link: <https://zoom.us/j/96676412363>

To Join the Meeting on a Phone

Number: +1 312 626 6799 Meeting ID: 966 7641 2363

AGENDA

I. Agenda

II. Public Forum *See details on pg. 2 of packet for participating remotely.*

III. Chair's Report

IV. Proposed CDO Amendment: ZA-23-02 Inclusionary Zoning

The Commission will hold a public hearing on a proposed amendment to the Burlington Comprehensive Development Ordinance regarding amendment that would create alternative compliance methods in the provision of affordable Inclusionary Zoning units, specifically relating to requirements for bedroom mix and unit floor area. Information related to this item is in the agenda packet on page 3.

Staff Recommendation: Approve the Municipal Bylaw Amendment report, make any changes and refer to Council with recommendation.

V. Commissioner Items

- a. Committee Reports

VI. Director's Report

VII. Minutes & Communications

- a. The minutes of the January 24 meeting are enclosed in the agenda packet on page 9.
- b. Communications are enclosed in the agenda packet.

VIII. Adjourn

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505. Written comments on items may be directed to the Planning Commission at 149 Church Street, Burlington, VT 05401, or at mtuttle@burlingtonvt.gov



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

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Guidance for Participating in a Virtual Planning Commission Meeting

As social distancing measures to preserve public health and safety continue to be required to prevent the spread of COVID-19, or are recommended as a standard practice, the Office of City Planning will be supporting the Planning Commission to conduct their meetings online via Zoom. Here is information about how to join a virtual meeting, and what to expect while participating.

General Guidance for Public Participation

Please remember that in this digital meeting environment, meetings are open to the public and anyone may be watching or listening even if you cannot see them. Meetings will be recorded, and both the recording and chat content of the meeting will be maintained as a public record.

Please ensure your display photo and screen name are professional, such as using your first and last name. Please test your audio and video prior to the start of a meeting, and familiarize yourself with how to join a meeting by your chosen method. And finally, please be patient with us. Technology doesn't always work as planned, and we are all learning how to hold a successful virtual meeting!

How to Join a Virtual Meeting

Zoom allows participation via either computer or telephone. Each agenda for a meeting that will be conducted virtually will include details about how to join via either of these options, including a web address, phone number, Meeting ID, and password.

If you participate via computer, you have the option of seeing Commissioner videos and any presentation materials that may be shared. If you use either a standard phone or cell phone to call in, you will only hear the audio portion of the meeting. If you join via a smartphone, you may have the option to download the Zoom app, which will enable you to see and hear the meeting.

How to Participate in a Virtual Meeting

During meetings, only Planning Commission members and limited staff members will be viewed on video. Members of the public attending a meeting will be muted, except when invited to speak during public forum or a public hearing. Whether members of the public can speak at other times during the meeting is the discretion of the Chair.

If you want to speak during public forum, please take the following steps to assist us in making this process run as smoothly as possible:

- Email staff at cdillard@burlingtonvt.gov by 5pm on the day before a meeting to indicate your interest in speaking. You do not need to provide your comments. Staff will enable your microphone as your name is called from a list of interested speakers.
- During a meeting, you can use the "Raise Hand" feature, or indicate in a chat message that you wish to speak during public forum. Staff will enable your microphone as your name is called.
- If you are interested in submitting your comments in writing instead of speaking during the meeting, you may do so by 5pm the day before a meeting, they will be forwarded to the Commissioners ahead of the meeting.



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TO: Burlington Planning Commission
Burlington City Council Ordinance Committee
FROM: Charles Dillard, AICP, Principal Planner
Meagan Tuttle, AICP, Planning Director
CC: Brian Pine, CEDO Director
DATE: January 31, 2023
RE: Proposed CDO Amendment – ZA-23-02: Inclusionary Zoning

Overview & Background

Inclusionary Zoning (IZ) is the primary mechanism for securing newly built affordable housing in Burlington. Consistent with peer cities, Burlington regulates not just the number of affordable homes that must be created, but the characteristics of those units, including floor area and bedroom mix, or the distribution of units according to the number of bedrooms they contain. However, Burlington's standards are inflexible in comparison and can lead to the creation of affordable unit types for which there is little demand, or even the inviability of the entire development project where some requirements are not compatible with affordable housing practices or the market for affordable housing. This proposed amendment seeks to provide greater flexibility in two specific areas of the ordinance.

Bedroom Mix

Current standards require that a development's inclusionary units must have the same bedroom mix as its market rate units. For example, in a project consisting of 100 units and a 15 percent Inclusionary Zoning requirement, 15 of the units must be affordable. If 1/3 of the market-rate units are two-bedroom units (29 units) and 2/3 of the market-rate units are one-bedroom (56 units), then the affordable units must be provided in the same ratio – 1/3 of the 15 units must be two-bedroom units (5 units) and 2/3 of the units must be one-bedroom (10 units). While usually appropriate and adequate in producing in-demand affordable unit types, this standard can be infeasible and make some projects not viable. For example, a development that includes a large number of four-bedroom units that may be marketed primarily to college and university students. While such four-bedroom units are in demand among this demographic, there is little to no demand for affordable four-bedroom units. Indeed, Champlain Housing Trust (CHT) has no waitlist for four-bedroom units while there are lengthy waitlists for one- and two-bedroom units. Nevertheless, the current bedroom mix requirements would produce a glut of four-bedroom IZ units. Conversely, the ordinance does not offer flexibility for the affordable units to be larger than the market rate units. For example, a development includes primarily studio and 1-bedroom market rate units, but desires to include a mix of 1 and 2-bedroom affordable units.

The proposed amendment would create an alternative compliance pathway in the provision of affordable units by exempting a project from the bedroom mix requirement by devoting a proportion of a building dedicated to residential units to inclusionary units. This alternative would require that the IZ units occupy a percent of the residential floor area that is greater than the required share of required IZ units. For example, a project is required by the ordinance to create 15 percent of its units under the IZ program. The amendment would allow the project to incorporate a bedroom mix of their choice so long as more than 15% of the residential floor area is occupied by inclusionary units. The intent would be for a project to create a greater number of in-demand affordable units, despite potentially having a different bedroom mix than the market units.

Following the Planning Commission and City Council Ordinance Committee's discussion on January 19, a previously proposed provision, which would have allowed for exemptions to the bedroom mix requirement when inclusionary units provided more bedrooms than otherwise required, was removed and is no longer proposed.

Floor Area

Current standards regulating floor area are intended to guarantee an adequate minimum size of IZ units. This is common practice among cities with IZ requirements. However, many jurisdictions either establish minimum unit sizes that are consistent with local housing markets or allow for flexibility in creating units that may be smaller than market-rate units but still adequate and in the interest of fair housing. Burlington, in contrast, requires that the floor area of inclusionary units must be no less than 90 percent of the floor area of units with the same number of bedrooms. While this standard was introduced in the comprehensive revision to Article 9 in 2019, there was much continued discussion about this route up to the adoption of the new provisions. Like the bedroom mix standard, for some projects this creates inflexibility and could lead to the creation of affordable units that are not consistent with demand.

Identical to the proposed approach with respect to bedroom mix, the amendment would create an exemption for unit size parity where a portion of a building dedicated to residential units is for inclusionary units. The amendment would allow for more flexibility in the creation of unit sizes commensurate with the bedroom mix so long as more than 15% of the total residential floor area is dedicated to the project's required IZ units. The amendment establishes minimum IZ unit sizes, by bedroom count, when this alternative approach is proposed.

It should be noted that the remainder of the IZ unit requirements would remain unchanged, including those provisions that regulate the location, tenure, income limits, building quality or energy efficiency of affordable units.

Proposed Amendment

Amendment Type

Text Amendment	Map Amendment	Text & Map Amendment
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Purpose Statement

This amendment modifies the General Requirements for Inclusionary Units to allow for greater flexibility in providing affordable housing. Specifically, the amendment creates alternative compliance pathways to meeting the bedroom mix and unit size requirements in developments where the project's market rate units' floor area and bedroom mix differ significantly from demand for affordable housing unit types.

Proposed Amendments

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

1. Amends Article 9 – Inclusionary and Replacement Housing to create alternative compliance methods in the provision of affordable Inclusionary Zoning units.

- Creates a new Sec. 9.1.14 (b) that exempts projects from the Sec. 9.1.14(a) bedroom mix requirements when the ratio of the gross floor area of its inclusionary units to the total gross floor area of all residential units within the project exceeds the required percent of inclusionary units established in *Table 9.1.8-1 Inclusionary Zoning Percentages*.
- Modifies the existing Sec. 9.1.14(e) to allow greater flexibility for the size of a project's affordable units relative to the market rate units. The amendment also establishes

minimum unit sizes when this alternative compliance method based on gross floor area is proposed.

Relationship to planBTV

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

Theme:	Dynamic	Distinctive	Inclusive	Connected
Land Use:	Conserve	Sustain		Grow

Compatibility with Proposed Future Land Use & Density

The proposed amendment is consistent with *planBTV*, which calls for growth in specific areas of the City where relatively dense, multi-unit housing is anticipated. As any development containing five or more units is required to create affordable IZ units, this growth will mean the creation of new affordable homes in Downtown and other growth areas and corridors that are accessible to jobs and services. To make such development feasible, and to create needed market-rate and affordable units, the amendment provides necessary flexibility and removes arbitrary requirements that have the unintended consequence of requiring units that are of a size and bedroom mix that are not in keeping with local demand for affordable housing.

Impact on Safe & Affordable Housing

The amendment is consistent with *planBTV* in that it promotes the development of in-demand and right-sized affordable housing in the city and will almost certainly lead to the creation of a greater number of affordable units than would today's requirements. Burlington, as *planBTV* makes clear, is distinct, dynamic and inclusive in large part to an established community value of acceptance of residents and households from all socioeconomic backgrounds. Indeed, the amendment is consistent with *planBTV's* Policy 11.1, which calls for the City to, "Update the City's Inclusionary Zoning Ordinance and other land use policies to expand the creation of affordable homes." By extension, through creating a more flexible affordable housing program, the amendment would support Burlington's goal of continuing to be a place where low- and moderate-income residents who contribute to the City's vitality and economy can reside.

Planned Community Facilities

This amendment has no direct impact on planned community facilities. However, it should be noted that an inclusive housing market that includes ample and appropriately-sized affordable homes located in growth areas supports the City's investments in infrastructure and open space amenities.

Process Overview

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

Planning Commission Process				
Draft Amendment prepared by: Staff	Presentation to & discussion by Commission 1/10/2023, 1/19/23, 1/24/23	Approve for Public Hearing 1/24/23	Public Hearing 2/16/23	Approved & forwarded to Council
City Council Process				
First Read & Referral to Ordinance Cmte	Ordinance Cmte discussion 1/19/2023	Ordinance Cmte recommend	Second Read & Public Hearing	Council Approval & Adoption

CITY OF BURLINGTON

In the Year Two Thousand Twenty-Two

An Ordinance in Relation to

CDO—Inclusionary and Replacement Housing
Inclusionary Zoning Percentages and
General Requirements for Inclusionary Units
ZA# 23-02

ORDINANCE _____

Sponsor(s): Ordinance Committee
Public Hearing Dates: _____

First reading: _____

Referred to: _____

Rules suspended and placed in all
stages of passage: _____

Second reading: _____

Action: _____

Date: _____

Signed by Mayor: _____

Published: _____

Effective: _____

It is hereby Ordained by the City Council of the City of Burlington as follows:

That Appendix A, Comprehensive Development Ordinance, of the Code of Ordinances of the City of Burlington, be and hereby is amended by amending Sections 9.1.8 Inclusionary Units, Rentals and Sales; and 9.1.14 General Requirement for Inclusionary Units; thereto to read as follows:

Sec. 9.1.8 Inclusionary Units, Rentals and Sales

For covered projects in which units are offered for rent or sale, a base of fifteen percent (15%) of all of the dwelling units in the project, graduated as specified in Table 9.1.8-1, shall be designated as inclusionary units, except when the alternative compliance methods are provided as established in Sec. 9.1.14(b) and 9.1.14(f).

This includes any covered project where units are offered via the conveyance of a deed or share for individual units, including fee simple ownership, condominium ownership and cooperative ownership.

Table 9.1.8-1 Inclusionary Zoning Percentages

If the average sale and rental price of project units is affordable to a household earning:	The percentage of units which are subject to rent and sales prices as per Sec. 9.1.9 and are subject to marketing and continued affordability provisions (Sec. 9.1.10 and Sec. 9.1.11) shall be:
Less than 139% of AMI	15%
140%-179% of AMI	20%
Development in any Waterfront district (RM-W, RL-W, NAC-CR and FD5 west of Battery St) or 180% of AMI and above in any other district	25%
Off-campus student housing	15% of total beds

CDO – Inclusionary and Replacement Housing
Inclusionary Zoning Percentages and
General Requirements for Inclusionary Units
ZA# 23-02

Sec. 9.1.14 General Requirements for Inclusionary Units

All covered projects must comply with the requirements set forth below.

- (a) In order to assure an adequate distribution of inclusionary units by household size, the bedroom mix of inclusionary units in any project shall be in the same ratio as the bedroom mix of the non-inclusionary units of the project.

~~(a)(b)~~ The bedroom mix requirements established in Section 9.1.14(a) do not apply when the ratio of the gross floor area of all inclusionary dwelling units to the total gross floor area of all dwelling units within the project exceeds the required percent of inclusionary units as established in Table 9.1.8-1, based on the project's average unit sale and rental price (e.g. where at least 15.5 percent of a project's residential gross floor area is composed of inclusionary units when the project's average sale and rental price is affordable to a household earning less than 139% of AMI);

~~(b)(c)~~ Rental inclusionary units within a covered project may “float” (as opposed to designating specific units). Owner-occupied inclusionary units within a covered project must be specifically designated. In either case, inclusionary units may be grouped together or distributed throughout a covered project;

~~(e)(d)~~ Covered projects including both rental and owner-occupied dwelling units shall provide inclusionary units proportionate to the numbers of rental and owner-occupied dwelling units;

~~(d)(e)~~ Inclusionary units may differ from the market units in a covered project with regard to interior amenities and gross floor area, provided that:

1. These differences, excluding differences related to size differentials, are not apparent in the general exterior appearance of the project's units;
2. These differences do not include insulation, windows, heating systems, and other improvements related to the energy efficiency of the project's units; and,
3. Inclusionary units are afforded the same opportunity for parking that the market units are afforded.

(f) The floor area of the inclusionary units is not less than ninety percent (90%) of the average gross floor area of the market rate units within the project with the same number of bedrooms, except when the ratio of the gross floor area of all inclusionary dwelling units to the total gross floor area of all dwelling units within the project exceeds the required percent of inclusionary units as established in Table 9.1.8-1, based on the project's average unit sale and rental price (e.g. where at least 15.5 percent of a project's residential gross floor area is composed of inclusionary units when the project's average sale and rental price is affordable to a household earning less than 139% of AMI).

1. When the gross floor area ratio described above is proposed, the minimum gross floor area of inclusionary units by bedroom count is as follows:

i. Studio: 350 sf

ii. 1 bedroom: 550 sf

iii. 2 bedroom: 750 sf

iv. 3 bedroom: 950 sf

~~(e)v.~~ 4+ bedroom: 1050 sf

~~(f)(g)~~ Upon demonstration of inability to sell units to income eligible residents earning 70% of the AMI, the Manager of the HTF may extend income eligibility to allow priority in the sale of inclusionary units to households earning as much as AMI, adjusted for household size and to households residing in Burlington at the time that these units are offered for sale. In extending income eligibility, priority shall be given to the lowest income household who qualifies for purchase, all else being equal;

~~(g)(h)~~ Except for household income limitations as set forth herein, occupancy of any inclusionary unit shall not be limited by any conditions that are not otherwise applicable to all units within the covered project unless required under federal law, e.g. local use of the Low Income Housing Tax Credit, or in conflict with the stricter bylaws of the designated housing agency; and

CDO – Inclusionary and Replacement Housing
Inclusionary Zoning Percentages and
General Requirements for Inclusionary Units
ZA# 23-02

(h)(i) The final calculations for the number of inclusionary units shall be determined by the Manager prior to the issuance of the zoning permit. If there is any change in the project due to sales prices for these units that increases the number of inclusionary units required, such modifications shall be determined by the Manager and communicated to the administrative officer prior to the issuance of a certificate of occupancy for the covered project. The rental or sales price of the inclusionary units shall also be determined by the Manager prior to the issuance of a certificate of occupancy.

01/10/23

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Burlington Planning Commission

Tuesday, January 24, 2023, 6:30 P.M.

Hybrid Meeting via Zoom and in the Bushor Conference Room

Draft Minutes

Members Present	A. Montroll, J. Randall, B. Baker, A. Friend, E. Lee, Y. Bradley
Staff Present	M. Tuttle, C. Dillard, S. Morgan
Public Attendance	S. Bushor, C. Bates, B. Pine, E. Farrell

I. Agenda

Call to Order	Time: 6:30pm
Agenda	No changes.

II. Public Forum

Name(s)	Comment
S. Bushor	Speaking about the inclusionary zoning amendment. Wants to know why 15.5% for the IZ requirement as opposed to 16 or 17%. Assumes is that if you meet trigger, all other categories would automatically meet the requirement. The other point is category of student housing on the IZ table, which is linked to number of beds – what does that trigger? That does need to be clarified to provide developer flexibility for different sized rooms. There should be some kind of guidance for developers within legislation. How do you allow student housing to qualify? Concerned about larger residential component of SEID.
C. Bates	Sent Charles an updated version of Calahan Park view. Shared view of Calahan Park from C. Dillard. Concerned about the view of Calahan park, feels as if the views in the pictures are purposefully at the bottom of the hill, and wants to know why CD didn't move to middle of soccer or baseball fields. Wants to preserve the view because this would block views of lake from residents. Concerned about lake views, mentions that this will impact residential housing prices and ruin Five Sisters neighborhood. Encourages commission to study issue more.

III. Chair's Report

A. Montroll	No report.
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IV. Director's Report

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M. Tuttle	Reported to executive committee and discussed how office work has transitioned from smaller amendments to larger more complex amendments that require a lot more discussion over the last year. As we look ahead to upcoming quarter, we do anticipate moving through two items on agenda to make space for smaller amendments, as well as the next parking study.
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V. Proposed CDO Amendment: ZA-23-01 South End Innovation District (SEID)

Action 1: Combine primary and secondary uses in this overlay district.		
Motion by: B. Baker	Second by: Y. Bradley	Vote: 4 - 2
Action 2: Refer to council as amended with a memo		
Motion By: E. Lee	Seconded by: B. Baker	Vote: Unanimous
Type: Discussion + Action	Presented by: Charles Dillard	
Introduction:		
• This has come back to commission for final discussion • There is a memo that staff has written that summarizes discussion from past meeting that states commission supports amendment, but commission recommends that council discusses the land use component of amendment.		
Commissioner Discussion		
• B. Baker: Would like memo to reflect that Land Use framework is substantial impediment to residential development. States that the zoning ordinance is a tough place to fine tune what the marketplace can do, and that the city is entering into a challenging phase of when residential developments can occur given interest rates doubling construction costs in the last 18 months. Would like conversation for enterprise zone to be exempt to Act 250 – finds it redundant and expensive. • Y. Bradley: Does not believe that what is suggested has any basis in reality, developers should have the choice. Does not feel that we have reached a consensus. • M. Tuttle: Points out that there is nothing in the ordinance that would mandate a building be residential, and that staff has been concerned about the opposite – that this area would be built out as exclusively residential without any commercial uses. On the scale of the tools that staff could use to ensure a mix of uses, they have tried to take a light touch compared to the rest of the city (ie: Downtown Form Code). Acknowledges that after the last substantial conversation about land uses, there were three pretty different suggestions offered. Staff went back and looked at how to provide greater flexibility in Land Use framework as well as a companion memo to council. Changes include no longer requiring 1-to-1 uses, with new 1-to-2 relationship between uses. Re: act 250, there are a lot of legislators in session and encourages PC to reach out to legislators. Act 250 exemption is limited, and there aren't current pathways under city control to get projects of a certain nature out of act 250 review. • C. Dillard: The exemptions for ground floor uses would allow residential buildings to be built without any non-residential component. There are four pathways for exemption. For example, if the building is on a secondary street, there is no requirement for those ground floor uses. It's only on the primary uses where there is a requirement and that requirement can be reduced from a significant amount. • E. Lee: Agrees with Yves on this conversation. This is a large piece of property that should be its own thing. Is not concerned with it being overly-residential. There is already a lot of forced commercial space. Doesn't feel like there is rhyme or reason to use table. Would like to see uses open up to give more flexibility. Also wants to comment that the pictures being shown are a lot of seasonal views, and there will be more lake views created by this development. These lake views are held by most affluent communities, and does not have tolerance for preserving lake views of private, affluent properties that prevent density and affordable housing in the midst of a climate and housing.		

- J. Randall + A. Friend echo E. Lee's comments related to views.
- C. Dillard: Clarified something about use table. Without structured land use approach, goals of PlanBTV South End would not be fulfilled. Looking at uses in primary use column do strike a balance and promote arts and innovation while easily allowing for secondary uses. Trying to create a dynamic district based on existing arts and innovation. There are also a few uses that have large footprints that could facilitate a good amount of these uses.
- M. Tuttle: The actual table in ordinance language modifies the broader use table for that overlay area. These are proposed to be permitted uses, with the only limit being that area ratio.
- A. Montroll asks if we are ready to take action on this.
- J. Randall wants to clarify why there is a distinction between bakeries as a primary use while cafés are a secondary use.
 - C. Dillard: There is an artisanal component for a bakery, while not necessarily in a café.
- J. Randall: Thinks that this mix of uses is important to promote, does not feel comfortable going further in flexibility. If the amendment becomes more flexible, it will lose sight of its original intent. In order for this district to blend into fabric of existing area, a tightly knit mixed use district will help this be more organically integrated as opposed to clustering or segmented uses. Feels the proposed is in line with goals of district.
- A. Montroll asks if there is a motion to refer and what next steps are.
- B. Baker: How large is SEID vs ELM?
 - C. Dillard: Innovation district is 65 acres, approximately 25-30% of ELM.
- A. Montroll: The overlay is underdeveloped portion of enterprise zone. There are a few well established buildings, but a lot of open space, which is why PC is open to greater changes. There are not a lot of enterprise zone activities happening in this area in comparison to other parts of the area.
- M. Tuttle: As a commission there was a recommendation to look at ELM in terms of incentivizing uses. This is, in a lot of ways, a blank canvas with a lot of opportunities for re-envisioning how land uses work together. More flexibility for land uses is awkward considering original intent of Plan BTV South End
- B. Baker: Echoes what Emily said -- Every time we want to do housing somewhere, we find a good reason to restrict it. The more barriers to development, the less likely residential development is. Recommends removing primary and secondary use categories and instead merge the two as both permitted uses.
- E. Lee: Agrees with B. Baker about merging the two uses, doesn't see rhyme or reason and it is limiting and complex when it doesn't need to be.
- B. Baker makes motion to merge the uses, seconded by Y. Bradley
- E. Lee asks what we are afraid of if we merge the uses. Finds it limiting and complex.
 - J. Randall: Office is already part of the district and should be prioritized in the future. Concerned arts uses would be crowded out if we combined the categories. Feels like proposal in the packet allows for flexibility of commercial and different types of structures.
 - M. Tuttle: Staff is balancing more flexibility with concerns heard from others including the community. Recommendation is already a sweeping change for ELM district due to bringing housing into district. The staff and commission are not necessarily afraid of anything, but are instead responding to concerns.
- A. Friend: This version discussed tonight is already a compromise. The market conditions might change and we should move forward.
- B. Baker: If we force someone building a large building to rent a big portion at a lower rate that building might never get built.
 - C. Dillard: Asks B. Baker if he is concerned with the requirement of non-residential on the ground floor or land use table or both equally
 - B. Baker: Prescribing the land uses will prevent housing from being built, especially if commercial use that is required may not lease.
 - Y. Bradley: You're prescribing a use without knowing what the environment looks like.

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- C. Dillard: Suggests taking a step back and looking at requirements of GFU and block standards. The district establishes block perimeter of 1600 sqft. We propose one block face must be designated primary, but that's as far as we go. On a primary frontage street, the ground floor nonresidential use is 80%, secondary street is 30%. There are then additional pathways to exemption, which includes detached nonresidential exemption as well as open space. Some of this ground floor space can be small dimensionally. This is a balance between urban form and land use component
 - B. Baker: There is a tipping point, especially considering that IZ will already cause developer to lose money.
- A. Montroll: If the primary permitted and secondary permitted were folded together, are there any of the secondary ones that should be eliminated?
 - M. Tuttle: Yes. We are in a position where our use table is incredibly prescriptive, which is making this difficult. If we were to combine these, staff would recommend certain ones not be included. We have also heard concerns similar to Bruce's from non-profits because nonprofit developers do not support building commercial. It seems more like there is more a concern about the ground floor activation standards. Listening to this conversation, her recommendation is that Commission considers activation standards as opposed to the ground floor uses.
 - J. Randall agrees with M. Tuttle.
- M. Tuttle: That would look like 4.5.8-2, 3rd column. It would instead eliminate the frontage thresholds, and point B and the sub-bullets would be eliminated as well. There would be activation standards in the sense that buildings come close to setback and maintain point on entry.
- A. Montroll wants the commercial uses on the ground floor because it creates more synergy between building/sidewalks/streets. Still prefers non-residential uses on first floor that engage people from street.
- E. Lee: Market is demanding residential – is staff worried spaces that could be residential be turned over to commercial? Doesn't feel that is a real threat.
 - M. Tuttle: The reason this alternative was proposed is because she is hearing that there is a concern that the current market may not want to build anything if there's a requirement that the ground floor has to contain commercial uses.
- B Baker: If commercial uses are broad enough, the live/work/play would happen organically. Likes the commercial activation of use, but doesn't want to restrict it to something that may not exist in the marketplace in 4 years. If commercial uses were broadened, it would activate the streetscape and figure out how to make the entirety work by giving broad array of commercial uses to them. Some commercial uses do support Performa of rest of building.
- J. Randall: if there is a developer looking at residential development and they provide commercial uses, it seems like that's compatible with what's on the use table.
 - C. Dillard: Only non-residential uses unlock secondary permitted uses.
- B. Baker: This prescriptive use makes the developers uneasy.
- Y. Bradley: They [developers] don't want to be told they have to build it. This is not NYC, this is Burlington. We're talking about commercial uses on lightly travelled streets. Foot traffic will not be heavy, and there aren't a lot of people living here. Businesses are not making high profits on side streets. There is no visibility, and its completely destination.
- C. Dillard: Not requiring ground floor activation would be more to the intent of PlanBTV south end, and removing the primary/secondary components of land use will remove the planning foundation for this district.
- A. Montroll: The big concern he is hearing is that on the first floor there is required for non-residential. Suppose this distinction between primary/secondary. Could you do ground floor as any use and then more prescriptive for the rest of the building?
 - M. Tuttle: That is moving away from this discussion.
- B. Baker: It sounds like Meagan's idea is more aligned with Yves.
- E. Lee: The work we did with form based code – we said that we wanted infrastructure and activation style of commercial uses to suggest we want retail there, but we didn't require the

Tuesday, January 24, 2022

use. Would like flexibility to make sure that buildings get built. Sees things across the city not happening. We can't force business location, but we can make sure infrastructure exists.

- M. Tuttle clarifying question: Is it more important to keep ground floor activation requirement?
 - E. Lee says yes, but wants to provide flexibility for use.
- A. Montroll, A. Friend, and J. Randall want to support housing, and feel conflicted.
- A. Montroll wants ground floor to be non-residential, but is less concerned about what that non-residential use is. Uses on first floor change all the time based on the market. Wants to make sure it's not stuck as being empty. There's a fear that if it's stuck as empty, it won't get built.
- B. Baker: If it were a 3 story area, that would be different than 8. If we have support for it, eliminating distinction would be what he supports.
- A. Montroll supports the merge, but Meagan and Charles should go through the use table to remove any uses that shouldn't be there.
- M. Tuttle: There has been a lot of discussion on this topic, if PC is interested in staff making changes to the use table, would prefer it if its recommended and on its way to council while staff reviews uses
- MOTION from B. Baker: Combine primary and secondary uses in this overlay district.
 - Yes: A. Friend, E. Lee, B. Baker, A. Montroll.
 - No: Yves, J. Randall
- Motion: Refer to council in the condition that while use table is combined, MT and CD will provide memo to city council and also removes specific uses to be removed from permitted uses.
 - B. Baker seconded
- A. Friend: Would like to hear why Yves voted no on motion he seemed to be a compromise in his favor.
 - Y. Bradley: Down the street from South Union Street there was a boat repair stop, fire station, general store next to rotary. Those are all residential now. Market decided against small things in community, and now there is a swing back. Had felt better when market was determining what is on ground floor, so businesses could change. Most businesses cannot survive without foot traffic. Innovation center won't support a café because there aren't enough people there.
- M. Tuttle: Does memo refer to staff report? Packet already has memo sharing with council there are other ways to consider the land use framework.
 - A. Montroll: Suggests that PC states staff had recommendation, this was a big part of discussion, and there has been a change.
- E. Lee: On Shelburne road there are a lot of newer apartments buildings behind the Starbucks, and now its all residential back there. Very insular and no reasons to go there. Wants to avoid that – supports lots of flexibility but wants to avoid something like that. Feels the infrastructure put in the building matters, allowing change in the future.
- A. Friend is still confused about why Yves voted no on a motion he seconded.
 - Y. Bradley: Wants no regulations.
- VOTE to refer to council with memo as amended: Unanimous vote.

VI. Proposed CDO Amendment: ZA-23-02 Inclusionary Zoning

Action: Refer this to a public hearing		
Motion by: A. Friend	Second by: J. Randall	Vote: Unanimous
Type: Action	Presented by: C. Dillard	
To quickly summarize, there were three recommended parts of this amendment. The first has been struck because the second provision covers what the first would have. Regarding number 2, there was discussion that Michael raised about projects where the ground floor area of IZ units does not exceed the percent required, and if there is an alternative pathway for proposed projects. Staff determined that at this time they wouldn't recommend addressing those projects with the ground floor area less than that. For example, if an IZ requirement is less than 15% and		

Tuesday, January 24, 2022

the IZ units ground floor area represents 14.5%, staff wouldn't say there is an alternative compliance in terms of bedroom mix or unit size. Staff recommends proceeding with time sensitive amendment and revisiting if Michael's concern comes up. - The second change regarding unit size is related to guard rails against units that are inadequately sized. There is nothing in the ordinance today that would require minimum unit size. A. Montroll wanted to answer S. Bushor's question that asked about why 15.5% GFA, M. Tuttle: reason for that is because envisioning % of GFA would correspond with % of IZ units required. 15% is the base, and 15.5% is to make sure that its greater than 15%. A. Montroll: There are other IZ issues that have come up in these discussions, but the time sensitivity of this makes us stick with issues presented in proposed amendment. E. Lee questions what would prevent a developer from building really large 1 bedroom units, which are more expensive to build? - C Dillard: This amendment contemplates non-profit developers, and the interest in the affordable housing developer to react to the market. - M Tuttle: This doesn't remove underlying requirement for number of units. A. Friend makes motion to refer this to a public hearing. J. Randall seconds motion as proposed in the amendment. B. Baker: a two bedroom in places across city is a lot. Recommends lowering from 750. A. Montroll: There will be time to look at numbers now or after public hearing, B. Baker said after hearing is fine. - MOTION passes unanimously.
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VII. Commissioner Items

Action: n/a		
Motion by: n/a	Second by: n/a	Vote: n/a
Type: n/a	Presented by: n/a	
Request by Y. Bradley to change date for planning commission on the 16 th .		
Request granted by staff.		

VIII. Minutes and Communications

Action: Approve the minutes and accept the communications		
Motion by: J. Randall	Second by: A. Friend	Approved: Unanimously
Minutes Approved: January 10 th		
Communications Accepted: in the agenda packet and posted at https://www.burlingtonvt.gov/CityPlan/PC/Agendas		

IX. Adjourn

Adjournment		Time: 8:30 pm	
Motion: B. Baker	Second: Y. Bradley		Vote: Approved Unanimously

Burlington Planning Commission

149 Church Street
Burlington, VT 05401
Telephone: (802) 865-7188
(802) 865-7195 (FAX)
(802) 865-7144 (TTY)

www.burlingtonvt.gov/pz

*Andy Montroll, Chair
Bruce Baker, Vice-Chair
Yves Bradley
Alexander Friend
Michael Gaughan
Emily Lee
Julia Randall*

Burlington Planning Commission with City Council Ordinance Committee

Thursday, February 16, 2023, 6:30 pm

Remote & Virtual Meeting via Zoom

In-Person Option Available:

Bushor Conference Room (Room 102), 1st Floor of City Hall, 149 Church St.

To Join the Meeting on a Computer

Link: <https://zoom.us/j/96676412363>

To Join the Meeting on a Phone

Number: +1 312 626 6799 Meeting ID: 966 7641 2363

AGENDA

I. Agenda

II. Public Forum See details on pg. 2 of packet for participating remotely.

III. Chair's Report

IV. Public Hearing: Proposed CDO Amendment: ZA-23-02 Inclusionary Zoning

The Commission will hold a public hearing on a proposed amendment to the Burlington Comprehensive Development Ordinance regarding amendment that would create alternative compliance methods in the provision of affordable Inclusionary Zoning units, specifically relating to requirements for bedroom mix and unit floor area. The City Council Ordinance Committee will participate in a discussion of the amendment in advance of their own consideration of the proposed amendment. Information related to this item is in the agenda packet on page 3.

Staff Recommendation: Approve the Municipal Bylaw Amendment report, make any changes and refer to Council with recommendation.

V. Commissioner Items

- a. Committee Reports

VI. Director's Report

VII. Minutes & Communications

- a. The minutes of the January 24 meeting are enclosed in the agenda packet on page 9.
- b. Communications are enclosed in the agenda packet.

VIII. Adjourn

The City of Burlington will not tolerate unlawful harassment or discrimination on the basis of political or religious affiliation, race, color, national origin, place of birth, ancestry, age, sex, sexual orientation, gender identity, marital status, veteran status, disability, HIV positive status, crime victim status or genetic information. The City is also committed to providing proper access to services, facilities, and employment opportunities. For accessibility information or alternative formats, please contact Human Resources Department at (802) 540-2505. Written comments on items may be directed to the Planning Commission at 149 Church Street, Burlington, VT 05401, or at mtuttle@burlingtonvt.gov

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Burlington Planning Commission

Thursday, February 16, 2023, 6:30 P.M.

Hybrid Meeting via Zoom and in the Bushor Conference Room

Draft Minutes

Members Present	A. Montroll, J. Randall, A. Friend, E. Lee, M. Gaughan B. Traverse, M. Brandt
Staff Present	M. Tuttle, C. Dillard, S. Morgan
Public Attendance	S. Bushor, B. Pine

I. Agenda

Call to Order	Time: 6:30pm
Agenda	No changes.

II. Public Forum

Name(s)	Comment
S. Bushor	Understands the rationale of the IZ amendment, but still feels the threshold allowing exception is too low. Its 15.5%, feels it should be 17%. Acknowledges that though it's a burden for developers and that it does impact market rate units, we still need to be thoughtful. Wants to also address Floor Area Ratio. "The FAR of IZ existing is no less than 90% of the market, but once again that can be deviated from if you have IZ units that are greater than 15.5%" – is glad that the square footage is there for various bedrooms. Feels that people are protected by having that guaranteed amount of living space. In the background information when you read through, there is discussion about the need for units of greater size that could have 4+ Bedrooms and talking about student housing. In the past, there has been caution about turning downtown over to colleges, and is worried about allowing student housing downtown. Doesn't want Burlington to become a bedroom community. There are more and more housing units, less and less retail. Her current job brings her into and around communities, and some of what is being stated about bedrooms is that there are a fair number of families with more than 2 children living in units. There appears to be a disconnect between waiting lists and the families in complexes in Burlington. We're dependent on information we're given, but there is a disconnect. Wants to provide housing for families and people in need, but doesn't feel like this meets that.

III. Chair's Report

A. Montroll	N/A
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IV. Public Hearing: Proposed CDO Amendment: ZA-23-02 Inclusionary Zoning

Action: Take action and refer to city council for consideration with amendments from staff and accompanied report

Motion: E. Lee

Seconded by: J. Randall

Vote: Unanimous

C. Dillard: This amendment proposes to amend the IZ standards by creating an alternative compliance path in the creation of bedroom mix and unit size for IZ units. Specifically, it creates a ratio wherein if the gross floor area of the IZ units is greater than the percent of IZ units required for that project, it can alter the bedroom mix and the unit size. Bedroom mix today is essentially tied 1:1 with the market rate units in a project and unit size is essentially set to at least 90% of the size on average of the market rate units in a project. Staff has a few minor revisions they suggest, almost technical in nature:

1. Delete line 8 in public hearing draft – language is not necessary and may be confusing to applicants and staff
2. Add “at least” to table 9.1.8-1: IZ Zoning Percentages – clarifies that projects may¹ provide IZ units in number exceeding the minimum standard

Public hearing is open but there are no other attendees outside of S. Bushor

Commission Discussion

M. Tuttle: Wants to acknowledge that staff has spoken with Michael Montey from CHT and want to acknowledge that there is a waiting list for larger units, but they also expressed that different projects in different locations within Chittenden County have different needs and in some cases like projects in the heart of downtown they might actually have a greater demand for smaller units. Mix of bedrooms may vary from project to project, and CHT is trying to meet demand across the county, but ultimately this can still offer some flexibility for them to meet certain kinds of site specific needs as they come up. Brings up that within other areas of ordinance, the units that are identified as IZ units can move around. By offering this greater level of flexibility for what the ultimate mix of unit sizes and bedroom mixes look like in a project, it may be that certain units of certain bedroom sizes are occupied as IZ units today, but they could float or move into a different unit mix in the future if those needs change.

B. Pine (CEDO): One of the hardest things to monitor from an IZ perspective is when you go to ask for the documentation that the units are both affordable to and initially occupied by households of a certain income level and there is the floating nature of the ordinance. It's challenging because if you had a mix that was based on the formula the way the ordinance prescribes it, and there's some floating and mixing of where folks are, you then have to tell them that they have to correct that. It gets difficult because needs change.

B. Pine: In response to S. Bushor's public comment, the percentage is set that low because it's really the exception that anyone goes above the minimum required amount. So as soon as they do, by definition, it includes a nonprofit affordable housing provider. So that's a way of doing that without singling out a type of ownership.

M. Tuttle: I do think the other piece of setting it at 15.5% was intentional to ensure that at least that amount of space is being set aside, whereas today if someone were bringing a project online that was purely complying with our ordinance, because the units only have to be 90% of the size of the market rate units, it's possible that today a project may have less than 15% of the gross floor area dedicated to these units and still comply. So in some ways this is pushing for a little bit more of the building area to be dedicated to those units.

A. Montroll calls for commissioner comments or concerns.

M. Brandt: Sharon also addressed the amount of retail space

¹ note: there was a typo in the presentation, change “pay” to “may”

M. Tuttle: The IZ amendment itself doesn't have much of an impact on what we're thinking or what is ultimately happening with the creation of new commercial space in downtown or anywhere in Burlington. We do know this has been a big part of our conversation about the South End amendment that's moving along for the Council's consideration. We're hearing that there are a lot of concerns about the demand for creating more commercial space and it's something we've been trying to work through in the context of that zoning amendment. We're trying to require that some, even if it's just a small portion of new buildings, is dedicated to non-residential uses. We're trying not to ask too much more than what commercial brokers can actually fill or ultimately what the market needs. Trying to be careful about finding that balance between wanting that as part of mixed-use neighborhoods in BTV without demanding too much.

B. Pine: Wants to note that the issue of balance of retail or non-residential in our core downtown is very much something we're thinking about right now in city government because of the loss of 110,000 square feet of office potentially (if the state of VT does sell 108 Cherry Street). There's no guarantee that remains office or commercial, and we're trying to work with them to find a solution that, to preserve those jobs in our downtown, it's a major challenge to the fact that retail has shifted way before the pandemic had begun. Now with the pandemic resulting in remote work, there's a real lack of demand for office. It's a challenge for every city dealing with this.

J. Randall: Agrees with the technical changes. Thinks it's important to make sure they're aligning with the intent. In response to S. Bushor's comments, the proposed changes are designed to be adaptable to those changing circumstances. What B. Pine just said about the difficulty in administering floating standards right now also underscores that. Feels like these standards encourage that adaptability as there's different demand for different units going forward.

M. Tuttle: You'll remember that in the first version of this amendment, we were actually trying to add language that addressed both the allowance for units that have fewer bedrooms as well as for units that might have more bedrooms in the case where maybe a market rate project is only providing 1 bedroom, but someone wants to provide several larger units. Through our discussion we determined that the language we have provides that flexibility on both sides and that we didn't need to be redundant about also allowing larger bedrooms or larger units as well.

E. Lee makes motion to refer to city council for consideration with amendments from staff and accompanied report. J. Randall seconded motion.

B. Traverse asks procedural question: As these are his first joint Ordinance Committee-Planning Commission meetings since joining the council, wants to ask whether or not there is any separate action that those from the ordinance committee are supposed to take? Do they join the vote here?

A. Montroll: Believes there is no separate action. The Ordinance Committee's role in the joint meeting is so members can hear perspectives, so when it goes to the council they're more up to speed and the process can move quicker.

M. Tuttle: In past meetings, there was something that previous Ordinance Committees had decided that they were not necessarily going to take action as part of these meetings. Agrees with A. Montroll that if either of the councilors that are here have questions or thoughts, please share before PC moves this along formally.

K. Sturtevant: Agrees with what A. Montroll and M. Tuttle. Because of the way the statute sets the pathway of the zoning amendment, there isn't a vote for the ordinance committee.

A. Montroll asks for any opposition to the vote, the vote passes unanimously.

V. Commissioner Items

Action: n/a		
Motion by: n/a	Second by: n/a	Vote: n/a
Type: n/a	Presented by: n/a	

VI. Directors Report

M. Tuttle	Will not be at next PC meeting (Feb 28th). Charles and Sarah will help take care of everything planned for that meeting's agenda. We are going to be bringing an amendment that the PC Ordinance Committee has previously discussed and should be a pretty straightforward amendment for your consideration and hopefully warning for a public hearing, so that is our plan to round out this month. We previously shared that we're looking ahead to a couple of bigger items for your meetings in March, including holding space for the presentation of the Joint Institutional Parking Management Plan by CATMA and the Hill Institution. As far as other amendments that PC has worked on, we have a big night next week where City Council will be hearing about the Trinity Campus amendment (Tuesday, Feb 21st), and staff anticipates presenting that to them and asking for referral to Ordinance Committee. Also anticipating referring this item on that was discussed tonight for their consideration of warning for public hearing. At their meeting two weeks ago, C. Dillard and M. Tuttle presented the SEID amendment to them along with the memo of recommendations. Looking forward to scheduling a time with the counselors that are here tonight to take that up and talk about it in more detail.
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VII. Minutes and Communications

Action: Approve the minutes and accept the communications		
Motion by: J. Randall	Second by: A. Friend	Approved: Unanimously
Minutes Approved: January 24th Communications Accepted: in the agenda packet and posted at https://www.burlingtonvt.gov/CityPlan/PC/Agendas J. Randall: The minutes are really good. S. Morgan: Thank you!		

VIII. Adjourn

Adjournment	Time: 7:10 pm	
Motion: A. Friend	Second: J. Randall	Vote: Approved Unanimously