

Zoning Ordinance

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ARTICLE 1. GENERAL PROVISIONS

- Sec. 1.1.1 Title.** This Appendix shall be known and may be cited as the *Burlington Zoning Ordinance*.
- Sec. 1.1.2 Intent and Purpose.** It is the intent and purpose of this ordinance to encourage the appropriate development of all lands in Burlington and its environs in a manner which will promote the public health, safety against fire, floods, explosions and other dangers; to promote prosperity, comfort, access to adequate light and air, convenience, efficiency, economy and general welfare; to enable the mitigation of property taxes on agricultural, forest and other environmentally significant lands; to encourage appropriate architectural design and the conservation and protection of historic resources; to encourage the development of renewable resources; to protect residential, agricultural and other areas from undue concentrations of population, overcrowding of land and buildings, traffic congestion, inadequate parking and the invasion of inappropriate through traffic and from the loss of peace, quiet and privacy; to facilitate the growth of Burlington and its neighborhoods so as to create an optimum environment, with good urban and civic design; to encourage development of a rich cultural environment and to foster the arts; and to provide for the minimization and future elimination of such land development problems as may presently exist or which may be foreseen.
- Sec. 1.1.3 Authority.** This ordinance is adopted pursuant to the authority contained in the Vermont Municipal and Regional Planning and Development Act, also designated as *Title 24, V.S.A. Chapter 117*. Whenever any provision of this ordinance refers to or cites a section of *Title 24 V.S.A. Chapter 117* and this section is later amended or superseded, the ordinance shall be deemed to refer to the amended section or the section that most nearly corresponds to the superseded section.
- Sec. 1.1.4 Jurisdiction.** This ordinance shall be effective for all land parcels within the City of Burlington.
- Sec. 1.1.5 Relationship to Existing Regulations.** To the extent that the provisions of this ordinance are the same in substance as the previously adopted provisions that they replace in the city's zoning and/or subdivision regulations, they shall be considered as continuations thereof and not as new enactments unless otherwise specifically provided. In particular, a situation that did not constitute a lawful, nonconforming situation under the previously adopted zoning ordinance does not achieve lawful nonconforming status under this ordinance merely by the repeal of the zoning ordinance or other applicable regulations. Likewise, any situation for which a lawful zoning permit was

not obtained under the previously adopted zoning ordinance shall be deemed to be in violation of this ordinance.

- Sec. 1.1.6 Relationship to Municipal Development Plan.** It is the intention of the legislative body that this ordinance implement the planning policies adopted for the city as reflected in the Municipal Development Plan and other planning documents. While the legislative body reaffirms its commitment that this ordinance and any amendment to it be in conformity with adopted planning policies, the legislative body hereby expresses its intent that neither this ordinance nor any amendment to it may be challenged on the basis of any alleged nonconformity with any planning document.
- Sec. 1.1.7 No Use of Land or Buildings Except in Conformity With Ordinance.** Except as otherwise provided in Article 20, no person may use or occupy any land or buildings or authorize or permit the use or occupancy of land or buildings under his or her control except in accordance with the applicable provisions of this ordinance. For purposes of this section, the “use” or “occupancy” of a building or land relates to anything and everything that is done to, on, or in that building or land.
- Sec. 1.1.8 Fees.** Reasonable fees sufficient to cover the costs of administration, plan review and consultation, inspection, enforcement, publication of notice and similar matters may be charged to applicants for zoning permits, certificates of appropriateness, zoning amendments, conditional use approvals, variances and other administrative relief. The amount of fees charged shall be as set forth in the city’s budget or as established by resolution of the legislative body. Any application shall be deemed incomplete until such time as all applicable fees are paid.
- Sec. 1.1.9 Greater Restrictions.** Where this ordinance imposes a greater restriction upon the use, height, setback and the area of structures or the use of premises than is imposed by other ordinances, the provisions of this ordinance shall control. Where one provision of this ordinance conflicts with another provision within this ordinance, the more restrictive shall apply unless otherwise specified.
- Sec. 1.1.10 Severability.** It is hereby declared to be the intention of the legislative body that if any section, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases of this ordinance.
- Sec. 1.1.11 Computation of Time.** Where an event is required or permitted to occur by this ordinance before, on or after a specified period of time measured from another event, in calculating the period:

- (a) The first day shall not be counted;
- (b) The final day shall be counted; and
- (c) Weekend days and holidays shall be counted.

Sec. 1.1.12 Effective Date. The provisions in this ordinance were adopted on December 13, 1993 and became effective on April 11, 1994.

ARTICLE 2. ADMINISTRATIVE MECHANISMS

PART 1: GENERAL ADMINISTRATIVE PROVISIONS

- Sec. 2.1.1 Intent.** The administrative provisions delineated herein are intended to set forth rules and procedures pertaining to planning and zoning for the following: planning commission, design advisory board, development review board, administrative officer, legislative body, and technical review committee.
- Sec. 2.1.2 Authority.** These regulations are enacted under the provisions of 24 V.S.A. *Chapter 117*.
- Sec. 2.1.3 Meeting Schedule.** A regular meeting schedule shall be established for each board and commission. Meetings shall be frequent enough so that action may be taken in conformity with the time limits specified in this ordinance. The chairperson may call special meetings. All meetings shall be open to the public, except as provided in Sec. 2.1.12 and Sec. 2.1.13.
- Sec. 2.1.4 Method of Appointment.** Appointments shall be made by the legislative body in accordance with the City Charter and with the provisions of this ordinance.
- Sec. 2.1.5 Number of Terms.** Members may be appointed to successive terms without limitation.
- Sec. 2.1.6 Vacancies.** Vacancies shall be filled by the legislative body upon the expiration of such term for an unexpired portion of any term.
- Sec. 2.1.7 Removal.** Any member may be removed for cause by the legislative body upon written charges and after public hearing.
- Sec. 2.1.8 Minutes.** Minutes shall be kept of every regular or special meeting. Minutes are not required for executive or deliberative sessions. The minutes shall be made available for public inspection during normal business hours at the department of planning and zoning. Any interested party shall have the right to a reproduction of the minutes, either in draft form or in final form. Draft minutes shall not be considered official until formally approved. Such interested party may be charged a reasonable fee for the reproduction of the minutes in an amount sufficient to cover the cost of reproduction.
- Sec. 2.1.9 Notice.** No regular or special meeting shall be held without providing at least twenty-four (24) hours written notice to the city clerk. Public hearings shall require no less than fifteen (15) days prior notice including

publication of the date, place and purpose in a newspaper of general publication in the city and the posting of the same information in city hall.

Sec. 2.1.10 Operating Rules. A commission or board may adopt by-laws setting forth rules and regulations governing its procedures and operations to the extent they are not consistent with the provisions of this ordinance. Any such by-law or amendment thereto, shall require a two-thirds vote of the membership of the board or commission (excluding vacant seats). Such by-laws may specify the establishment of special or standing committees, which shall conduct themselves in accordance with, said by-laws.

Sec. 2.1.11 Quorum. A quorum shall consist of a majority of the commission or board membership, excluding vacant seats.

Sec. 2.1.12 Executive Sessions. In accordance with *1 V.S.A. Section 313*, executive sessions may be called only by the affirmative vote of a majority of the members present, following a motion which indicates the nature of the business of the executive session. Such vote shall be taken in the course of an open meeting and recorded in the minutes. No other matter beyond the approved motion may be considered; nor shall formal or binding action be taken in executive session except actions relating to the securing of real estate options. An executive session may be held only with respect to one or more of the following:

- (a) Contracts, labor relation agreements with employees arbitration, mediation, grievances, civil actions, or prosecutions, where premature general public knowledge would clearly place the municipality, other public body, or person involved, at a substantial disadvantage;
- (b) The negotiating or securing of real estate options;
- (c) The appointment, employment, or evaluation of a public officer or employee;
- (d) Disciplinary or dismissal action against a public official or employee;
- (e) A clear and imminent peril to the public safety; and/or
- (f) Discussion or consideration of records or documents exempted from public access under *1 V.S.A. Section 317 (b)*.

Sec. 2.1.13 Deliberative Sessions. In accordance with *1 V.S.A. Section 312 (e)*, deliberative sessions may be called and held outside of a duly warned open meeting but only in connection with a quasi-judicial proceeding.

Sec. 2.1.14 Conflicts. In order to secure, protect and preserve the highest level of public trust in the deliberations and decisions of boards and commissions, it is incumbent upon each member not only to scrupulously avoid any act which constitutes a conflict of interest

established in law but also to avoid any act which gives the appearance of an undue special privilege or a conflict of interest.

(a) *Abstentions from Participation and Voting:* A member shall withdraw from all participation, including all formal and informal discussion and voting, in any deliberation of a board or commission, or any of its committees, or any issue upon declaration of a conflict of interest, or upon the assertion that there is a reasonable public presumption that a conflict or a special privilege may obtain. Circumstances under which this provision shall be exercised include but are not limited to the following:

- (1) If the member has a direct or indirect financial interest in the outcome of the matter at issue. A direct financial interest shall include, but not limited to, circumstances in which the member is an applicant, a provider of professional or business services to the applicant, serves on the board of directors, or receives any form of remuneration or benefit from the applicant. Indirect financial interest shall include, but is not limited to, issues in which a member's partner, employee, client, immediate family, relative or close personal friend has or is likely to have a direct financial interest in the outcome of the matter;
- (2) If the matter at issue involves the member's own official conduct;
- (3) If participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or
- (4) If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.

(b) *Ex Parte Communication:* No member shall communicate, directly or indirectly with any applicant, except in the presence of staff or at board or commission meetings, which have been properly noticed. Office meetings and site visits to which staff members have requested the presence of one or more members are exempt from this requirement.

Sec. 2.1.15 Compensation. Members shall serve without compensation.

PART 2: PLANNING COMMISSION

Sec. 2.2.1 Composition. There shall be a planning commission consisting of seven (7) members who shall be residents of the city.

Sec. 2.2.2 Term Duration. Planning commission members shall be appointed for four- (4) year staggered terms in the following manner:

On the first Monday in June of 1992 and every four (4) years thereafter, the legislative body shall appoint to a term of four (4) years, or until his or her successor is duly appointed and qualified, one member of the planning commission. On the first Monday of June in 1993, 1994, 1995 and every four (4) years thereafter, the legislative body shall appoint to a term of four (4) years, or until their successors are duly appointed and qualified, two (2) members of the planning commission.

Sec. 2.2.3 Voting. Any action of the planning commission shall be taken by a majority of the commission members. All votes of the commission shall be recorded in the minutes of the meeting, indicating the vote of each member, including abstentions.

Sec. 2.2.4 Organization. At its first meeting in July of each year, the commission shall, by majority vote of its members (excluding vacant seats) elect one of its members to serve as chairperson and one member to serve as vice-chairperson. The commission shall also select a clerk who shall be either a commission member or municipal employee. Terms of office shall be one year. Vacancies in these offices may be filled for the unexpired terms only by majority vote of the commission membership (excluding vacant seats).

Sec. 2.2.5 Powers and Duties. The planning commission shall:

- (a) Prepare a Municipal Development Plan and amendments thereof for consideration by the legislative body; and shall review any amendments thereof initiated by others pursuant to 24 V.S.A. *Section 4384*;
- (b) Prepare and present to the legislative body proposed by-laws and make recommendations to the legislative body on proposed amendments to such by-laws as set forth in 24 V.S.A. *Sections 4403-4404*;
- (c) Undertake any of the other powers and duties authorized by 24 V.S.A. *Section 4325*; and
- (d) Undertake capacity studies and make recommendations on matters of land development, urban renewal, transportation, economic and social development, urban beautification and design improvements, historic and scenic preservation, the conservation of energy and the development of renewable energy resources and wetland protection, as set forth in 24 V.S.A. *Section 4325(4)*. (Zoning Amendment 95-05, effective 2/7/96)

PART 3: DESIGN ADVISORY BOARD

Sec. 2.3.1 Composition. There shall be a design advisory board consisting of five (5) members. Three (3) of the five (5) members shall be a member of any one of the following fields: architecture, landscape architecture, engineering, planning, contracting, history, archaeology, architectural history, historical architecture, or real estate development. Those positions which require design expertise or real estate knowledge shall be available to individuals who work and/or live in Burlington. All other positions shall be available to individuals who live in Burlington.

Sec. 2.3.2 Term Duration. Design advisory board members shall be appointed to three (3) year terms in the following manner:

On the first Monday in June of 1992, 1993, and every three (3) years thereafter, the legislative body shall appoint to a term of three (3) years, or until their successors are duly appointed and qualified, two (2) members of the design advisory board; on the first Monday in June of 1994, and every three (3) years thereafter, the legislative body shall appoint to a term of three (3) years, or until his or her successor is duly appointed, one member of the design advisory board.

Sec. 2.3.3 Voting. Any action of the design advisory board shall be taken by a majority of the members present. Recommendations of the design advisory board with regard to requests for certificates of appropriateness are deemed advisory in nature and are non-binding upon other boards or commissions.

Sec. 2.3.4 Organization. At its first meeting in July of each year, the design advisory board shall, by majority vote of its members (excluding vacant seats), elect one of its members to serve as chairperson and one member to serve as vice-chairperson. Terms of office shall be one year. Vacancies in these offices may be filled for the unexpired terms only by majority vote of the board membership (excluding vacant seats).

Sec. 2.3.5 Powers and Duties. The design advisory board shall upon request of the planning commission, development review board or its designee perform the following:

- (a) Review requests for certificates of appropriateness in accordance with the design review standards specified in Article 6;
- (b) Prepare written advice and recommendations with regard to requests for certificates of appropriateness;
- (c) Provide recommendations with regard to design review criteria and/or the establishment of new design control districts; and
- (d) Maintain a historic preservation review committee as delineated in Section 2.3.6. Said committee shall meet no less than four (4) times each year.

Sec. 2.3.6 Historic Preservation Review Committee. The historic preservation review committee shall consist of three (3) of the five (5) members of the design advisory board and shall be appointed by the legislative body. All members of the committee shall have a demonstrated interest, competence or knowledge in historic preservation. To the extent available, at least two (2) of the members shall be professionals from the disciplines of history, architectural history, architecture and historical architecture who meet the requirements outlined in Appendix A of the "Regulations for the Vermont Certified Local Government Program". The committee shall conduct itself in accordance with the "Regulations of the Vermont Certified Local Government Program" and any activities undertaken shall be in accordance with the format and standards established by the Vermont Historic Preservation Division. Such activities shall include:

- (a) Creation and maintenance of a system for the survey and inventory of historic properties within the city of Burlington;
- (b) Preparation of a report concerning properties within the City of Burlington which are under consideration for nomination to the National Register of Historic Places;
- (c) When determined to be appropriate in the discretion of the committee, preparation and submission for approval by the planning commission of grant applications; and
- (d) Advising and assisting the city council, planning commission, development review board and other appropriate agencies and persons on matters related to historic preservation.

PART 4: DEVELOPMENT REVIEW BOARD

Sec. 2.4.1 Composition. There shall be a development review board consisting of seven (7) members and two (2) alternates who shall be residents of the city.

Sec. 2.4.2 Term Duration. Development review board members and alternate members shall be appointed for four (4) year terms in the following manner:

For the initial appointment of board members on August 14, 2000, one such member shall be appointed for a term ending June 30, 2001; two such members shall be appointed for a term ending June 30, 2002; two such members shall be appointed for a term ending June 30, 2003; two such members plus the two alternate members shall be appointed for a term ending June 30, 2004, with all such terms continuing until a member's successor has been duly appointed and qualified. Thereafter,

all appointments shall be for four years and until a successor is appointed and qualified.

Sec. 2.4.3 Voting. Any action of the development review board shall be taken by a majority of the board members, a quorum being present. The minutes of board proceedings shall show the vote of each member upon each question, including abstentions. Absences shall also be recorded in the minutes.

Sec. 2.4.4 Organization. At its first meeting in July of each year, the development review board shall, by majority vote of its members (excluding vacant seats) elect one of its members to serve as chairperson and one member to serve as vice-chairperson. The board shall also select a clerk who shall be either a board member or municipal employee. Terms of office shall be one year.

Vacancies in these offices may be filled for the unexpired terms only by majority vote of the board membership (excluding vacant seats).

Sec. 2.4.5 Powers and Duties. The development review board shall have the following powers and duties in addition to those specifically provided elsewhere in this ordinance:

- (a) *Administrative Decisions:* to hear and decide appeals where it is alleged that an error has been committed in any order, requirement, decision or determination made by the administrative officer in connection with the enforcement of this ordinance. The board may reverse or affirm wholly or partly the order, requirement, decision or determination appealed from, and make such other order, requirement, decision or determination consistent with the intent and provision of this ordinance and to that end shall have all the powers of the administrative officer from whom the appeal is taken;
- (b) *Conditional Uses:* to hear and grant or deny a request for a conditional use pursuant to 24 V.S.A. Section 4407(2) in certain districts as specified in this ordinance;
- (c) *Variances:* to hear and grant variances in accordance with the provisions of state statute for a structure that is not primarily a renewable energy resource structure;
- (d) *Variances-Renewable Energy Resource Structure:* to hear and grant variances in accordance with the provisions of state statute for a renewable energy resource structure;
- (e) *Evidence and Testimony:* The development review board in connection with any of its proceedings, may examine, or cause to be examined, any property, maps, books or records bearing upon the matters concerned in such proceeding, may require the attendance of any person having knowledge of the premises, may take testimony and require proof material for its information, and may administer oaths or take acknowledgement in respect of such

matters. Any of the powers granted to the development review board by this subsection may be delegated to the administrative officer or another specifically authorized agent or representative; and

- (e) *Stay of Enforcement.* The development review board may grant a stay of enforcement of the regulatory provisions referred to in a notice of appeal in accordance with the provisions of state statute.

Sec .2.4.6 Use of Alternate Members. Where a board member is unable to hear a particular matter due to a conflict as defined in section 2.1.14 of this ordinance, an alternate will be designated by the Chair to participate in that particular matter. Alternates may also be requested by the Chair to sit for member if the member is not able to attend meetings on a long term basis (i.e. sabbatical, long term illness, etc.).

Sec .2.4.7 Transitional Provision

- (a) The development review board shall become effective on and after October 1, 2000. Effective as of midnight September 30, 2000, the zoning board of adjustment shall cease to exist except for the completion of its then pending docket, which for these purposes shall include any and all matters filed for consideration by the zoning board of adjustment on or before September 15, 2000, and, for which purposes only, the zoning board of adjustment shall be regarded as fully legally constituted. Further, effective midnight September 30, 2000, all of the planning commission's current functions relating to review and approval of permit requests for developments shall be transferred to the development review board, except for the completion of the planning commission's then pending docket, which for these purposes shall include any and all permit requests filed for consideration by the planning commission on or before September 15, 2000, for which purposes only, the planning commission shall be regarded as fully and legally authorized to exercise regulatory review authority over such requests for permits.
- (b) On and after October 1, 2000, any reference in any past or present permit to the zoning board of adjustment or to the planning commission shall be considered a reference to the development review board, and any and all matters which prior to such date would have been considered by the zoning board of adjustment or the planning commission shall be considered to be under the exclusive jurisdiction of the development review board.

PART 5: ADMINISTRATIVE OFFICER

Sec. 2.5.1 Appointment. An administrative officer, who may hold any other office in the municipality, shall be appointed for a term of three (3) years by the planning commission, with the approval of the city council, whenever a vacancy exists. The planning commission may reaffirm this appointment

annually. An administrative officer may be removed for cause at any time by the legislative body after consultation with the planning commission.

- Sec. 2.5.2 Powers and Duties.** The administrative officer shall administer the provisions of this ordinance and any amendments thereto and other applicable bylaws literally. The administrative officer shall not have the power to permit any land development that is not in conformance with this ordinance. The administrative officer shall have the responsibility of hiring, supervising, and removing when necessary, planning and zoning staff.
- Sec. 2.5.3 Budget.** The administrative officer shall prepare an annual recommended budget in consultation with the planning commission and shall submit it for approval by the legislative body.
- Sec. 2.5.4 Zoning Permits and Certificates of Appropriateness.** Only the administrative officer or his or her designee shall be authorized to issue zoning permits and certificates of appropriateness in accordance with the provisions of this ordinance.
- Sec. 2.5.5 Certificates of Occupancy.** Only the administrative officer or his or her designee shall be authorized to issue certificates of occupancy in accordance with the provisions of this ordinance.
- Sec. 2.5.6 Acting Administrative Officer.** The planning commission may appoint, with the approval of the legislative body, an acting administrative officer who shall have the same duties and responsibilities as the administrative officer in his or her absence. The planning commission may reaffirm this appointment annually.

PART 6: LEGISLATIVE BODY

- Sec. 2.6.1 Legislative Body.** The legislative body of the city for the purposes of this ordinance is the city council with mayor presiding.
- Sec. 2.6.2 Sec. 4443(c) Applications.** The legislative body, in considering applications subject to the provisions of 24 V.S.A. *Section 4443(c)*, acts in a quasi-judicial capacity and, accordingly, is required to adhere to the public hearing and notice requirements specified in Article 18 of this ordinance.
- Sec. 2.6.3 Zoning Map/Text Changes.** In considering proposed amendments to this ordinance, the zoning map, official map, or subdivision regulations, the legislative body acts in its legislative capacity and is required to adhere to the provisions of 24 V.S.A. *Section 4404* and Article 23 of this ordinance.

- Sec. 2.6.4 Municipal Development Plan.** In considering the adoption of the Municipal Development Plan or any amendment thereto, the legislative body is required to adhere to the provisions of 24 V.S.A. Section 4385.

PART 7: TECHNICAL REVIEW COMMITTEE

- Sec. 2.7.1 Composition.** The city's technical review committee as established by resolution of the legislative body on April 21, 1986 shall be composed of those department heads, or their designees, whose departments are or will be significantly affected by major development projects. The administrative officer shall serve as chair of the technical review committee.
- Sec. 2.7.2 Powers and Duties.** The technical review committee shall review all major impact developments either prior to or as soon as practicable following a formal submission of an application. Members of the committee shall provide written comments following such review and indicate for the applicant any and all pertinent regulations and identifiable impacts of the proposed development project. In assessing such impacts, the committee shall consider the cumulative impact of developments on city services and infrastructure within the proceeding twelve- (12) month period. The comments of the committee are intended to provide general direction to the applicant and are not deemed binding on either the members of the committee or upon the applicant unless such comments are incorporated into a final decision of either the development review board or legislative body.

ARTICLE 3. ZONING DISTRICTS AND ZONING MAP

PART 1: ZONING DISTRICTS

Sec. 3.1.1 **Intent.** The intent of this article is to:

- (a) Divide all land within the city into zoning districts;
- (b) Provide uniform provisions for each class of uses or structures within each district; and
- (c) Require that every parcel of land and every structure in the city, except as otherwise provided by law or by this ordinance, be subject to the regulations, restrictions, and requirements specified for the district in which it is located.

Sec. 3.1.2 **Authority.** These regulations are enacted under the provisions of 24 V.S.A. Sec. 4405.

Sec. 3.1.3 **Recreation and Conservation Districts Established.** The following recreation and conservation districts are established:

Recreation, conservation and open space (RCO) and waterfront recreation-conservation (WRC).

- (a) The RCO district is intended to protect the city's natural environment, provide for a balance between developed and undeveloped land, protect air quality, provide adequate open areas for recreation and conservation and to preserve areas for appropriate future development; and
- (b) The WRC district is intended to preserve the public's rights to access the waters of Lake Champlain and to promote and enhance the public use of the lake for fishing, navigation, bathing and recreation.

Sec. 3.1.4 **Residential Districts Established.** The following residential districts are established:

Residential-low density (RL), waterfront residential low density (WRL), residential medium density (RM), waterfront residential medium density (WRM) and residential high density (RH). Each of these districts is intended to secure for the persons who reside there a comfortable, healthy, safe, and pleasant environment in which to live, sheltered from incompatible and disruptive activities that properly belong in nonresidential districts. Certain nonresidential uses, including public and semi-public uses and neighborhood-oriented commercial and service uses, are permitted in certain residential districts upon conditional use approval.

- (a) The RL and WRL districts are intended primarily for low-density residential development in the form of single detached dwellings, and/or planned residential developments. In such RL and WRL districts, occupation of a dwelling unit is limited to members of a family as defined in Article 30, Section 30.1.2. If the dwelling unit contains at least twenty-five hundred (2500) square feet excluding its attic and basement, it may be occupied by more than four (4) unrelated adults if the building also contains at least an additional two hundred fifty (250) square feet per adult occupant in excess of four (4) and if the proposed use is also approved as a conditional use by the Development Review Board. Notwithstanding the foregoing, the minimum square footage requirements shall be reduced by ten (10%) percent in situations where the residential premises are owner occupied. Except as otherwise provided for by this ordinance, density is limited to 4.4 dwelling units per acre;
- (b) The RM district is intended primarily for medium density residential development in the form of single detached dwellings, duplexes, apartments, and/or planned residential developments. The waterfront medium density district (WRM) is intended to establish a neighborhood which provides open space and convenient lake access. In such RM and WRM districts, occupation of a dwelling unit is limited to members of family as defined in Article 30, Section 30.1.2. If the dwelling unit contains at least twenty-five hundred (2500) square feet excluding its attic and basement and if it also contains at least an additional two hundred (200) square feet per adult occupant in excess of four (4), a proposed use of more than four (4) unrelated adults may be approved as a conditional use by the Development Review Board. Notwithstanding the foregoing, the minimum square footage requirements shall be reduced by ten (10%) percent in situations where the residential premises are owner occupied. Except as otherwise provided for by this ordinance, density is limited to twenty (20) units per acre.
- (c) The RH district is intended primarily for high density residential development in the form of duplexes, apartments, and/or planned residential developments. Except as otherwise provided for by this ordinance, density is limited to forty (40) units per acre.

Sec. 3.1.5 Mixed Use Districts Established. The following mixed-use districts are established:

Neighborhood commercial (NC), commercial (C), general commercial (GC). The purpose of the mixed-use districts is to reinforce historic development patterns, provide for the continuation of existing uses, and to provide employment opportunities in close proximity to residential uses. Except as otherwise provided for by this ordinance, density is limited to twenty-five (25) units per acre.

- (a) The NC district is intended to provide for limited commercial uses in residential areas where the character of the neighborhood merits protection by a suitable residential/commercial mix where such commercial uses provide neighborhood-oriented goods and services and/or employment opportunities. Conditional use approval for commercial uses is required;
- (b) The C district is intended to provide for commercial goods and services for neighborhoods, transients and tourists, including uses that are automobile oriented. Such districts typically occur along major roadways and transit corridors; and
- (c) The GC district is intended to provide for businesses, which are retailing heavy durable goods to the region, and for businesses that are not designed primarily to serve adjacent residential neighborhoods. It provides minimal restriction with regard to the type of commercial use permitted.

Sec. 3.1.6 Institutional District Established. The following institutional district is established:

University campus (UC). The UC district is intended primarily to accommodate educational and medical institutions and their respective campuses while preserving the residential character of existing neighborhoods within and adjacent to the district. In order to evaluate and mitigate the cumulative impacts of institutional growth within this district, all allowed uses other than single detached dwellings and duplexes require conditional use approval.

Sec. 3.1.7 Commercial Districts Established. The following commercial districts are established:

Waterfront commercial-north (WFC-N), waterfront commercial-west (WFC-W), waterfront commercial-east (WFC-E), waterfront commercial-transitional (WFC-T), central business district (CBD), and central business district-transitional (CBD-T). These districts are intended to serve the shopping, service and employment needs of the residents of Burlington and its environs, provide for a secure and stable economic base, and to reinforce the city's role as a regional center.

- (a) The WFC-N district is intended to enhance the waterfront area in the vicinity of the mouth of the river, protect natural areas, preserve the existing residential uses, and to allow water-oriented commercial and recreational uses at a scale compatible with existing development and with the ecology of the area;
- (b) The WFC-W district is intended to enhance and diversify development in the downtown waterfront area and to increase access, utilization and enjoyment of the shore by the community;
- (c) The WFC-E district is intended to enhance and diversify development of the downtown waterfront area and to permit commercial and residential uses that are compatible with development uses in the adjacent CBD and RH districts;
- (d) The WFC-T district is intended to provide a transitional zone between the waterfront and the high-density residential districts immediately adjacent to the waterfront commercial district. It allows uses normally permitted in WFC-E on lots which directly border the WFC-E district solely within existing boundaries of such lots as described in a single deed as of August 25, 1980 provided that such uses obtain conditional use approval;
- (e) The CBD is intended to accommodate a wide variety of commercial activities, particularly those which are pedestrian-oriented, that will result in the most intensive and attractive use of the City's downtown area. The CBD is also intended to function as a government center for the city and the county. Residential use is encouraged on upper floors within the CBD to provide for a higher level of activity, diversity, economic stability and safety as well as a reduction in automobile use.
- (f) The CBD-T district is intended to provide a transitional zone between the CBD and the high-density residential districts immediately adjacent to the CBD. It allows uses normally permitted in the CBD on lots which directly border the CBD solely within the existing and recorded boundaries of such lots as described in a single deed as of August 25, 1980 provided that such uses obtain conditional use approval.

Sec. 3.1.8 Enterprise District Established. The following enterprise districts are established:

Enterprise (E) and waterfront enterprise (WFE).

- (a) The E district is intended primarily to accommodate enterprises engaged in the manufacturing, processing, distribution, creating, repairing, renovating, painting, cleaning, or assembling of goods, merchandise, or equipment. This district is intended also to ensure that sufficient land area is

appropriately designated within the city to ensure an adequate and diversified economic base that will result in job creation and retention; and

- (b) The WFE district is intended to protect existing industrial uses and to provide for their future orderly development and eventual conversion from industrial uses to uses more appropriate to the Burlington waterfront.

PART 2: OVERLAY DISTRICTS

Sec. 3.2.1 Overlay Districts Established. The following districts are established as overlay districts, meaning that these districts are overlaid upon other districts and the land so encumbered may be used in a manner permitted in the underlying district only if and to the extent such use is permitted in the applicable overlay district: floodway (FW), flood hazard (FH), design review (DR), historic buildings (HB), public trust (PT) and intervale enterprise/agricultural (IEA).

Sec. 3.2.2 Flood Districts. The FW and the FH districts are intended to protect the citizenry from injury or damage caused by seasonal or periodic flooding and to prevent pollution of Lake Champlain, the Winooski River and adjacent streams and tributaries and also for maintaining eligibility in the National Flood Insurance Act of 1968, as amended. The FW district is further intended to establish floodplain management criteria in floodprone areas. The FH district is further intended to regulate land use in portions of zoning districts, which are subject to flooding. The FW and FH overlay districts are depicted as Zone AE on the Flood Insurance Rate Map for the City of Burlington as revised January 16, 1987 as amended. FW and FH districts are further described in Article 21.

Sec. 3.2.3 Design Review District. The DR district is intended to preserve, protect and enhance those areas within the city containing structures of historical, architectural or cultural merit. Because of the concentration of community interest in them, the areas listed below are designated as design review districts subject to the procedures specified in Article 6.

- (a) Waterfront core, Regional Core and Inner City, as delineated in the 1973 Municipal Development Plan for the City of Burlington;
- (b) Historic Buildings;
- (c) Major street corridors; all nonresidential uses, and residential uses with home occupations or other conditional uses, having frontage on the following major streets:

- (1) Shelburne Street, from its point of beginning southerly to its intersection with Home Avenue;
- (2) South Union Street, from its intersection with Howard Street southerly to its terminus at Shelburne Street;
- (3) St. Paul Street, from its intersection with Howard Street southerly to its terminus at Shelburne Street;
- (4) Colchester Avenue, from its intersection with East Avenue northeasterly to its intersection with Barrett Street; and
- (5) North Avenue, from its intersection with Convent Square northerly to its intersection with Plattsburg Avenue.

(d) RCO, WRL, WFC-N, C, GC, and E zoning districts.

Sec. 3.2.4 Historic Buildings District. The HB district is intended to identify those buildings, structures and areas that are of particular historic significance and to ensure that the review process incorporates adequate criteria designed to protect this legacy for future generations. The HB district is delineated in Article 8.

Sec. 3.2.5 Public Trust District. The PT district is intended to recognize the special legislative characteristics pertaining to the so-called “filled lands” along the Burlington downtown waterfront which are subject to the public trust doctrine. Permissible uses within this overlay district are authorized by the Vermont State Legislature. The PT district is described in Article 9.

Sec. 3.2.6 Intervale Enterprise/Agricultural District. The IEA overlay district is intended to provide for orderly expansion of existing uses as well as agricultural-related uses in portions of the intervale. This area is identified on Map 3-5 f.

Sec. 3.2.7 Champlain College Core Campus Overlay (CCO) (Zoning amendment 94-01, effective 10/19/94). The Champlain College Core Campus overlay district is intended to provide a more urban configuration of the institution's core campus in order to accommodate future growth without further intrusion into surrounding residential neighborhoods.

- (a) The CCO boundaries shall be as delineated on Map 3-5B, Champlain College Core Campus Overlay.
- (b) Lot coverage within the CCO shall not exceed 60% inclusive of bonus provisions.
- (c) All exterior changes, additions to existing structures and all new structures shall require approval of a zoning permit and shall be subject to the provisions of Article 6, Design Review.
- (d) Setbacks:

- (1) Setback requirements as stipulated in Article 5 shall be applicable only to the perimeter of any contiguous ownership of Champlain College within the same block and not separated by a public or private street.
- (2) The front yard setback defined by the existing building line as of January 1, 1994 shall be maintained along the South Willard Street frontage south of Maple Street.
- (e) Residential density shall be at a maximum of 24 units per acre within the CCO inclusive of inclusionary units.
- (f) No new exterior unstructured surface parking lots shall be permitted in the CCO except for exchanging or consolidating with existing unstructured surface parking lots. Such exchanges or consolidations may occur only upon approval of a zoning permit by the Development Review Board.

Sec. 3.2.8 Institutional Core Overlay (ICO) (Zoning amendment #95-01A and B effective 10/13/99¹ and 1/12/00², respectively). The Institutional Core Overlay district is intended to provide reasonable future growth for institutions within their existing core campuses without further intrusion into surrounding residential neighborhoods. This overlay district shall, in no manner whatsoever, affect the use requirements in the underlying UC district.

- (a) The ICO district boundaries shall be as delineated on Map 3-5C and 3-5E, Institutional Core Overlay.
- (b) Lot Coverage:
 - (1) Lot coverage within the ICO district shall not exceed 60% except for the bonus provided in Paragraph (4) below.
 - (2) Maximum lot coverage shall be applied to the aggregated of all lots owned by an institution and located within the ICO district.
 - (3) If a parcel of land, within the area bounded by the centerline of East Avenue, Main Street, South Prospect Street, and Colchester Avenue, respectively, is contiguous to and under the same ownership as land designated ICO, said parcel may be developed under the provisions of the ICO district.
 - (4) Transitional buffer:
 - (A) The Transitional Buffer is defined as all land owned by an institution as measured from the centerlines of Colchester Avenue, East Avenue,

¹ Page updated 10/13/99

² Page updated 12/17/99

Main Street, and South Prospect Street frontages only and extending 150 feet into the ICO district.

- (B) If the lot coverage within the Transitional Buffer is less than 40%, the maximum lot coverage for the entire tract of land owned by an institution within the ICO lot District may be increased by one percent for each one percent that the Transitional Buffer coverage is less than 40%, up to a maximum of 65%.
- (c) All exterior changes, additions to existing structures, and all new structures within the ICO District shall require a zoning permit and shall be subject to the provisions of Article 6, Design Review.
- (d) The minimum side and rear yard setbacks shall not be applicable within the ICO District south of Colchester Avenue.
- (e) In the ICO District, the restrictions on residential density set forth in Article 5, Part 2, Density Requirements, shall not apply to dormitories/rooming houses, as defined in Chapter 18 of the Burlington Code of Ordinances. The restrictions on the nonresidential density equivalent set forth in Article 5, Part 2, Density Requirements, Section 5.2.4 shall not apply in the ICO District.
- (f) No new outdoor surface parking spaces shall be permitted in the ICO District unless the number of the new outdoor surface parking spaces is offset by the corresponding removal of outdoor surface parking spaces in the ICO district existing as of January 1, 1999 and the Development Review Board has approved such offset in issuing a certificate of appropriateness for the new parking spaces under Article 6, Design Review and 7 Site Plan Review.
- (g) Unless replaced on site, no housing unit in a residential structure located within the Transitional Buffer shall be demolished or converted to a nonresidential use, except for housing units which are exempt from the provisions of Article 15, Housing Preservation and Replacement/Demolition and Conversion.
- (h) Height in the ICO District shall be measured under the height related provisions of Article 5. For the purposes of height calculations, parcels shall be as depicted on ICO Map 3-5C.
 - (1) Additions and new construction may be built to a height that does not exceed the greater of thirty-five feet (35') or, subject to design review, the height of existing structures located within the ICO district.

- (2) For the purposes of height calculations, parcels shall be as depicted on ICO Maps 3-5C and 3-5E.
- (3) Building height shall be considered in the context of other buildings in the vicinity as required under Sec. 6.1.10 (a) Relate development to its environment.
- (4) In measuring height under Sec. 3.2.8 (h), the general provisions regarding height contained in Article 5 shall apply.
- (5) Except for ornamental and symbolic architectural features as per Sec. 5.3.13 (d), the height of existing structures located in the UVM ICO parcel (Map 3-5E), for the purpose of applying the exceptions to height limits contained in Sec. 5.3.13, shall be the lesser of:
 1. The actual height of the existing structure measured from finished grade to roof in accordance with the rules set out in Sec. 5.3.19; or
 2. The elevation of the plane running parallel to sea level and defined by the roof of the highest structure on the parcel.

Sec. 3.2.9 **Trinity Campus Overlay (TCO)** – Zoning Amendment ZA 02-01; Trinity Campus Overlay district is intended to provide reasonable future use of the Trinity College campus without further intrusion into surrounding residential neighborhoods. This overlay district shall, in no manner whatsoever, affect the dimensional requirements in the underlying UC district.

- (a) The TCO district boundaries shall be as delineated on Map 3-5G.
- (b) Lot Coverage;
 - (1) Lot coverage within the TCO district shall not exceed 40% except as may be allowed under the inclusionary housing provision of Article 14, Inclusionary Housing.
 - (2) Maximum lot coverage shall be applied to the aggregate of all lots owned by a single entity and located within the TCO district.
 - (3) No new outdoor surface parking spaces shall be permitted in the TCO district unless the number

of the new outdoor surface parking spaces is offset by the corresponding removal of outdoor surface parking spaces in the TCO district existing as of January 1, 2002 and the Development Review Board has approved such offset in issuing a certificate of appropriateness for the new parking spaces under Article 6, Design Review and 7, Site Plan Review.

(c) Setbacks;

- (1) Development in the TCO shall be subject to the setback requirements as specified under the provisions of Article 5 for development within the University Campus zoning district.
- (2) Minimum side and rear yard setbacks shall be applicable between parcels under the same ownership within the TCO district, but shall apply along the perimeter of the district.
- (3) Colchester Avenue Buffer. Within the TCO no development of new surface parking or new structures, except for ancillary structures no larger than 200 square feet, shall be permitted within a setback of 115 feet from the front property line on Colchester Avenue.

(d) Height: Additions and new construction may be built to a height that does not exceed the greater of thirty-five feet (35') or the height of existing structures located on the same parcel within the TCO district, but in no instances shall any building exceed fifty-five feet (55') in height as measured from finished grade.

(e) Density:

- (1) In the TCO district, the restrictions on residential density set forth in Article 5, Part 2, Density Requirements, and in Article 14 Inclusionary housing shall apply to all development, including changes in use.
- (2) Unless replaced on site no housing unit in a residential structure located within the TCO shall be demolished or converted to a nonresidential use, except for housing units that are exempt from the provisions of Article 15, Housing

Preservation and Replacement/Demolition and Conversion.

(f) Uses:

(1) No permitted or conditional use in the TCO District may include drive-through facilities, gas pumps or canopies.

(2) Permitted Uses. Within the TCO the following uses are permitted.

a. **Residential:**

Single family, duplex and multi-unit projects.
Boarding house affiliated with an institutional use or social service agency.
Convalescent center or nursing home/assisted living.

b. **Medical/General offices*:**

Medical offices
General offices
Medical and dental offices/services
Medical and other records storage

c. **Education*:**

Educational Institutions
Dormitories/Residence Halls
Wellness Education facility
Preschool
Charitable/Religious Institutions

d. **Neighborhood and community service*:**

Day care centers, small and large
Place of Worship
Community center/house
Bed and Breakfast/Historic Inn
Health club/fitness center
Dance studio
Youth Hostel
Health Care Hospitality
Parks

*All non-residential uses are Permitted Uses within buildings existing as of January 1, 2002; and are Conditional Uses if located within a new building to be constructed after January 1, 2002.

- (3) Conditional Uses. Within the TCO the following uses are conditionally permitted under the provisions of Article 17, Conditional Uses. Specific limitations on the size of certain uses are as stated below:

Ancillary/Retail/Neighborhood Uses Allowed Only On the First Floor and up to a maximum of 3500 square feet of gross floor area per use:

General Retail

Food store/Convenience store excluding the sale of gasoline

Restaurant/bakery/café

Retail bank/ATM's

Pharmacy

Dry cleaner drop off

Scientific and medical research labs

Research and development facilities

Technical and medical equipment development and/or services

- (g) Parking. Parking for all uses and structures shall be in accordance with the provisions of Article 10, Parking, and Sec. 3.2.9(b)(3).
- (h) Review Requirements. Within the TCO the following review criteria shall be applicable.
- (1) Any new construction or any change in use of 15,000 square feet or more (including any cumulative change of use or new construction of 15,000 square feet or more within a twelve month period) shall be subject to the conditional use and major impact criteria in Articles 17, Approvals, Variances and Uses, and 13, Major Impact, respectively.
- (2) Design and site plan review under the provisions of Articles 6, Design Review and 7, Site Plan, respectively, are required for any new construction, exterior alteration, or site development within the TCO.

PART 3: ZONING MAP

- Sec. 3.3.1 Title.** There shall be a map known and designated as the official zoning map, which shall show the boundaries of all zoning districts within the city. The map shall be drawn on acetate or other durable material from which prints can be made, shall be dated, and shall be kept in the department of planning and zoning.
- Sec. 3.3.2 Incorporation by Reference.** The official zoning map dated December 13, 1993 is adopted and incorporated herein by reference.
- Sec. 3.3.3 Amendments.** Amendments to this map shall be made pursuant to 24 V.S.A. Sec. 4404, as amended and shall be automatically incorporated herein upon adoption.
- Sec. 3.3.4 Loss or Damage.** Should the Official Zoning Map be lost, destroyed or damaged, the administrative officer may have a new map drawn on acetate or other durable material from which prints can be made. Computer-generated zoning maps, or copies thereof showing identical data, may be used as substitutes for prints. No further legislative body authorization or action is required so long as no district boundaries are changed in this process.
- Sec. 3.3.5 Revisions.** The administrative officer shall update the official zoning map and any data bases used for computer-generated zoning maps as soon as possible after amendments to it are adopted by the legislative body. Upon entering any such amendment, the administrative officer shall change the date of the map to indicate its latest revision. New prints or copies of the map may then be issued.
- Sec. 3.3.6 Authority for Revisions.** Only the administrative officer or his or her designee shall be authorized to alter or modify the official zoning map in accordance with actions of the legislative body.
- Sec. 3.3.7 Reference Copies.** The department of planning and zoning shall keep copies of superseded prints of the zoning map for historical reference.
- Sec. 3.3.8 Interpretation of District Boundaries.** Where uncertainty exists as to the boundaries of any district shown on the official zoning map, the following rules shall apply:
- (a) Where district boundaries appear to approximately follow the center line of highways, roads, alleys, railroads, streams, other bodies of water, civil division lines, land lot lines, property lines or contour lines, such lines or center lines shall

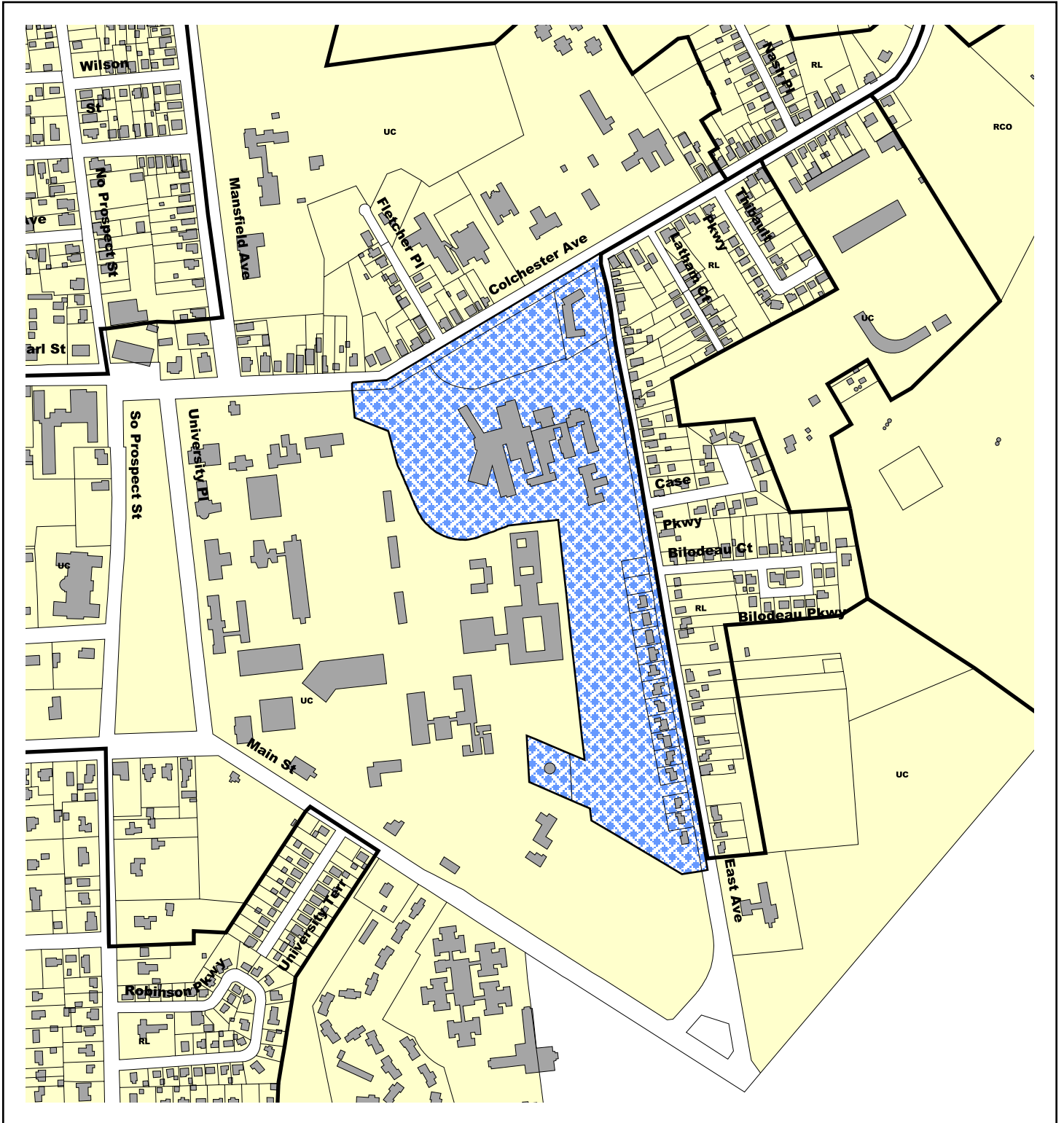
- be construed to be such boundaries as they existed at the time of passage of this ordinance;
- (b) Where district boundaries are indicated as being measured from or being parallel to the center line of highways, roads, alleys, railroads, civil division lines, land lot lines, or property lines, such boundaries shall be construed as being measured from or being parallel thereto and at a distance therefrom as indicated or as determined by the scale shown on the zoning map;
 - (c) Where a district boundary line divides a parcel in single ownership as of April 26, 1973 the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extension shall not include any part of such lot more than 35 feet beyond the district boundary line. The district categories, from recreation and conservation to enterprise districts, are listed from the most to the least restrictive;
 - (d) Where a district boundary line divides a parcel or contiguous parcels in a single ownership as of July 1, 1993 where at least fifty (50) per cent of the land area of that parcel exclusive of any expansion of the boundary line as per Sec. 3.3.8 (c), is within a less restrictive zone, the provisions of that less restrictive zone may be applied to the entire parcel or to all parcels under that single ownership; and
 - (e) If further uncertainty exists, the administrative officer shall make a determination as to the location of the boundaries based on the graphic scale of the zoning map.

Insert Zoning Map 3-5A

Insert Map 3-5B (Champlain College Core Campus Overlay, CCO)

Insert Map 3-5C (FAHC Institutional Core Overlay, ICO)

Institutional Core Overlay - Map 3-5C



SEP 1999

Zoning District Boundary
 ICO - FAHC



400 0 400 800 Feet

Insert Map 3-5E (UVM Institutional Core Overlay, ICO)

Insert Map 3-5F (Intervale Enterprise Agricultural Overlay District

Insert Map 3-5G Trinity Campus Overlay

PART 4: OFFICIAL MAP

Sec. 3.4.1 Waterfront Core Official Map Established. A map entitled “The Official Map of the Waterfront Core” is established pursuant to Title 24 V.S.A. Section 4422 through 4425, and is incorporated herein by reference. The proposed streets, public ways, public parks and other public lands and visual corridors contained therein are more particularly described as follows:

- (a) A pedestrian easement thirty (30) feet in width along the center line of Main Street extended to Lake Champlain west of the Union Station building;
- (b) A waterfront pedestrian easement fifty (50) feet in width abutting the ordinary high water mark of Lake Chaplain from Maple Street extended to College Street;
- (c) A waterfront pedestrian easement one hundred (100) feet in width abutting the ordinary high water mark of Lake Champlain from College Street extended to the north property line of the city-owned lands designated as “urban reserve” and formerly owned by the Central Vermont Railway;
- (d) Visual corridors and/or pedestrian ways sixty (60) feet in width along the center lines of Bank, Cherry, Pearl and Sherman streets extended west to Lake Champlain and visual corridors above the fourth floor along Main Street and College Street;
- (e) The following existing streets remain: Maple and King streets and as extended to Lake chaplain; Main street; College Street and as extended to Lake Champlain; Lake Street from Main Street to College Street; Depot Street; and Battery Street;
- (f) Port Street created: Port Street is a lane forty-four (44) feet in width, located adjacent to and west of the old Rutland railway right-of-way and owned by the State of Vermont running between the King Street Dock and College Street; and
- (g) Lake Street (north) modified: The portion of Lake Street is a street seventy (70) feet in width, the center line of which commences on the north line of College Street thence running northerly following the center line of existing Lake Street approximately fifteen hundred (1500) feet to a point; thence deflecting to the left at an angle approximately one hundred and six (106) feet to a point; thence deflecting to an angle to the right forty-nine (49) degrees and heading in a northerly direction or to a point intersecting the northerly property line of the Moran Generating Station extended east.

Sec. 3.4.2 Permit Denial Regarding Official Map Parcels. If a permit for any structure within the lines of any proposed street, drainage way, park, school, or other public facility shown on an official map is

denied, the legislative body shall have one hundred and twenty (120) days from the date of the denial of the permit to institute proceedings to acquire such land or interest therein, and if no such proceedings are started within that time, the administrative officer shall issue the permit if the application otherwise conforms to all the applicable bylaws.

ARTICLE 4: ZONING PERMITS

PART 1. GENERAL PROVISIONS

Sec. 4.1.1 Intent. It is the intent of these regulations to set forth the provisions for the processing of zoning permits for all development within Burlington.

Sec. 4.1.2 Authority. These regulations are enacted under the provisions of 24 V.S.A. Section 4443.

Sec. 4.1.3 Zoning Permit Required. No land development may be commenced within Burlington without a zoning permit therefor issued by the administrative officer except as per Sec. 4.1.14 (Zoning amendment 98-02 effective 10/28/98).

(a) Exterior Work

A zoning permit shall be required for any exterior work or modifications involving one or more of the following:

- ❖ Additions to existing buildings, garages, accessory buildings
- ❖ Alterations
- ❖ Re-siding or window replacement that alters trim details or otherwise changes the exterior appearance
- ❖ Change of use or expansion of use
- ❖ Demolition
- ❖ Excavation or fill related to site improvements
- ❖ Fences, retaining walls
- ❖ Land development
- ❖ Exterior lighting
- ❖ New buildings, garages, sheds, and accessory buildings
- ❖ Parking areas and walkways
- ❖ Patios and decks
- ❖ Satellite dish antennae
- ❖ Signs
- ❖ Site improvements
- ❖ Swimming pools
- ❖ Subdivisions

(b) Interior work

A zoning permit shall be required for any interior work or modification involving one or more of the following:

- ❖ Addition, expansion, or elimination/reduction in dwelling unit size
- ❖ Installation of additional kitchen
- ❖ Change in use
- ❖ Home occupations
- ❖ Increase in living space (e.g. attic, basement, garage, and winterizing porch)

- Sec. 4.1.4 Conformance with Regulations.** No zoning permit may be issued by the administrative officer except in conformance with this ordinance.
- Sec. 4.1.5 Zoning Certificate of Occupancy.** It shall be unlawful to use or occupy (or allow the use or occupancy) of any land or structure, or part thereof which has been created, changed, converted, or wholly or partly altered or enlarged in its use or structure after the effective date of this ordinance until a zoning certificate of occupancy has been issued therefore by the administrative officer. The zoning certificate of occupancy shall state that the proposed use of the structure or land conforms to the requirements of this ordinance. A building certificate of occupancy issued by the Division of Inspection Services shall not constitute a zoning certificate of occupancy unless so specifically authorized in writing by the administrative officer.
- Sec. 4.1.6 15-Day Appeal Period.** No zoning permit issued under this ordinance shall take effect until the fifteen (15) day appeal period as directed by state statute has passed, or in the event that a notice of appeal is properly filed, such permit shall not take effect until the adjudication of said appeal.
- Sec. 4.1.7 2-Year Time Limit on Zoning Permits.** A zoning permit shall become invalid unless the work or action authorized under it shall commence within two (2) years after the date of issuance. Completion of all work or action authorized thereunder shall occur within three (3) years of date of issuance unless an extension of time is approved in writing in advance by the administrative officer.
- Sec. 4.1.8 1-Year Time Limit: Conditional Uses and Variances.** A zoning permit which is issued in connection with a conditional use or variance approved by the development review board shall become invalid unless the work or action authorized under it shall commence within one year after the date of issuance. Completion of all work or action authorized thereunder shall occur within two (2) years of the date of issuance unless an extension of time not to exceed one (1) year is approved in advance after public hearing by the development review board.
- Sec. 4.1.9 Exceptions to Time Limits.** Except for projects subject to Act 250 jurisdiction or which have been appealed to Vermont Environmental Court, there shall be no exceptions to the time limits specified in Section 4.1.7 and 4.1.8 unless longer or shorter time limits are specifically imposed as permit conditions of approval by the development review board at the time of approval. For projects subject to Act 250, the date of issuance shall be deemed to be the date of issuance of the land use permit for the subject project by the District Environmental Commission. For projects under appeal, the date of issuance shall be deemed to be the date of decision adjudicating such appeal.

- Sec. 4.1.10 Commencement of Work.** Commencement of work as required under Sections 4.1.7 and 4.1.8 shall be defined as the construction or reconstruction or clearing, excavating, grading, filling, draining or conducting of physical operations of any kind in preparation for or in pursuance of construction or reconstruction, or the moving of a structure upon a lot.
- Sec. 4.1.11 Appeal Period Noted on Permit.** Each zoning permit issued under this article shall contain a statement of the period of time within which an appeal may be taken.
- Sec. 4.1.12 Post of Permit.** Within three (3) days following issuance of a zoning permit, the administrative officer shall:
- (a) Deliver a copy of the permit to the City Assessor, and
 - (b) Post a copy of the permit in City Hall until the expiration of fifteen (15) days from the date of issuance of the permit.
- Sec. 4.1.13 Effect of Pending Ordinance.** If a public notice with respect to an amendment to this ordinance is duly warned, the administrative officer shall not issue any zoning permit if the permit is with regard to or would be affected by such amendment except with written consent of the legislative body. Such prohibition with respect to issuance of a permit shall commence upon the date of public notice of the amendment by the planning commission and end upon the effective date of the adoption or rejection of said amendment by the legislative body. Written consent of the legislative body shall be given after a public hearing on the permit in question has been duly warned under the provision of Article 18.
- Sec. 4.1.14 Exceptions for Requiring a Zoning Permit** (Zoning amendment 98-02 effective 10/28/98)
- (a) Exterior changes to a single family residence or duplex structure located in a non-design control RL zoning district. In a non-design control RL zoning district a zoning permit is not required for exterior modifications to an existing structure, except for any of the following changes:
 - 1. Increased lot coverage;
 - 2. Changes in setbacks or building footprints; and
 - 3. Addition of a second story to an existing single story structure.

PART 2: PERMIT TYPES AND SUBMISSION REQUIREMENTS

- Sec. 4.2.1 Permit Types.** Different types of zoning permits are issued with respect to the implementation of this ordinance, depending on the complexity and location of the zoning request. The five (5) different zoning permit types are:

- ❖ Basic
- ❖ Level I
- ❖ Level II
- ❖ Level III
- ❖ Conditional Use

Sec. 4.2.2 Application Forms. All applications for zoning permits shall be submitted on forms provided by the Department of Planning and Zoning.

Sec. 4.2.3 Basic Zoning Permits. The Basic Zoning Permit is issued for those zoning requests that require only administrative review with regard to use, parking, and dimensional requirements pertaining to density, lot coverage, height and setback. Submission requirements for obtaining a Basic Zoning Permit include the following:

- (a) Completed and signed application form;
- (b) Site plan of the subject property indicating dimensions, existing structure(s), as well as the proposed improvement;
- (c) Photographs of subject property; and
- (d) Payment of applicable fee(s).

Sec. 4.2.4 Level I Permit. A Level I Permit is issued for those zoning requests pertaining to properties located in one of the city's design review districts or for those uses which require site plan review. A Level I Permit requires the approval of a Certificate of Appropriateness by the development review board. Level I Permits are issued for projects with an estimated construction cost of less than fifteen thousand dollars (\$15,000). Submission requirements for a Level I Permit include the following:

- (a) Completed and signed application form;
- (b) Site plan, drawn to scale, of the subject property indicating existing structures, walkways, driveways, and other significant features;
- (c) Site plan drawn to scale of 1" = 10 ft. or 20 ft., which indicates proposed changes with all dimensions; distances from the front, side and rear property lines to each proposed new structure and/or site improvement shall be shown on the plan;
- (d) Landscaping plan, indicating existing plantings (trees, shrubs, etc.) and proposed plantings. Size, species and spacing shall be clearly indicated;
- (e) Building elevations, drawings of each exterior façade shall indicate architectural details and construction materials to be used;
- (f) Photographs of the structure and/or site;
- (g) Utility Plan, existing and proposed utilities plan showing the location of utilities in the street, planned hookup to those utilities and the location of the storm collection and drainage system;
- (h) Description of special features, including proposed location and design of lighting, dumpsters, and other exterior equipment; and

- (i) Payment of applicable fee(s).

Sec. 4.2.5 Level II Permit. A Level II Permit is similar to a Level I Permit and requires approval of a Certificate of Appropriateness by the development review board. It also involves review of the proposal by the design advisory board, which provides an advisory report to the development review board. Level II permits are issued for projects with an estimated construction cost greater than fifteen thousand dollars (\$15,000). Submission requirements for a Level II Permit are the same as for a Level I Permit with the exception that the development review board may require the submission of additional materials as indicated in Sec. 4.2.8 when deemed appropriate.

Sec. 4.2.6 Level III Permit. A Level III Permit is required for all subdivisions and planned residential developments. One or more public hearings are required. Submission requirements include the materials required for a Level II Permit submission as well as additional plat requirements as specified in Sections 28-5 and 28-6 of Chapter 28 (Burlington Subdivision Regulations).

Sec. 4.2.7 Conditional Use Permit. Zoning requests subject to conditional use approval (e.g., home occupations) will require review by the development review board in accordance with the provisions of Article 17. Such review shall be in addition to the review by the administrative officer, design advisory board, and/or any other applicable local, state or federal review. The Findings of Fact issued by the development review board on a specific zoning request shall constitute the Conditional Use Permit for that request.

Sec. 4.2.8 Modification of Submission Requirements. The administrative officer may allow the modification of the submission requirements listed in Sections 4.2.3 through 4.2.6, including combining existing and proposed information on the same site plan, provided that any modification enables adequate review of the zoning request. Either the development review board or the administrative officer may require the submission of additional information when deemed necessary to make a decision on the zoning request in a timely manner. Such additional information may include but not limited to the following:

- (a) A massing model, to scale, indicating the proposed structure(s) and adjoining buildings;
- (b) Site sections;
- (c) Floor plans (to assist in determining fees and parking requirements);
- (d) Shadow diagrams;
- (e) Plans for street furniture and other amenities;
- (f) Phasing schedule;
- (g) Traffic impact analysis; and/or

- (h) Benefit/cost analysis for projects in the CBD in excess of 15,000-sq. ft. describing the impacts on municipal facilities and services, and on energy generation.

Sec. 4.2.9 Completeness of Submission. The time limits as specified in this ordinance shall not commence until all submission requirements are met. Modifications to a pending application by an applicant shall extend any applicable time limits, commencing upon the modification date.

Sec. 4.2.10 Administrative Review. In addition to administrative review of Basic Zoning Permits, the development review board may authorize the administrative review and approval of Levels I and II zoning permits.

Sec. 4.2.11 Posting of Property. Any applicant requesting a zoning permit, a certificate of appropriateness, or a conditional use or variance shall display on the subject premises a notice sign provided by the department of planning and zoning. The notice, which shall be clearly visible from a public way, shall be displayed at the time of application and shall not be removed until after the appeals expiration date.

Sec. 4.2.12 Mailing of Notice. Prior to action by the development review board on any certificate of appropriateness exceeding fifteen thousand dollars (\$15,000) conditional use or variance, a copy of the applicable meeting agenda or public hearing notice shall be sent by first class mail to all owners of land abutting the proposed project. For condominium ownership, a notice to the condominium association shall satisfy the notice requirement.

Sec. 4.2.13 Defect in Notice. An error or defect in the notice provisions specified in Sections 4.2.11 and 4.2.12 shall not invalidate an action of the development review board unless such error was the result of a deliberate or intentional act.

PART 3: TEMPORARY STRUCTURES

Sec. 4.3.1 Temporary Structures. (See Amendments Index A-1; Zoning Amendment 95-02, Effective 2/7/96)

Review required for temporary structures shall be as per the following table:

No Review or Permit Required	Site Plan Review: Zoning Permit & COA	Review as per Underlying Zoning
Up to 10 consecutive days or 30 days within any 12-month period at the same location.	From 11-31 consecutive days or 31-60 days within any 12 month period at the same location.	Over 31 consecutive days or more within any 12 month period at the same location.
Tents used for recreational camping purposes.		

ARTICLE 5. USE, DENSITY & DIMENSIONAL REQUIREMENTS

PART 1: USE REGULATIONS

- Sec. 5.1.1 Intent.** It is the intent of these regulations to ensure that adequate provision is made in the city's zoning regulations for a variety of uses that will promote the public health, safety, convenience and welfare by:
- (a) Encouraging the most appropriate use of land;
 - (b) Conserving the value of land and buildings;
 - (c) Lessening congestion of traffic; and
 - (d) Targeting growth to areas most suitable for development without creating an undue burden on the city's infrastructure.
- Sec. 5.1.2 Authority.** These regulations are enacted under the provisions of 24 V.S.A. Sec. 4405.
- Sec. 5.1.3 General Provisions.** Except as otherwise provided by law or by this ordinance, no land or structure in any district shall be used or occupied except for the purposes specified in Table 5-A for the district in which such land or structure is located.
- Sec. 5.1.4 Permitted Uses.** A use listed in Table 5-A is permitted as of right in any district under which it is denoted by the letter "Y", except for projects that are subject to articles pertaining to Housing Replacement, Inclusionary Zoning, Major Impact and Subdivision Regulations, subject to such requirements as may be further specified in this ordinance.
- Sec. 5.1.5 Conditional Uses.** A use listed in Table 5-A may be authorized in any district under which it is denoted by the letter "D" if the development review board authorizes conditional use approval therefore as provided in Article 17 subject to such requirements as may be further established by this ordinance and such further restrictions as the development review board may establish.
- Sec. 5.1.6 Uses Not Permitted.** In Table 5-A any use in any district not denoted by the letter "Y" or the letter "D" or any use not listed shall not be allowed unless the administrative officer shall determine that the use is substantially equivalent in use, nature and impact to a listed permitted or conditional use.
- Sec. 5.1.7 Preexisting Uses.** Any preexisting and/or nonconforming use lawfully existing as of the effective date of this ordinance shall be deemed an authorized use subject to maintaining the character and extent of operations and structures existing on that date.
- Sec. 5.1.8 Change to a Preexisting Use.** Any modifications to a preexisting and/or nonconforming use or extent of use, including increased hours of operation, a change of use, expansions or alterations of structures or dimensions to a preexisting use, which do not otherwise conform to all provisions of this ordinance shall require a zoning permit and/or conditional use approval by the development review board. Any

change to another use shall require, along with conditional use approval, a finding by the development review board that the new use is less harmful or detrimental to the neighborhood than the existing use (see Sec. 20.1.6).

- Sec. 5.1.9 Accessory Uses/Residential.** Customary accessory uses to a principal residential use listed in Table 5-A, including such uses as private garages, storage sheds, tennis courts, swimming pools, cabanas for swimming pools and detached fireplaces, but not including outdoor overnight storage of commercial vehicles or the outdoor storage of more than one unregistered vehicle, shall be permitted. Private garages shall be limited to as many stalls as there are bedrooms in the dwelling to which it is accessory, provided that if the ground floor area of any accessory use, including private garage, exceeds one-half (1/2) the ground floor area of the main building, site plan approval shall be obtained as provided in Article 7.
- Sec. 5.1.10 Accessory Uses/Nonresidential.** An accessory use or structure customarily subordinate to any of the nonresidential principal uses listed in Table 5-A may be permitted, provided, however, that any structure with a gross floor area in excess of five hundred (500) square feet or a building containing living space shall not be considered an accessory building.
- Sec. 5.1.11 Accessory Uses/Limitation.** Except for home occupations as regulated by Article 12, no accessory use or uses within a structure or structures shall occupy more than a combined total of more than twenty-five (25) per cent of the total gross floor area of the principal structure and/or accessory structures.
- Sec. 5.1.12 Temporary Uses.** The administrative officer may issue a zoning permit for a non-complying structure or nonconforming use incidental and accessory to a building development and where reasonably required for such development. Such permits for temporary uses or structures shall not be issued for a period in excess of ninety (90) days in any consecutive twelve (12) month period unless such uses or structures conform to the applicable provisions of this ordinance.

TABLE 5-A

PERMITTED RESIDENTIAL USES BY ZONING DISTRICT

Use	RCO, WRC	RL, WRL	RM, WRM	RH	NC	C	GC	UC	WFC N	WFC W	WFC E ₁₅	WFC T	CBD T	CBD	E	WFE	IEA
RESIDENTIAL USES																	
Apartments, Attached Dwellings	N	N ¹	Y	Y	Y	Y	Y	D	Y	N	Y	Y	Y	Y	N	N	
Duplex	N	D ¹⁴	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	N	N	
PRD: Less than 2 Acres	N	N ²	Y	Y	Y	Y	Y	D	Y	N	Y	Y	Y	Y	N	N	
PRD: More than 2 Acres	N	Y	Y	Y	Y	Y	Y	D	Y	N	Y	Y	Y	Y	N	N	
Single Detached Dwelling	N	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	N	N	
RESIDENTIAL SPECIAL USES																	
Bed and Breakfast ³	N	N	D	D	Y	Y	Y	D	Y	N	Y	D	D	Y	N	N	
Boarding House 4 persons or less	N	Y ⁴	Y	Y	Y	Y	Y	D	Y	N	Y	Y	Y	Y	N	N	
Boarding House 5 persons or more	N	D ⁴	D	D	D	Y	Y	D	Y	N	Y	D	D	Y	N	N	
Community House	N	D	D	D	Y	Y	Y	D	Y	N	Y	D	D	Y	N	N	
Convalescent Home	N	D	Y	Y	Y	Y	Y	D	Y	N	Y	Y	Y	Y	N	N	
Daycare Home ⁵ (6 children or less)	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y ²³	Y ²³	
Group Home	N	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	N	N	

TABLE 5-A

PERMITTED NON-RESIDENTIAL USES BY ZONING DISTRICT

Use	RCO, WRC	RL, WRL	RM, WRM	RH	NC	C	GC	UC	WFC N	WFC W	WFC E ¹⁵	WFC T	CBD T	CBD	E	WFE	IEA
Agricultural Use	Y	Y	Y	Y	N	N	N	Y	N	N	N	N	N	N	Y	Y	
Amusement Arcade	N	N	N	N	D	Y	Y	N	N	Y	Y	D	D	Y	N	N	
Animal Boarding/Animal Hospitals	N	N	N	N	D	N	Y	N	N	N	N	N	N	N	N	N	
Appliance Sales/Service	N	N	N	N	D	Y	Y	N	N	N	Y ⁶	D	D	Y	N	N	
Art Gallery	N	N	N	N	Y	Y	Y	N	N	Y	Y	D	D	Y	N	N	
Auction Houses	N	N	N	N	N	N	N	N	N	N	N	N	D	Y	N	N	
Auto Body Shop	N	N	N	N	N	Y	Y	N	N	N	N	N	N	N	N	N	
Auto/Junk/Salvage Yard	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y ²¹	N	
Auto Parts Sales	N	N	N	N	D	Y	Y	N	N	N	Y ⁶	D	D	Y	Y	N	
Auto Sales	N	N	N	N	N	Y	Y	N	N	N	N	N	N	N	N	N	
Auto Storage Yard	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y ²¹	N	
Bakery	N	N	N	N	Y	Y	Y	N	N	Y	Y	D	D	Y	Y	D	

TABLE 5-A

PERMITTED NON-RESIDENTIAL USES BY ZONING DISTRICT

Use	RCO, WRC	RL, WRL	RM, WRM	RH	NC	C	GC	UC	WFC N	WFC W	WFC E ¹⁵	WFC T	CBD T	CBD	E	WFE	IEA
Bank, Credit Union	N	N	N	N	Y	Y	Y	N	N	N	Y	D	D	Y	N	N	
Bar, Tavern	N	N	N	N	N	Y	N	N	N	Y	Y	D	N	Y	N	N	
Beauty/Barber Shop	N	N	N	N	Y	Y	N	N	N	N	Y	D	D	Y	N	N	
Bicycle Sales/Repair	N	N	N	N	Y	Y	Y	N	N	N	Y	D	D	Y	N	N	
Billiard Parlor	N	N	N	N	N	Y	N	N	N	Y	Y	D	D	Y	N	N	
Boat Sales/Service	N	N	N	N	N	Y	Y	N	Y	Y	Y	N	D	Y	Y	D	
Bowling Alley	N	N	N	N	N	Y	Y	N	N	N	N	N	N	N	N	N	
Building Material Sales	N	N	N	N	N	N	Y ⁷	N	N	N	N	N	N	N	Y	N	
Camp Ground	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
Car Wash	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	
Communications Studio	N	N	N	N	N	Y	Y	N	N	N	N	N	N	Y	N	N	
Contractor Yard	N	N	N	N	N	N	Y ⁷	N	N	N	N	N	N	N	Y	D	

TABLE 5-A

PERMITTED NON-RESIDENTIAL USES BY ZONING DISTRICT

Use	RCO, WRC	RL, WRL	RM, WRM	RH	NC	C	GC	UC	WFC N	WFC W	WFC E¹⁵	WFC T	CBD T	CBD	E	WFE	IEA
Convenience Store	N	N	N	N	D	Y	Y	N	Y ³²	Y ³²	Y ³²	D ³²	D	Y	D ³¹	N	
Convalescent Home	N	D	Y	Y	N	N	N	N	N	N	N	Y	Y	N	N	N	
Crematory	N	N	N	N	N	Y	Y	N	N	N	N	N	N	N	N	N	
Daycare – Large ⁵ Over 20 children	N	D	D	D	Y	Y	Y	D	Y	Y	Y	D	D	Y	Y	Y	
Daycare Small ⁵ 20 children or less	N	D	D	D	Y	Y	Y	D	Y	Y	Y	D	D	Y	Y	Y	
Daycare Home ⁵ (6 children or less)	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Dental Lab	N	N	N	N	D	Y	Y	D	N	N	N	N	D	Y	Y	D	
Distribution Center	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	Y	D	
Dry Cleaning Plant	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	Y	D	
Dry Cleaning Service	N	N	N	N	Y	Y	Y	N	N	N	Y ⁶	D	D	Y	N	N	
Fabricating Establishment	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	Y	D	
Food Processing	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	Y	D	

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TABLE 5-A

PERMITTED NON-RESIDENTIAL USES BY ZONING DISTRICT

Use	RCO, WRC	RL, WRL	RM, WRM	RH	NC	C	GC	UC	WFC N	WFC W	WFC E ¹⁵	WFC T	CBD T	CBD	E	WFE	IEA
Food Store	N	N	N	N	Y ²⁹	Y	Y	N	Y	Y ⁹	Y ⁶	D	D	Y	N	N	
Funeral Home	N	Y ⁸	Y	Y	D	Y	Y	N	N	N	N	N	N	N	N	N	
Furniture Store	N	N	N	N	D	Y	Y	N	N	N	Y ⁶	D	D	Y	N	N	
Garden Supply Store	N	N	N	N	D	Y	Y	D	N	Y ⁹	Y ⁶	D	D	Y	Y	N	
Gasoline Service Station ²⁰	N	N	N	N	D	Y	Y	N	N	N	N	N	D	Y	N	N	
Hazardous Waste Disposal	N	N	N	N	N	N	N	N	N	N	N	N	N	N	D	D	
Health Club	N	N	N	N	Y	Y	D	Y	N	Y	D	D	D	Y	D	N	
Historic Inn	N	D	D	D	D	Y	Y	D	Y	N	Y	D	D	Y	N	N	
Hotel, Motel	N	N	N	N	N	Y	N	N	N	Y	Y	N	N	Y	N	N	
Laundromats	N	N	N	N	Y ²⁸	Y	Y	N	N	N	Y	D	D	Y	Y	D	
Lumber Yard	N	N	N	N	N	N	Y ⁷	N	N	N	N	N	N	N	D	D	
Machine Shop	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	Y	D	
Manufacturing	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	D	

TABLE 5-A

PERMITTED NON-RESIDENTIAL USES BY ZONING DISTRICT

Use	RCO, WRC	RL, WRL	RM, WRM	RH	NC	C	GC	UC	WFC N	WFC W	WFC E¹⁵	WFC T	CBD T	CBD	E	WFE	IEA
Marina	Y	N	N	N	N	N	N	N	Y	Y	Y	N	N	N	N	N	
Medical Lab	N	N	N	N	D	Y	Y	D	N	N	N	N	D	Y	Y	D	
Mini Warehouse/Self Storage Facility	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	D	
Motorcycle/Moped Sales/Service	N	N	N	N	N	Y ¹¹	Y ¹¹	N	N	N	N	N	N	N	N	N	
Office, General	N	N	N	N	Y	Y	Y	N	Y	N	Y ¹⁷	D	D	Y	Y	D	
Office, Medical, Dental	N	N	N	N	Y	Y	Y	D	Y	N	Y ¹⁷	D	D	Y	Y	D	
Open Air Markets	N	N	N	N	D	Y	Y	N	N	Y	Y	D	D	Y	Y	D	
Parking Garage – Private	N	N	N	D	D	Y	Y	N	Y	N	Y	N	Y	Y	Y	D	
Parking Lot – Private	N	N	N	Y	D	Y	Y	N	Y	N	Y	N	Y	Y	Y	D	
Pet Store	N	N	N	N	Y ²⁹	Y	Y	N	N	Y ⁹	Y ⁶	D	D	Y	N	N	
Photo Studio	N	N	N	N	Y ³⁰	Y	Y	N	N	Y ⁹	Y ⁶	D	D	Y	N	N	
Photography Lab	N	N	N	N	D	Y	Y	N	N	N	N	N	D	Y	Y	D	

TABLE 5-A

PERMITTED NON-RESIDENTIAL USES BY ZONING DISTRICT

Use	RCO, WRC	RL, WRL	RM, WRM	RH	NC	C	GC	UC	WFC N	WFC W	WFC E ¹⁵	WFC T	CBD T	CBD	E	WFE	IEA
Printing/Publishing	N	N	N	N	D	Y	Y	N	N	N	N	N	D	Y	Y	D	
Public Works Yard/Garage	N	D ¹⁹	D	D	D	Y	Y	D	N	D	N	N	N	N	Y	D	
Rail Line	Y	Y	Y	N	N	N	N	N	Y	Y	Y	N	N	N	Y	D	
Rail Storage Services Repair	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	D	
Recording Studio	N	N	N	N	D	Y	Y	N	N	N	N	D	D	Y	Y	N	
Recreational Pier	Y	N	N	N	N	N	N	N	Y	Y	N	N	N	N	N	N	
Repair Garage ¹¹	N	N	N	N	N	Y	Y	N	N	N	N	N	N	N	N	N	
Research Lab	N	N	N	N	N	Y	Y	N	N	N	N	N	D	Y	Y	D	
Recycling Center – Large above 2,000 sf	N	N	N	N	N	N	Y ⁷	N	N	N	N	N	D ⁷	Y ⁷	Y ²¹	D ²¹	
Recycling Center – Small 2,000 sf or less ⁷	N	N	N	N	D	Y	Y	D	Y	N	Y	D	D	Y	Y	D	
Restaurant	N	N	N	N	D	Y	Y	N	Y	Y	Y	D	D	Y	Y	D	
Retail Establishment	N	N	N	N	D	Y	Y	N	Y	Y ⁹	Y ⁶	D	D	Y	Y	D	
School, Trade, Professional	N	N	N	N	D	N	N	D	N	N	N	N	D	Y	N	N	

TABLE 5-A

PERMITTED NON-RESIDENTIAL USES BY ZONING DISTRICT

Use	RCO, WRC	RL, WRL	RM, WRM	RH	NC	C	GC	UC	WFC N	WFC W	WFC E¹⁵	WFC T	CBD T	CBD	E	WFE	IEA
Tailor Shop	N	N	N	N	Y	Y	Y	N	N	N	Y	D	D	Y	N	N	
Terminal – Taxi/Bus/Passenger	N	N	N	N	D	N	Y	D	N	Y	Y	N	N	Y	Y	D	
Theatre	N	N	N	N	N	Y	N	N	N	Y	Y	D	D	Y	N	N	
Tour Oriented – Manufacturing	N	N	N	N	N	N	D	N	N	N	D	N	N	D	Y	D	
Solid Waste Facility – Incinerator, Landfill, Transfer Station	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y	D	
Truck Terminal	N	N	N	N	N	N	Y	N	N	N	N	N	N	N	Y	D	
Vehicle Sales	N	N	N	N	N	Y	Y	N	N	N	N	N	N	N	N	N	
Warehouse Retail	N	N	N	N	N	N	N	N	N	N	N	N	N	N	Y ¹³	D ¹³	
Warehouse Storage	N	N	N	N	N	N	Y ¹²	N	N	N	N	N	N	N	Y	D	
Wholesale Distribution Facility	N	N	N	N	N	N	Y ¹²	N	N	N	N	N	N	N	Y	D	
Wholesale Sales	N	N	N	N	N	N	Y ¹²	N	N	N	N	N	N	N	Y	D	

TABLE 5-A

PERMITTED PUBLIC/INSTITUTIONAL USES BY ZONING DISTRICT

Use	RCO, WRC	RL, WRL	RM, WRM	RH	NC	C	GC	UC	WFC N	WFC W	WFC E ¹⁵	WFC T	CBD T	CBD	E	WFE	IEA
Aquarium	N	D ¹⁹	Y	Y	D	N	N	D	Y	Y	Y	Y	Y	Y	N	N	
Bicycle Path	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
College/Schools Educational Institutions	Y ¹⁸	D ¹⁹	D	D	D	D	D	D	N	N	N	N	D	Y	N	N	
❖ Administrative/ Faculty Offices	Y ¹⁸	N	N	N	D	Y	N	D	Y	N	N	N	D	Y	Y	D	
❖ Athletic Facility/Other Accessory Use	Y ¹⁸	N	N	N	D	Y	N	D	Y	N	N	N	D	Y	Y	D	
❖ Dining Facilities	Y ¹⁸	N	N	N	N	N	N	D	N	N	N	N	D	Y	N	N	
❖ Sorority/Fraternity	N ²²	N ²²	N	N	N	N	N	D	N	N	N	N	D	Y	N	N	
❖ Laboratories (University oriented, medical/dental)	Y ¹⁸	N	N	N	D	N	N	D	N	N	N	N	D	Y	Y	D	
❖ Dormitory	Y ¹⁸	N	N ²⁴	N ²⁴	N	N	N	D	N	N	N	N	D	Y	N	N	
Community Center	Y ¹⁸	D ¹⁹	Y	Y	Y	Y	Y	D	Y	Y	Y	Y	Y	Y	N	N	
Club, Membership	Y ¹⁸	D ¹⁹	Y	Y	D	N	N	D	N	N	N	Y	Y	Y	N	N	
Hospitals	N	D ¹⁹	Y	Y	D	N	N	D	N	N	N	Y	Y	Y	N	N	

TABLE 5-A

PERMITTED PUBLIC/INSTITUTIONAL USES BY ZONING DISTRICT

Use	RCO, WRC	RL, WRL	RM, WRM	RH	NC	C	GC	UC	WFC N	WFC W	WFC E₁₅	WFC T	CBD T	CBD	E	WFE	IEA
Library	Y ¹⁸	D ¹⁹	Y	Y	Y	N	N	D	N	Y	Y	Y	Y	Y	N	N	
Museum	Y ¹⁸	D ¹⁹	Y	Y	D	N	N	D	Y	Y	Y	Y	Y	Y	N	N	
Park	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
Police Station	N	D ¹⁹	Y	Y	D	N	N	N	N	Y	N	Y	Y	Y	N	N	
Post Office	N	D ¹⁹	Y	Y	D	Y ²⁶	N	N	N	Y	Y	Y	Y	Y	N	N	
Recreational Facility Government Owned and Operated	D	D ¹⁹	Y	Y	D	N	N	D	Y	Y	N	Y	Y	Y	Y	D	
Worship, Place of	D ¹⁸	D ¹⁹	Y	Y	Y	N	N	N	N	N	N	Y	Y	Y	N	N	
Codes: D = Development Review Board Y = Yes N = No																	

USE TABLE FOOTNOTES

1. One additional unit may be added to structures, which contained two or more units as of April 26, 1973, if approved in advance as a conditional use, by the development review board.
2. Two-acre minimum may be waived by development review board for conversion to residential use of an accessory structure existing as of January 1, 1987.
3. No more than 3 rooms permitted to be let in any district where bed and breakfast is a conditional use.
4. Must be owner-occupied.
5. See Definitions, Article 30.
6. Such uses not to exceed ten thousand (10,000) square feet per establishment or fifty percent (50%) of gross floor area, whichever is less.
7. Exterior storage not permitted.
8. Must be located on a major street.
9. Such uses not to exceed four thousand (4,000) square feet per establishment.
10. Permitted in Intervale Enterprise-Agricultural Overlay District only.
11. All repairs must be considered within an enclosed structure. Repair garage is permitted as an accessory use for rail and other transportation facilities within the WFE district.
12. Excludes storage of uncured hides, explosives, and oil and gas products.
13. Permitted only in buildings in existence as of January 1, 1973.
14. Duplexes may be constructed or a single unit may be converted into a duplex on lots existing as of April 26, 1973 and which meet the minimum lot size of 9,900 square feet.
15. Housing must be located above the ground or first floor and the area shall not exceed fifty percent (50%) of the gross floor area of building.
16. Conducted as a private gainful business excluding noisy accessory uses.
17. Offices not to exceed seventy five percent (75%) of gross floor area.
18. Subject to five percent (5%) coverage limitation.
19. Must be located on major or collector street; new structures or additions must be placed not less than fifty (50) feet from any property line.
20. Automobile sales not permitted as an accessory use in any district.
21. Any exterior storage must be screened from public ways and abutting properties.
22. Clarifies current interpretation that separates out fraternities and sororities as a distinct use from membership clubs.
23. Permitted in pre-existing residential structures only.
24. An existing fraternity, sorority or other institutional use may be converted to dormitory use subject to conditional use approval by the development review board.
25. All conditional uses in the WFE district are subject to the following findings by the development review board:
 - A. All operations must be conducted and all materials and products stored within the building of the plant, or concealed from public view as approved by design review.
 - B. No process shall emit noxious odor detectable beyond the lot line. Where odors are produced, the burden of successful elimination of the odors shall rest on the occupant of the premises;
 - C. No operations creating undue noise, vibration, dust or fumes which are in any way a nuisance to persons beyond the lot line;
 - D. Operations creating glare shall be so shielded that the glare cannot be seen from the lot line; and
 - E. Off-street loading areas for handling all materials and products must be provided in areas treated to prevent dust. Travel ways and parking areas shall be stabilized or paved.
26. Zoning Amendment 98-01; Post Office in Commercial Zone; effective 10/28/98.
27. In any situation on Table 5-A where more than one use category may apply, the more specific or restrictive use category shall apply, as provided for in Sec. 1.1.9.
28. Permitted hours of operation 5:30 a.m. to 11:00 p.m.
29. In NC, pet supplies and pet fish for sale only are a permitted use with no boarding of animals except for fish for sale.
30. In no on-site chemical processing is involved, use is a permitted use. If there is on-site chemical processing, use will continue to require conditional use approval by the DRB.
31. The following standards shall apply to convenience stores in the E zone in addition to the statutory conditional use criteria:
 - a) A convenience store shall not contain more than 5,000 square feet of gross floor area.
 - b) Convenience Stores that obtain a conditional use permit within the Enterprise District may include gasoline pumps provided the total square footage occupied by pumps, pump islands and vehicular space(s) at a pump filling station is the lesser of 1,850 s.f. or 50% of the gross floor area of the enclosed convenience store.

- c) If a canopy or canopies are proposed it shall be reviewed under the conditional use criteria (Article 17) and design review and site plan criteria (articles 6 & 7) to determine if such canopy is appropriate and, if so, its appropriate location, size, height and design.
 - d) No signs or fascia lighting may be placed on or within any pump canopy.
 - e) Outdoor lighting in and around Convenience Stores shall not exceed current Illuminating Engineering Society (IES) standards for lighting of exterior environments, service station or gas pump areas.
 - f) No outside storage or displays or vending machines, except for a screened dumpster, shall be allowed on the site. The term "vending machine" does not include pay telephones, air pumps, or vacuum machines.
 - g) There shall be no exterior service windows or exterior ATMs allowed.
 - h) Convenience Stores in the Enterprise District must be sited at least 2000 linear feet, measured lot line to lot line, from any other convenience store in the E district.
 - i) Convenience store buildings, but not accessory uses or structures are exempt from the 25-foot front yard setback requirement in order to encourage buildings to locate close to the street frontage in order to improve streetscape aesthetics and pedestrian access.
 - j) There shall be a least one sidewalk dedicated exclusively for pedestrians from a public way/sidewalk to the store entrance.
 - k) The nearest edge of the curb cuts shall be located as far as possible from any intersections with a minimum distance of 50 feet from an intersection as measured from the corner of and along the lot line of the site.
 - l) Approval shall be granted only if, in addition to the general conditional use standards listed in Sec. 17.15(a), the Development Review Board determines that a proliferation of convenience stores is not threatening the primary intent of the Enterprise District for industrial purposed, as stated in Section 3.1.8(a).
 - m) Convenience stores in the Enterprise District shall only be allowed on properties fronting on Pine Street.
32. No gas pumps shall be allowed in a WFC ZMI designation.

- Sec. 5.1.13 Exceptions to Use Requirements.** Uses in waterfront districts listed in Table 5-A shall be subject to the provisions of Article 9 where applicable.
- Sec. 5.1.14 Non-conforming Uses.** Nonconforming uses shall be subject to the provisions of Article 20.
- Sec. 5.1.15 Overlay Districts.** Uses permitted within certain overlay districts may differ from those specified in Table 5-A.

PART 2: DENSITY REQUIREMENTS

- Sec. 5.2.1 Maximum Allowable Density.** Except as further regulated by Sec. 5.2.6, the maximum allowable residential density shall be in accordance with Table 5-B:

Table 5-B	
Maximum Residential Density	
District	Maximum net dwelling units Per Acre
Low Density RL and WRL Single detached dwelling Duplex dwelling Planned residential development	4.4/acre ¹ 5.5/acre ² 4.4/acre ¹
Medium Density RM, WRM, UC, WFC-N C, NC, GC	20.0/acre ¹ 25.0/acre ¹
High Density RH, CBD, CBD-T, WFC-E	40.0/acre ¹
Other RCO, WRC, WFC-W, WFE or E	None
¹ Inclusive of new streets but exclusive of existing streets ² Exclusive of streets	

- Sec. 5.2.2 Residential Uses Not Permitted.** New residential uses are not permitted in RCO, WRC, WFC-W, WFE, or E districts. Residential uses are permitted as an accessory use related to agriculture.
- Sec. 5.2.3 Density Calculation.** In calculating the number of residential units permitted, fractional units of less than five-tenths (0.5) shall be rounded down to the nearest whole number and fractional units of five-tenths (0.5) or greater shall be rounded up to the nearest whole number. Any rounding of fractional units shall be limited to a single final calculation for any development.
- Sec. 5.2.4 Nonresidential Density Equivalent.** For purposes of density calculations, each one thousand five hundred (1,500) square feet of nonresidential gross floor area not contained within a dwelling unit or within hallways, stairwells and elevator shafts serving said dwelling units shall be counted as one dwelling unit.
- Sec. 5.2.5 Floor Area Ratio.** In any district where a floor area ratio (FAR) is specified, the maximum allowable floor area ratio may be substituted for the maximum allowable residential or nonresidential density.
- Sec. 5.2.6 Exceptions to Maximum Density.** The following exceptions to maximum allowable density may be approved by the development review board:
- (a) *Elderly Housing*
 - (1) Residential development in RL and WRL districts at a maximum density of twenty (20) dwelling units per acre is allowed for elderly housing provided the following conditions are met:
 - (A) No less than twenty-five (25) per cent of the units are reserved for low-moderate income households as defined by state or federal guidelines, including no less than ten (10) per cent reserved for low-income households;
 - (B) Lot coverage shall not exceed forty (40) per cent; and/or
 - (C) The proposal shall be subject to the design review provisions of Article 6.
 - (2) Residential development in the central business district (CBD) at a maximum density of eighty (80) dwelling units per acre may be permitted for elderly housing provided the following condition is met:
 - (A) No less than twenty-five per cent (25%) of the units are reserved for low-moderate income households as defined by state or federal guidelines, including no less than ten percent (10%) reserved for low-income households.
 - (b) *Adaptive Reuse*
 - (1) Residential development in RL and WRL districts at a density of five and one-half (5.5) dwelling units per acre may be permitted for the adaptive reuse or residential conversion of existing nonresidential structures

including but not limited to existing commercial structures, carriage barns, and other accessory structures existing as of January 1, 1987.

- (2) Residential development in RM districts at a density of forty (40) units per acre may be permitted for the adaptive reuse or residential conversion of existing nonresidential structures and for any new construction on the same lot ancillary to the rehabilitation of such nonresidential structures subject to the following conditions:

- (A) Lot coverage shall not exceed eighty (80) per cent; and
- (B) The number of ancillary newly-constructed units shall not exceed one hundred seventy-five (175) per cent of the units contained in the rehabilitated structure(s).

- (3) Residential development in RH districts at a density not to exceed eighty (80) dwelling units per acre may be permitted for the rehabilitation of all or a portion of an existing nonresidential structure to a residential use subject to the following conditions:

- (A) The structure has not previously been converted from a residential use to a nonresidential use; and
- (B) The full parking requirement shall be met unless otherwise waived by the development review board.

- (4) In the RH district, within the area bordered on the north by Main Street, on the south by Maple Street, on the west by Pine Street and on the east by South Union Street (as per Map 5.2-A), an existing non-residential property may be redeveloped for a residential use at a density not to exceed 92 units per acre, inclusive of the inclusionary bonus allowed in Article 14, subject to both conditional use approval and the following additional conditions:

(A) Height: The height of any structure shall be that height permitted by Article 5 unless otherwise allowed by this subsection. In no event shall the height of any structure in this District exceed six stories. Subject to such maximum, the following regulations shall apply:

- (1) Building height in excess of that permitted by Article 5 hereof may be allowed only if the height of the structure does not exceed sixty eight (68) feet above grade as measured from the mean level of the front of the building along the street having the lowest record grade, and
 - (a) The height of the proposed building will not be more than the average height of existing buildings with frontage on the same block of the same street as the proposed building, measured by the standards of Section 5.3.19, plus an additional fifteen (15) feet;
 - (b) A greater height than that allowed in (a) may be permitted if such greater height is set back from the

property line along such street a minimum of twenty-five percent (25%) of the width of the street right-of-way, and in no event less than fifteen (15) feet from the property line.

2. Notwithstanding (A) (1) above, in that portion of this District which is located between Pine and Church Streets, no building may exceed fifty-five (55) feet above grade as measured from the mean level of the front of the building along the street having the lowest record grade, except as otherwise permitted by the CBD-T District.
3. The height allowance for frontage on one street shall not adversely impact the streetscape of an adjacent street, in the judgement of the Development Review Board

(B) *Setback:*

1. The portion of any building which is constructed to a height in excess of that height allowed under Article 5, as allowed under (A) (1) and (2) above, must maintain a distance of fifty percent (50%) of that portion's height from adjacent residential structures. Such distance will be maintained as a setback only for the portion of the building immediately adjacent to an existing residential property.
2. Front yard setbacks shall be at least the lesser of ten (10) feet or the average setback of existing buildings with frontage on that block of the street, subject to the following exceptions:
 - (a) Up to twenty-five percent (25%) of the building façade above the ground level story on that street may project into the front yard setback by not more than fifty percent (50%) for the purpose of architectural merit/design excellence.
 - (b) At the ground level, patios, paved courtyards and sitting areas may be allowed within the setback. Such allowances are subject to approval by the Development Review Board under the design review criteria of Article 6. If the Board deems it necessary, it may impose a greater setback to be in compliance with Article 6.

(C) *Minimum Lot Size:*

Any building to be constructed under the height criteria set forth in (A) (1) and (2) hereof shall be on a lot of at least one-half acre in size, and must be a single lot of record as of February 8, 2001, with the following exception: a half acre lot may be combined with any

single or multiple contiguous surface parking lot(s) of any size and receive the benefits of such an association as set forth in this amendment. Under no circumstances may contiguous lots be combined to meet the minimum criteria for the density bonus.

(D) *Construction Materials:*

Any new structure utilizing the height bonus provisions as specified under this subsection shall be constructed of quality masonry materials or other comparable materials of similar durability on all elevations. The exterior material and windows shall also be of a type that the Development Review Board deems effective for sound buffering.

(E) *Parking Requirements:*

1. There shall be at least one parking space per unit (exceptions for elderly and affordable housing, as outlined in Article 10, shall apply).
2. There shall be an affirmative finding by the Development Review Board that the proposed development provides adequate parking for its residents and non-residential uses.
3. At least seventy-five (75%) of the parking spaces required after any waiver shall be provided on site as structured parking spaces.
4. Any structured parking shall be concealed by the structure or the building so that it is not visible from the street (the entrance and exit may be visible).

(F) *Non-residential Use:*

The following nonresidential uses may be permitted on the first floor or story of the structure with approval of the Development Review Board under the design review criteria of Article 6: Art Gallery, Bakery, Bank/Credit Union, Beauty/Barber Shop, Daycare, Food Store, Health Club, Laundromat, Office (general), Office (medical or dental), Open Air Market, Photo Studio, Restaurant, Retail, Tailor Shop, and Theatre.

(G) *Occupancy:*

Each unit of any structure erected pursuant to this subsection shall be occupied by a "Family" as defined in Sec.30.1.2

(H) *Character of the Area Affected:*

When the Development Review Board reviews a project requested under Section 5.2.6(b)(4) for compliance with Sec. 17.1.5(a)(2) (Character of the Area Affected), it shall take into consideration the facts that developments utilizing this bonus are located in an area adjacent to the Central Business District. In making its determinations and setting conditions, the Development Review Board shall consider that it is the public policy of the City of Burlington that where there are conflicts between public uses and

activities and the quiet enjoyment of residents in developments utilizing the bonuses in Section 5.2.6 (b)(4), the public uses and activities shall take precedence and the development shall be designed in a manner that mitigates the conflicts.

- (c) *Inclusionary Units*. For any district where inclusionary housing units are provided, exceptions to maximum densities shall be permitted in accordance with the provisions of Article 14.
- (d) *Planned Residential Development (PRD)*. For any planned residential development, exceptions to maximum densities shall be permitted in accordance with the provision of Article 11.
- (e) *Floor Area Ratio (FAR)*. Central Business District and Transitional Districts: The maximum allowable density for any residential or mixed use development containing residential units within the Central Business District or its Transitional District shall be as specified in Sec. 5.2.1 plus applicable bonuses, or a floor area ratio of 3.0 for a project that has at least 50% of its parking spaces located in an underground structure, whichever is greater. (See Amendments Index A-I; Zoning Amendment 95-07, Effective 6/19/96)

PART 3: DIMENSIONAL REGULATIONS

Sec. 5.3.1 District Regulations. The regulations for each district pertaining to lot coverage, front yard setback, side yard setback, rear yard setback, waterfront setback, minimum lot size, and building height shall be as specified in Table 5-C, Table of Dimensional Requirements, and subject to the further provisions of this ordinance.

Sec. 5.3.2 Lot Coverage Requirements. Where a maximum lot coverage is specified in Table 5-C, no building or part of a building or paved area or other form of coverage shall exceed such maximum allowable coverage except as specifically authorized by this ordinance.

Sec. 5.3.3 Calculating Lot Coverage. Lot coverage shall be calculated in the following manner:

- (a) Compute the square footage of all parts of the lot covered by buildings, accessory structures, paved or unpaved walkways, paved or unpaved parking areas, decks, patios and any other paved surface;
- (b) Add the square footage calculated in subsection (a) to obtain a figure for total coverage; and
- (c) Divide the total coverage figure by the square footage of the entire lot to derive the percentage of lot coverage.

Sec. 5.3.4 Exceptions to Lot Coverage.

- (a) In all districts, the following shall not be counted as lot coverage:
 - (1) Lawns, gardens and unpaved landscaped areas;
 - (2) Drainage ways;

- (3) Open play structure without roofs, sand boxes, or swings, not located on a paved surface;
 - (4) Fountains;
 - (5) Swimming pools (Note: aprons, decks and walks adjacent to swimming pools shall be considered as lot coverage);
 - (6) Fences;
 - (7) Retaining walls less than twelve (12) inches in width across the top surface; if twelve (12) inches or greater, the entire top surface shall be considered as lot coverage; and/or
 - (8) Ramps for the disabled, for which the sole purpose is to provide access for the disabled, and which have no more than the minimum dimensions required to meet accessibility standards.
- (b) In the RL, WRL and RM districts, an additional ten (10) per cent of lot coverage above that specified in Table 5-C may be permitted for the following amenity features accessory to residential uses provided that such features shall at no time be enclosed or be used for parking:
- (1) Decks;
 - (2) Patios;
 - (3) Porches;
 - (4) Terraces;
 - (5) Tennis or other outdoor game courts; and/or
 - (6) Swimming pool aprons.

Such additional coverage shall not be permitted for any development where bonus provisions of this ordinance are applicable.

- (c) In the RCO district maximum allowable coverage may be increased to ten percent (10%) for agricultural structures subject to approval of the development review board.
- (d) Neighborhood Activity Center lot coverage bonuses.

In the commercial (C) zoning district, any site identified as a Neighborhood Activity Center in the September, 1994 Neighborhood Activity Center Report may be developed as follows:

- 1) (a) Developments that provide landscaping within a parking lot may increase lot coverage above the allowable 80% maximum up to a lot coverage maximum of 85%. This lot coverage bonus is limited to twice the landscaping area within a parking lot for each landscaped area of at least 125 square feet with a minimum width of 8 feet excluding curbs, and that include significant shade trees whose mature height is at least 35 feet. If more than two such trees are planted, they shall be 30 feet on center, linear.
- (b) In calculating lot coverage, sidewalks are not to be included that are shaded with significant shade trees whose mature height is at least 35 feet and are planted 30 feet on center, linear. **A substantial tree must be at least 3 inches in caliper and planted in accordance with Section 11 of**

the “Burlington Street Tree Planting Plan,” design and planting recommendations.

- 2) Developments that provide space for upper story uses (over the first floor), may increase lot coverage above the allowable 80% maximum by allowing an additional square foot of lot coverage for every square foot of upper story, up to a lot coverage maximum of 90%
- 3) Developments that provide housing in addition to commercial uses may increase lot coverage above the allowable 80% maximum by allowing an additional two square feet of lot coverage for every square foot of housing, up to a lot coverage maximum of 90%.

Sec. 5.3.5 Setbacks Required. Setbacks shall be provided between proposed structures and front, side and rear yard property lines in accordance with Table 5-C and this section:

- (a) *Front yard.* Any yard or open space extending across the full width of the lot along any street lot shall be considered a front yard. Corner lots shall be deemed to have more than one front yard. Front yard setbacks for residential districts shall be provided in accordance with Table 5-D.
- (b) *Side yard.* Any yard or open space between the side property line and the nearest point of the building shall be considered a side yard. A side yard shall extend from the front yard to the rear yard. Minimum side yard setback for any principal structure shall be ten (10) per cent of lot width measured parallel to lot frontage, up to a maximum of twenty (20) feet, but in no event less than five (5) feet.
- (c) *Rear yard.* Any yard or open space extending across the full width of a lot between the rear property line and the nearest point of the building shall be considered a rear yard. Minimum rear yard setback for any principal structure shall be twenty-five (25) per cent of lot depth measured perpendicular to lot frontage, up to a maximum of seventy-five (75) feet, but in no event less than twenty (20) feet.

Table 5-C						
Dimensional Requirements						
Zoning District	Coverage ¹	Setbacks ²				Height ⁴
		Front ²	Side ⁵	Rear ⁵	WF ³	
RCO	5%	15'	10%	25%	50'	35'
WRC	25%	15'	10%	25%	100'	25'
RL, WRL	35%	See Table 5-D	10%	25%	50'	35'
RM	40%		10%	25%	NA	35'
WRM	60%		10%	25%	100'	35-55'
RH	80%		10%	25%	NA	35'
UC	40% ⁶	15'	10%	25%	NA	35'
WFC-N	35%	15'	10%	25%	50'	35'
NC	80%	None	10%	25%	NA	35'
WFC-W	80%	None	10%	None	50-100'	35-50'
C, GC	80%	None	None	25%	NA	35'
WFC-E	100%	None	None	None	50'	35-50'
CBD-T	100%	None	None	None	NA	38-60'
CBD	100%	None	None	None	NA	38-60'
WFC-T	100%	None	None	None	NA	35'
E	80%	25'	None	None	50'	45'
WFE	80%	None	None	None	50'	45'
Footnotes:						
1. See exceptions to lot coverage: Sec. 5.3.4						
2. See Sec. 5.3.5 and exceptions to yard setbacks: Sec. 5.3.6						
3. See exceptions to waterfront setbacks: Sec. 5.3.8						
4. See exceptions to maximum height: Sec. 5.3.13, 5.3.15, 5.3.17 and 5.3.18						
5. Percentages figure refers to either a percentage of lot width,10% in the case of side yard setbacks or lot depth of 25% in the case of rear yard setbacks						
6. Lot coverage in the CCO is allowed up to 60%: Sec. 3.2.7						
Table 5-D						
Front Yard Requirements in Residential Districts						
Residential Structures					Commercial Structures	
District	Local Street*	Collector Street*	Major Street*			
RL, WRL	15'	20'	25'		30'	
RM, WRM	15'	20'	25'		25'	
RH	15'	15'	15'		None	
*As defined in Table 5-E						

Burlington Street Classification

Street	Location	Street	Location
Major Streets <u>Arterials</u> Champlain Park Way. South Burlington line to Battery Street Winooski Valley Park Way. Manhattan Drive to Heineberg Bridge <u>Other Major Streets</u> Battery Street Park. Park Street to Maple Street Barrett Street. Colchester Avenue to Grove Street Colchester Avenue. North Prospect Street to city limits East Avenue. Colchester Avenue to Main Street Elmwood Avenue. North Street to Pearl Street Flynn Avenue. Pine Street to Shelburne Street Grove Street. Barrett Street to city limits Hyde Street. So. Willard Street to Riverside Avenue Intervale Avenue. Riverside Avenue to North Street Ledge Road. So. Prospect Street to Shelburne Street Main Street, US 2. Battery Street to city limits Manhattan Drive. Park Street to Spring Street Mansfield Avenue. North Street to Colchester Avenue Maple Street. Battery Street to So. Prospect Street North Avenue. Plattsburg Avenue to Sherman Street No. Champlain Street. Manhattan Drive to Pearl Street No. Prospect Street. Riverside Avenue to Pearl Street No. Union Street. North Winooski Avenue to Pearl Street No. Willard Street. Shelburne Street to Hyde Street No. Winooski Avenue. Riverside Avenue to Pearl Street Oak Street. Manhattan Drive to Intervale Avenue Park Street. Manhattan Drive to Pearl Street Pearl Street. Battery Street to No. Prospect Street Pine Street. Main Street to Queen City Park Road Plattsburg Avenue. North Avenue to Heineberg Bridge Riverside Avenue. Intervale Avenue to Winooski Bridge Saint Paul Street. Main Street to So. Union Street Shelburne Street/ US 7. So. Union Street to city limits Sherman Street. Park Street to North Avenue		<u>Other Major Streets Cont'd.</u> So. Prospect Street. Pearl Street to Ledge Road So. Union Street. Pearl Street to St. Paul Street So. Willard Street. Shelburne Street to Hyde Street So. Winooski Avenue. Pearl Street to St. Paul Street <u>Collector Streets</u> Appletreet Point Road. Staniford Road to private road Archibald Street. Spring Street to North Prospect Street Austin Drive. So. Cove Road to Home Avenue Bank Street. So. Winooski Avenue to Pine Street Birchcliff Parkway. Pine Street to Shelburne Street Cherry Street. Battery Street to So. Winooski Avenue College Street. Lake Street to So. Prospect Street Ethan Allen Parkway. North Avenue to Gazo Avenue Flynn Avenue. Oakledge Park to Pine Street Heineberg Road. North Avenue to Farrington Parkway Home Avenue. Austin Drive to Shelburne Street Howard Street. Pine Street to St. Paul Street Industrial Pkwy. Queen City Park Road to Home Avenue Lakeside Avenue. Central Avenue to Pine Street Locust Street. Pine Street to Shelburne Street North Avenue. Plattsburg Avenue to Derway Drive North Street. Mansfield Avenue to North Avenue Pine Street. Bank Street to Main Street Prospect Parkway. So. Prospect Street to Shelburne Street St. Paul Street. Bank Street to Main Street Shore Road. North Avenue to Crescent Beach Road Spring Street. Manhattan Drive to Archibald Street Staniford Road. North Avenue to Cumberland Road Starr Farm Road. North Avenue to Curtis Avenue Village Green. North Avenue to Rivermount Terrace <u>Local Streets</u> All other public streets	

Sec. 5.3.6 Exceptions to Yard Setback Requirements. The following exceptions to yard setbacks shall be permitted:

- (a) *Side and Rear Setbacks.* Side and rear yard setbacks shall not be required in CBD, CBD-T, WFC-E, WFC-W, WFC-T, WFE and E districts except as required by subsections (b) and (k);
- (b) *Industrial Use Abutting Residential District.* When a permitted industrial use abuts a residential district, there shall be a fifteen (15) foot setback between the industrial structure and the boundary line of the abutting residential district;
- (c) *Commercial Districts.* Maximum side and rear yard setbacks in commercial districts shall be ten (10) feet;
- (d) *Addition to Nonresidential Building.* An addition to an existing nonresidential building in any commercial district may project into required yard setbacks subject to design review provided the addition does not project further into required setbacks than the existing building;
- (e) *Existing Building Built to Lot Line.* A side yard setback shall not be required where an existing building on an adjoining lot is already built to the same lot line with no setback and said existing adjoining wall has neither doors nor windows;
- (f) *Projections into Setbacks.* Eaves, sills, walkways, steps to first floor entries, ramps for the disabled, roof overhangs, cornices, fences or walls, swimming pools, and similar features may project into required yard setbacks; no swimming pool's water's edge may be less than five (5) feet nor any apron less than two (2) feet from any property line;.
- (g) *Front Yard Setbacks-New Structures.* A new structure may encroach into a required front yard setback up to the average front yard setback of principal structures on adjacent lots on the same street frontage;
- (h) *Front Yard Setbacks-Additions.* An addition to an existing structure may encroach into the required front yard setback provided it does not exceed the existing front yard setback. This provision does not apply to upper story additions to enclosed or unenclosed front porches. Any such encroachments shall be subject to design review and shall be compatible with adjoining properties;
- (i) *Accessory Structures and Additions.* Accessory structures no higher than fifteen (15) feet, including garages, parking areas, driveways, and additions no higher than fifteen (15) feet to structures in existence as of April 26, 1973 may project into required side and rear yards, but in no event shall they be less than five (5) feet from side or rear property line where a setback is required; and/or
- (j) *Shared Driveways.* Common or shared driveways and walkways along shared property lines and associated parking

areas do not have to meet setback requirements along the shared property line.

- (k) *Lot Line in WFC-E District.* Where a parcel lot line in a WFC-E district abuts an adjoining residential district, the side yard requirement for that lot line shall meet the provisions of Sec. 5.3.5 (b).

Sec. 5.3.7 Waterfront Setback Required. Unless otherwise specified, the minimum lakefront and riverfront setback shall be fifty (50) feet from the ordinary high water mark. In the WRC and WFC-W districts, the waterfront setback shall be the width of the public access easement as set forth in the "Official Map of the Waterfront Core" which shall be one hundred (100) feet for the area north of Main Street extended and fifty (50) feet for the area south of Main Street extended.

Sec. 5.3.8 Exceptions to Waterfront Setback. The following exceptions to waterfront setback requirements shall be permitted:

- (a) *Additions to Existing Structure.* Additions to or replacement of an existing structure may encroach into the required setback provided the addition or replacement does not encroach more than the existing structure, except with approval of the Planning Commission with respect to 5.3.8(c).
- (b) *Averaging of Setbacks.* If the waterfront setback of existing principal structures within a distance of one hundred fifty (150) feet on either or both sides of a lot is less than the required setback, the setback may be reduced to the average alignment of such structures; and
- (c) *Encroachments into Waterfront Setbacks.* Within the WRC, WFC-E and WFC-W districts, the development review board may as part of site plan and design review approve within the public access easement:
 - 1. Structures such as walkways, planters, benches, fountains, works of art, sitting walls and other improvements which will enhance the pedestrian environment, and public marinas, public recreational piers, ferry docks, lake excursion facilities, and open-air markets, provided pedestrian circulation is not unreasonably impaired.
 - 2. Upper story encroachments that overhang the waterfront setback provided that the property owner complies with the following conditions:
 - (a) In exchange for encroaching into the waterfront setback, a permanent public access easement shall be granted to the city at no additional cost. The easement shall be publicly accessible and shall be written in a fashion which is

satisfactory in form and substance to the City Attorney's Office. This permanent public access easement shall be no less than 14 feet between the structure, including the overhang, and water's edge when at the ordinary high water mark for the entire shoreline of the parcel where development is occurring to ensure that pedestrian circulation and waterfront access will not be closed off to the public once the overhang has been constructed. The entire public access easement shall be at a finished elevation of 102 feet above sea level or higher.

- (b) The minimum height of any overhang above finished grade shall be 14 feet.
- (c) Any overhangs must be setback a minimum of 14 feet from the water's edge.
- (d) The overhang shall be cantilevered with no support brackets, posts or pillars or other structural or decorative elements below the 14-ft. minimum height above the finished grade.
- (e) Tables, chairs, planters, light fixtures, or other obstructions as described in Sec.5.3.8(c)1. shall not be allowed in the 14 ft. minimum public space easement.
- (f) Any overhang approval shall be subject to obtaining written acceptance by the city fire marshal.

Sec. 5.3.9 Corner Lots/Clear Sight Triangle.

- (a) In order to provide for unobstructed traffic visibility at intersections, in any district where a front yard for a corner lot is required, no sign, fence, wall, tree, hedge, other vegetation, or structure which extends more than three (3) feet above the curb level, shall be erected, placed or maintained within a clear sight triangle area formed by the intersecting street lot lines or extensions thereof, and a straight line joining said street lot lines at points which are twenty-five (25) feet distant from the point of intersection, measured along said street lot lines. Tree canopies may be permitted above a plane measured seven feet above curb level.
- (b) Front yard fence height limits. Any fence within twenty-five (25) feet of a driveway and within fifteen (15) feet from the front property line or between an existing building and the front property line, whichever is less, shall be no higher than three (3) feet to provide visibility for vehicles and pedestrians.

Sec. 5.3.10 Minimum Lot Frontage and Lot Sizes. With the exception of planned residential developments, the minimum street lot frontage and lot size in RL districts shall be as follows:

Table 5-F		
Lot Frontage/Lot Size RL and WRL Districts		
	Minimum Lot Frontage	Minimum Lot Size
Use		
Single detached dwelling	75 feet ¹	9,900 ²
Duplex	100 feet ¹	15,840 ²
Footnotes:		
1. Measurement in feet		
2. Measurement in square feet		

The development review board may reduce the frontage requirements for lots fronting on cul-de-sacs.

Sec. 5.3.11 Height Regulations. Where a maximum building height is specified in Table 5-C, no building or part of a building shall exceed the number of feet in height, except as otherwise authorized by this ordinance.

Sec. 5.3.12 Height Limits-All Districts. Except as otherwise authorized by this ordinance, no structure shall exceed thirty-five (35) feet in any district other than the CBD, CBD-T, E, WFE, WRM, and WFC-E (*). Any structure which is authorized to exceed thirty-five (35) feet is subject to site plan approval in any district.

Sec. 5.3.13 Exceptions to Height Limits-All Districts.

- (a) Additions and new construction on parcels that contain an existing structure exceeding thirty-five (35) feet in height as of April 20, 1987 may exceed the thirty-five (35) foot height limit subject to design review, but in no event shall exceed the height of the existing structure;
- (b) In no case shall the height exceed the limit permitted by federal and state regulations regarding flight paths of airplanes;
- (c) When a permit for a greater height is granted by site plan approval by the development review board;
 - (1) Such height will not unreasonably obstruct views of Lake Champlain or mountains from public ways, public and semipublic buildings or residential areas; and
 - (2) Where a front yard is required, the depth is increased five (5) feet for each additional ten (10) feet of building height.

- (d) Greenhouses, rooftop gardens, terraces and similar features are exempt from specific height limitations but shall be subject to design review. Ornamental and symbolic features of buildings and structures, including towers, spires, cupolas, belfries and domes, where such features are not used for human occupancy or commercial identification, are also exempt from specific height limitations and shall be subject to design review. Such architectural features shall not exceed ten percent (10%) of the total roof area. Satellite dish antennae are not exempt from height limitations.

Sec. 5.3.14 Height Limits/Central Business District.

- (a) *Intent.* Building heights, shapes, exterior detailing and roof top designs dramatically impact the urban form of Vermont's largest city. These regulations emphasize the importance of how buildings are designed with regard to height, and the need for buildings to reflect a clear statement of design objectivity that positively links architecture to urban design; and
- (b) *Special Areas.* The CBD includes the following areas whose unique character requires special consideration:
 - (1) Church Street:
 - (A) Buildings fronting on Church Street shall not exceed thirty-eight (38) feet in height; and
 - (B) Structures damaged or destroyed may be rebuilt to their height as of January 1, 1986.
 - (2) East-west view corridors.
 - (A) Building heights and forms shall respect the principal view corridors, defined as the rights-of-way of Pearl, Cherry, College and Main Streets, and preserve or enhance views to the lake and mountains;
 - (B) New buildings abutting these corridors shall be stepped back above the fourth story one-fourth the distance of the abutting right-of-way or rights-of-way up to a maximum setback of forty (40) feet; where a principal building with no setback abuts a side lot line, no setback shall be required up to the height of the abutting building provided the wall along the common project, line has neither doors nor windows; and (See Amendments Index A-1; Zoning Amendment 96-01, Effective 7/10/96)
 - (C) Additional restrictions apply in the Transitional District; see Sec. 5.3.16.
 - (3) Historic buildings.

- (A) New buildings shall respect the character, scale and detailing of historically significant buildings and their neighborhoods. Newer designs shall be sympathetic to and harmoniously integrated with the old;
 - (B) Buildings listed on the National register of Historic Places, the Vermont Historic Sites and Structures Survey, or located in an historic buildings district listed in Article 8 of this ordinance, if damaged or destroyed may be rebuilt to their height as of January 1, 1986, or the maximum height of the district in which they are located, whichever is less;
 - (C) Historic buildings shall not be demolished merely to make way for new development. If it is determined to be financially and structurally infeasible to rehabilitate an historic building, it may be replaced by a building of the same height as of January 1, 1986, or the maximum height permitted in the district in which it is located, whichever is less; and
 - (D) Structural and financial feasibility shall be determined by the development review board upon recommendation of the Historic Preservation Review Committee. The board shall make its determination within sixty (60) days from the date of application submission.
- (4) City Hall Park. This historic open space shall be protected from shading by new buildings. Views from the park to the lake, mountains and sky shall be protected from encroachment and enhanced wherever possible.
- (c) Specific Heights in the CBD. Maximum height for new construction within the CBD shall be limited to sixty (60) feet. A higher height may be authorized by the development review board as provided under Sec. 5.3.15.

Sec. 5.3.15 Exception to CBD Height Limits. The development review board may authorize a maximum height higher than is permitted in Sec. 5.3.14 subject to paragraphs (c), (d) and (e) under one or more of the following conditions:

(a) Height Bonuses:

- (1) *Housing.* Where housing is provided on the lot, of which no less than twenty (20) per cent shall be affordable to low and moderate income households as defined by state and federal regulations, with priority given to Burlington residents, an additional twenty (20) feet of height may be authorized, provided, that such gross floor

area shall be no less than the gross floor area resulting from the bonus height;

- (2) *Public Parking*. Where public parking is provided on the lot, an additional twenty (20) feet of height may be authorized with said public parking to be no less than ten (10) per cent over and above the total parking requirement of the building;
 - (3) *Single Bonus Heights* (80'). For those buildings where the conditions of either subparagraph (1) or (2) are met, the maximum aggregate building height shall be limited to eighty (80) feet; and/or
 - (4) *Double Bonus Height* (100'). For those buildings where the conditions of both subparagraphs (1) and (2) are met, maximum aggregate building height shall be limited to one hundred (100) feet.
- (b) *In-Lieu Payment*. Should the development review board determine that the housing and/ or parking required by this section cannot be adequately provided on site or is otherwise not practicable, the development review board may authorize such housing and/or parking to be provided at an alternate location within the CBD or CBD-T district, or the board may require a payment to the city in an amount to be determined by the city council, which amount shall be appropriated by said city council so as to serve the housing and parking needs of the CBD or CBD-T district. The in-lieu payment required shall not exceed the cost of providing the housing or parking required by this section on site;
 - (c) In addition to the foregoing conditions, the development review board may authorize a maximum height higher than permitted under Sec. 5.3.14 only when one or more public benefits are provided by the developer of the lot, said benefits to include but not be limited to, the following: Open space, either within public view or access; street improvements such as paving, wider sidewalks, underground wiring, lighting, pedestrian walkways, landscaping including planters, flowering plants, water feature(s); publicly accessible rooftop terraces; works of art; seating; historically appropriate building materials and preservation of historic structures and views which are significant to the community;
 - (d) The development review board may permit in-lieu of the bonus provisions specified in this ordinance the substitution of such other bonus provisions as shall assure the same standard of amenity as would have been provided by compliance with the regulations of this ordinance; and
 - (e) To illustrate height and bulk of the structure, at the request of the development review board, the developer shall be required to float balloons to the height of the corners and

peaks of the proposed building(s) during the review process. Balloons shall be aloft for a period of time sufficient for viewing by the design advisory board, development review board and general public after adequate notice has been given. Photo documentation may be required by the planning department.

Sec. 5.3.16 Heights in CBD-T District.

- (a) *Intent.* In addition to the open space of the street which connects the CBD and RH districts, heights within the CBD-T district are intended to provide a transition from the commercial scale of the CBD to the residential scale and fabric of the neighborhoods surrounding the CBD; and
- (b) *Division into Areas.* This district is divided into two (2) areas:
 - (1) Pearl Street from Battery Street to Winooski Avenue, and South Winooski Avenue from Pearl Street to Buell Street. The maximum height shall be three (3) stories or thirty-eight (38) feet, whichever is less. With conditional use approval, the maximum height may be increased to four (4) stories of forty-five (45) feet, whichever is less.
 - (2) South Winooski Avenue from Buell Street to Main Street, and Main Street from South Winooski Avenue to Battery Street. Building heights shall not exceed three (3) stories or thirty-eight (38) feet, whichever is less, or sixty (60) feet, if the fourth story is set back half the distance of the abutting rights-of-way up to a maximum setback of forty (40) feet; where a principal building with no setbacks abuts a lot line, no setback shall be required up to the height of the abutting building provided the wall along the common property line has neither doors nor windows.

Sec. 5.3.17 Exceptions to CBD-T Height Limits. The height bonus provisions specified within the CBD may also be authorized by the development review board for properties along Main Street within the CBD-T district under the following conditions:

- (a) Maximum height shall not exceed eighty (80) feet;
- (b) Setback provisions as stipulated in Sec. 5.3.16 and in Table 5-A are met; and
- (c) The portion of a building containing bonus height shall be located no less than fifty (50) feet from any boundary line of an historic buildings district as specified in Article 8.

Sec. 5.3.18 Exceptions to Height Limits/Waterfront Districts.

- (a) *Intent.* The intent of the special height limits for the waterfront districts is to provide vistas from Battery Park of harbor activity

- within the breakwater area and to preserve panoramic views of the mountain and lake from adjoining areas;
- (b) WRM Height Limits. In the WRM district, building height shall not exceed the following:
 - (1) Thirty-five (35) feet:
 - (A) In the area up to two hundred (200) feet inland from the ordinary high water mark; and
 - (B) In areas where base grade elevation exceeds one hundred eighty (180) feet.
 - (2) Sixty (60) feet:
 - (A) In the area beyond two hundred (200) feet inland from the ordinary high water mark except where base grade elevation exceeds one hundred eighty (180) feet.
 - (c) WFC-E Height Limits. In the WFC-E district, building height shall not exceed the following:
 - (1) Thirty-five (35) feet south of College Street;
 - (2) Fifty (50) feet from College Street to Bank Street extended; and
 - (3) Sixty (60) feet from Bank Street extended to Pearl Street extended.
 - (d) WFC-W Height Limits. In the WFC-W District. Building heights shall not exceed the following:
 - (1) Thirty-five (35) feet in the area south of College Street extended, and within two hundred (200) feet inland from the ordinary high water mark; and
 - (2) Fifty (50) feet in the area beyond two hundred (200) feet inland from the ordinary high water mark.

Sec. 5.3.19 Height Measurement. Height shall be measured as follows:

- (a) *Flat Roof:* Building height shall be measured as the vertical distance from the mean level of the finished grade of the front of the building to the highest point on the finished roof.
- (b) *Pitched Roof:* Building height shall be measured as the vertical distance from the mean level of the finished grade of the front of the building to the average height of the rise of the pitched roof.

- (c) *Curved Roof:* Building height shall be measured as the vertical distance from the mean level of the finished grade of the front of the building to a point two thirds the vertical height of the curve.
- (d) *Other Forms:* Building height shall be measured as determined by the administrative officer in a manner that most closely reflects the intent of subsections (a) through (c) and attains a height which is similar to adjacent complying structures.
- (e) *Corner Lots:* Building height for corner lots shall be measured as the vertical distance from the mean level of the front of the building along the street having the lower record grade.
- (f) *Lots Fronting on Two Streets:* Where a lot, other than a corner lot, fronts on two streets, a line shall be drawn halfway between the two (2) streets which the lot adjoins; maximum height shall then be measured separately for each of the two (2) frontages of the building from the mean level of the finished grade; maximum height so measured shall apply on each side of that portion of the lot which lies between the line and each street.
- (g) *Lots Fronting on More than Two Streets.* Where a lot fronts on three (3) or more streets, building height shall be measured from the mean level of the front of the building along the street having the lowest record grade.

ARTICLE 6. DESIGN REVIEW

- Sec. 6.1.1 Intent.** These regulations are intended to provide detailed individual review of certain uses and structures in those areas of the city, which contain structures of historical, architectural or cultural merit.
- Sec. 6.1.2 Authority.** These regulations are enacted under the provisions of 24 V.S.A. *Section 4407 (6)*.
- Sec. 6.1.3 Areas Covered.** The areas subject to design review include all areas listed under Section 3.2.3 of this ordinance. Within these areas no structure may be erected, reconstructed, substantially altered, restored, moved, demolished, or changed in use or type of occupancy without approval of the plan therefor by the development review board. Zoning requests subject to conditional use approval shall also adhere to the provisions of this Article.
- Sec. 6.1.4 Certificate of Appropriateness.** Prior to the commencement of any development or activity within any design review district, a certificate of appropriateness must be obtained from the development review board.
- Sec. 6.1.5 60-Day Approval Period.** Within sixty (60) days after a complete submission in accordance with Article 4, or within such further time as the applicant may in writing allow for a decision by the development review board, the board shall either grant or deny the certificate of appropriateness.
- Sec. 6.1.6 Design Advisory Board.** In considering whether to grant a certificate of appropriateness, the development review board may request advice and recommendations from the design advisory board.
- When its advice is sought, the design advisory board shall be provided with a copy of the application and/or accompanying plans, specifications and supporting materials. The advice and recommendations of the design advisory board shall be made in writing and submitted to the development review board in sufficient time for the board to make a decision in accordance with the time limits specified in Sec. 6.1.5.
- Sec. 6.1.7 Decision.** If the development review board determines that the proposed development is appropriate, or if the board fails to make a decision within the time limits specified in Sec. 6.1.5, it shall issue, to the applicant, a certificate of appropriateness. If the board determines that a certificate of appropriateness should not be issued, it shall specify, in writing, the reason(s) for its determination and provide a copy thereof to the applicant.

Sec. 6.1.8 Predesign Conference. In addition to the submission requirements specified in Article 4, the applicant is encouraged to meet with the zoning administrative officer before presenting any formal application, in order for the city's requirements to be clarified and to avoid costs to the applicant associated with reworking subsequent submissions.

Sec. 6.1.9 Exemptions. Nothing in these design review regulations shall be construed to prevent:

- (a) The ordinary maintenance or repair of any exterior architectural feature which does not involve a change in design, material, color or the outward appearance of the feature except where the total dollar value for all labor and materials used for the interior or exterior exceeds five thousand dollars (\$5,000); or
- (b) The construction, reconstruction, or alteration of any feature, which the city's building inspector shall certify in writing, is required by the public safety because of an unsafe or dangerous condition.

Sec. 6.1.10 Design Review Criteria. The following criteria shall be considered in connection with any application for a certificate of appropriateness:

- (a) *Relate development to its environment.* The proposed development shall relate appropriately to its context. It shall relate harmoniously to the terrain and to the use, scale and architecture of existing buildings in the vicinity which have a functional or visual relationship to the proposed structure(s). Proposals that deviate substantially from established neighborhood patterns should be discouraged;
- (b) *Preserve the landscape.* The landscape, existing terrain, and any significant trees and vegetation shall be preserved in its natural state insofar as practicable. Tree and soil removal shall be minimized and any grade changes shall be in keeping with the general appearance of neighboring developed areas. If natural features and existing landscaping are proposed to be removed, special attention shall be accorded to plans to replace such features and landscaping;
- (c) *Provide open space.* All open space shall be designed to be visually and physically accessible to the extent feasible. Open space shall add to the visual amenities of the vicinity by maximizing its visibility for persons passing or overlooking the site from neighboring properties. If open space is intended for active use, it shall be so designed as to maximize its accessibility for all individuals, including the disabled, encourage social interaction, and facilitate ease of maintenance;
- (d) *Provide efficient and effective circulation.* With respect to vehicular and pedestrian circulation, special attention shall be given to the location and number of access points to public streets and sidewalks, to the separation of vehicles and pedestrians, to the

- arrangement of parking areas and to service and loading areas, and to the location of accessible routes and ramps for the disabled;
- (e) *Provide for nature's events.* Special attention shall be accorded to stormwater runoff so that neighboring properties and/or the public stormwater drainage system are not adversely affected. Attention shall also be accorded to design features which address the affects of rain, snow and ice at building entrances and to provisions for snow and ice removal from circulation areas;
 - (f) *Make advertising features understandable.* The size, location, design, texture, lighting, and materials of all exterior signs and advertising features shall not detract from the use and enjoyment of proposed buildings or surrounding properties. Signs and similar features shall be appropriately sized and located in a manner that does not detract from nor disrupt the immediate visual environment. Buildings that include publicly accessible restrooms shall include appropriate exterior signs indicating their availability (Zoning Amendment 98-04, Effective 1/13/99);
 - (g) *Integrate special features with the design.* Exposed storage areas, machinery and equipment installation, service areas, truck loading areas, utility connections, meters and structures, mailboxes, lighting, and similar accessory structures shall be subject to such setbacks, screen planting or other mitigation or screening methods as shall reasonably be required to prevent their being incongruous with or offensive to existing or proposed structures and surrounding properties. Special features, which are essential to a structure's function, shall be incorporated into the original structure design, not added as an afterthought;
 - (h) *Make spaces secure and safe.* With respect to personal safety, all open and enclosed spaces shall be designed to facilitate building evacuation, maximize accessibility by fire, police or other emergency personnel and equipment, and, to the extent feasible, provide for adequate and secure visibility for persons using and observing such spaces;
 - (i) *Protect Burlington's heritage.* The removal or disruption of historic, traditional or significant, uses, structures or architectural features or neighborhood patterns shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties. Significant structures and/or structures with important architectural features shall be identified by their inclusion in the Burlington Register of Historic Resources. New structures, additions, and alterations shall be sympathetic to and complement the scale and design of surrounding historic structures and locally significant buildings of architectural merit; and
 - (j) *Consider the microclimate.* Any development which proposes new structures, additional lot coverage, or the installation of machinery or equipment which emits heat, vapor, fumes, or noise shall endeavor to minimize, insofar as practicable, any adverse impact

on light, air, and water resources, or on the noise and temperature levels of the immediate environment.

Sec. 6.1.11 Additional Review Criteria: CBD, CBD-T and Waterfront Core Districts. In addition to the criteria specified in Section 6.1.10, the following criteria shall apply to all proposals in the CBD and CBD-T districts and the Waterfront Core, which includes all properties in the WRC, WFR-20, WFC-E, and WFC-W districts:

- (a) *Protect existing scale and streetscape.* The arrangement of new structures and facilities should respect and be compatible with existing development. Where appropriate, new structures should be built to the street property line to retain traditional street patterns and the integrity of city blocks and their corners.
- (b) *Protect views and view corridors.* All new structures along the east-west corridors shall seek to preserve views of Lake Champlain and the Adirondack Mountains, minimize obstruction and extend access to these views for adjacent sections for the community. No new structures shall be permitted to obstruct views of Lake Champlain or mountains from nearby public ways except to the extent that it extends access to the view to significant sections of the community or is for uses which have a clear public purpose;
- (c) *Consider the city skyline.* New structures shall be thoughtfully shaped in relationship to their position in the skyline and sympathetic to surrounding nineteenth century vernacular architecture. The impact of rooftop forms shall be carefully considered. Alternatives to flat roofs shall be encouraged;
- (d) *Protect solar access.* New structures shall have minimal adverse impact on solar access to open space and adjacent structures in order to preserve and provide for active and passive solar utilization where practicable;
- (e) *Reduce energy utilization.* New structures should incorporate best available technologies and materials in order to maximize energy efficient design. The environmental impacts of wind and energy consumption created by buildings over four (4) stories should be assessed;
- (f) *Minimize shadow impacts.* New structures and additions to existing structures shall be shaped to reduce substantial impacts of shadows on public plazas and other publicly accessible spaces. In determining the impact of shadows, the following factors shall be taken into account: the amount of area shaded, the duration of shading, and the importance of sunlight to the utility of the type of open space being shadowed;
- (g) *Conceal rooftop devices.* Rooftop mechanical equipment and appurtenances to be used in the operation or maintenance of a structure shall be arranged so as to minimize visibility from any point at or below the roof level of the subject structure. Such features, in excess of one foot in height, shall be either enclosed by

outer building walls or parapets, or grouped and screened in a suitable manner, or designed in themselves so that they are balanced and integrated with respect to the design and materials of the building;

- (h) *Provide pedestrian corridor for waterfront access.* When considering plans submitted for design review within the waterfront core, the development review board shall encourage, but not require, the provision of an area adjacent to the lakefront for the purpose of providing continuous and convenient access for pedestrian traffic along the lakefront and for the purpose of providing an easement for underground utilities. Any such area shall be at least fourteen feet (14') in width and shall be designed in such a way as to connect adjacent developments along the lakefront;
- (i) *Make service access secondary to pedestrian access.* Any point of vehicular access for delivery of goods shall be encouraged to respect the character of the pedestrian corridor where it exists or is proposed. Water-oriented commercial facilities requiring the movement of goods across the pedestrian corridor shall provide controlled points of access;
- (j) *Achieve design excellence.* Endeavors to achieve design excellence in all new structures are encouraged. Where the existing character and quality merit change, the design of new structures shall be directed towards a specific design objective. In every case the structure shall be made compatible with the character of Burlington by means of the following factors:
 - (1) A silhouette harmonious with the natural landforms and building patterns produced by height limits;
 - (2) Maintenance of an overall height similar to that of surrounding buildings, or a sensitive transition, where appropriate, to development of a dissimilar character; and
 - (3) Use of materials, colors and scales similar to or harmonizing with those of nearby structures and neighborhoods.

Sec. 6.1.12 Additions to Design Review Districts. Except for properties subject to zoning requests requiring conditional use approval, if a property is subsequently added to a design review district either individually or as part of a district, the notice procedures as specified in Article 23 shall be followed.

ARTICLE 7. SITE PLAN REVIEW

- Sec. 7.1.1 Intent.** It is the intent of these regulations to set forth the standards and procedures for the review of site plans.
- Sec. 7.1.2 Authority.** These regulations are enacted under the provisions of 24 V.S.A. Section 4407(5).
- Sec. 7.1.3 Applicability.** Except as otherwise provided in this ordinance, these regulations shall apply to any zoning permit request pertaining to any use other than a single detached dwelling or duplex.
- Sec. 7.1.4 Exemptions.** In addition to exemptions for a single detached dwelling or duplex, these regulations shall not apply to:
- (a) Projects not involving any additional coverage of the lot, either in the form of construction of or addition to a structure, whether permanent or temporary, grading changes, or in the form of additional paving, asphaltting or other equivalent method of lot coverage; or
 - (b) Projects involving the construction, reconstruction or alteration of any feature, which the building inspector or other duly authorized city inspector certifies in writing, are required by public safety in order to correct an unsafe or dangerous condition.
- Sec. 7.1.5 Certificate of Appropriateness.** No zoning permit shall be issued for any use subject to these regulations unless the site plan has been approved and a certificate of appropriateness issued by the development review board in accordance with the provisions of Article 4.
- Sec. 7.1.6 Review Criteria.** The development review board shall be guided by the following standards in conducting its review and imposing conditions and safeguards:
- (a) *Adequacy of Traffic Access.* Curb cuts should be so arranged and limited in number as to reduce congestion and improve traffic safety. Proper sight triangles and sufficient turnarounds for vehicles should be provided to reduce the potential for accidents at points of egress;
 - (b) *Adequacy of Traffic Circulation and Parking.* There should be sufficient parking as required in Article 10 laid out in a manner to provide ease in maneuvering of vehicles and so as not to be detrimental to the surrounding properties or to create an undesirable visual effect from the street. Sufficient area for loading and unloading may be required if the need for such loading zone is found to be necessary;

- (c) *Adequacy of Landscaping and Screening.* There shall be a sufficient amount of landscaping and screening, as may be reasonably determined by the development review board, to insure protection of and to enhance the quality of the project in question and the adjacent properties; and
- (d) *Adequacy of Protecting the Use of Renewable Energy Resources:* Where appropriate and feasible, the site plan shall be so designed as to not unreasonably deter the actual or potential use by the subject property or adjacent properties of energy available for collection or conversion from direct sunlight, wind, running water, or organically derived fuels.

Sec. 7.1.7 Substitution of Design Review Criteria. When a permit request is subject to these regulations and the provisions of Article 6 pertaining to design review, the design review criteria may be substituted by the development review board in whole or in part for the site plan review criteria.

Sec. 7.1.8 Application Procedure. Application for site plan approval shall be made in accordance with the submission requirements specified in Article 4.

Sec. 7.1.9 60-Day Approval Period. The development review board shall act to approve, disapprove, or approve with conditions, any site plan within sixty (60) days after it receives a complete submission in accordance with Section 7.1.8. Failure to act within such period shall be deemed approval of the site plan and a certificate of appropriateness shall be issued to the applicant upon request. The sixty- (60) day review period may be extended upon written agreement of the applicant.

Sec. 7.1.10 Performance Bond. In the event the development review board imposes conditions as a part of its site plan approval, it may also, as a condition of approval, require that a performance bond, letter of credit, or other security acceptable to the administrative officer, be submitted by the applicant which is sufficient in amount to cover the installation of the site improvements mandated by the board and sufficient in amount to guarantee landscaping plant survival if such is mandated. The board may accept a contract with a landscaping firm that provides adequate guarantees as compliance with that portion of its performance bond requirements.

ARTICLE 8. HISTORIC BUILDINGS

Sec. 8.1.1 Intent. It is the intent of this Article in setting forth special criteria for reviewing historic and/or significant structures, sites and districts that the development review board be strict in its judgment of plans for structures deemed to be valuable according to studies on file with the board for districts of historical or architectural value. It is also the intent of this Article that the board be lenient in its judgment of plans for structures of little historic value or for plans for new construction, except where such plans would seriously impair the historic or architectural value of surrounding structures or of the surrounding area. It is not the intent of this Article to require that new construction, alteration or repair exemplify any one period or architectural style.

Sec. 8.1.2 Authority. These regulations are enacted under the provisions of 24 V.S.A. *Section 4407(15)*.

Sec. 8.1.3 Historic and Architectural Significance. Structures, sites and districts listed in this article are deemed to be of historic and/or architectural significance because one or more of the following conditions is present:

- (a) Relationship with or to an historical event, person, or era in the City's social, physical or economic development;
- (b) Distinctive design element or landscape feature;
- (c) Distinctive architectural style;
- (d) Exterior architectural features or materials which bear a significant relationship to the remainder of the structures in the immediate vicinity; and/or
- (e) Inclusion on a local, state or federal listing of historic structures sites or districts.

Sec. 8.1.4 Review Criteria. In addition to the design review criteria specified in Article 6, the development review board shall give specific consideration in reviewing plans to the following:

- (a) The historic and/or architectural value and significance of the structure and its relationship to the historic and/or architectural value of the surrounding area;
- (b) The relationship of the exterior architectural features of the structure to the rest of the structure and to the surrounding area;
- (c) The general compatibility of exterior design, arrangement, texture and materials proposed to be used; and/or
- (d) To any other factor, including aesthetic factors, which it deems to be pertinent as delineated in the descriptions on file with the board.

In making such considerations, the board shall pass only on exterior features of the structure and shall not consider interior arrangements,

nor shall it disapprove applications except in regard to these considerations.

Sec. 8.1.5 List of Historic Districts and Sites. The requirements set forth by this Article shall uniformly apply to the following list of districts and sites:

<u>Historic Districts</u>		
District	Boundaries	Ward
University Green	University Place, east side Colchester Avenue, north side South Prospect Street, west side Main Street, south side	1 & 6
Main Street	South Prospect Street, west side South Willard Street, north side	1 & 6
South Willard Street both sides	Main Street, south side Tower Terrace, north side	6
South Williams Street	The rear property lines of those properties with frontage on South Williams Street, east and west sides, or a line parallel to South Williams Street two hundred fifty feet (250') distance from its center line, whichever is less; from the center line of Pearl Street, to the center line of Main Street.	1
Waterfront	South Champlain Street, west side Main Street, south side Maple Street, north side	5
Battery Street	Bounded by the lake front from Maple Street extended to the rear property lines extended of those properties with frontage on the north side of Main Street extended from the lake to Battery Street, then by the rear property lines of those properties with frontage on the south side of Main Street from Battery Street to Saint Paul Street, then on the rear property lines of those properties with frontage on the east side of Saint Paul Street from Main Street to Maple Street, then the rear property lines of those properties with frontage on the south side of Maple Street from Saint Paul Street to Battery Street, then the center line of Maple Street extended to the lake waterfront.	5

<u>Historic Sites</u>			
Street	Street No.	Description	Ward
Allen Street	29	St. Joseph's Church	3
Battery Street	164	Pomeroy House	5
	194	Howard Bank Building	5
Chase Street	21	Chase-Barr House	1
Church Street	1	Masonic Temple	3
	2	Richardson Building	3
	135	Ethan Allen Fire House	3
	149	City Hall	3
	180	Site of former Court House	6
	189	Wilson Hotel	6
	272	Converse Home	6
College Street	69	Follet House	3
	115-117	Wells-Richardson Complex	3
	148	Burlington Savings Bank	2
	275	Peck House	2
	323	Hagar House	2
	337	Hagar-Larfner House	2
	404	Lyon House	1
George Street	3	Standard House	3
King Street	35	Gideon King House	5
Main Street	101	Old Armory	2
	175	Old Post Office	6
	278	Mark Rive House (YWCA)	2
	411	Grasse Mount	6
	442	Wheeler House	1
	447	Sproston House	6
		Reservoir Pump House	
North Avenue	934	Hurley-House	4
	1251	St. Mark's Church	4
North Prospect St.	179	Fletcher Farm	1
North Union St.	29	Atwater Kent House	2
North Winooski Ave.	52	Wales-Hartc House	2

Historic Sites (Continued)			
Street	Street No.	Description	Ward
Pearl Street	141	First Unitarian Church	2
	303	Buell House	2
	308	Deming House	2
	327	Hills House	1
	342	Horacc Loomis House	1
	371	Van Patten House	1
	416	Woodbury House	1
Pine Street	1-15	Omnium Gatherum	3
	809	Old Champlain School	5
Saint Paul Street	567	William Hickock House	5
South Prospect Street	151	Bittersweet	6
	194	N.S. Hill House	6
	216	Kennedy House	6
	350	Redstone	6
	385	Carriage House	6
	393	Coachman's Cottage	6
South Union Street	177	Saxe House	6
	253	Shaw House	6
South Willard Street	143	James Hickock House	2
	158	Jackson House	6
	163	Winterbotham Estates	6
	251	Phelps House	6
South Williams Street	43	Warren R. Austin House	1
	146	Bissell House	1
South Winooski Avenue	54	First United Methodist Church	2
	338	First Congregational Church	2
Summit Street	26	Howard House	6
	61	Edward Wells House	6
University Place	UVM	Ira Allen Chapel	1
	UVM	Billings Library	1
	UVM	Williams Science Hall	1
	UVM	Old Mill	1
	UVM	Old Gym	1
Winooski Valley Park District		The Ethan Allen Farm House located in the Intervale area within the property owned by the Winooski Valley Park District and easterly of the Winooski Valley Park Way.	4

ARTICLE 9. SPECIAL OVERLAY DISTRICT

PART 1: PUBLIC TRUST DISTRICT

- Sec. 9.1.1 Intent.** The intent of this overlay district is to set forth the permitted uses associated with those parcels designated as “filled lands” along the waterfront and which are subject to the public trust doctrine. It is further the intent of this Article to ensure that public trust filled lands is available to the public on an open and nondiscriminatory basis.
- Sec. 9.1.2 Authority.** These regulations are enacted under the provisions of 24 V.S.A. 4405 and Act No. 274 of the *Acts of the 1989 Adjourned Session* of the Vermont General Assembly as amended.
- Sec. 9.1.3 Area Affected.** This overlay district includes all parcels situated on filled public trust lands on the Burlington waterfront north of the centerline of Main Street extended.
- Sec. 9.1.4 Legislature’s Authority on Uses.** Uses permitted in the public trust district are limited to those uses specifically authorized by the Vermont General Assembly by legislative act.
- Sec. 9.1.5 Permitted Uses.** Only the following uses are permitted within the public trust district::
- (a) Governmental facilities: such as water and sewer plants; Coast Guard and naval facilities; roads that are accessory and transportation facilities accessory to the uses permitted under this section; or existing roads, and similarly sized extensions of those roads, that service the filled public trust lands and immediately adjacent lands;
 - (b) Indoor or outdoor parks and recreation uses and facilities including parks and open space, marinas open to the public on a non-discriminatory basis, water dependent uses, boating and related services;
 - (c) The arts, educational and cultural activities including theaters and museums;
 - (d) Fresh water and other environmental research activities;
 - (e) Services related and accessory to the uses permitted under subsections (a) through (d) of this section, including restaurants, snack bars, and retail uses and ancillary parking; only those uses that are subordinate and customarily incidental to the uses listed shall be considered as related and accessory services; and/or
 - (f) Railroad, wharfing and storage uses.
 - (g) Publicly Accessible Restrooms. Any structure larger than 1000 sq. ft. in size, other than roads, parking lots, railroad tracks or recreation paths, shall include publicly accessible restrooms with appropriate exterior signs indicating their availability. The

development review board may waive this provision if it so determines that adequate publicly accessible restrooms are available within close proximity (Zoning Amendment 98-04; effective 1/13/99).

Sec. 9.1.6 Other Regulations In Effect. All other regulations of this ordinance shall apply to any uses permitted under this Article.

PART 2: INTERVALE ENTERPRISE/AGRICULTURAL DISTRICT (IEA)

Sec.9.2.1 Intent. The intent of this overlay district is to set forth the permitted uses associated with those parcels designated as “enterprise/agricultural” located in Burlington’s Intervale.

Sec.9.2.2 Authority. These regulations are enacted under the provisions of 24 V.S.A. 4407i.

Sec.9.2.3 Area Affected. This overlay district includes all areas identified in Section 3.2.6, Map 3-5F, of this ordinance within the Intervale where limited enterprise and agricultural related uses are appropriate.

Sec.9.2.4 Permitted Uses

- (a) Agricultural uses; fields, pastures, woodlots, horticulture activities, farms, including grazing, truck gardening and raising and storage crops but not including fur farms;
- (b) Agricultural research laboratories;
- (c) Day care centers;
- (d) Education/learning centers;
- (e) Agricultural greenhouses;
- (f) Aquaculture.

Sec.9.2.5 Accessory Uses. Allowed in conjunction with permitted and conditional uses as per Sections 9.2.4 and 9.2.6.

- (a) Retail uses only as an accessory use to a wholesale or mail order establishment, which shall not exceed 25% of the total operating space;
- (b) Cafeterias, restaurants, and health club facilities for employees, of a permitted or conditional use;
- (c) Offices accessory to any of the permitted or conditional uses listed;
- (d) Retail sale of agricultural products produced on site.
- (e) Retail uses accessory to an approved permitted or conditional use in the IEA. Accessory rail facilities shall be limited to rail sidings, short term storage of rail cars, occasional minor repair of rail cars,

and loading and off-loading of goods and passengers traveling by rail.

Sec.9.2.6 Conditional Uses (See Sec.17.1.5)

- (a) Utility and public works facilities;
- (b) Manufacturing and assembly of products and implements for agricultural use excluding chemicals;
- (c) Non-animal food or beverage processing;
- (d) Manufacturing or assembly of products and implements for energy use, excluding nuclear, chemical or fossil fuels based products or processing.

Sec.9.2.7 Other Regulations in Effect. All other regulations of this ordinance shall apply to any uses permitted or conditionally permitted under this Article.

ARTICLE 10. PARKING REGULATIONS

PART 1: GENERAL REQUIREMENTS

- Sec. 10.1.1 Intent.** It is the intent of this Article to:
- (a) Ensure there are adequate parking and loading facilities to serve the use or uses of the property;
 - (b) Ensure that any parking facility is so designed to provide proper circulation, reduce hazards to pedestrians, and protect the users of adjoining properties from nuisance caused by the noise, fumes, and glare of headlights which may result from the operation of vehicles parking off the street;
 - (c) Reduce congestion in the streets and contribute to traffic safety; and
 - (d) Encourage alternate modes of travel that will reduce dependence upon the single-occupancy automobile.
- Sec. 10.1.2 Authority.** These regulations are enacted under the provisions of 24 V.S.A. *Section 4407(4)*.
- Sec. 10.1.3 Parking and Loading Provisions.** No structure shall be erected, altered or established unless or until the provisions of this Article pertaining to parking and loading have been met.
- Sec. 10.1.4 Existing Structures.** Any structure or land use lawfully in existence prior to the adoption of this ordinance shall not be subject to the requirements of this Article so long as the kind or extent of use is not changed, and provided further that any parking facilities now serving such structures shall not in the future be reduced below such requirements.
- Sec. 10.1.5 Change or Expansion of Use.** Whenever there is an alteration or conversion of a structure or a change or expansion of a use which increases the parking requirements, the total additional parking requirements for the alteration, conversion, change, or expansion shall be provided in accordance with the requirements of this Article. A waiver may be requested under the provisions of Sec. 10.1.19.
- Sec. 10.1.6 Non-complying Commercial Structure.** Where the computed parking requirement for a nonresidential use in any commercial district is ten (10) spaces or less, the development review board may waive all or part of such computed requirements.
- Sec. 10.1.7 Non-complying Residential Structure.** Where additions or conversions to existing structures add living space but do not add dwelling units, and such existing structures do not meet the parking standards of Sec. 10.1.8, one (1) parking space shall be provided for each additional room. Single detached dwellings shall be exempt from this requirement.

Sec. 10.1.8 Minimum Off-Street Parking Requirements. Parking for all uses and structures shall be provided in accordance with Table 10-A. Where no requirement is designated and the use is not comparable to any of the listed uses, parking requirements shall be determined by the development review board upon recommendation of the administrative officer based upon the capacity of the facility and its associated uses.

Table 10-A

Minimum Off-Street Parking Requirements

	# Parking Spaces Required	# Reservoir Standing Spaces Required
RESIDENTIAL	Per dwelling Unit	
Single detached or attached dwelling, including cooperative and condominium units	2	
Duplex	2	
Multi-unit rental, excluding elderly:	2	
First 4 dwelling units	1.5 ¹	
Above 4 dwelling units		
Multi-unit rental, elderly	.2	
	Per Room	
Hotel	1	1/20 rooms
Motel	1	1/10 rooms
	Per 2 Beds	
Boarding/rooming house/ apartment hotel, bed & breakfast	1	
Fraternity, sorority, & dormitory	1	
COMMERCIAL²		
Amusement arcade	1/150 square feet <u>and</u> 1/ 4 seats for eating areas	
Animal boarding/hospital	1/400 square feet; no less than 5 spaces	
Appliance sales/service	1/200 square feet	
Art gallery	1/300 square feet	
Auction house	1/ 4 seats	
Auto body shop	6/service bay	
Auto junk/auto storage	1/10,000 square feet of lot area; minimum 4	
Bakery	1/ 4 seats and 1/50 square feet patron space	
Bank, credit union	1/250 square feet, 6/drive-up window	
Beauty shop, barber shop	1/200 square feet	
Bicycle sales/repair	3/1,000 square feet	

¹ An additional 10% of the total spaces shall be provided for visitor parking and shall be so designated.

² Square feet refers to number of square feet of gross floor area.

Table 10-A Continued

Minimum Off-Street Parking Requirements

	# Parking Spaces Required	# Reservoir Standing Spaces Required
Boat sales/service	1/500 square feet sales area indoor/outdoor	
Bowling Alley	5/lane	
Campground	1.5/campsite	
Car, motor vehicle, motorcycle sales	1/400 square feet	
Car wash	1/800 square feet	6/wash bay
Communication studio	1/400 square feet	
Convenience store	1/100 square feet	2/pump island (1 on each side)
Crematory	1/ 4 seats or 100 square feet of chapel area, whichever is greater	
Dance hall, health salon, gym	1/100 square feet	
Daycare	1/5 children plus 1/500 square feet gross floor area	
Dental	1/250 square feet	
Distribution center	1/800 square feet	
Dry cleaning plant	1/500 square feet	
Dry cleaning service	1/300 square feet	
Food store/supermarket	1/200 square feet	
Fabrication	1/800 square feet	
Furniture, appliance store	1/400 square feet	
Funeral parlor, mortuary	1/100 square feet	2
Game room, arcade	2/table or 1/game machine	
Garden supply	1/400 square feet	
Gas station, service station	6/service bay	2/pump island (1 on each side)
Laundry	1/2 wash machines and 1/200 square feet public space	
Machine shop	1/500 square feet	
Marina	1.5/slip or berth	
Mini warehouse/storage	1/3 units	
Medical, dental office/lab	1/250 square feet	
Office, general	1/300 square feet	
Open air markets	1/200 square feet of stall and customer circulation area	
Outpatient clinic	1/250 square feet	
Pet store	1/150 square feet	
Photo studio/lab	1/300 square feet	

Printing/publishing	1/600 square feet	
Table 10-A Continued Minimum Off-Street Parking Requirements		
	# Parking Spaces Required	# Reservoir Standing Spaces Required
Produce stand (display area)	1/100 square feet	
Rail storage services	1/1,500 square feet	
Repair garage	1/400 square feet	
Resource recycling	1/500 square feet, <u>minimum 5</u>	
Restaurant bar, diner, nightclub ³	1/ 4 seats	
Restaurant (drive-in, fast food) ³	1/50 square feet	
Research facility	1/300 square feet	
Retail, general	1/150 square feet	
Service business	1/300 square feet	
Tailor shop	1/300 square feet	
Terminal – taxi, bus	5 <u>plus</u> 1/100 square feet of waiting space	
Theater	1/3 seats	
Theater, drive-in		10% of entrance capacity
Tour-oriented manufacturing	1/800 square feet plus 1/150 feet devoted to patron use/ circulation	
Trash, incinerators	1/1,000 square feet	
Truck terminal	1/1,000 square feet	
Warehouse retail	1/150 square feet	
Wholesale distribution	1/500 square feet	
Wholesale sales	1/150 square feet	
INDUSTRIAL²		
Manufacturing	1/800 square feet	
Warehouse	1/1200 square feet	
INSTITUTIONAL/PUBLIC²		
Aquarium	1/700 square feet	
Auditorium, church, synagogue	1/ 4 seats	
Club-membership	1/ 4 persons related to occupancy	
College, university	³ / ₄ /# parking stickers issued	
Correctional facility	1/10 inmates of maximum	

³ Plus one space per each 75 square feet of gross floor area intended for patron use but without seats or amusement machines.

	capacity	
Table 10-A Continued Minimum Off-Street Parking Requirements		
	# Parking Spaces Required	# Reservoir Standing Spaces Required
Daycare	1/5 children <u>plus</u> 1/500 square feet	
Educational facility – other	1/400 square feet	
Elementary, junior-high school	1/400 square feet	
High School	1/300 square feet	
Hospital, medical center	2 ¾ / bed	
Library, museum, gallery	1/700 square feet	
Nursing home/Convalescent home	1/4 beds	
Nursery school	1/500 square feet	
Post office	1/500 square feet	
Police/fire station	1/300 square feet	
Public assembly – other	1/ 4 seats	
Public utility, yard, garage	1/500 square feet	
Wharf	1 ½ /slip or berth	

Sec. 10.1.9 Minimum Off-Street Loading Requirements. Every structure constructed after the effective date of this ordinance and used for business, trade or industry, shall provide space on the premises as indicated in Table 10-B for the unloading and loading of vehicles. Such space shall have access to a public alley, or if there is no alley, to a public street.

Table 10-B Minimum Off-Street Loading Requirements	
Retail Business and Services	1 space of at least 250 sf for each 3,000 sf of gross floor area or part thereof
Wholesale and Industrial	1 space of at least 500 sf for each 10,000 sf of gross floor area or part thereof
Bus and Truck Terminal	Sufficient space to accommodate the maximum number of buses or trucks to be stored or to be loading or unloading at the terminal at any one time

Sec. 10.1.10 Parking Dimensional Requirements. Each parking space shall meet the dimensional requirements and aisle width requirements of Table 10-C.

Table 10-C Minimum Dimensional Requirements		
	Regular	Compact
Parking space width	9'	9'
Parking space length, angled	20'	18'
Parking space length parallel	22'	20'
Aisle width (one-way)	10'	9'
Aisle width (two-way)	20'	18'
NOTE: The front two (2) feet of any parking space located adjacent to a required or proposed setback may extend into that setback, thereby reducing the required parking space length accordingly		

Sec. 10.1.11 Recommended Dimensional Requirements. The standards recommended in Table 10-D shall be incorporated whenever feasible to ensure adequate and convenient access and circulation. These standards should be adhered to except in situations where a lesser standard is deemed necessary due to site topography, location of existing or proposed structures, lot configuration, and/or the need to preserve existing trees and mature vegetation.

Table 10-D

Recommended Parking Lot Dimensions					
Angle of Parking Space	Width of Space	Length of Space	Width of Angled Space	Length of Angled Space	Minimum Back-Up Length
STANDARD CARS					
Parallel Parking	9.0'	22.0'	-	-	-
30° Angle	9.0'	20.0'	18.0'	17.8'	12.0'
	9.5'	20.0'	19.0'	18.2'	12.0'
	10.0'	20.0'	20.0'	18.7'	12.0'
45° Angle	9.0'	20.0'	12.7'	20.5'	15.0'
	9.5'	20.0'	13.4'	20.9'	14.0'
	10.0'	20.0'	14.1'	21.7'	14.0'
60° Angle	9.0'	20.0'	10.4'	21.8'	18.0'
	9.5'	20.0'	11.0'	22.1'	18.0'
	10.0'	20.0'	11.5'	22.3'	18.0'
90° Angle	9.0'	20.0'	9.0'	20.0'	24.0'
	9.5'	20.0'	9.5'	20.0'	23.0'
	10.0'	20.0'	10.0'	20.0'	22.0'
COMPACT CARS					
Parallel Parking	8.0'	20.0'	-	-	-
30° Angle	8.0'	18.0'	15.9'	15.1'	13.0'
45° Angle	8.0'	18.0'	11.2'	18.3'	13.0'
60° Angle	8.0'	18.0'	9.2'	19.8'	15.0'
90° Angle	8.0'	18.0'	8.0'	18.0'	20.0'

Sec. 10.1.12 Location and Arrangement.

- (a) Every required off-street parking space and reservoir standing space shall be located on the same lot and within the property lines of the use served by it;
- (b) Whenever feasible, drives and curb cuts serving adjacent uses shall be combined to minimize the number of entrances onto a public street;
- (c) Curb cuts on corner lots shall be located at the farthest possible point away from the corner curb return;
- (d) Parking lots with dead end ninety degree (90°) angle parking shall be provided with a turning area;
- (e) Whenever feasible, all parking lots shall be designed to preclude the necessity of vehicles backing onto a public street; and
- (f) Whenever feasible, a minimum distance of twenty feet (20') shall be provided at drive entrances between the fronting property line and the first on-site parking space to provide adequate stacking space.

Sec. 10.1.13 Off-Site Location. If the required off-street parking spaces cannot be reasonably provided on the same lot as the building it serves, such space may be provided on other property located not more than four

hundred feet (400') distant, as measured from lot line to lot line along the nearest pedestrian route. Such off-site spaces must not reduce the required parking for another use or structure. The availability and duration of off-site spaces must be documented in writing prior to approval.

Sec. 10.1.14 Parking for Disabled Persons. Parking spaces for disabled persons shall be at least eight feet (8') wide and shall have an adjacent access aisle at least five feet (5') wide. Parking access aisles shall be part of the accessible route to the building or facility entrance. Accessible parking spaces shall be designated as reserved for the disabled by a sign showing the symbol of accessibility. A vehicle parked in the space shall not obscure such sign.

Sec. 10.1.15 Compact Car Spaces. No more than twenty-five percent (25%) of the total number of spaces may be designed and designated for use by compact cars.

Sec. 10.1.16 Tandem Parking Restriction. Parking facilities shall be designed so that each motor vehicle may proceed to and from the parking space provided for it without the moving of any other motor vehicle. This restriction shall not apply to single detached dwellings and duplexes.

Sec. 10.1.17 Lighting. All artificial lighting used to illuminate a parking lot shall be so arranged that all direct rays from lighting fall entirely within such parking lot or accessory walkways. Lighting standards shall not exceed twenty-two feet (22') in height and shall be equipped with top and side shields when necessary to prevent glare onto adjacent properties.

Sec. 10.1.18 Front Yard Parking. Front yard parking for residential uses, with the exception of access drives to the site eighteen feet (18') or less in width, shall be in conformance with the required minimum front yard setback or average building line of adjacent lots, whichever distance is greater. No such average setback shall exceed twice the required front yard setback specified in Article 5. The provisions of this subsection shall not be applicable during the annual effectiveness of the winter parking ban pursuant to Section 20-56 of the Code of Ordinances.

Sec. 10.1.19 Waivers. All of the requirements of this Article may be reduced upon approval of the development review board to the extent that the applicant can demonstrate that the regulation is unnecessarily stringent for reasons of:

- (a) Unique use times;
- (b) Shared or dual use;
- (c) Availability and projected use of alternate transportation modes, including the adoption of a traffic management plan for one or more uses; and/or

- (d) Anticipated reduction in vehicle ownership in connection with affordable housing developments.

Sec. 10.1.20 Waiver Limits. A waiver authorized by the development review board shall not exceed fifty percent (50%) of the required spaces except for:

- (a) Affordable housing units;
- (b) Cooperative or condominium conversions of existing multi-unit developments that cannot meet the cooperative or condominium parking requirements of Sec. 10.1.7 with either:
 - (1) The adoption of a transportation management plan;
 - (2) A vehicle limitation covenant or restriction; or
 - (3) Demonstrated availability of public transportation facilities;
- (c) Housing projects, adaptive reuse projects, and ground floor retail uses in existing buildings within the CBD and CBD-T; and/or
- (d) Off-street loading requirements.

PART 2: INSTITUTIONAL PARKING PLANS

Sec. 10.2.1 Institutional Parking Plans. Each college, university, and medical institution within the UC district shall provide off-street parking and loading facilities consistent with its needs according to the standards specified for each use in Sec. 10.1.8 and Sec. 10.1.9. In order to accomplish this objective, each such institution shall maintain and monitor a comprehensive parking, loading and storage plan for the entire campus or institution. In addition, each college, university or medical institution shall establish a facility-wide permit system to implement its plan. With each permit request, which would increase parking demand, a college, university or medical institution shall submit, said plan, including any modifications thereto.

Sec. 10.2.2 Institutional Parking Plans-Review Criteria. In reviewing a permit requested by a college, university or medical institution, the development review board shall find that the following conditions are met by the parking plan:

- (a) That the number of staff, faculty and student vehicle permits issued is a realistic reflection of the on-premise parking needs of faculty, staff and students;
- (b) That the vehicle permit system adopted by the college, university or medical institution is neither designed nor operated in a manner that effectively voids the intent of any of the provisions of this ordinance;
- (c) That there be provided a minimum of $\frac{3}{4}$ spaces for each vehicle permit issued per Sec. 10.1.8. Where such ratio is deemed

inadequate by the development review board to fully meet the parking needs of the college, university or medical institution, a higher parking standard for each individual structure or use may be required, but in no event higher than the standards specified in Sec. 10.1.8;

- (d) There be provided off-street loading and service vehicle spaces for each building and structure as per Sec. 10.1.9;
- (e) That the required parking and loading generated by the proposed construction related to the permit requested shall be provided in excess of the existing parking and loading;
- (f) That additional visitor parking shall be provided equal to ten percent (10%) of the total vehicle permits issued as per Sec. 10.1.8; and
- (g) That the parking and loading provided has a reasonable location relative to use.

PART 3: PARKING AND MASS TRANSIT CAPITAL FUND

Sec. 10.3.1 Establishment of Fund. The City of Burlington Parking and Mass Transit Capital Fund is established for the sole purpose of assuring that the off-street parking requirements of the CBD, the transitional zones and the Waterfront Core are adequately satisfied. In order to accomplish this objective, expenditures from the fund shall be restricted to the provision of additional off-street parking spaces in the CBD, transitional zones and the Waterfront Core or to the provision of alternative transit modes and/or facilities which shall be shown to have the effect of reducing an equivalent number of off-street parking needs in the CBD, transitional zones and the Waterfront Core.

- (a) The fund will be managed and maintained in a separate account by the city treasurer;
- (b) The fund will be the repository of the contributions generated under Sec. 10.3.2. Such contributions shall be a precondition of the issuance of a certificate of occupancy to the applicant. The fund may be augmented by transfers from federal, state municipal and private sources consistent with the purposes of the fund; and
- (c) Expenditures from the fund will be made by the city council according to standard appropriation procedures as specified in Section 157 of the City Charter and upon recommendations of the public works commission and planning commission.

Sec. 10.3.2 Contribution to Capital Fund. Subject to the approval of the development review board, all or part of the required accessory parking for a structure located in the CBD, CBD-T, WFC-E, WFC-T, or WFC-W districts, in excess of ten (10) spaces may be waived subject to the applicant's election to contribute an equivalent predevelopment fee to

the City of Burlington Parking and Mass Transit Capital Fund in lieu of the number of spaces waived.

- Sec. 10.3.3 Amount of Contribution.** The amount of predevelopment fee shall be determined, and adjusted periodically as needed, by the city council upon recommendation of the city engineer, the planning director, and the CEDO director. The amount shall be computed on the basis of the current land acquisition, financing and construction cost of providing the exempted spaces in a parking garage located in or adjacent to the CBD reduced by the present value of the projected revenues from said spaces. Effective November 1, 1992, the predevelopment fee shall be eight thousand dollars (\$8,000) per parking space.
- Sec. 10.3.4 Development Review Board Approval.** It is the policy of the city that on-site parking as required by Sec. 10.1.8. shall be required to the maximum extent possible. The development review board may allow the election of contribution to the fund only if the applicant can demonstrate by clear and convincing evidence that (i) on-site parking will be impossible or constitute an undue hardship or (ii) contribution to the fund under the particular circumstances of the application will be more beneficial to the city. The contribution to the fund, if allowed, shall represent the smallest amount of variance from the requirements of on-site parking that will afford relief. Such contribution shall be deemed a payment in lieu of providing on-site parking and shall not be deemed an impact fee or exaction.
- Sec. 10.3.5 Time Limit for Expenditure.** Any funds contributed to the Parking and Mass Transit Capital Fund shall be expended within ten (10) years. Any funds not expended within this time limit shall be returned to the applicant.

ARTICLE 11. PLANNED RESIDENTIAL DEVELOPMENT

Sec. 11.1.1 Intent. The intent of the planned residential development (PRD) is to:

- (a) Promote the most appropriate use of land through flexibility of design and development of land;
- (b) Facilitate the adequate and economical provision of streets and utilities;
- (c) Preserve the natural and scenic qualities of open space;
- (d) Provide for a variety of housing types;
- (e) Provide a method of development for existing parcels which because of physical, topographical, or geological conditions could not otherwise be developed; and
- (f) Achieve a high level of design quality and amenities.

Sec. 11.1.2 Authority. These regulations are enacted under the provisions of 24 V.S.A. Section 4407(3).

Sec. 11.1.3 General Requirements. A planned residential development may be permitted in all districts where residential uses are permitted subject to the provisions of this Article. A planned residential development must receive a certificate of appropriateness under the design control provisions of Article 6 and final subdivision plat approval in accordance with Chapter 28, Subdivision Regulations, of the City of Burlington.

Sec. 11.1.4 Modification of Regulations. With the approval of the development review board and subject to the limitations of Sec. 11.1.5, the density, frontage and setback regulations may be altered for a planned residential development. At the discretion of the development review board the dwelling units may be of varied types including single detached, attached, duplex or apartment construction. Any proposed modifications of regulations shall be listed in a statement accompanying the plat submission and such modifications shall be subject to the provisions of Sec. 11.1.5 and Sec. 11.1.6.

Sec. 11.1.5 Approval Requirements. The following requirements shall be met for the development review board to approve a planned residential development:

- (a) Lot coverage requirements of the district shall be met;
- (b) The minimum setbacks required for the district shall apply to the periphery of the project;
- (c) The minimum parcel size shall be met if the project is located in a RL and WRL districts;
- (d) The project shall be subject to design review and site plan review;
- (e) The project shall meet the requirements of the subdivision regulations of the City of Burlington;

- (f) All other zoning requirements of the district, except those specifically deemed not applicable by the administrative officer, shall be met;
- (g) Open space or common land shall be assured and maintained in accordance with the conditions as prescribed by the development review board;
- (h) The development plan shall specify reasonable periods within which development of each phase of the planned residential development may be started and shall be completed. Deviation from the required amount of usable open space per dwelling unit may be allowed provided such deviation shall be provided for in other sections of the planned residential development;
- (i) The intent as defined in Sec. 11.1.1 is met in a way not detrimental to the city's interests; and
- (j) The proposed development shall be consistent with the municipal development plan.

Sec. 11.1.6 Accessory Facilities.

- (a) A planned residential development may contain a building or buildings intended for use as a community center, recreation facility, child care center and/or business office if the development review board determines that such use or uses will not contribute to parking problems on site or in the surrounding area.
- (b) A planned residential development may contain a building or buildings intended for use as a community convenience store if approved by the Development Review Board under the following standards:
 1. A determination shall be made by the Development Review Board that the community convenience store will not contribute to parking problems on site or in the surrounding area.
 2. The maximum size of the store is 1000 square feet.
 3. Only one sign is permitted limited to the following:
 - a) The maximum size is 4 square feet.
 - b) The sign shall be a parallel sign.
 - c) The sign shall not be illuminated.
 - d) No window signs, temporary or permanent shall be allowed.
 - e) No freestanding signs on the site or within the street ROW are allowed.
 4. No outside storage or displays or vending machines, except for a telephone and a screened dumpster, is allowed.
 5. There shall be no exterior service windows or exterior ATM's allowed.
 6. There shall be no gas pumps allowed.

7. The building(s), sign and site for any such store shall be subject to the Design Review Criteria under Article 6.
8. Parking shall be in back or at the side of the community convenience store building with the building oriented for pedestrian access.

ARTICLE 12. HOME OCCUPATIONS

Sec. 12.1.1 Intent. It is the intent of these regulations to ensure that a home occupation as an accessory use is so located and conducted that the average neighbor, under normal circumstances, would not be aware of its existence other than for a sign permitted under Sec. 12.1.6 and Article 16. The standards for home occupations are intended to ensure compatibility with other permitted uses and with the residential character of the neighborhood. The home occupation must clearly be secondary or incidental to the residential use of the main building. It is further the intent of these regulations to eliminate any home occupations that do not conform to the provisions of this Article.

Sec. 12.1.2 Authority. These regulations are enacted under the provisions of 24 V.S.A. Section 4407(2).

Sec. 12.1.3 Conditional Use Approval. Any home occupation, except as specified in Sec. 12.1.3 (a), shall require conditional use approval by the development review board in accordance with the provisions of Article 17 (*Zoning Amendment 98-03, effective 10/28/98*).

(a) Administrative approval.

- (1) A home occupation located within a commercial district that meets all the criteria specified in Sec. 12.1.6 shall not require conditional use approval, but shall require a zoning permit that may be administratively approved.
- (2) A home occupation located in a residential or university campus district that meets all the criteria as specified below and the criteria in Sec. 12.1.6 shall not require conditional use approval, but shall require a zoning permit that may be administratively approved:
 - (a) Home occupations that are low impact office in nature and including design studios, using normal office equipment such as computers, calculators, telephone, fax machines, desks, drafting tables or other similar office furnishings;
 - (b) Limited to one business per residence;
 - (c) No clients or customers come to the premises;
 - (d) There shall be no vehicles associated with the home occupation except:
 - (1) A personal vehicle with no commercial identification can be used; and
 - (2) An occasional delivery vehicle such as a Postal Service, UPS, or FedEx truck, but excluding semi trailers or 18 wheel vehicles; deliveries or pick-ups

shall occur no more than an average of one (1) time per day between the hours of 8 am and 6 pm;

- (e) No goods are located on site except for samples or designs produced on site and no such samples or other materials associated with the home occupation may be stored outside of an enclosed structure;
- (f) All employees shall be residents of the home where the home occupation is conducted. No outside employees are allowed on the premises;
- (g) No more than 25%, up to 500 square feet, of a residence can be used for the home occupation; and
- (h) No signs are allowed.

- (3) Failure to adhere to the criteria set out in Sec. 12.1.3 shall render the administrative approval null and void.

Sec. 12.1.4 Application Procedures. Application for a home occupation shall be made on a form provided by the administrative officer. The form shall be signed by the applicant and accompanied by the applicable filing fee.

Sec. 12.1.5 Public Hearing. The development review board shall hold a public hearing under Article 18 to consider any request for a home occupation.

Sec. 12.1.6 Home Occupation Criteria. In addition to the conditional use criteria specified in Article 17, the following criteria must be met for any home occupation:

- (a) A home occupation shall be conducted solely by resident occupants plus no more than one additional full-time equivalent employee in RL and WRL districts and no more than two (2) full-time equivalent employees in other districts. The home occupation shall be conducted entirely within an existing dwelling unit and/or one enclosed accessory structure;
- (b) No more than thirty-five per cent (35%) of the floor area of said residence, including accessory structures, up to a maximum of seven hundred fifty (750) square feet, whichever is less, shall be used for such purpose;
- (c) No home occupation shall require alterations, construction or equipment that would change the fire rating of the structure or the fire district in which the structure is located;
- (d) There shall be no outside storage of any kind related to the home occupation;
- (e) There shall be no exterior evidence of the conduct of a home occupation except for:
 - (1) Occasional garage/lawn/yard type sales (up to twice a year not to exceed two (2) days each); and

- (2) One non-illuminated attached parallel sign that shall not exceed two (2) square feet. No other signs shall be permitted.
- (f) No home occupation may increase vehicular traffic flow or parking by more than one additional vehicle at a time for customers or deliveries. All parking shall be located off-street and shall maintain the required front yard setback per Article 5;
- (g) No home occupation shall create sounds, noise, dust, vibration, smell, smoke, heat, humidity, glare, radiation, electrical interference, fire hazard or any other hazard, nuisance or unsightliness which is discernible from any adjacent dwelling unit;
- (h) The home occupation shall be clearly incidental and secondary to the use of the dwelling for residential purposes and shall not change the character thereof or adversely affect the uses permitted in the residential district of which it is a part.
- (i) Delivery of products and materials related to the home occupation by vehicles other than automobiles shall occur no more than once per day;
- (j) With the exception of one delivery per day, as specified in subparagraph (9), no more than one (1) commercial vehicle shall be allowed on the premises at any one time; and
- (k) There shall be no sale of goods except for goods fabricated on the premises as part of an approved home occupation.

Sec. 12.1.7 Exclusions. Home occupations shall not include commercial stables or kennels, veterinary clinics or similar establishments and such uses shall not be permitted in any district unless specifically listed as a permitted use.

Sec. 12.1.8 Revocation. Approval of a home occupation may be revoked by the development review board in accordance with the following provisions:

- (a) **Noncompliance.** Upon receipt of notification or evidence of noncompliance with conditions of approval or evidence of error or misrepresentation, the development review board may schedule a public hearing to consider the revocation or modification of approval for a home occupation;
- (b) **Notice.** The administrative officer shall duly warn such public hearing and give notice to the applicant, abutters, and other interested parties;
- (c) **Public Hearing.** The development review board shall hold a public hearing to hear cause as to why the approval of the home occupation should not be revoked. The development review board shall render its decision in accordance with the conditional use time limitations set forth in Article 17; and
- (d) **Errors.** The burden of providing complete and accurate information shall be the sole responsibility of the applicant. Any error or

misrepresentation may result in voiding or modification of the approval for a home occupation.

ARTICLE 13. MAJOR IMPACT DEVELOPMENTS

Sec. 13.1.1 Intent. The intent of these regulations is:

- (a) To ensure that projects of major significance or impact receive a comprehensive review under established criteria;
- (b) To ensure that the city's natural, physical, and fiscal resources and city services and infrastructure are adequate to accommodate the impact of such developments, both individually and cumulatively; and
- (c) To provide a local review and public hearing process.

Sec. 13.1.2 Authority. These regulations are enacted under the provisions of 24 V.S.A. *Section 4407(2)*.

Sec. 13.1.3 Applicability.

- (a) Except as otherwise provided in this ordinance, these regulations shall apply only to permit requests involving:
 - 1 The construction or substantial rehabilitation of five (5) or more dwelling units or the creation through adaptive reuse/conversion of ten (10) or more dwelling units;
 - 2 The construction or substantial rehabilitation of fifteen thousand (15,000) s.f. or more of gross floor area of non-residential development;
 - 3 Site improvements, including paving projects in excess of fifty (50) parking spaces or one acre; or
 - 4 Site improvements to parcels that contain designated wetlands or natural areas of state or local significance.
- (b) Multiple projects by the same applicant or responsible party within any consecutive twelve (12) month period on the same property or on a property within 1000 feet of the subject property that in the aggregate equal or exceed the above criteria shall be subject to these regulations.
- (c) For purposes of Sec. 13.1.3A.3 only, site improvements do not include other subsurface improvements that are covered with soil and plantings, with the exception of parking lots and athletic playing fields. Such subsurface improvements that are excluded from the definition of site improvements include, but are not limited to, underground utility lines and subsurface drainage ways.

Sec. 13.1.4 Exemptions. This provision shall not apply to permit requests for temporary structures or to projects that meet all the following criteria:

- (a) Substantial rehabilitation that does not expand the floor area nor structural capacity;

- (b) Projects that do not result in a change of use or increased parking demand as determined by the administrative officer; and
- (c) Projects that do not directly alter a wetland and its 100-foot buffer or a natural area.

Sec. 13.1.5 Conditional Use Approval. A major impact development, except subdivisions previously approved by the development review board, is permitted only upon receipt of conditional use approval of the board.

Sec. 13.1.6 Review Criteria. Before a major impact development may receive approval, the development review board must be satisfied, based on documentation provided by appropriate city agencies, experts, interested parties and/or the applicant that the proposed development, in addition to meeting the statutory criteria for conditional use, shall:

- (a) Not result in undue water, air or noise pollution;
- (b) Have sufficient water available for its needs;
- (c) Not unreasonably burden the city's present or future water supply or distribution system;
- (d) Not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;
- (e) Not cause unreasonable congestion or unsafe conditions on highways, streets, waterways, railways, bikeways, pedestrian pathways or other means of transportation, existing or proposed;
- (f) Not cause an unreasonable burden on the city's ability to provide educational services;
- (g) Not place an unreasonable burden on the city's ability to provide municipal services;
- (h) Not have an undue adverse effect on rare, irreplaceable or significant natural areas, historic or archaeological sites, nor on the scenic or natural beauty of the area or any part of the city;
- (i) Not have an undue adverse effect on the city's present or future growth patterns nor on the city's fiscal ability to accommodate such growth, nor on the city's investment in public services and facilities;
- (j) Be in substantial conformance with the city's municipal development plan;
- (k) Not have an undue adverse impact on the present or projected housing needs of the city in terms of amount, type, affordability and location; and/or
- (l) Not have an undue adverse impact on the present or projected park and recreation needs of the city.

ARTICLE 14. INCLUSIONARY ZONING/DENSITY BONUS

Sec. 14.1.1 Intent. The intent of these regulations is:

- (a) To meet the specific mandates of 24 V.S.A. Section 4302 related to housing opportunities for all of Vermont's citizens, particularly for those citizens of low or moderate income;
- (b) To mitigate the impact of market rate housing construction on the limited supply of available land suitable for housing, thus preventing the city's zoning ordinances which allow residential development from having the effect of excluding housing that meets the needs of all economic groups within the municipality; and
- (c) To prevent overcrowding and deterioration of the limited supply of affordable housing, and thereby promote the public health, safety and general welfare.

Sec. 14.1.2 Authority. These regulations are enacted under the authority of 24 V.S.A. Sec. 4406(4)(B).

Sec. 14.1.3 Applicability. Except as otherwise provided in this ordinance, these regulations shall apply only to permit requests including:

- (a) The creation of five (5) or more dwelling units through new construction and/or substantial rehabilitation of existing structures; or
- (b) The creation of ten (10) or more dwelling units through adaptive reuse or conversion of a nonresidential use to residential use.

Multiple developments or projects by the same applicant or responsible party within any consecutive twelve (12) month period that in the aggregate equal or exceed the above criteria shall be subject to these regulations.

Any project meeting the criteria of this section shall be deemed a covered project.

Sec. 14.1.4 Certificate of Inclusionary Housing Compliance. Notwithstanding any other provision of this ordinance, no conditional use approval, change of use, subdivision approval, building permit or occupancy permit shall be granted for a covered project unless a certificate of inclusionary housing compliance has been issued by the Housing Trust Fund.

Sec. 14.1.5 Conditional Use Approval. A covered project, except subdivisions approved by the development review board, is permitted only upon receipt of conditional use approval of the board.

Sec. 14.1.6 Percentage of Inclusionary Units. All covered projects shall meet the percentage requirements for inclusionary units as specified in Sections 14.1.7 and 14.1.8. The percentage of inclusionary units shall be calculated with a base number that includes any bonus units added to the covered project under Section 14.1.14. Inclusionary units shall include those units in a covered project, which are regulated in terms of:

- (a) Selling price or rent level;
- (b) Marketing and initial occupancy; and
- (c) Continued requirements pertaining to re-sale or rent increases.

Sec. 14.1.7 Inclusionary Units (Rental). For projects where units are offered for rent, fifteen percent (15%) of all of the dwelling units in the project shall be designated as inclusionary units except that in any waterfront zoning district twenty-five percent (25%) of all the dwelling units in the project shall be designated as inclusionary units.

Sec. 14.1.8 Inclusionary Units (For Sale). For covered projects where units are offered for sale via the conveyance of a deed or share for individual units, inclusionary units shall be designated in accordance with the following table:

Table 14-A Inclusionary Zoning Percentages		
If the average sale price of project units is affordable to household earning:	The percentage of units which are subject to rents and selling prices as per Sec. 14.1.10 and are subject to marketing and continued affordability provisions (Sec. 14.1.11 and Sec. 14.1.12) shall be:	The percentage of units which are subject to marketing and continued affordability provisions (Sec. 14.1.11 and Sec. 14.1.12) shall be:
Less than 80% of median income	0%	15%
80% - 99% of median income	10%	5%
100% - 139% of median income	15%	0%
140%-179% of median income	20%	0%
180% of median income and above	25%	0%

Sec. 14.1.9 General Requirements for Inclusionary Units. All covered projects must comply with the requirements set forth in subparagraphs (a) through (e) 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, unless waived by the Housing Trust Fund or its designee;
- (b) 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; and
 - (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) The gross floor area of the inclusionary units is not less than the following minimum requirements, unless waived by the Housing Trust Fund or its designee:

One bedroom	750	square feet
Two bedroom	1,000	square feet
Three bedroom.....	1,100	square feet
Four bedroom.....	1,250	square feet
- (c) Priority in the sale or lease of inclusionary units will be given to households earning less than eighty percent (80%) of median income, adjusted for household size and to households residing in Burlington at the time that these units are offered for sale or lease;
- (d) 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; and
- (e) The final calculations for the number of inclusionary units and the rental or sales price for these units shall be made prior to the issuance of building permits for the covered project.

Sec. 14.1.10 Calculating Rents and Selling Prices. The following provision shall apply to the calculation of rents, selling prices and/or carrying charges of inclusionary units:

- (a) Inclusionary rental units shall be rented at a price which, on average, is affordable for a household with an annual income that is sixty-five percent (65%) of median income adjusted for household size;
- (b) Inclusionary units for sale shall be sold at a price which is affordable for a household with an annual income that is seventy-five percent (75%) median income adjusted for household size;

- (c) In calculating the rents or carrying charges of inclusionary units, the following relationship between unit size and household size shall apply:
 - (1) Efficiency units: 1 person household;
 - (2) One-bedroom units: 1.5 person household (average of one and two-person household incomes);
 - (3) Two-bedroom units: 3 person household;
 - (4) Three-bedroom units: 4.5 person household (average of four and five-person household incomes);
 - (5) Four-bedroom units: 6 person household.
- (d) With respect to inclusionary units offered for sale, prices will be calculated on the basis of:
 - (1) An available fixed-rate thirty-year mortgage, consistent with a “blended rate” for Burlington banks plus the Vermont Housing Finance Agency. A lower rate may be used in calculating affordable prices if the developer can guarantee the availability of a fixed-rate thirty-year mortgage at this lower rate from the Vermont Housing Finance Agency for all of the inclusionary units required for the covered project;
 - (2) A down payment of no more than ten percent (10%) of the purchase price;
 - (3) A calculation of property taxes; and
 - (4) A calculation of homeowner insurance or homeowner association fees. Homeowner association fees shall be calculated in the same manner as those calculated for the residents of market units in the same development.

Sec. 14.1.11 Marketing of Inclusionary Units. Any applicant developing a covered project shall adhere to the following provisions with respect to the initial offering of inclusionary units for sale or rental:

- (a) **Trust Fund Notification.** The developer shall notify the Housing Trust Fund, as defined in Section 14-400 of the Code of Ordinances, of the prospective availability of any inclusionary units at the time that the building permit is issued for such units in a covered project;
- (b) **Trust Fund Option.** The Housing Trust Fund shall then have an exclusive option for one hundred twenty (120) days to purchase each inclusionary unit offered for sale from the developer unless waived or assigned;
- (c) **Trust Fund Waiver.** If the Housing Trust Fund fails to exercise its option by failing to negotiate and sign a purchase and sale agreement for the inclusionary units, or if the Housing Trust Fund declares its intent not to exercise its option, the developer shall

offer the units for purchase or rent to households earning less than median income, adjusted for household size. If requested by the developer, the Housing Trust Fund shall execute documents that may be recorded in the Burlington Land Records to evidence said waiver of the option;

- (d) **Time of Closing.** Closing on inclusionary units purchased by the Housing Trust Fund shall occur on or after the time of issuance of the certificate of occupancy. If the Housing Trust Fund fails to close on these inclusionary units, the developer shall offer the unit for purchase or rent to households earning less than median income, adjusted for household size; and
- (e) **Transfer of Option.** The Housing Trust Fund may assign its options under this section to any “designated housing agency,” as defined by the provisions of Article 5 of Chapter 18 of the Burlington Code of Ordinances, in which event it shall notify the developer of the agency to which it has assigned the option, which agency shall deal directly with the developer, and shall have all of the authority of the Housing Trust Fund as provided under this section.

Sec. 14.1.12 Continued Affordability Requirements. All covered projects shall comply with the following provisions to ensure continued affordability of inclusionary units provided under this article and units required to be continually affordable under Section 14.1.8.

- (a) **99-Year Requirement.** All inclusionary units shall remain affordable for a period of no less than ninety-nine (99) years commencing from the date of initial occupancy of the units. Where a developer can establish that regulatory or other considerations make it impossible to provide the required inclusionary units if subject to the full extent of this requirement, the development review board, under the provisions of Section 14.1.17, may modify the duration of the period of continued affordability only to the extent necessary to render the development feasible;
- (b) **Deed Restrictions.** Provisions to ensure continued affordability of inclusionary units shall be embodied in legally binding agreements and/or deed restrictions, which shall be prepared by the developer, but which shall not be recorded or filed until reviewed and approved by the Housing Trust Fund with such modifications as it may deem necessary to carry out the purpose of this article. Such review and approval shall be completed within forty-five (45) days following date of submission of such documents to the Housing Trust Fund. Failure of the Housing Trust Fund to respond within the forty-five (45) day period as set forth herein shall constitute approval of the documents;
- (c) **Resale Restrictions.** Provisions to ensure continued affordability of inclusionary units offered for sale shall include a formula for limiting equity appreciation to an amount not to exceed twenty-five

percent (25%) of the increase in the inclusionary unit's value, as determined by the difference between fair market appraisal at the time of purchase of the property and a fair market appraisal at the time of resale, with such adjustments for improvements made by the seller and necessary costs of sale as may be approved by the Housing Trust Fund;

- (d) **Rent Increases.** Provisions for continued affordability of inclusionary rental units shall limit annual rent increases to the percentage increase in the median household income within the Burlington Metropolitan Statistical Area (MSA), except to the extent that further increases are made necessary by hardship or other unusual conditions, and shall provide that no rent increase may take effect until it has received the approval of the Housing Trust Fund in writing;
- (e) **Purchase Option.** Provisions for continued affordability of inclusionary units shall provide that the Housing Trust Fund or its designee shall have an exclusive option to purchase any inclusionary unit when it is offered for resale for a period of ninety (90) days from the date on which the Housing Trust Fund is notified of the availability of the unit; and
- (f) **Sublet Restrictions.** Provisions for continued affordability of inclusionary units shall prohibit subletting for a price exceeding that which is affordable for a household with an annual income that is seventy-five percent (75%) of median, consistent with the relationship between unit size and household size set forth in Section 14.1.10(c).

Sec. 14.1.13 Phasing of Inclusionary Units. Inclusionary units shall be made available for occupancy on approximately the same schedule as a covered project's market units, except that certificates of occupancy for the last ten percent (10%) of the market units shall be withheld until certificates of occupancy have been issued for all of the inclusionary units. A schedule setting forth the phasing of the total number of units in a covered project, along with a schedule setting forth the phasing of the required inclusionary units, shall be established prior to the issuance of a building permit for any development subject to the provisions of this article.

Sec. 14.1.14 Density Bonus. All covered projects shall be entitled to a density increase in accordance with the provisions of this section.

- (a) Any covered project shall be entitled to an increase in the maximum coverage allowed for the site on which the project is located following the calculation of density, height, lot coverage, setbacks, and parking improvements for the site. Calculations for the density and/or lot coverage bonus will be based upon the following tables:

Table 14-B Density Bonus		
Zoning District	Bonus	Maximum Dwelling Units/Acre with Bonus
RH, CBD, WFC-E	15%	46
WRM, RM, WFC-N, UC	20%	24
C, NC, GC	20%	30
RL, WRL	25%	5.5

Table 14-C Lot Coverage Bonus		
Zoning District	Bonus	Maximum Lot Coverage with Bonus
RH, NC, C, GC	15%	92%
WRM	20%	72%
RM, UC	20%	48%
RL, WRL, WFC-N	25%	44%

- (b) Bonus units as provided for herein shall be accepted at the option of the applicant;
- (c) With the approval of the development review board, applying the conditional use criteria, bonus units added to a project as market rate units may be substituted by commercial or other nonresidential uses wherever such nonresidential uses are otherwise permitted in the district where the project is located. Approved substitution for nonresidential uses shall occur at the following rate:

1 market-rate dwelling unit = 1,500 square feet nonresidential space
- (d) All provisions of Sec. 14.1.6 through 14.1.12 shall apply without exception to any inclusionary units that are added as bonus units; and
- (e) Bonus units as provided for herein may not be added to a covered project where a bonus for elderly housing or affordable housing has already been granted pursuant to another section of this ordinance.

Sec. 14.1.15 Off-Site-Option. The development review board at its sole discretion may allow any developer of a covered project that is not located within a waterfront zoning district to comply with the requirements of Sec. 14.1.8 and 14.1.9 by constructing inclusionary units on a site other than that on which the covered project is located, subject to the following conditions:

- (a) The number of inclusionary units to be provided by the developer or by the developer's designee through off-site development shall be no fewer than 1.25 times the number otherwise required by this article;
- (b) The bonus provisions of Section 14.1.14 shall not be granted to the units constructed off-site; and
- (c) All of the provisions of Sections 14.1.5 through 14.1.7 shall apply without exception to off-site inclusionary units under the provisions of this section.

Sec. 14.1.16 Exemptions. Exempt from the requirements of this article are:

- (a) Projects that are located within a UC zoning district that are developed by an educational institution for the exclusive residential use and occupancy by that institution's students; and
- (b) Those dwelling units in a covered project that are produced as "replacement units," pursuant to Article 15.

Sec. 14.1.17 Administrative Relief. The development review board may waive all or part of the inclusionary requirements of this article in the case of any covered project where the applicant can establish by clear and convincing financial data and other evidence relating to the character of the development or surroundings that the imposition of the requirements set forth in this article shall render the project unfeasible. A waiver under this section shall only be granted to the extent necessary to relieve the hardship or difficulty that serves as the basis for the requested waiver.

Sec. 14.1.18 Certificate of Occupancy. No certificate of occupancy shall be issued for a covered project unless all inclusionary units within the covered project are eligible for a certificate of occupancy; except that with respect to covered projects to be constructed in phases, certificates of occupancy may be issued on a phased basis consistent with the provisions of Section 14.1.13.

Sec. 14.1.19 Enforcement. Violations of this article shall be punishable as provided by Article 19 of this ordinance and by Section 1-9 of the Code of Ordinances and Sections 49 and 54 of the City Charter.

Sec. 14.1.20 Administration. The Housing Trust Fund shall monitor activity under this article and shall provide a report no less than every two (2) years to the legislative body, setting forth its findings, conclusions and recommendations for changes that will render the program more effective. The report described above shall be presented to the legislative body at a public hearing legally warned.

ARTICLE 15. HOUSING PRESERVATION AND REPLACEMENT/ DEMOLITION AND CONVERSION

Sec. 15.1.1 Intent. The intent of these regulations is:

- (a) To prevent the demolition and conversion to a nonresidential use of residential structures, many of which contain the city's most affordable housing, from having the effect of excluding housing that meets the needs of all economic groups within the municipality;
- (b) To meet the specific mandates of 24 V.S.A. *Section 4302* related to housing opportunities for all of Vermont's citizens, particularly for those citizens of low or moderate income;
- (c) To support the retention of housing units in the city;
- (d) To preserve the residential character of neighborhoods in which the expansion of commercial, professional or educational activities is likely to eliminate existing housing units;
- (e) To offset the loss of housing by requiring replacement of housing units with new construction, conversion, or creation of assisted housing; and
- (f) To mitigate the impact on tenants displaced or threatened with displacement by demolition or conversion to a nonresidential use;

Sec. 15.1.2 Authority. These regulations are enacted under the authority of 24 V.S.A. *Section 4406(4)(B)*.

Sec. 15.1.3 Applicability. Except as otherwise provided for in Section 15.1.12, these regulations are applicable to the demolition or conversion to a nonresidential use of any housing unit in the City of Burlington, including those demolished or declared unfit for habitation pursuant to any order, decision or other action of the city's office of inspection services.

Sec. 15.1.4 Conditional Use Approval. Notwithstanding any other provision of this ordinance, a person who proposes to demolish or to convert to a nonresidential use, any housing unit or units, in a zone where it is otherwise permitted, must first obtain conditional use approval from the development review board.

- (a) The applicant must submit to the zoning board of adjustment, on a form to be provided by the administrative officer, a statement certifying the number of housing units to be demolished or converted to a nonresidential use and the number of bedrooms existing within each of these units; and
- (b) The applicant must submit to the administrative officer a list containing the name of each tenant currently residing in the housing units to be demolished or converted, as well as verification

by affidavit of compliance with the tenant notice requirements of this section.

Sec. 15.1.5 Relocation Requirements; Notice and Relocation Costs. Prior to demolition or conversion, the owner shall:

- (a) Deliver to every tenant who occupies a housing unit slated for demolition or conversion, written notice to vacate the unit due to the owner's intent to demolish or convert the unit to nonresidential use. This notice to tenants shall be sent certified mail, return receipt requested, and by either regular mail or hand delivery, and shall provide the tenant not less than one hundred eighty (180) days to vacate the rental unit. Evidence of receipt of notice to each affected tenant shall be required prior to approval by the development review board; and
- (b) Be responsible for paying the costs of relocation for any tenant(s) displaced from any housing unit demolished or converted to a nonresidential use. The costs that are included and the manner in which these costs are paid shall be identical to the relocation services that are required for displaced persons under Section 18-2 of the *Burlington Code of Ordinances*.

Sec. 15.1.6 Housing Replacement Requirement. In addition to applicable requirements for a conditional use, the development review board shall require, as a condition of approval, that an owner shall replace any housing units that are demolished or converted to a nonresidential use.

Sec. 15.1.7 Housing Replacement Options. An owner shall meet the replacement requirement by creating new housing units pursuant to a plan approved by the administrative officer. The plan shall be in accordance with the provisions of this section. Replacement units may be provided by the owner or by the owner's designee in any one of three (3) different ways, or combination thereof:

- (a) Construction of housing units within a new structure or new addition;
- (b) Conversion of a nonresidential building to residential use; or
- (c) Creation of assisted housing units out of housing units that have not been affordable to low-income households for the twenty-four (24) months preceding the date of application for conditional use approval.

Sec. 15.1.8 Replacement Unit Requirements. In addition to the foregoing, all replacement units must meet the following requirements:

- (a) Each unit shall have at least the same number of bedrooms as the unit being replaced;
- (b) These units must be provided within the City of Burlington;

- (c) These units must be ready for occupancy within eighteen (18) months of the date on which the conditional use approval is granted;
- (d) These units must remain assisted housing, as either rental housing or limited equity housing, for a period of not less than ten (10) years from the date of first occupancy;
- (e) These units must be sold or leased to prospective occupants who qualify as low-income households at the time they first lease or purchase the unit; and
- (f) These units shall contain at least the same number of accessible units being replaced, or the number of accessible units that may otherwise be required by statute or regulation, or one accessible unit, whichever is greater.

Sec. 15.1.9 Performance Bond. Owners must post a performance bond, letter of credit, or other security acceptable to the City of Burlington in an amount equivalent to the estimated cost of producing the replacement units required by this section as determined by the administrative officer. Should the owner fail to provide the replacement units required within the time period specified in Section 15.1.8(c) the performance bond, letter of credit or other security shall be forfeited and the proceeds placed in the city's housing trust fund.

Sec. 15.1.10 Adjustment for Increased Units. A downward adjustment of fifty percent (50%) in the number of years that replacement units must remain assisted housing may be approved by the administrative officer where the owner creates on site, through new construction or by the conversion of a nonresidential building to residential use, at least twice the number of housing units as the number being lost through units required by this article.

Sec. 15.1.11 Administrative Relief. Any owner who has applied for conditional use approval for demolition or conversion of a housing unit or units may apply to the development review board for relief from the housing replacement requirements of Section 15.1.6. Such relief may be a downward adjustment of up to fifty percent (50%) of the owner's housing replacement obligation if the owner establishes to the board's satisfaction that:

- (a) The literal interpretation and strict application of the housing replacement requirement would constitute an undue hardship on the owner;
- (b) The requested relief would be consistent with the spirit and purpose of this article; and
- (c) The requested relief does not constitute a grant of special privilege inconsistent with the limitations upon similar properties.

The development review board must make specific findings on each of the three (3) conditions in order for any such adjustment to be valid.

Sec. 15.1.12 Exemptions. This article, except for Section 15.1.4 pertaining to conditional use approval, shall not be applicable to:

(a) Any housing unit ordered demolished or declared unfit for habitation by the office of inspection services because of damage caused by civil commotion, malicious mischief, vandalism, natural disaster or other causes beyond the owner's control shall not be subject to these regulations. Any housing unit ordered demolished, or declared unfit for human habitation, by the office of inspection services because of deterioration caused by neglect or deferred maintenance by the existing or prior owner(s) shall not be exempt. A determination of neglect or deferred maintenance shall be made by the administrative officer based on evidence of one or more of the following:

- (1) The deterioration of exterior walls or other vertical support;
- (2) The deterioration of roofs or other horizontal members;
- (3) The deterioration of external chimneys;
- (4) The deterioration or crumbling of exterior mortar;
- (5) The ineffective waterproofing of exterior walls, roofs and/or foundations; and/or
- (6) The existence of broken windows or doors.

In the event any unit is demolished prior to obtaining conditional use approval, enforcement action in accordance with Article 19 shall commence immediately and the requirements of Section 15.1.6 through 15.1.12 shall apply in addition to any enforcement penalties.

- (b) The demolition or conversion to a nonresidential use of a single attached or detached housing unit or duplex that is occupied by the owner as his or her primary residence for the twelve-(12) month period preceding the date of application for conditional use approval. Nor shall this section be applicable in its replacement requirement to that portion of a multi-unit building of three (3) units or more that is occupied by the owner as his or her primary residence for the thirty-six-(36) month period preceding the date of application for conditional use approval. Any exemption allowed under this provision shall be void if the owner sells any of the applicable units within twenty-four (24) months of the date of conditional use approval;
- (c) The conversion to a nonresidential use of any housing unit located within a mixed-use commercial/residential structure where the owner of the structure is also the owner, at the time of adoption of this ordinance of a commercial enterprise within that structure, and

where the expansion of this commercial use results in the loss of one or more housing units;

- (d) The conversion by an educational institution to a nonresidential use of a rooming house, as defined in Chapter 18 of the *Burlington Code of Ordinances*, if the development review board finds that, as a result of a reduction in the number of full-time residential students attending such institution, there is a reduction in the number of students it needs to house; and
- (e) The demolition or conversion of luxury rental housing.

ARTICLE 16. SIGNS

PART 1: GENERAL PROVISIONS

- Sec. 16.1.1 Intent.** The intent of this section is to promote signs and advertising features, which are:
- (a) Compatible with surroundings;
 - (b) An enhancement to the city's visual environment;
 - (c) Orderly, readable, and safe;
 - (d) Harmonious in color, material and lighting with the building to which it relates; and
 - (e) Non-distracting to motorists.
- Sec. 16.1.2 Authority.** These regulations are enacted under the provisions of 24 V.S.A. Section 4405.
- Sec. 16.1.3 Definitions.** (See Article 30).
- Sec. 16.1.4 Calculation of Sign Area.**
- (a) The area of a sign shall include all lettering, designs, or symbols, together with the background, whether open or enclosed, upon which they are displayed. Not included in this definition is any supporting framework incidental to the display itself;
 - (b) Where a sign consists of individual letters or symbols attached, painted or applied to a building, wall or window, the area shall be considered to be the smallest rectangle encompassing all the letters and symbols.
 - (c) In computing the area of a double-faced sign, only one side shall be considered if both faces are identical. Notwithstanding the above, if the interior angle formed by the two (2) faces of the double-faced sign is greater than forty-five (45) degrees, then both sides of such sign shall be considered in calculating the sign area.
 - (d) The maximum allowable area of a sign shall include all permanent signs attached, painted, or applied to a building facade.
- Sec. 16.1.5 Enforcement.** If any sign is found to be in violation of the provisions of this section, the administrative officer shall give written notice ordering that the owner and/or occupant comply with the standards of this ordinance within seven (7) days of such notice.
- Sec. 16.1.6 Permit Requirements.** Except for official and political signs, all on-premises and off-premises signs, regardless of size, shall require the issuance of a zoning permit before public display.

- Sec. 16.1.7 Political Signs.** Signs advertising political parties and/or candidates shall be permitted on or off premises provided that the size of such sign does not exceed thirty two (32) square feet; it not be erected earlier than forty five (45) days prior to the election to which they pertain; all such signs are removed within three (3) days after the date of the election.
- Sec. 16.1.8 Posting of Signs.** No person shall paint, paste, brand, stamp or in any other manner place on or attach to any tree, rocks or other natural feature, utility pole, or other pole on any street or public right-of-way, any sign, excluding an official sign, or other advertisement, bill, notice, card or poster.
- Sec. 16.1.9 Product Advertising or Logos.** Advertising relating to a specific product or products sold on the premises, or the utilization of corporate symbols, logos, or similar features, shall be included in the aggregate sign area permitted for each establishment.
- Sec. 16.1.10 Prohibited Signs.** No sign or other advertising device with visible moving or movable parts or with flashing animated or intermittent illumination shall be erected (except signs indicating the time, date or weather conditions), and no sign shall contain any fluorescent paint or device, including mirrors, which has the effect of intensifying reflected light.
- Sec. 16.1.11 Projecting Signs.** One projecting sign is allowed per establishment. The maximum projection beyond the building line shall not exceed four (4) feet. A projecting sign must have its lower edge at least seven-feet six-inches (7'6") above any pedestrian way.
- Sec. 16.1.12 Obstruction.** No sign shall be placed so that it prevents clear and unobstructed view of official signs or of approaching or merging traffic. No sign shall be placed within the clear sight triangle, except as otherwise permitted by this ordinance.
- Sec. 16.1.13 Separate Frontage.** If an establishment has walls fronting on two (2) or more streets, the sign area for each street shall be computed separately.
- Sec. 16.1.14 Setbacks.** No portion of any freestanding sign shall be located closer to any lot line than fifty per cent (50%) of the required yard setback for the district in which it is located.
- Sec. 16.1.15 Regulation by District.** Signs shall be permitted in each district as specified in Table 16-A and as further regulated by the provisions of this Article. Where other provisions in this Article are more restrictive than Table 16-A, the more restrictive provisions shall apply.

Table16-A SIGN REGULATION SUMMARY					
	DISTRICT				
Sign Type		RCO, WRC, RL, WRL, WRM, RM, RH, UC	NC, C, GC, CBD, CBD-T, WRC-T, WFC-N, WFC-E, WFC-W	E, WFE	Marketplace District
Parallel	Size	20sf	2sf ¹	2sf ¹	1.5sf ¹
	Maximum Height	12ft ²	14ft ²	14ft ²	14ft ²
	Illumination	No	Yes	No	No
Projecting			Permitted only in C and GC		
	Size	4sf	1sf ¹	4sf	8sf
	Maximum Height	12ft ²	14ft	14ft	18ft
	Illumination	No	Yes ³	No	No
Freestanding	Size	20sf	½sf ¹	1sf ¹	No
	Maximum Height	6ft	14ft	6ft	-
	Illumination	No	Yes ³	No	-

1. Size is determined per each linear foot of building frontage allocated to the establishment
2. Or ceiling height of the first floor, whichever is less, except in CBD, CBD-T and C may be above 14 feet as per sec. 16.2.5(a) (5)
3. Illuminated signs are not permitted in NC district

PART2: DISTRICT REGULATIONS

Sec. 16.2.1 Permitted Signs in All Districts. The following signs are permitted in all districts:

- (a) Directional Signs. Non-illuminated signs displayed strictly for the direction, safety or convenience of the public, including signs which

identify restrooms, telephone booths, parking area entrances or exits, freight entrances or the like, provided the area of any such sign shall not exceed two (2) square feet.

- (b) Home Occupation Signs. One non-illuminated sign for allowed home occupations not to exceed two (2) square feet.
- (c) Sale/Rental Sign. One temporary non-illuminated sign advertising the sale or rental of the premises or indicating that such premises have been sold or rented, provided the area of any such sign shall not exceed twenty (20) square feet and shall be removed within twenty (20) days after the rental agreement has been executed or title has been transferred.
- (d) Contractor Sign. One contractor's non-illuminated sign, not exceeding twenty (20) square feet in area, maintained on the premises while a building is actually under construction.
- (e) Restriction Signs. Non-illuminated signs such as those announcing no trespassing; the private nature of a road, driveway, or premises; or regulating fishing or hunting on the premises, provided the area of any such sign shall not exceed two (2) square feet.
- (f) Memorials/Markers. Non-illuminated memorial signs or historical signs or tablets provided the area of any such sign shall not exceed two (2) square feet.
- (g) R.O.W. Signs. No sign or supporting structure may be located in or over the traveled portion of any public right-of-way unless the sign is attached to a structural element of a building and an encroachment permit has been obtained from the Department of Public Works.

Sec. 16.2.2 Permitted Signs in RCO/WRC Districts. Signs in RCO and WRC districts shall be Subject to the same restrictions set forth in Sec.16.2.3.

Sec. 16.2.3 Permitted Signs in Residential Districts. In addition to signs authorized under Sec. 16.2.1, only the following on-premise signs shall be permitted in residential districts. No illuminated signs are permitted.

- (a) Organization Signs. Parallel, projecting and freestanding signs representing governmental educational or religious organizations provided that the total sign area for each such use shall not exceed twenty (20) square feet.
- (b) Agricultural Signs. One (1) sign advertising for sale agricultural produce raised on the premises where such sale is permitted, not to exceed two (2) square feet in area.
- (c) Non-residential Building Sign. One sign or announcement board identifying a permitted non-residential building, use, or activity, provided the area of such sign or board shall not exceed twenty (20) square feet.
- (d) Non-conforming Use. One (1) sign in connection with a non-conforming use, provided such sign shall not exceed twenty (20) square feet.

- (e) Projecting Sign. One projecting business sign not exceeding four (4) square feet.

Sec. 16.2.4 Restrictions on Residential District Signs. The following restrictions regarding type and placement of signs pertain to all signs in residential districts:

- (a) Illuminated signs are prohibited.
- (b) Freestanding signs shall not exceed six (6) feet in height.
- (c) No parallel signs or portions thereof shall be located above the ceiling of the ground floor or more than fourteen (14) feet above the official street grade, whichever is less.
- (d) No sign shall be located within three (3) feet of any sidewalk or its vertical plane, except where such sign is attached to the face of the building at least eight (8) feet above the sidewalk and is protruding no more than six (6) inches from the face of the building.

Sec. 16.2.5 Permitted Signs in Commercial Districts. Except as provided for in Sec.16.3.4 for signs on the Church Street Marketplace, only the following on-premise signs may be permitted in commercial districts in addition to signs permitted under Sec.16.2.1 and 16.2.3 and subject to the restrictions of Sec. 16.2.4.

- (a) Parallel business signs. Parallel business signs are permitted provided:
 - (1) The total area of all parallel signs for each establishment does not exceed two (2) square feet for each linear foot of frontage devoted to such establishment.
 - (2) If such establishment does not occupy any floor area on the ground level, other than an entryway, the maximum permitted sign area shall not exceed one (1) square foot for each linear foot of frontage devoted to such establishment.
 - (3) Signs painted on or affixed to the inside or outside of windows shall be included in the computation under (1) and (2) above, only if the combined area exceeds twenty-five (25) per cent of the area of the window which they occupy.
 - (4) In no case, however, may the total area of parallel signs exceed two hundred (200) square feet or fifteen (15) per cent, whichever is less, of the area of the wall to which they are attached, including windows, door area and cornices.
 - (5) In the CBD, CBD-T and C zones a sign above 14 feet may be allowed, subject to the following:
 - a) The first floor of the building has a floor-to-ceiling height in excess of 14 feet.
 - b) In no instance shall a sign be allowed above the floor level of a second story, or the cornice line of a structure.
 - c) The Development Review Board must determine a sign to

- be architecturally compatible with the design of a structure.
- d) No such sign can be internally illuminated.
- e) Such signs shall be subject to the provisions of Article 6, Design Review.

(b) Freestanding Signs. Freestanding signs are permitted provided:

- (1) Only one such sign is permitted for each separate street frontage devoted to an establishment;
- (2) The area of any such sign does not exceed one half (1/2) square foot per one (1) linear foot of frontage or a total of sixty (60) square feet, whichever is smaller; and
- (3) The height of any freestanding sign shall not exceed fourteen (14) feet in height.

(c) Non-illuminated, indirectly or directly illuminated business signs.

(d) Projecting business signs only in the C and GC districts and as a substitute for either parallel or freestanding signs, provided any such sign:

- (1) Does not visually interfere with the view to and from adjacent properties;
- (2) Does not extend above any portion of the roof of the building to which such sign is affixed;
- (3) Has its lower edge at least eight (8) feet above any pedestrian way;
- (4) Has a vertical alignment.

(e) Provided further that the maximum permitted area of all such signs shall be governed by Sec. 16.2.5 (b).

(f) Signs connected to a canopy, awning, or marquee, provided they:

- (1) Are fixed flat to such canopy, marquee or awning; and
- (2) Are limited to announcing the name of the establishment or any on-premises show or event.

Such signs are to be considered projecting business signs, and as such are governed by subsection (d) above.

Sec. 16.2.6 Signs in Transitional Districts. The provisions of Sec. 16.2.5 shall regulate signs in the WFC-T and CBD-T District and along streets perpendicular to the CBD, for a distance of one block.

Sec. 16.2.7 Signs in Enterprise Districts. The provisions of Sec. 16.2.5 subject to the following restrictions shall regulate signs in Enterprise districts:

- (a) The total area of any parallel sign shall not exceed two (2) square feet for each foot of length of the front building wall or length of that portion of such wall devoted to such establishment, or two hundred (200) square feet, whichever is less;

- (b) No parallel sign shall be painted on or affixed to the outside windows;
- (c) Illuminated signs are prohibited;
- (d) Freestanding signs shall not exceed six (6) feet in height;
- (e) No parallel signs or portions thereof shall be located above the ceiling of the ground floor or more than fourteen (14) feet above the official street grade, whichever is less; and
- (f) No sign shall be located within three (3) feet of any sidewalk or its vertical plane, except where such sign is attached to the face of the building at least eight (8) feet above the sidewalk and is protruding no more than six (6) inches from the face of the building.

Sec. 16.2.8 Signs in University Districts. Signs in the University Campus district shall be subject to the restrictions in Sec. 16.2.3. Signs in the district which exceed these restrictions shall be permitted provided such sign is in accordance with a signage plan submitted by the institution and approved by the development review board.

Sec. 16.2.9 Off-Premise Signs. Off-Premise signs shall not be permitted within the City of Burlington with the following exceptions:

- (a) Political signs as regulated by Sec. 16.1.7;
- (b) Temporary non-illuminated signs directing persons to temporary exhibits, shows or events provided:
 - (1) The size of such sign does not exceed twelve (12) square feet in area; and
 - (2) Such signs are not posted earlier than two (2) weeks prior to the event and are removed within three (3) days after the event.
- (c) Non-illuminated signs used for directing members or patrons to service clubs, churches or other nonprofit organizations provided:
 - (1) Such signs indicate only the name of the facility and the direction of the facility; and
 - (2) Such signs do not exceed four (4) square feet in area.

PART 3: CHURCH STREET MARKETPLACE

Sec. 16.3.1 Area covered. The regulations in Sec. 16.3.2 through Sec. 16.3.4 shall govern all signs located in the Church Street Marketplace District (hereinafter "district") as defined by Sec. 321 of the City Charter.

Sec. 16.3.2 Marketplace Commission Approval. In addition to complying with these regulations and prior to installation, all signs, banners, kiosks, and similar advertising features must be reviewed by and consented to in

writing by the Church Street Marketplace District Commission, which may make use of the Church Street Marketplace Design Guidelines in such reviews.

Sec. 16.3.3 Exemptions. Signs at the following addresses shall be exempted from the provisions of this Article. Such signs may be repaired or replaced so long as the repair or replacement is identical to the sign existing at the time of this ordinance. Where such repair or placement changes the appearance of the sign, the sign must meet all requirements of this Article.

- (a) 34 Church Street
- (b) 37 Church Street
- (c) 75 Church Street (Bank Street facade)
- (d) 78 Church Street
- (e) 107 Church Street
- (f) 115 Church Street

Sec. 16.3.4 Permitted Signs and Restrictions. Unless otherwise noted, the following on-premise signs shall be permitted:

(a) *Parallel Signs:*

- (1) The total area of all parallel signs for each establishment shall not exceed one and one-half (1.5) square foot of length of that portion of such wall devoted to such establishment;
- (2) If such establishment does not occupy any floor area of the ground level of the building, other than an entryway, the maximum permitted sign area shall not exceed ten (10) square feet;
- (3) Signs painted on or affixed to the inside or outside of windows shall be included in the computation of subsections (1) and (2) above, if their combined area exceeds thirty (30) per cent of the area of the window they occupy;
- (4) No signs, except window signs, shall be placed more than one (1) foot above the finish floor level of the second floor of a multi-story building to which they are attached. In no case shall such signs be placed more than fourteen (14) feet above the lowest point where the sidewalk meets the building line on the façade to which the sign is attached or, where there is a public canopy structure, above the top edge of the glass roof;
- (5) No parallel sign shall project more than twelve (12) inches from the face of the wall to which it is attached, except as otherwise provided in subsection (c)(1) below.

(b) *Projecting signs* providing that:

- (1) There shall be no more than one (1) such sign per establishment;

- (2) The total area of such a projecting sign shall not exceed eight (8) square feet;
 - (3) The maximum projection of such sign beyond the building line shall not exceed four (4) feet;
 - (4) The maximum height to the top of such a sign, as measured from the lowest sidewalk elevation at the building line on the façade to which the sign is attached, shall not exceed eighteen (18) feet;
 - (5) The lower edge of such a sign must be at least seven (7) feet six (6) inches above the sidewalk directly beneath the sign;
 - (6) Three-dimensional signs depicting the goods or services available on the premises are allowed within the limits specified in items (1) through (5) above. The area of the smallest rectangle, which can be drawn encompassing all the parts of the sign, shall measure the area of such signs;
 - (7) Two-dimensional signs shall have both faces parallel, vertical and at right angles to the building line.
- (c) *Canopies, marquees and awnings* attached to buildings are permitted subject to development review board review. When a sign is affixed to such a canopy, marquee or awning, it shall satisfy the following requirements:
- (1) If placed parallel to the building facade, its area shall be deducted from the maximum allowable area of parallel signs;
 - (2) If at right angles, it shall be in substitution of any other projecting sign and shall meet the requirements of subsection (b) (1), (2), and (4) through (7) above.
- (d) *Freestanding on-premises signs* are not permitted, except as otherwise provided below.
- (e) *Other restrictions* on type and placement of signs:
- (1) Internally illuminated signs are prohibited. Signs inside the building may be illuminated in any manner by a steady source of light. Signs external to the building envelope may be illuminated by a steady source of light external to the sign, except that linear outline neon signs with no background are permitted;
 - (2) Fabric banners or streamers may be mounted on the façade of a building with the written consensus of the city engineer, who must be satisfied as to the structural soundness of the mounting device to withstand wind loads. All liability in case of structural failure, however, shall remain the sole responsibility of the owner. The lower edge of such a banner or streamer must be at least fourteen (14) feet above the sidewalk directly beneath the sign. The maximum projection of such banner or streamer beyond the building line shall not exceed six (6) feet;

- (3) Temporary flags or banners may be attached to those light poles that have been structurally designed to receive them.
- (f) *Canopy Signs/Mosaic Signs.* No sign, other than official signs, shall be located in any public way, with the following exceptions:
 - (1) Permanent verbal and nonverbal signs, satisfying the conditions of subsection (c) above, may be attached to the Church Street pedestrian canopy provided that they also satisfy the following requirements:
 - (a) Such signs may be attached only to front or back columns or to cross members below the glass;
 - (b) The owner of such a sign must bear the full cost of attaching the sign to the canopy structure and must also fully restore the galvanized and painted waterproofing membranes on the canopy, which may be damaged during attachment or removal of the sign;
 - (c) The maximum height of such sign measured from the base of the sidewalk directly below shall be nine (9) feet;
 - (d) No person shall have more than two (2) signs located in or attached to any part of the public right-of-way or public canopy system.
 - (2) Mosaic signs are permitted in the floor of building entries and may fill the entire entry. Such signs may be placed within the sidewalk directly in front of building entries, subject to the following conditions:
 - (a) The materials used in creating such a sign must be durable, nonskid paving materials, laid in a manner that is compatible with the existing sidewalk paving and creating no discontinuities in sidewalk surface or changes in grade;
 - (b) The width of such a sidewalk sign shall be no greater than the width of the building entry and the depth shall be no more than seven (7) feet from the building line;
 - (c) The owner must bear the full cost of removing the existing sidewalk pavement, assume all liabilities for structural problems in the sidewalk or accidents which may occur due to such re-paving, and restore the original pavement should any problem arise.
- (g) *Kiosks.* Permanent kiosks are permitted provided that the information displayed thereon shall serve a public purpose such as the names and locations of establishments on the block in which the kiosk is located or on the Church Street Marketplace as a whole, or provision of space for changing information such as posters and announcements; and provided that such kiosks meet the following location and dimensional requirements:

- (1) Such kiosk shall not impede the flow of pedestrian traffic;
- (2) Such kiosk shall not interfere with any publicly funded amenity;
- (3) The maximum area of the projected plan of such a kiosk shall be fifteen (15) square feet; and
- (4) The maximum height of such kiosk shall be ten (10) feet.

ARTICLE 17. APPEALS, CONDITIONAL USES, VARIANCES

Sec. 17.1.1 Intent. It is the purpose of this article to provide for review of all questions arising out of or with respect to the implementation of this ordinance. Except as specifically provided herein, no development review board may amend, alter, invalidate or affect any development plan or bylaw or the implementation or enforcement thereof, or allow any use not permitted by any zoning regulations or other bylaw.

Sec. 17.1.2 Authority. These regulations are enacted under the provisions of 24 V.S.A. Section 4464, 4465, 4407(2), 4468, 4471-4473, and 4475.

Sec. 17.1.3 Appeals to Development Review Board.

- (a) Any interested person may take an appeal from any final order or decision of the administrative officer to the development review board. An appeal is taken by filing with the administrative officer and the development review board a written notice of appeal. Such notice of appeal shall include the name and address of the appellant, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief requested by the appellant and the alleged grounds why such requested relief is believed proper under the circumstances. A notice of appeal shall be considered filed with the administrative officer and the development review board when delivered to the planning department, and the date and time of filing shall be entered on the notice by the planning staff;
- (b) An appeal must be taken within fifteen (15) days after the date of decision or act appealed from;
- (c) Whenever an appeal is filed, the administrative officer shall forthwith transmit to the development review board all the papers constituting the record relating to the action appealed from; and
- (d) When an appeal is taken to the development review board in accordance with this section, the administrative officer shall have the initial burden of presenting to the development review board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

Sec. 17.1.4 Interested Persons. For the purposes of this article, an interested person means any one of the following:

- (a) A person owning title to property affected by a bylaw who alleges that such regulation imposes on such property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case;
- (b) The City of Burlington or any municipality which adjoins the city;

- (c) A person owning or occupying property in the immediate neighborhood of a property which is the subject of any decision or act taken under the ordinance, who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or bylaw of that municipality;
- (d) Any ten (10) persons owning real property within the city or an adjoining municipality who, by signed petition to the development review board, the plan or bylaw of which is at issue in any appeal brought under this article, allege that any relief requested by a person under this article, if granted, will not be in accord with the policies, purposes or terms of the plan or bylaw of the city;
- (e) Any department and administrative subdivision of the State of Vermont owning property or any interested therein, the city or an adjoining municipality, and the Vermont Agency of Development and Community Affairs; and
- (f) The Burlington Conservation Board.

Sec. 17.1.5 Conditional Uses.

- (a) Approval shall be granted only if the development review board, after public notice and public hearing, determines that the proposed conditional use shall not adversely affect the following general standards:
 - (1) The capacity of existing or planned community facilities;
 - (2) The character of the area affected;
 - (3) Traffic on roads and highways in the vicinity;
 - (4) Bylaws then in effect; or
 - (5) Utilization of renewable energy resources.
- (b) In granting a conditional use, the board may attach such additional reasonable conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations. The development review board shall act to approve or disapprove any such requested conditional use within sixty (60) days after the date of the final public hearing held under this section, and failure to so act within such period shall be deemed approval. The development review board in applying the general and applicable specific standards shall consider the cumulative impact of the proposed use;
- (c) Conditional use permits are issued with a zoning permit under this chapter after a zoning permit request form is completed and submitted and only when a review of the application and supporting documentation submitted, including the plans contained therein, indicates that the development will comply with the provisions of this chapter and any conditions attached by the development review board in approving a conditional use if completed as proposed. Such plans and applications, as approved, and conditions imposed by the

development review board, are incorporated into any permit issued, and except as otherwise provided, all development shall occur strictly in accordance with such approved plans, applications and conditions.

- (d) In considering a request for a conditional use permit relating to a greater number of unrelated individuals residing in a dwelling unit within the RL, WRL, RM and WRM districts than is allowed as a permitted use, in addition to the criteria set forth in Subsection (a) hereof, no conditional use permit may be granted unless all facilities within the dwelling unit, including bathroom and kitchen facilities are accessible to the occupants without passing through any bedroom. Additionally, each room proposed to be occupied as a bedroom must contain at least one hundred twenty (120) square feet. There must also be a parking area located on the premises at a location other than the front yard containing a minimum of one hundred eighty (180) square feet for each proposed adult of the dwelling unit in excess of the number of occupants allowed as a permitted use. All other green space standards must be observed.

Sec. 17.1.6 Variances.

- (a) A variance from the provisions of a zoning regulation may be granted by the development review board and a decision rendered in favor of the request for a structure that is not primarily a renewable energy resource structure, if all of the following facts are found and the finding is specified in its decision:
 - (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located;
 - (2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of property;
 - (3) That the appellant and the hardship have not created the unnecessary hardship relates to the applicant's land, rather than personal circumstances;
 - (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate

- use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare;
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan; and that
 - (6) The variance, if granted, will not result in either the extension of a non-complying situation or allow the initiation of a nonconforming use of land.
- (b) In granting variances, the development review board may impose such reasonable conditions as will ensure that the use of the property to which the variance applies, will be a compatible as practicable with the surrounding properties;
 - (c) A variance may be issued for an indefinite duration or for a specified duration only;
 - (d) The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirements of this chapter.
 - (e) The burden of presenting evidence sufficient to allow the development review board to reach the conclusions set forth in this section, as well as the burden of persuasion on those issues, remains with the applicant seeking the variance;
 - (f) Wherein a variance from the provisions of a zoning regulation is requested for a structure that is primarily a renewable energy resource structure, the development review board may grant such variances, and render a decision in favor of the request if all the following facts are found and the finding is specified in its decision:
 - (1) It is usually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with the regulations; and
 - (2) That the hardship was not created by the appellant; and
 - (3) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
 - (4) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the municipal development plan.

- (g) In rendering a decision in favor of a variance of zoning provisions or renewable energy resource structure, the development review board may attach such conditions to such variances as it may consider necessary and appropriate under the circumstances to implement the purposes of this ordinance and the municipal development plan.

Sec. 17.1.7 Appeals Of Development Review Board Decisions. An interested person may appeal a decision of the development review board to the Vermont Environmental Court. The appeal shall be taken in such manner as the environmental court may by rule provide for appeals from state agencies governed by Sections 801 through 816 of Title 3. Notice of the appeal shall be sent by mail to every interested person appearing and having been heard at the hearing before the development review board, and, if any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

Sec. 17.1.8 Exclusivity of Remedy. Except as otherwise provided by state statute, the exclusive remedy of an interested person with respect to any decision or act taken, or any failure to act, under this ordinance or any one or more of its provisions shall be the appeal to the development review board, and the appeal to Vermont Environmental Court from an adverse decision upon such appeal.

Sec. 17.1.9 Finality.

Upon the failure of any interested person to appeal to the development review board or to Vermont Environmental Court, all interested persons affected shall be bound by such decision or act of such administrative officer, such provisions or such decisions of the development review board, as the case may be, and shall not thereafter contest, either directly or indirectly, such decision or act, such provision, or such decision in any proceeding, including without limitation, any proceeding brought to enforce this ordinance.

ARTICLE 18. NOTICE AND HEARING PROCEDURES

- Sec. 18.1.1 Intent.** The intent of these regulations is to set forth procedures for the notice and conduct of hearings held to implement the provisions of this ordinance.
- Sec. 18.1.2 Authority.** These regulations are enacted under the provisions of 24 V.S.A. Sections 4447, 4467 and 4470.
- Sec. 18.1.3 Public Hearing Notice.** Any public notice required for public hearing under this ordinance shall be given not less than fifteen (15) days prior to the date of the public hearing by:
- (a) The publication of the date, places, and purpose of the hearing in a newspaper of general publication in the city;
 - (b) The posting of the same information in city hall; and
 - (c) The mailing of the same information by first class mail to the appellant and to the owners of record of property immediately abutting the properties which is the subject of the hearing.
- Sec. 18.1.4 Defect in Notice.** No defect in the form or substance of any public hearing notice under this article, or failure by an abutter to receive such notice shall invalidate any action taken as a result of the public hearing unless such notice is materially misleading or if the defect was the result of a deliberate or intentional act.
- Sec. 18.1.5 Hearing Within 60 Days.** The development review board shall set a date and place for a public hearing of an appeal under this ordinance, which shall be within sixty (60) days of the filing of the notice of such appeal with the administrative officer in accordance with Article 17. The board shall give public notice of the hearing in accordance with Section 18.1.3.
- Sec. 18.1.6 Right to Be Heard.** Any person or body empowered under Article 17 to take an appeal with respect to the property at issue may appear and be heard in person or be represented by an agent or attorney at such hearing.
- Sec. 18.1.7 Adjourned Hearing.** The development review board from time to time may adjourn any hearing under this article, provided however, that the date and place of the adjourned hearing shall be announced at the hearing.
- Sec. 18.1.8 Open Hearing.** All hearings under this article shall be open to the public except for executive or deliberative sessions called in accordance with

applicable state laws. No votes or other actions may be taken while in executive or deliberative session.

- Sec. 18.1.9 Rules of Evidence.** The rules of evidence at hearings under this article shall be the same rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in 3 V.S.A. Section 810. The development review board may examine or cause to be examined any property or information bearing upon the matters concerned in the hearing, require the attendance of persons having knowledge of the premises, take testimony, and administer oaths as further set forth in Sec. 2.4.5 of this ordinance.
- Sec. 18.1.10 Decision Within 45 or 60 Days.** The development review board shall render its decision, which shall include findings of fact, within forty-five (45) days for a variance and sixty (60) days for a conditional use after completing the hearing, and shall within that period send to the appellant, by certified mail, a copy of the decision. Copies thereof shall be filed with the administrative officer and the city clerk.
- Sec. 18.1.11 Failure to Reach Decision.** If the development review board does not render its decision within the period prescribed by Sec. 18.1.10 and Sec. 17.1.5, the board shall be deemed to have rendered a decision in favor of the appellant and granted the relief requested by him or her as of the last day of such period.
- Sec. 18.1.12 Rejection of Appeal.** The development review board may reject an appeal without hearing and render a decision, which shall include findings of fact, within ten (10) days of the date of filing of the notice of appeal, if the board considers the issues raised by the appellant in his or her appeal to have been decided in an earlier appeal or the same in substantially or materially the same facts by or on behalf of that appellant, such decision shall be rendered, or notice given, as in the case of a decision under and shall constitute a decision of the board for the purpose of appeal to environmental court.
- Sec. 18.1.13 Stay of Enforcement.** If a notice of appeal includes a request for a stay of enforcement, and states the grounds for such request with a statement under oath by the appellant that irreparable damage will directly result if such stay is not granted, the development review board may grant a stay of enforcement of the regulatory provisions referred to in the notice of appeal, under such terms and conditions, including, without limitation, a bond to be furnished by the appellant, as the board deems in its judgment and discretion appropriate under the circumstances. Any stay of enforcement granted under this section shall expire upon the expiration of the time to appeal to the environmental

court. The grant or denial of a request for a stay shall be given in writing by the board, and shall be sent by registered or certified mail, or delivered, to the appellant within fifteen (15) days of the filing of the notice of appeal with the board. Whenever practicable, the board shall conduct a hearing before deciding on a request for a stay. Any hearing under this section shall be held after publication of notice thereof in a newspaper of general circulation in Burlington, and in two public places within the city, and by mail to the appellant, at least five (5) days prior to the hearing date. However, the board may give abbreviated notice where in its judgment circumstances requires prompt action.

Sec. 18.1.14 Hearings by Legislative Body. The notice and hearing provision of this article shall be adhered to by the legislative body when considering applications subject to the provisions of 24 V.S.A. Section 4443(c).

ARTICLE 19. ENFORCEMENT

- Sec. 19.1.1 Intent.** The intent of this article is to set forth efficient and effective procedures for the enforcement of the provisions of this ordinance.
- Sec. 19.1.2 Authority.** These regulations are enacted under the provisions of 24 V.S.A. Sections 1974a, 1977, 4444 and 4445.
- Sec. 19.1.3 Enforcement Officer.** The administrative officer or his or her designee shall enforce this ordinance. The administrative officer shall not issue a permit for the erection or alteration of any structure or part thereof unless the plans, specifications and intended use of such structure or structures are in all respects in conformity with the provisions of this ordinance. The administrative officer may request other city officials to assist with the enforcement of this ordinance, including planning and zoning staff, housing and building inspectors, police officers, city attorney, and/or city constable.
- Sec. 19.1.4 Entrance Upon Premises.** The administrative officer, or his or her designee, as a representative of the development review board, may enter upon any land in the city to make examinations and surveys pursuant to 24 V.S.A. Section 4325(9). When entrance upon property is refused or denied, the administrative officer may seek a warrant for the purposes of conducting an examination of the premises. A warrant shall only be requested when another city official that a zoning violation allegedly exists has filed with the administrative officer or upon notification a written complaint.
- Sec. 19.1.5 Complaints Regarding Violations.** Whenever the administrative officer receives a written, signed complaint alleging a violation of this ordinance, he or she shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing, if so requested, what actions have been or will be taken. A written complaint shall not be considered a public record unless and until such complaint is entered into evidence as part of a court hearing on an alleged violation.
- Sec. 19.1.6 Persons Liable.** The owner, tenant, or occupant of any structure or land or part thereof and any architect, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this ordinance may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.
- Sec. 19.1.7 Criminal Offense, Penalties.** A violation of this ordinance shall constitute a civil offense. Each day that a violation is continued shall constitute a separate offense. Offenses may be pursued through a

municipal civil complaint ticket or an enforcement action as described below.

- a) Municipal Civil Complaint Ticket: any designated code enforcement officer may issue a municipal complaint ticket for zoning violations with two copies of said ticket to be served either in person or by first class mail to the defendant (one copy shall be retained by the issuing officer and the original shall be filed with the Judicial Bureau). The issuing officer shall follow the procedure set forth by the Judicial Bureau for municipal complaint tickets.

The first offense ticketed for a violation shall be punishable by a fine of one hundred dollars (\$100.00), the waiver fee shall be one hundred dollars (\$100.00); a second offense ticketed for the same violation shall be punishable by a fine of one hundred and fifty dollars (\$150.00), the waiver fee shall be one hundred and fifty dollars (\$150.00); a third offense ticketed for the same violation shall be punishable by a fine of two hundred and fifty dollars (\$250.00), the waiver fee shall be two hundred and fifty dollars (\$250.00). Upon the fourth offense, the City may request that the case be transferred from the Judicial Bureau to the Environmental Court, or any other court of competent jurisdiction.

- b) Enforcement Action: an enforcement action may be brought for any violation of this ordinance. Pursuant to an enforcement action any person who violates this ordinance shall be fined not more than one hundred dollars (\$100) for each offense. No action may be brought under this subsection unless the alleged offender has had at least seven (7) days' warning notice by certified mail. An action may be brought without the seven (7) day notice and opportunity to cure if the alleged offender repeats the violation of the by-law or ordinance after the seven (7) day notice period and within the next succeeding twelve (12) months. The seven (7) day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven (7) days and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven (7) days. In default of payment of the fine, such person, the members of any partnership, or the principal officers of such corporation, shall each pay double the amount of such fine. Each day that a violation is continued shall constitute a separate offense. All fines collected for the violation of by-laws shall be paid over to the City.

Sec. 19.1.8 Processing Fee. If any enforcement action results in the need for zoning permit for the subject property, the application fee for processing such permit shall be twice the regular application fee charged in order to recoup the administrative costs associated with the enforcement action.

This fee shall be separate from any penalties that may be assessed under Sec. 19.1.7.

Sec. 19.1.9 Remedies. If any street, building, structure, or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained or used in violation of this ordinance, or in violation of one or more conditions of a permit issued under this ordinance, the administrative officer shall institute in the name of the city any appropriate action, injunction or other proceeding to prevent, restrain, correct or abate such construction or use, to prevent, in or about such premises, any act, conduct, business or use constituting a violation. (*Zoning Amendment 95-06, Effective 2/7/96*)

Sec. 19.1.10 Administrative Appeal. A decision by the administrative officer pertaining to an alleged zoning violation may be appealed to the development review board in accordance with the provisions of Article 17 provided that such appeal is filed within fifteen (15) days of the administrative officer's decision.

ARTICLE 20. NONCONFORMING USES AND NONCOMPLYING STRUCTURES

- Sec. 20.1.1 Intent.** These regulations are established to preserve the property rights of individuals and organizations as is reasonable and at the same time promote the City's general health, safety and welfare by enforcing the provisions of this ordinance. It is considered desirable and in the best interest of the city to encourage nonconforming uses to change to conforming uses.
- Sec. 20.1.2 Authority.** These regulations are enacted under the authority of 24 V.S.A. Section 4408.
- Sec. 20.1.3 Applicability.** The term "nonconforming uses" refers to those uses that do not conform to the use regulations set forth in this ordinance. The term "non-complying structures" refers to those structures that do not comply with the dimensional regulations and parking requirements set forth herein.
- Sec. 20.1.4 Continuation.** Except as otherwise specified in this Article, any nonconforming use or non-complying structure which lawfully existed at the time of passage of the applicable provisions of this or any prior ordinance or any amendment thereto may be continued subject to the provisions of this Article. A nonconforming use may be changed to a conforming use, but when changed to be conforming, it shall not be made nonconforming again.
- Sec. 20.1.5 Conditional Use Approval.** Any change or modification to a nonconforming use shall require conditional use approval by the development review board in accordance with the provisions of Sec. 20.1.6 and Article 17. A change from a nonconforming use to a conforming use shall not require approval by the development review board unless the proposed use requires conditional use approval in that particular district.
- Sec. 20.1.6 Nonconforming Use: Alteration or Enlargement.** A nonconforming use shall not be relocated, moved, enlarged, altered, extended, reconstructed, or restored, except in strict conformance with the following schedules:
- (a) **Relocation.** A nonconforming use shall not be relocated or moved except to a location where it shall be conforming.
 - (b) **Enlargement.** Nonconforming uses may be enlarged within the existing lot (extension into an adjoining lot is permitted if such lots are under single ownership as of April 26, 1973) by up to an aggregate of twenty-five per cent (25%) of the floor area, building or structural capacity existing at the time that the use first became

nonconforming. Such enlargement shall be permitted only if such change shall not result in greater noncompliance with respect to dimensional requirements such as setbacks, coverage, and height limits and if parking requirements for the change are met.

- (c) **Change in use.** A nonconforming use may not be altered in use except to an allowed use under the provisions of the district in which it is situated, except as allowed in Sec. 5.1.8.
- (d) **Re-establishment.** A nonconforming use shall not be re-established if such use has been discontinued for any reason for a period of one year; to resume a nonconforming use shall not confer the right to do so.
- (e) **Reconstruction.** A structure containing a nonconforming use shall not be reconstructed or restored to other than a conforming use after damage from any cause that shall be sufficient to cause cessation of the use unless the use is re-established within one year.
- (f) **Time extension.** An extension of the time limits specified in subparagraphs (d) and (e) of up to but not more than one year may be granted by the administrative officer upon verification of documented evidence of a continuous good faith effort to re-establish or reconstruct the nonconforming use. Such evidence shall consist of application(s) to the development review board, bid documents, records of expenditures, newspaper advertisements and/or real estate listings. A request for a time extension must be submitted in writing by the applicant prior to the expiration of the one- (1) year time limit specified in subparagraphs (d) and (e). Any extension approved by the administrative officer shall be made in writing and shall specify the date after which no nonconforming use will be permitted upon the subject property.

Sec. 20.1.7 Non-complying Structures. Nothing in this article shall be deemed to prevent normal maintenance and repair, structural alteration, moving, or enlargement of a non-complying structure, provided that such action does not increase the degree of or create any new noncompliance with regard to dimensional or parking regulations pertaining to such structures. If a non-complying structure is also a nonconforming use, it shall be subject to the provisions of Sec. 20.1.5 and 20.1.6.

Sec. 20.1.8 Rebuilding After Catastrophe. If a nonconforming use or non-complying structure is damaged by fire, explosion, or other catastrophe, and no government investigation determines that the damage resulted from the owner's intentional conduct or gross negligence the use may be restored or the structure rebuilt subject to the following provisions:

- (a) A zoning permit shall be obtained;
- (b) Any restoration or rebuilding which results in a modification of exterior features or to the site plan shall obtain a certificate of

- appropriateness under the provisions of Article 6 (Design review) and Article 7 (Site plan review) where applicable;
- (c) A nonconforming use shall not be increased beyond its extent prior to the catastrophe;
 - (d) Noncompliance, in terms of dimensional regulations or parking requirements, shall not be increased beyond what existed prior to the catastrophe; and
 - (e) Such restoration or reconstruction shall be completed within one year after such catastrophe, unless the administrative officer in accordance with Section 20.1.6(f) grants a written extension.

Sec. 20.1.9 Non-complying Signs.

- (a) Any sign or other advertising device which does not comply with the provisions of this ordinance in terms of location, area, illumination, type, or height shall be deemed a non-complying sign. Non-complying signs may remain in use at the same location and ordinary maintenance and repair of such signs shall be permitted. A non-complying sign shall not be enlarged, replaced, redesigned, or altered in any way (except for a change of lettering, logo or colors using the same materials within an existing sign frame subject to obtaining a zoning permit) without complying to the provisions of Article 16 and shall be consistent with the definition of a noncomplying sign in Article 30.
- (b) The Planning Commission may under its discretion allow a sign in substantially greater compliance than an existing noncomplying sign subject to the design review criteria in Article 6.
- (c) A sign approved under Sec. 20.1.9(b) must comply with the sign regulations in Article 16 regarding illumination.

ARTICLE 21. FLOOD HAZARD REGULATIONS

- Sec. 21.1.1 Intent.** The intent of these regulations is to set forth the limitations pertaining to floodway (FW) and flood hazard (FH) districts.
- Sec. 21.1.2 Authority.** These regulations are enacted under the provisions of 24 V.S.A. Sections 4405, 4407, and 4412.
- Sec. 21.1.3. Permitted Uses-FW and FH Districts.** The following open land uses shall be permitted within the floodway (FW) and flood hazard (FH) district to the extent that they are not prohibited by any other ordinance and provided that they do not require the erection of structures or storage of materials and equipment, the borrowing of fill from outside the floodway area, or channel modification or relocation, and do not obstruct flood flows, nor result in any increase in flood levels during the occurrence of the base flood discharge, decrease the water-carrying capacity of the floodway or channel, or increase off-site flood damage potential:
- (a) Agricultural uses, such as general farming, pasture, orchard, and grazing, outdoor plant nurseries, truck farming, and forestry;
 - (b) Recreation uses, such as parks, camps, picnic grounds, tennis courts, golf courses, golf driving ranges, archery and shooting ranges, hiking and riding trails, hunting and fishing areas, game farms, fish hatcheries, wildlife sanctuaries, nature preserves, swimming areas and boat launching sites; and/or
 - (c) Accessory residential uses, such as lawns, gardens, and parking areas. Among the uses not permitted are junkyards, mobile homes, and storage facilities for chemicals, explosives, flammable liquids or other toxic materials.
- Sec. 21.1.4 Permitted Accessory Uses.** Uses customarily accessory and incidental to any of the permitted uses listed in Section 21.1.3 may be permitted, subject to the limitations therein.
- Sec. 21.1.5 Conditional Uses - FH District.** All permitted uses in the zoning districts which are overlaid by the flood hazard district (FH), except those open space uses as listed in Section 21.1.3, are permitted only upon the granting of a conditional use by the development review board as per Article 17.
- (a) Upon receiving an application for a conditional use permit, the development review board shall, prior to holding a hearing and rendering a decision thereon, obtain from the applicant:
 - (1) Base flood elevation data for all subdivision proposals and other proposed new developments containing more than fifty (50) lots or covering more than five (5) acres;

- (2) The elevation, in relation to mean sea level, of the lowest habitable floor, including basement, of all new construction or substantial improvements of structures;
 - (3) Confirmation if such structures contain a basement; and
 - (4) The elevation, in relation to mean sea level, to which any structure has been flood proofed.
- (b) In addition, the development review board shall require of the applicant any of the following information deemed necessary for determining the suitability of the particular site for the proposed use:
 - (1) Plans in triplicate, drawn to scale, showing the location, dimensions, contours and elevation of the lot; the size and location on the site of existing and/or proposed structures, fill or storage of materials; the location and elevations of streets, water supply and sanitary facilities; and the relationship of the above to the location of the channel, floodway and base flood elevation where such information is available;
 - (2) A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel and cross-sectional areas to be occupied by the proposed development;
 - (3) A profile showing the slope of the bottom of the channel or flow line of the stream; and
 - (4) Specifications for building construction and materials, flood proofing, mining, dredging, filling, grading, paving, excavation or drilling, channel improvement, storage of materials, water supply and sanitary facilities.

Sec. 21.1.6 Mandatory Notification. The development review board shall transmit one copy of the application and supporting information to the Department of Environmental Conservation in accordance with 24 V.S.A. section 4409 (c)(2)(A). In riverine situations, the development review board shall notify adjacent communities and the Agency of Natural Resources prior to approval of any alteration or relocation of a watercourse and submit copies of such notifications to the FIA Administrator.

Sec. 21.1.7 Evaluation. In reviewing the application, the development review board shall consider the evaluation of the Department of Environmental Conservation and shall determine that the proposed use will conform to the development standards of Section 21.1.9.

Sec. 21.1.8 30-Day Time Limit. No permit may be granted for new construction substantial improvement, filling, installation of a residential structure or the development of land in any area designated as a floodplain by the Department of Environmental Conservation prior to the expiration of a

period of thirty (30) days following the submission of the application and a report describing the proposed use, the location requested and an evaluation of the effect of such proposed use on Burlington's municipal development plan and the regional plan, if any, to the Department of Environmental Conservation provided this subsection shall not be applicable to public utility generating stations and transmission lines which shall require the issuance of a certificate of public good under 30 V.S.A. 248 prior to any land filling or construction.

Sec. 21.1.9 Special Review Criteria. In reviewing each application, the development review board shall assure that the flood-carrying capacity within any portion of an altered or relocated watercourse is maintained and shall consider:

- (a) The danger to life and property due to increased flood heights or velocities caused by encroachments;
- (b) The danger that material may be swept on to other lands or down stream to the injury of others;
- (c) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions;
- (d) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;
- (e) The importance of the services provided by the proposed facility to the community;
- (f) The availability of alternative locations not subject to flooding for the proposed use;
- (g) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
- (h) The relationship of the proposed use to the municipal development plan;
- (i) The safety of access to the property in times of flood of ordinary and emergency vehicles;
- (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood-waters expected at the site; and
- (k) Such other factors as are relevant to the purposes of this ordinance.

Sec. 21.1.10 Approval Conditions. Upon consideration of those factors in Sec. 21.1.9 and the purposes of these regulations, the development review board shall attach the following conditions to any permit it chooses to grant. Such conditions require that:

- (a) All residential structures have the first floor, including basement, elevated at least at or above, the base floods elevation;
- (b) All development shall be designed to minimize flood damage to the proposed development and to public facilities and utilities;

- (c) All new construction and substantial improvements for nonresidential purposes shall have the lowest floor, including basements, elevated at or above the base flood elevation or be designed to be watertight below the base flood elevation, with walls substantially impermeable and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for a proposed building shall not be issued until a registered architect or engineer has reviewed the structural design, specifications and plans and has certified that the design and methods of construction are in accordance with meeting the provisions of this subsection;
- (d) Structures shall be:
 - (1) Designed and anchored to resist flotation, collapse, or lateral movement during the occurrence of the base flood;
 - (2) Constructed of materials resistant to flood damage;
 - (3) Constructed by methods and practices that minimize flood damage; and
 - (4) Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (e) All development shall be designed to provide adequate surface drainage to reduce exposure to flood hazards;
- (f) Any fill shall be prohibited that will cause any increase in the base flood level;
- (g) The flood-carrying capacity within any altered or relocated portion of a watercourse shall be maintained;
- (h) New and replacement water supply and sanitary sewer systems shall be designed so as to prevent the infiltration of floodwaters into the systems and discharge from the systems;
- (i) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding;
- (j) New and replacement manufactured homes shall be elevated on properly compacted fill such that the top of the fill (the pad) under the entire manufactured home will be above the base flood elevation;
- (k) All necessary permits be obtained from those governmental agencies from which approval is required by federal or state law; and
- (l) All new construction and substantial improvements that have fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage shall have permanent openings, designed to allow the entry and exit of flood waters in accordance with specifications of 60.3(c)(5) of National Flood Insurance Program (NFIP) Rules and Regulations.

Sec. 21.1.11 Quantitative Requirements. As prescribed by the district in which the FH is overlaid and as set forth in Articles 5 and 10.

Sec. 21.1.12 Qualitative Requirements. As prescribed by the district in which the FH is overlaid and as set forth in Articles 6 and 7.

Sec. 21.1.13 Non-conforming Uses and Non-complying Structures. As set forth in Article 20.

Sec. 21.1.14 Records. The administrative officer shall maintain a record of:

- (a) The elevation, in relation to mean sea level, of the lowest habitable floor, including basement, of all new or substantially improved structures, and whether or not such structures contain a basement; and
- (b) The elevations, in relation to mean sea level, to which existing structures have been flood-proofed.

Sec. 21.1.15 Variances.

- (a) **Criteria.** The development review board, after public hearing, may approve the repair, relocation, replacement or enlargement of a non-complying structure within a regulated flood hazard area, subject to compliance with applicable federal laws and regulations and provided that the following criteria are met:
 - (1) The board finds that the repair, relocation, or enlargement of the non-complying structure is required for the continued economically feasible operation of a nonresidential enterprise;
 - (2) The board finds that the repair, relocation, or enlargement of the non-complying structure will not increase flood levels in the regulatory floodway, threaten the health, safety, and welfare of the public or other property owners;
 - (3) The permit so granted states that the repaired, relocated, or enlarged non-complying structure is located in a regulated flood hazard area, does not conform to the bylaws pertaining thereto, and will be maintained at the risk of the owner; and
 - (4) A copy of such a permit granted by the board shall be affixed to the copy of the deed of the concerned property on file in the City Clerk's office.
- (b) **Notice to Applicant.** The development review board shall notify the applicant that:
 - (1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00) of insurance coverage; and

- (2) Such construction below the base flood elevation increases risks of life and property.
- (c) **Annual Recording.** The development review board shall:
 - (1) Maintain a record of all variance actions, including justification for their issuance; and
 - (2) Report such variances issued in its annual report to the administrative officer.

Sec. 21.1.16 Warning of Disclaimer of Liability.

- (a) These regulations do not imply those areas outside the flood hazard area or land uses permitted within such districts will be free from flooding or flood damages. These regulations shall not create liability on the part of any city official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

ARTICLE 22. REQUIRED REGULATIONS

PART 1: SMALL LOTS

- Sec. 22.1.1 Existing Small Lots:** Any lot of record as of April 26, 1973, may be developed for the purposes permitted in the district in which it is located even though not conforming to minimum lot size requirements, if such lot is not less than four thousand (4,000) square feet in area with a minimum width or depth dimension of forty (40) feet, provided no permit for any such development shall be issued by the administrative officer until a certificate of appropriateness has been issued by the development review board under the design review provisions of Article 6.

PART 2: FRONTAGE REQUIRED

- Sec. 22.2.1 Required Frontage or Access:** No land development may be permitted on lots that do not have frontage on a public road or public waters. For lots of record existing as of January 1, 1988, development may be permitted with approval of the development review board, if access to such road or public waters exists by a permanent easement or right-of-way of at least twenty-five (25) feet in width.

ARTICLE 23. AMENDMENTS

PART 1: AMENDMENT PROCEDURES

- Sec. 23.1.1 Intent.** The intent of this article is to set forth the procedures to be followed when amendments are proposed to the text of this ordinance or to the zoning map.
- Sec. 23.1.2 Authority.** These regulations are enacted under the provisions of 24 V.S.A. *Section 4404*.
- Sec. 23.1.3 Amendment Preparation.** An amendment of this ordinance may be prepared by the planning commission or any other person or body.
- Sec. 23.1.4 Amendment by Others.** A proposed amendment prepared by a person or body other than the planning commission shall be submitted in writing along with any supporting documents to the planning commission. The planning commission may then proceed under this article as if the commission had prepared the amendment.
- Sec. 23.1.5 Amendment by Petition.** If the proposed amendment of a bylaw is supported by a petition signed by not less than five percent (5%) of Burlington voters, the commission shall correct any technical deficiency and shall, without otherwise changing the amendment, promptly proceed in accordance with this article as if it had been prepared by the commission.
- Sec. 23.1.6 Report.** When considering an amendment to this ordinance, the planning commission may prepare a written report on the proposal. If the proposal would alter the zoning designation of any land area, the report should be prepared and should cover the following points:
- (a) The probable impact on the surrounding area, including the effect of any resulting increase in traffic and the probable impact on the overall pattern of land use;
 - (b) The long-term cost or benefit to the municipality, based upon consideration of the probable impact on:
 - (1) The municipal tax base; and
 - (2) The need for public facilities.
 - (c) The amount of vacant land which is:
 - (1) Already subject to the proposed new designation; and
 - (2) Actually available for that purpose, and the need for additional land for that purpose.

- (d) The suitability of the area in question for the proposed purpose, after consideration of:
 - (1) Appropriate alternative locations;
 - (2) Alternative uses for the area under consideration; and
 - (3) the probable impact of the proposed change on other areas similarly designated.
- (e) The appropriateness of the size and boundaries of the area proposed for change, with respect to the area required for the proposed use, land capability, and existing development in the area.

Sec. 23.1.7 Hearing by Planning Commission. The planning commission shall hold at least one public hearing within the municipality after public notice on any amendment proposed by the planning commission or by petition.

Sec. 23.1.8 Hearing Notice Contents. Where a hearing is called concerning an amendment to this ordinance, the planning commission shall publish and post, as provided in Article 18, either the full text of the proposed material, or a notice including:

- (a) A statement of purpose;
- (b) The geographic areas affected;
- (c) A table of contents or list of section headings; and
- (d) A description of a place within the municipality where the full text may be examined.

No defect in the form or substance of any public hearing notice shall invalidate an amendment to this ordinance. However, the action shall be invalidated if the notice is materially misleading in content or fails to include one of the elements required by this section or if the defect was the result of a deliberate or intentional act.

Sec. 23.1.9 Notice to Municipalities and Agencies. At least fifteen (15) days prior to the first hearing, a copy of the proposed amendment and any written report shall be delivered with proof of receipt, or mailed by certified mail, return receipt requested, to each of the following:

- (a) The chairs of the planning commissions of Colchester, South Burlington and Winooski;
- (b) The executive director of the Chittenden County Regional Planning Commission; and
- (c) The department of housing and community affairs within the Vermont Agency of Development and Community Affairs.

Sec. 23.1.10 Submission to Legislative Body. The planning commission may make revisions to a proposed amendment and to any written report, and shall thereafter submit the proposed amendment and any written report to the

legislative body. However, if requested by the legislative body, or if a proposed amendment was supported by a petition signed by not less than five percent (5%) of Burlington voters, the planning commission shall promptly submit the amendment, with changes only to correct technical deficiencies, to the legislative body, together with any recommendation or opinion it considers appropriate. Simultaneously with the submission, the planning commission shall file with the city clerk a copy of the proposed amendment and any written report, for public review.

Sec. 23.1.11 Hearing by Legislative Body. Not less than thirty (30) nor more than one hundred twenty (120) days after a proposed amendment is submitted to the legislative body, the legislative body shall hold the first of one or more public hearings, after public notice, on the proposed amendment and shall make copies of the proposal and any written report of the planning commission available to the public upon request. Failure to hold a hearing within one hundred twenty (120) days shall not invalidate the adoption of the amendment or the validity of any repeal.

Sec. 23.1.12 Changes by Legislative Body. The legislative body may change the proposed amendment, but shall not do so less than fifteen (15) days prior to the final public hearing. If the legislative body at any time makes substantial changes in the concept, meaning or extent of the proposed amendment, it shall warn a new public hearing or hearings under Sec. 23.1.11. If any part of the proposal is changed, the legislative body, at least fifteen (15) days prior to the hearing, shall file a copy of the changed proposal with the city clerk and with the planning commission. The planning commission may submit a report thereon to the legislative body at or prior to the public hearing.

PART 2: ADOPTION

Sec. 23.2.1 Adoption. Except as provided in Sec. 23.2.2 and 23.2.3 an amendment shall be adopted by a majority of the members of its legislative body at a meeting, which is, held after the final public hearing, and shall be effective twenty-one (21) days after adoption.

Sec. 23.2.2 Extraordinary Majority Voting. Notwithstanding Sec. 23.2.1, an amendment shall become effective only when adopted by a two-thirds vote of all members of its legislative body if a written protest against the amendment is filed with the legislative body at least fifteen (15) days before the vote on adoption of the amendment by:

- (a) Five percent (5%) of Burlington voters; or
- (b) The owners of forty percent (40%) of the lots or area included in the proposed amendment; or

- (c) The owners of forty percent (40%) of the lots or area located outside the proposed amendment but within two hundred feet (200') from the outer limits of lots included in the proposed amendment.

Sec. 23.2.3 Popular Vote. Notwithstanding Sec. 23.2.1, a vote on an amendment shall not take effect if five percent (5%) of Burlington voters petition for a meeting of the municipality to consider the amendment, and the petition is filed within twenty (20) days of the vote. In that case Australian ballot shall duly warn a meeting of the municipality for the purpose of acting upon the amendment.

Sec. 23.2.4 Time Limit for Adoption. If the proposed amendment is not approved or rejected within one year of the date of the final hearing of the planning commission, it shall be considered disapproved unless five percent (5%) of Burlington voters petition for a meeting of the municipality to consider the amendment, and the petition is filed within sixty (60) days of the end of that year. In that case Australian ballot shall duly warn a meeting of the municipality for the purpose of acting upon the amendment.

PART 3: REPEAL

Sec. 23.3.1 Repeal. Repeal of this ordinance or any of its provisions shall follow the same procedures as an amendment to this ordinance.

ARTICLE 30. DEFINITIONS

Sec. 30.1.1 Miscellaneous. For the purpose of this ordinance,

- (a) Words used in the singular include the plural and words used in the plural include the singular.
- (b) Words used in the present tense include the future.
- (c) The word "shall" is mandatory and not merely directory.
- (d) The word "building" includes "structure".
- (e) The word "lot" includes the word "plot".
- (f) The word "land" includes the words "marsh", "wetland" and "water".

Sec. 30.1.2 Definitions. For the purpose of this ordinance certain terms and words are herein defined as follows:

Unless defined to the contrary in Section 4303 of the Vermont Planning and Development Act as amended, or defined otherwise in this section, definitions contained in the building code of the City of Burlington, Sections 8-2 and 13-1 of the Code of Ordinances, as amended, incorporating the currently adopted edition of the American Insurance Association's "National Building Code" and the National Fire Protection Association's "National Fire Code" shall prevail.

Accessible unit: a housing unit designed, constructed or altered such that the unit is located on an accessible route and can be approached, entered and used by an individual regardless of any disabilities an individual may have, as set forth in the specifications of the American National Standards Institute's "Standard for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People, A117.1-1986," or the latest edition thereof.

Accessory building or use: A use or detached building that:

- (a) Is clearly incidental to and customarily found in connection with the principal use or building;
- (b) Is subordinate to and serves a principal use or building;
- (c) Is subordinate in area, extent, or purpose to the principal use or building served and not to exceed twenty-five (25) per cent of the gross floor area of the principal use; and
- (d) Is located on the same lot as the principal use or building served. Accessory structures, such as doghouses, doll houses, or tree houses, less than or equal in the aggregate to a total of sixteen (16) square feet in area shall not require a zoning permit.

Affordable housing: See Low or moderate-income housing.

Affordable units: See Low or moderate-income housing.

Agriculture: The use of land for the production of plant or animal materials, including fields, pastures, wood lots, horticultural activities, farms, grazing, truck gardening, and raising and storing crops, but not including piggeries and fur farms; provided that no animals are permitted to graze or to be stabled closer than two hundred (200) feet to a zoning district boundary or lot line.

Alteration: Alteration means the rearrangement of interior space, including the addition of walls, halls, steps, elevators, escalators, the rearrangement of the exterior bearing walls, including new doors, wind exits or facades; but not including ordinary maintenance or repairs.

Amusement arcade: An indoor or outdoor area or structure open to the public, which contains coin operated games and similar entertainment and amusement devices.

Apartment: A dwelling unit in a building containing more than two dwelling units or a dwelling unit in a mixed-use building.

Apartment house: A structure containing three or more apartments.

Aquarium: An establishment where aquatic collections of living organisms are kept and exhibited.

Assisted housing: See Low or moderate-income housing.

Average monthly utilities cost: See Low or moderate-income housing.

Bar, cafe: A restaurant whose primary business is the sale of alcoholic beverages.

Basement: A portion of any building located partly underground but having less than half its clear floor-to-ceiling height below the average grade of the adjoining ground.

Bed and Breakfast: An owner-occupied residence, or portion thereof, in which no more than three short-term lodging rooms are rented and where only a morning meal is provided to guests.

Bedroom: See Low or moderate-income housing.

Boarding or rooming house: A building or premises where rooms are let to individuals, other than transients, and where meals may be regularly served in a common dining area for compensation. Hotels, motels, apartment houses, inns, tourist homes and/or lodging, houses shall not be considered boarding or rooming houses.

Building height: The vertical distance measured from the mean level of the street frontage of the building to the highest point on the finished roof, including mechanical devices in the case of a flat roof, and the average height of the rise, including, mechanical devices, in the case of a pitched or similarly sculptured form. See Sec. 5.3.19 for specific height calculation provisions.

Building inspector: The administrative officer of the building code for the City of Burlington.

Building lot: A building lot is that area of land described in an application for a building permit or an application to the development review board for a permit or a variance, or otherwise defined as the area on which a structure is to be constructed or a certain use is to be carried on. A building lot shall not include any part of a street that is relied upon to qualify the lot as to frontage.

Certificate of inclusionary zoning: See Low or moderate-income housing.

Club, membership: Buildings or facilities owned or operated by a corporation, association, or persons for a social, educational, or recreational purpose, but not primarily for profit or to tender a service that is customarily carried on as a business. Specifically excluded are fraternities and sororities.

Commercial use: Any business use, mercantile use or place of assembly; excluding bars, cafes, gasoline service stations and repair garages.

Community center: A common building within a residential development which provides a focus for recreational, neighborhood commercial, educational and cultural activities for the residents of that immediate neighborhood.

Community house: A community house is a residential dwelling unit where individuals are not handicapped as per the Federal Fair Housing Act but where, due to the particular needs of the resident individuals, a joint living arrangement is necessitated and where the individuals are under sponsorship or care of a public, nonprofit or for profit agency where the sponsor or caretaker provides, or arranges for, the provision of varying degrees of personal supervision and/or care in a residential environment, such as a halfway house, a personal care residence, a community transitional facility, or any other such facility that provides such services.

The following are not community houses: group homes, fraternities, sororities, dormitories, convents, communes, apartments, boarding and rooming houses, tourist homes, and hotels and motels. Community houses shall be considered a conditional use in any residential district and subject to all applicable provisions pertaining to conditional uses.

In addition to conditional use standards of Article 17, proposals for new community houses shall comply with the following requirements:

- (a) Density shall not exceed 1 person per two hundred (200) square feet of gross floor area;
- (b) Parking shall be required as per Article 10;
- (c) All lot requirements of Article 5 shall be applicable; and
- (d) Minimum distances (lot line to lot line) between community houses:

Total number of occupants
(beds) for largest of the

Radial distance

<u>community houses</u>	<u>in feet</u>
<u>6 or less</u>	<u>0</u>
<u>7 – 12</u>	<u>500</u>
<u>13 – 20</u>	<u>1000</u>
<u>21+</u>	<u>1500</u>

Conditions: Those conditions required in this article which must be met prior to the issuance of a zoning permit or certificate of occupancy.

Convalescent home: A health center or home where patients or boarders are given custodial or chronic medical, psychiatric or psychological care and may include patients receiving counseling from public and semipublic agencies but shall exclude acute care on a continuing basis.

Convenience Store: A retail store no larger than 5000 gross square feet that is open extended hours and that typically sells limited lines of groceries, household items, snacks and may include the sale of gasoline or other motor fuel, and is intended for the convenience of the surrounding neighborhood. The area for the sale of gasoline shall not exceed the lesser of 1,850 s.f. or 50% of the gross floor area of the enclosed convenience store. The area for the sale of gasoline is determined by the total square footage occupied by pumps, pump islands and vehicular space(s) at a pump filling station. Notwithstanding the foregoing, gas pumps at convenience stores shall not be allowed in the WFCN, WFCW, WFCE and WFCT zones.

Conversion to a nonresidential use or conversion: See low or moderate-income housing.

Day care center:

- (a) **Family day care home:** A state-registered or licensed daycare facility serving up to six (6) pre-school plus four (4) school-aged children. A family day care shall be considered by right to constitute a permitted accessory use to single detached dwellings.
- (b) **Small day care center:** A residential use conditionally permitted with site plan review. In addition to the conditional use criteria and site plan review standards, the following findings must be made:
 - (1) No playground equipment is located within the front yard.
 - (2) No more than twenty (20) full-time children are served.
 - (3) The site plan review shall insure adequate and safe drop-off-pickup space is provided and that traffic problems are not created.
 - (4) Any additions, signage or site improvements shall be residential in character.
 - (5) The facility is licensed or registered by the State of Vermont.

- (6) The use, as a small day care center, shall constitute a residential use and any conversion to change to a non-residential use shall be considered as such and shall be required to meet the requirements of Article 15, Housing Replacement.
 - (7) No more than one residential unit may be converted for any single small day care center.
 - (8) Tenant relocation requirements as per Article 15, Housing Replacement, shall be met. The seller or converter of the unit shall be responsible for any tenant relocation costs.
 - (9) The neighborhood is not overburdened with other day care centers.
- (c) **Large day care center:** A state-licensed facility providing day care services for children without regard to the number of children served shall be:
- (1) A permitted use in a commercial or industrial zoning district.
 - (2) A conditional use in residential districts.
 - (3) Considered a nonresidential use and subject to the requirements of Article 15, Housing Replacement.
 - (4) Large day care centers shall be subject to the parking requirements of Article 10.

Demolition: See Low or moderate-income housing.

Design review: Design review is the review of height, bulk, open space, massing, traffic access, circulation, parking, landscaping and all other site and architectural features.

Development Review Board or Board: The development review board of the City of Burlington, Vermont. The board has 7 members and 2 alternate members. The responsibilities of the board includes, but is not limited to, review of all development projects in the City of Burlington.

Duplex: A structure designed and constructed for two (2) separate living units, regardless of the type of construction.

Dwelling: A building or portion thereof used exclusively for residential purposes, including one-family, two-family, and multiple-family dwellings, but not including hotels and boarding or lodging houses.

Dwelling unit: A room or set of rooms fitted with a private bath, kitchen, and living facilities comprising an independent, self-contained dwelling space occupied by a family and where rooms are not let to individuals. Bathroom, kitchen and living facilities must be separate and distinct from bedroom facilities. Each bedroom must contain a minimum square footage consistent with the current minimum housing standards. Separate bathroom facilities will be deemed to exist only when it is possible to access such bathroom facilities without passing through a room which is designated as a bedroom. If there is more than one meter for any utility, address to the property, or kitchen; or if there are separate entrances to rooms which could be used as separate dwelling units: or if there is a lockable, physical separation between rooms in the

dwelling unit such that a room or rooms on each side of the separation could be used as a dwelling unit, multiple dwelling units are presumed to exist; but this presumption may be rebutted by evidence that the residents of the dwelling share utilities and keys to all entrances to the property and that they (A) share a single common bathroom as the primary bathroom or (B) share a single common kitchen as the primary kitchen. Each dwelling unit must have a minimum of one hundred eighty (180) square feet of parking space on the premises for every two occupants thereof, such parking area may not be in the front yard.

Dwelling unit, single detached: Free standing residential structure containing a single family unit occupied by a single nonprofit housekeeping unit, but not including group quarters; see definition of "family" and where rooms are not let to individuals.

Estimated Cost Calculation: Fees are calculated based upon building construction, alteration, and/or site improvement expenses. Not included in this figure is the purchase price of the land and the final interior finishes relative to a specific tenant, i.e. specialized equipment, finishes, furniture, drapes, etc.

Family: One or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit, but not including group quarters such as dormitories, sororities, fraternities, convents, and communes. Occupancy by any of the following shall be deemed to constitute a family:

1. Members of a single family, all of whom are related within the second degree of kinship (by blood, adoption, marriage or civil union).
2. A "functional family unit" as defined in Article 30, Sec.30.1.2(1).
3. Persons with disabilities as so defined in Title VII of the Civil Rights Act of 1968, as amended by the "Fair Housing Amendments Act of 1988".
4. A state registered or licensed day care facility serving six or fewer children as required by 24 V.S.A. 4409(2), as the same may be amended from time to time.
5. No more than four unrelated adults and their minor children.

Provided that a dwelling unit in which the various occupants are treated as separate roomers cannot be deemed to be occupied by a family.

For purposes of this definition of family, a group of adults living together in a single dwelling unit and functioning as a family with respect to those characteristics that are consistent with the purposes of zoning restrictions in residential neighborhoods shall be regarded as a "functional family unit" and shall also qualify as a family hereunder.

- (1) In determining whether or not a group of unrelated adults is a "functional family unit", under the standard set forth above, the following criteria must be present:

- (a) The occupants must share the entire dwelling unit. A unit in which the various occupants act as separate roomers cannot be deemed to be occupied by a functional family unit.
- (b) The household must have stability with respect to the purpose of this chapter. Evidence of such stability may include but not be limited to, the following:
 - (1) Minor dependent children regularly residing in the household, and school age children are enrolled in local schools.
 - (2) Proof of the sharing of expenses for food, rent or ownership costs, utilities and other household expenses and sharing in the preparation, storage and consumption of food.
 - (3) Whether or not different members of the household have the same address for purposes of:
 - (a) Voter registration
 - (b) Drivers' licenses
 - (c) Motor vehicle registration
 - (d) Summer or other residences
 - (e) The filing of taxes
 - (4) Common ownership of furniture and appliances among the members of the household.
 - (5) Employment of householders in the local area.
 - (6) A showing that the household has been living together as a unit for a year or more, whether in the current dwelling unit or other dwelling units.
 - (7) Any other factor reasonably related to whether or not the group or persons is the functional equivalent of a family.
- (2) The initial determination of whether a "functional family unit" status exists shall be made by the Code Enforcement Office ("CEO"). The burden will rest upon the individuals claiming "functional family status" to submit information to the CEO to substantiate their claim. Some of the information provided to the CEO as part of a "functional family unit" status request, as well as the CEO's initial determination, may be highly confidential and, thus, will be maintained in a separate "red envelope" in the property file. It will be left to the CEO to determine whether the information is sensitive enough to be retained in the "red envelope". Information maintained in the "red envelope" will be considered confidential and thus used only by the CEO. Access to the "red envelope" by persons outside of the CEO will only be allowed under court order or during litigation regarding said property.

Finished Grade: A reference plane representing the average of finished ground level adjoining the building at all exterior walls. When the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, when the lot line is more than six (6) feet from the building, between the building and point six (6) feet from the building.

When the finished grade is lower than the preexisting natural grade, the finished grade may be measured from the grade at the front lot line. (*Zoning Amendment 96-01, Effective 7/10/96*)

Floor area ratio: The ratio of gross floor area to gross site area.

Frontage: That portion of the lot which abuts on a public street or way, the width of which shall be measured along the front building line across the width of the lot.

Garage: A building or structure or a portion thereof in which motor vehicles or equipment are housed.

- (a) Garage, private: a garage, but not for commercial repair of vehicles or the storage of any motor vehicles having a gross weight of more than six thousand (6,000) pounds or rental of more than two (2) stalls.
- (b) Garage, public: a garage, other than a private garage, as defined above, used or designed to be used for storage, repair, sale or lease, service or maintenance of motor vehicles or equipment.

Gross floor area: The sum of the areas of the several floors of a building, including areas used for human occupancy in basements, attics and penthouses as measured from the exterior faces of the walls. It does not include cellars, unenclosed porches, or attics if said areas are not used for human occupancy, or any floor space in accessory buildings or in the main building intended and designed for the parking of motor vehicles in order to meet the parking requirements of the ordinance. It shall include the horizontal area at each floor level devoted to stairwells and elevator shafts.

Gross site area: The total lot area.

Group home: A residential dwelling unit occupied by unrelated individuals as a single nonprofit housekeeping unit only if all said occupants, with the exception of supervisory personnel, are handicapped persons as defined in Title VIII of the Civil Rights Act of 1968, as amended by the "Fair Housing Act of 1988". Such unrelated individuals shall have the right to occupy a residential dwelling unit in the same manner and to the same extent as any family unit as defined in this article.

Historic Inn: An existing building located on a single lot of record as of January 1, 1996, meeting the one-half acre minimum lot size may be used as an historic inn, which has the primary use of housing overnight guests, in compliance with the following requirements:

- (1) The subject building(s) involved shall be an Historic Site or located in an Historic District as listed in Article 8, or shall be listed in the United States Department of the Interior National Register of Historic Places, or shall be listed on the State of Vermont Historic Sites and Structures Survey.
 - (a) Any exterior modifications to the structure, including but not limited to mechanical and ventilation equipment, shall be subject to the design

review criteria in Article 6 and the additional historic review criteria in Article 8. No new structural additions to existing buildings in order to accommodate its use as an historic inn are allowed.

- (2) The lot of record shall be a minimum of one-half (1/2) acre in size and located on a major street as listed in Table 5-E.
- (3) Where an Historic Inn is a conditional use, as listed in Table 5a, a person as their primary residence who is an owner of the property or of the business shall occupy the premises. For purposes of this subsection only, an owner is defined as someone who holds, at least, a 25% ownership interest in the property or in the business.
- (4) There may be common dining facilities for overnight guests and their guests. Where an Historic Inn is a conditional use, regular meals may be limited if so determined by the development review board.
- (5) Where an Historic Inn is a permitted use, ancillary events are allowed. Where an Historic Inn is a conditional use, ancillary events may be allowed, but shall be limited to indoor business meetings and meals in conjunction with those meetings for overnight guests and no more than four (4) invited guests. However, if a conditional use, the development review board may determine that no ancillary meetings shall be allowed.
- (6) Parking.
 - (a) All parking shall be accommodated in an on-site parking area in low-density residential districts (RL and WRL). The location and installation of a parking area is subject to all applicable provisions of this ordinance and is subject to Article 7, Site Plan Review. Further, in addition to the review of development review board, a recommendation on the site plan from the Design Advisory Board is required.
 - (b) Parking requirements: one (1) space per guestroom plus two (2) for the residential occupancy and one (1) per six (6) guestrooms for staff. No additional parking above the required number of spaces shall be allowed. The development review board as allowed under Sec. 10.1.19 may waive the requirement for staff.
 - (c) Full setback requirements as for a principal structure shall be applied to new parking areas in low density residential districts (RL and WRL); and
 - (d) All parking shall be adequately screened from neighboring properties and the street.
- (7) Site lighting is not encouraged. However, if exterior lighting, including but not limited to building mounted lights, is proposed, it shall be subject to review and approval of the development review board with recommendations from the Design Advisory Board.
- (8) The maximum number of guestrooms allowed for historic inns shall be based on a density of twelve (12) rooms per acre or six (6) rooms per 1/2 acre. However, if a conditional use, the development review board, as part of its review, may determine that a lesser number of rooms are appropriate, based on its evaluation of the impact of the proposed use on neighboring

properties and traffic on nearby streets. (*Zoning Amendment 96-02, Effective 9/11/96*)

Home occupation: An accessory use of a dwelling unit for gainful employment involving the provision of services or the fabrication of goods. Home occupations are subject to all the procedures, conditions and standards of Article 12.

Hotel, inn motel, or lodging house: A single building, or portion thereof on a single lot, intended to be used for the temporary occupancy of four (4) or more individuals, who are lodged, with or without meals, and in which provision for cooking may be made in a central kitchen, but may not be in the individual rooms or suites.

Housing, elderly: Housing that is designed for, and is occupied primarily by, those persons sixty (60) years of age or older.

Housing unit: See Low or moderate-income housing.

Inclusionary unit or affordable inclusionary unit: See Low or moderate-income housing.

Junkyard: Land or buildings used for the collection, storage or sale of waste paper, rags, scrap metal or discarded material; or for the collection, wrecking, dismantling, storage, salvaging and sale of machinery parts or vehicles not in running condition.

Kennel or coop: Accessory building or enclosure for the keeping of domestic pets of the residents, limited to three (3) or less such pets or animals three (3) months or older in age.

Lakefront: Lake front or lakeshore means the water's edges of Lake Champlain at mean low water unless otherwise defined.

Landscaped open space: Lot area(s) which includes grass, ground covers, gardens, shrubs, trees and natural areas. Landscaped open space shall not include parking or drives.

Legislative Body: The Burlington City Council with Mayor presiding.

Limited equity housing unit: See Low or moderate-income housing.

Loading space, off-street: An off-street space or berth, on the same lot with building for the temporary parking of vehicles while loading or unloading merchandise or material, and which has access to a street, alley or other appropriate means of ingress and egress.

Lot, corner: A lot abutting on two (2) or more streets at their intersection.

Low-income household: See Low or moderate-income housing.

Low or moderate-income housing - Section 14:

- (a) **Affordable housing:** A housing unit for which the monthly rent, monthly carrying charge, or monthly mortgage payment plus the average monthly utilities cost does not exceed thirty per cent (30%) of household income adjusted for household size. A household size of 1.5 shall be used in determining whether a one- (1) bedroom unit is affordable housing. A household size of 3, 4, 5 and 6, respectively, shall be used in determining whether a two (2) bedroom unit or a four (4) bedroom unit is affordable housing.
- (b) **Affordable units:** Units for which the rent or carrying charges, including utilities paid by the tenant or co-op member, shall not exceed thirty per cent (30%) of household income or for which carrying charges paid by the owner-occupant (including mortgage payments, taxes, condominium fees, and insurance) shall not exceed thirty percent (30%) of the household's income.
- (c) **Assisted housing:** A housing unit that is made affordable housing for a household with an annual income that is halfway between the annual income of a very low-income household and the annual income of a low-income household.
- (d) **Average monthly utilities cost:** The Section 8 housing allowances for tenant-furnished utilities and other services for the Burlington MSA, as promulgated from time to time by the Burlington Housing Authority, and as adjusted for building type, unit size, and the type of utilities and services actually provided in a particular housing unit. Low or moderate-income
- (e) **Bedroom:** A room located within a housing unit that is used primarily for sleeping purposes by human occupants and that contains at least seventy (70) square feet of floor area.
- (f) **Certificate of inclusionary housing compliance:** A certificate approved by the planning department, in consultation with the community and economic development office, which certificate provides legal assurance that a developer's obligations under this article will be satisfied.
- (g) **Conversion to a nonresidential use or conversion:** A change in character of any housing unit, whether occupied or vacant, from a residential to a nonresidential use. A change in character lasting less than one (1) year, where residential use is restored within that same one (1) year period, shall not be subject to the replacement requirements of Article 15.
- (h) **Demolition:** The destruction of any housing unit. Such destruction shall not include the alteration and continued exclusive residential use of a multi-unit residential structure that results in a net loss of housing units.
- (i) **Housing unit:** Any "dwelling unit" or "rooming unit", as defined by Chapter 18 of the Burlington Code of Ordinances. This shall not include units for the temporary occupancy of patients or guests in a hospital, hotel, motel or convalescent facility unless the same tenant customarily occupies for such units more than sixty (60) days. Any four- (4) "rooming units" shall be considered a single housing unit in applying the housing replacement requirements of Article 15.

- (j) **Inclusionary unit or affordable inclusionary:** Any dwelling unit within any covered project that is made affordable pursuant to Article 14 of this ordinance.
- (k) **Limited equity housing unit:** Any unit in which the occupant possesses an ownership interest and which is kept affordable for low- or moderate-income households through restrictions upon equity accrual of the occupant's ownership interest.
- (l) **Low-income household:** A household with income not exceeding eighty per cent (80%) of median income for the Burlington MSA, as set forth in regulations promulgated from time to time by the U.S. Department of Housing and Urban Development pursuant to 42 U.S.C. Section 1437 et seq.
- (m) **Luxury rental housing:** A housing unit that has rented, for the twenty-four (24) months preceding the date of application for conditional use approval, for a monthly charge in excess of twice the HUD Fair Market Rent for the Burlington MSA, adjusted for unit size.
- (n) **Market unit:** Any dwelling unit available for rental or purchase which is not an inclusionary unit or affordable inclusionary unit, as defined herein. Low or moderate-income.
- (o) **Median income:** The income for the Burlington MSA set forth in or calculated by regulations promulgated by the United States Department of Housing and Urban Development, pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974. The median income that is current on the first day of March of any year shall be used throughout the subsequent twelve (12) months in calculating the general requirements for affordable housing under Article 14.
- (p) **Moderate-income household:** A household having an income not exceeding one hundred ten per cent (110%) of median income for the Burlington MSA, as set forth in regulations promulgated from time to time by the U.S. Department of Housing and Urban Development pursuant to 42 U.S.C. Section 1437 et seq.
- (q) **Notice to tenants:** The written notice, which an owner is required to send by certified **and** by either regular mail or hand delivery to the current tenants of any housing unit that is slated for demolition or conversion to a nonresidential unit, announcing the owner's intent to demolish or convert the unit to nonresidential use.
- (r) **Owner:** Any person, firm, partnership, association, joint venture, corporation or other entity or combination of entities who along, jointly or severally with others holds legal or equitable title to any housing unit.
- (s) **Person:** Any individual, corporation, business trust, estate trust, partnership, association, or any other entity or combination thereof.
- (t) **Planned residential development (PRD):** A subdivision planned and developed as an entity under single land ownership which does not correspond in lot size, bulk or type of dwelling, or required open spaces to the regulations in which district it is situated as established by this ordinance, regardless of whether by law or fact the area is to be utilized by separate entities, functions or households.

- (u) **Rental housing unit:** Any housing unit, as defined herein, which is rented out as a residence by another for compensation, pursuant to a lawful lease or rental agreement, whether oral or written, express or implied.
- (v) **Substantial rehabilitation:** Any rehabilitation of an existing structure that requires an investment equal to at least fifty per cent (50%) of the structure's total replacement cost.
- (w) **Tenant:** Any person who occupies a rental housing unit pursuant to a lawful lease or rental agreement, whether oral or written, express or implied. Two (2) or more persons who live together in a rental housing unit shall be considered one (1) tenant for purposes of this section.
- (x) **Very low-income household:** A household having an income not exceeding fifty per cent (50%) of median income for the Burlington MSA, as set forth in regulations promulgated from time to time by the U.S. Department of Housing and Urban Development pursuant to 42 U.S.C. Sec. 1437 et seq.

Luxury rental housing: See Low or moderate-income housing.

Marina: Facility for berthing, rental, repair, fueling and sale of recreational marine craft; excludes building, repair, dry-dock storage of craft in residential district.

Market unit: See Low or moderate-income housing.

Median income: See Low or moderate-income housing.

Moderate-income household: See Low or moderate-income housing.

MSL: Mean sea level.

Non-complying structures: Non-complying structure means a structure or part thereof not in conformance with the zoning regulations covering building bulk, dimensions, height, area, parking, yards or density, where such structure conformed to all applicable laws, ordinances and regulations prior to enactment of such zoning ordinance.

Non-conforming use: A non-conforming use of land or building is an existing use of land or building which does not conform to the use regulations for the district in which such use of land or building exists and which legally existed at the time of the adoption of the regulations to which it does not conform.

Notice to tenants: See Low or moderate-income housing.

Ordinary high water mark: The elevation of one hundred (100) feet above mean sea level.

Owner: See Low or moderate-income housing.

Parking, Surface: See Surface Parking

Planning commission or commission: The planning commission of the City of Burlington, Vermont.

Performance bond: In lieu of the completion of the required improvements, the development review board may require from the owner for the benefit of the city, a performance bond issued either by a bonding or surety company approved by the legislative body or by the owner with security acceptable to the legislative body, in an amount sufficient to cover the full cost of said required improvements and their maintenance for a period of two (2) years after completion as is estimated by the development review board or such municipal departments or officials as the board may designate. Such bond or other security shall provide for, and secure to the public, the completion of any improvements which may be required within the period fixed in the regulations for such completion, and for the maintenance thereof for a period of two (2) years after completion.

Person: See Low or moderate-income housing.

Public use: A use that is owned and operated by a public agency.

Quasi-judicial: Having a partly but essential judicial character by possession of the right to hold hearings on and conduct investigation into items dealing with rules and regulations and to make decisions in the general manner of courts.

Recreational pier: A structure built into or out over the water and used as a landing place for boats, promenade or entertainment/recreational area.

Rental housing unit: See Low or moderate-income housing.

Restaurant, including bars, cafes, and caterers: Any food service establishment subject to Vermont Health Regulations which prepares and serves food for consumption on premises; and including those establishments whose primary business is the sale of prepared food for consumption off the premises. Bars and cafes are further defined as restaurants whose primary business is the sale of alcoholic beverages.

Satellite dish antenna: A solid, open mesh, or bar configured device, often with the shape of a shallow dish, cone, horn, or cornucopia, for the purpose of transmitting and/or receiving radio or electromagnetic waves between terrestrially and/or orbitally based uses. Satellite dish antennas larger than 24" in width or diameter are subject to regulation as specified in Article 4, Sec. 4.1.3. (a) and Article 5, Sec. 5.3.13(d). Any satellite dish equipment less than 24" in diameter in the aggregate on a single structure or lot shall not be considered a satellite dish antenna for the purposes of this ordinance, and is not subject to regulation as such. (*Zoning Amendment 95-04, Effective 2/7/96*)

Semipublic use and buildings: Semipublic use includes churches, membership clubs and, other nonprofit operations. Private nursery schools are specifically determined not to be a semipublic use.

Sign: Any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, designs, trade names, trade marks by which anything is made known, such as are used to designate an individual, a firm, an association, a corporation, a profession, a business, or a commodity or product, which are visible from a public-street or right-of-way and used to attract attention.

- (a) **Business Sign.** An on-premises sign that directs attention to any primary business, commodity, service, industry or other activity, which is sold, offered or conducted on the premises.
- (b) **Clear Sight Triangle.** The area formed by the intersecting street lines and a straight line joining said street lines at points twenty-five (25) feet distant from the point of intersection of the street lines, measured along said street lines. No sign, except an official sign more than three (3) feet above the established street grades, shall be erected in the clear sight triangle.
- (c) **Directly Illuminated Sign.** A sign, which emits light from a source within such sign directly or through transparent or translucent material, including but not, limited to, neon and exposed lamp signs.
- (d) **Festoon Lighting.** A method of illuminating a structure with a group of incandescent bulbs hung or strung overhead or used to outline a structure or any part thereof.
- (e) **Flashing Sign.** An illuminated sign on which an artificial light is in a non-stationary position or is not constant in intensity or color at all times during use.
- (f) **Freestanding Sign.** A self-supporting sign resting on the ground or supported by means of poles or standards in the ground. The height of freestanding signs shall be measured from the official street grade to the top of the light standard or supporting standard, whichever is higher. Only one freestanding sign is permitted for each separate street frontage devoted to an establishment. A sign that stands without supporting elements, such as "sandwich sign" or interchangeable message board on wheels, is considered a freestanding sign.
- (g) **Holiday Decorations.** Holiday decorations displayed for and during recognized federal, state, or religious holidays shall be exempted from the provisions of this article except where they interfere with traffic safety or in any way becomes a public safety hazard.
- (h) **Indirectly Illuminated Sign.** A sign illuminated from an outside source so shielded that no direct rays are visible elsewhere on the lot. If such shielding device is defective, the sign shall be deemed to be a directly illuminated sign.
- (i) **Institutions.** Public and semipublic uses including, but not limited to, colleges, universities, hospitals, churches, membership clubs, and private colleges.
- (j) **Kiosk.** Any structure erected in a public place with approval of the development review board for the specific purpose of displaying any sign to direct or inform pedestrians. Kiosks erected on city sidewalks shall not occupy more than twenty-five per cent (25%) of the total width of the sidewalk measured at the location of the kiosk. The maximum height of a kiosk shall not exceed nine (9) feet. Kiosks shall not unreasonably interfere

with the normal flow of pedestrian traffic. A bus shelter may be used as a kiosk. Kiosks are to be distinguished from "free-standing signs" which are governed by Section 21-5 of Chapter 21 of the Burlington Code of Ordinances.

- (k) **Noncomplying Signs.** Any sign existing at the time of the passage of this section that does not conform in area, illumination, type, or height with the provisions herein. Such signs may remain in use in the same location. A noncomplying sign may be repaired and renovated, however it may not be moved or altered in any way except to bring the sign into complete or substantially greater compliance with this chapter, as allowed by Sec. 20.1.9(b)
- (l) **Off-Premise Sign.** A sign which advertises or otherwise directs attention to any commodity or activity sold, offered or conducted elsewhere than on the premises upon which such sign is located.
- (m) **Official Sign.** Any sign, including traffic signs and similar regulatory notices, erected by a duly constituted governmental body.
- (n) **On-Premise Sign.** A sign directing attention to an activity on the same premise.
- (o) **Parallel Sign.** A sign attached, painted or otherwise mounted parallel to a wall or other vertical building surface. Parallel signs shall not extend beyond the edge of any wall or other surface to which they are mounted and shall not project more than eighteen (18) inches from the surface thereof.
- (p) **Projecting Sign.** Any sign mounted to a wall or other vertical building surface other than a parallel sign. Signs connected to a canopy, awning or marquee that project more than 18" are considered to be projecting signs. The content must be affixed flat to such canopy, marquee or awning and is limited to announcing the name of the establishment or any on-premises show or event.
- (q) **Roof Sign.** A sign erected on or above the roof or parapet of a building. No sign or advertising device attached to a building shall project above the roof or parapet line no more than 12 inches out from the wall to which it is attached.
- (r) **Sign exemptions.** Excluded from sign regulations are interior merchandising displays as well as displays of less than two (2) square feet which serve only to indicate the name and address of residential occupants.
- (s) **Temporary sign.** A display, information sign, banner, or other advertising device constructed of cloth, canvas, fabric, wood, or other light material, with or without a structure frame, and intended for a limited period of display. The display of any such temporary sign(s) shall be limited to two nonconsecutive 30-day periods per calendar year. Any other sign shall be considered to be permanent as defined in Sec. 30, and shall be governed by Sec. 16.
- (t) **Vehicular Sign.** A sign affixed to any vehicle in such a manner that the display of such sign is a primary purpose of the vehicle. Any such sign shall be considered a freestanding sign.
- (u) **Window sign.** A sign affixed to the window or placed within twelve (12) inches of the glass area.

Site plan review: The review of commercial, industrial or apartment uses subject to the same procedures and requirements as a subdivision in accordance with Chapter 67 of the Burlington City Ordinances and Article 7.

Small lots: Any lot of record in existence as of April 26, 1973 not conforming to minimum lot size requirements, if such lot is not less than four thousand (4,000) square feet in area with a minimum width or depth dimension of forty (40) feet.

Sorority/Fraternity: A multiple dwelling used and occupied by a cooperating group of university or college students and containing and providing domestic and social facilities and services thereto.

Special exception: No special exception is allowed under the provisions of this ordinance and none shall be granted.

Street: A public way as defined in Section 1-2 of the Code of Ordinances of the City of Burlington, or a private way devoted to public use. The word “ street” shall include the entire width between property lines of every way used for vehicular and pedestrian travel which has become public by authority of the law, and such ways on public places other than highways as the public is permitted to use for vehicular and pedestrian traffic.

Structure: Any construction, erection, assemblage or other combination of materials upon the land, including swimming pools necessitating pilings, footings or a foundation attachment to the land, and including paving (not including resurfacing).

Substantial rehabilitation: See Low or moderate-income housing.

Surface parking: Parking facilities that are at grade and uncovered or not within a structure. (See Amendments Index A-1; Zoning Amendment 94-01, Effective 4/8/94).

Temporary structures: See Article 4 Section 4.3.1

Tenant: See Low or Moderate-income housing.

Tour-oriented manufacturing facility: A manufacturing and/or processing establishment in which public tours are accommodated and incorporated into the facility’s ordinary operations and the retail sale of the products or goods produced on the premises accessory to the manufacturing activity. In no case, however, shall the noise, fumes, or odor emanating from the facility be heard or detected beyond the property boundary.

Tourist camp: Land used, or intended to be used, let or rented for occupancy by campers traveling by automobile or otherwise; or for temporary occupancy by house trailers, tents, or movable or temporary dwelling, rooms or sleeping quarters of any kind.

Usable open space: Lot area(s) which enhance utility and amenity including improvements such as: recreational facilities, walkways, plazas, tennis courts,

bikeways, boardwalks, recreational piers, sitting walls, fountains and works of art. Usable open space shall not include parking or drives.

Variance: Variance is allowed deviation from the physical dimensional requirements of this chapter as granted by the development review board, but not to include any land use or density changes other than is specifically permitted under the provisions of this ordinance.

Very low-income household: See Low or moderate-income housing.

Waiver fee: A person “waives” or creates a “waiver” when that person relinquishes a specific right with respect to an action of the court. For purposes of this ordinance, when a party is issued a municipal complain ticket with a penalty fee and also a waiver fee, that party may consent to no hearing and instead pay only the designated “waiver” fee and send the payment with the ticket form in accordance with the procedures of the Judicial Bureau.

Warehouse: A building used for the storage of goods or materials. Warehouses may include the distribution of goods but do not include retail sale of goods.

Warehouse retail: A building used for the sale of goods, in bulk or as individual retail items, to the general public or to a membership.

Warehouse, self-storage or mini warehouse: A building consisting of individual, self-contained units that are leased or owned for the storage of business supplies and household goods. Business goods are limited to those not associated with any office, retail or other business or commercial use within the self-storage warehouse facility.

Waterfront pedestrian corridor: The waterfront pedestrian corridor is an area encouraged for dedication to the city by any applicant for a certificate of appropriateness in the waterfront design control district.

Yard: All open space, other than an enclosed court, on the same lot with a building or group of buildings, which open space lies between a building or group of buildings and a lot line.

- (a) **Yard, front:** The open, unoccupied space extending across the full width of the lot and lying between the street line of the lot and the nearest line of the building. The depth of a front yard shall be the minimum distance between the building and front lot lines, measured at right angles to the front line of the lot.
- (b) **Yard, rear:** The open, unoccupied space extending across the full width of the lot and lying between the rear lot line of the lot and the nearest line of the building. The depth of a rear yard shall be the minimum distance between the building and rear lot line, measured at right angles to the rear line of the lot.
- (c) **Yard, side:** The open, unoccupied space between the side lot line of the lot and the nearest line of the building, and extending from the front yard to the

rear yard, or, in the absence of either of such yards, to the front or rear lot lines, as may be. The width of a side yard shall be the minimum distance between the building and the side lot line, measured at right angles to the sideline of the lot.

AMENDMENTS INDEX

TEXT

ZONING AMENDMENTS

93-02; Comprehensive Zoning Rewrite:

First Planning Commission Public Hearing: April 8, 1993

Adopted by Planning Commission: April 22, 1993

First City Council Public Hearing: July 19, 1993

Adopted by City Council: December 13, 1993

Effective Date: April 8, 1994

94-01; Sec. 3.2.7; Core Campus Overlay (CCO)

First Planning Commission Public Hearing: March 24, 1994

Adopted by Planning Commission: April 14, 1994

First City Council Public Hearing: May 23, 1994

Adopted by City Council: September 19, 1994

Effective Date: October 19, 1994

95-02; Sec. 4.3.1; Temporary Structures

First Planning Commission Public Hearing: August 24, 1995

Adopted by Planning Commission: September 14, 1995

First City Council Public Hearing: November 13, 1995

Adopted by City Council: January 8, 1996

Effective Date: February 7, 1996

95-04; Sec. 30, Definitions; Satellite Dish Antenna

First Planning Commission Public Hearing: August 24, 1995

Adopted by Planning Commission: September 14, 1995

First City Council Public Hearing: November 13, 1995

Adopted by City Council: January 8, 1996

Effective Date: February 7, 1996

95-05; Sec. 2.2.5; Powers and Duties of Planning Commission

First Planning Commission Public Hearing: August 24, 1995

Adopted by Planning Commission: September 14, 1995

First City Council Public Hearing: November 13, 1995

Adopted by City Council: January 8, 1996

Effective Date: February 7, 1996

95-06; Sec. 19.1.9; Remedies (violations)

First Planning Commission Public Hearing: August 24, 1995

Adopted by Planning Commission: September 14, 1995

First City Council Public Hearing: November 13, 1995

Adopted by City Council: January 8, 1996

Effective Date: February 7, 1996

95-07; Sec. 5.2.6; Exception to Maximum Density

First Planning Commission Public Hearing: January 11, 1996

Adopted by Planning Commission: January 25, 1996

First City Council Public Hearing: February 20, 1996

ARTICLES/SECTION INDEX

Article 3 Zoning Districts and Zoning Map

Add Sec. 3.2.7; 94-01

Article 5 Use, Density & Dimensional Requirements

Add footnote #6 to Table 5-C; 94-01

Article 4 Zoning Permits

Add Part 3, Sec. 4.3.1; Temporary Structures; 95-02

Article 30 Definitions

Add wording, Sec. 30.1.2; 94-01

Article 30 Definitions

Add wording; 95-04

Article 2 Administrative Mechanisms

Add Sec. 2.2.5 (d); 95-05

Article 19 Enforcement

Add wording to Sec. 19.1.9; 95-06

Article 5 Use, Density & Dimensional Requirements

Add Sec. 5.2.6 (e); 95-07

ZONING AMENDMENTS

95-07; Sec. 5.2.6; Exception to Maximum Density (cont.)

Adopted by City Council: May 20, 1996

Effective Date: June 19, 1996

96-01; Sec. 5.3.14; Height Limits/Central Business District

First Planning Commission Public Hearing: January 11, 1996

Adopted by Planning Commission: January 25, 1996

First City Council Public Hearing: February 20, 1996

Adopted by City Council: June 10, 1996

Effective Date: July 10, 1996

96-02; Table 5A; Historic Inn

First Planning Commission Public Hearing: February 8, 1996

Adopted by Planning Commission: February 22, 1996

First City Council Public Hearing: May 6, 1996

Adopted by City Council: August 12, 1996

Effective Date: September 11, 1996

98-01; Table 5A; Add Post Office as Permitted Use in a Commercial District.

First Planning Commission Public Hearing: January 8, 1998

Adopted by Planning Commission: January 22, 1998

First City Council Public Hearing: September 28, 1998

Adopted by City Council: October 7, 1998

Effective Date: October 28, 1998

98-02; Sec. 4.1.14, 5.3.9; Fences and Non-Design Control Exemptions

First Planning Commission Public Hearing: June 25, 1998

Adopted by Planning Commission: July 23, 1998

First City Council Public Hearing: September 28, 1998

Adopted by City Council: October 7, 1998

Effective Date: October 28, 1998

98-03; Sec. 12.1.3; Administrative Approval of Home Occupations

First Planning Commission Public Hearing: June 25, 1998

Adopted by Planning Commission: July 9, 1998

First City Council Public Hearing: September 28, 1998

Adopted by City Council: October 7, 1998

Effective Date: October 28, 1998

98-04; Sec. 9.1.5; Publicly Accessible Restrooms on Public Trust Lands

First Planning Commission Public Hearing: June 25, 1998

Adopted by Planning Commission: July 9, 1998

First City Council Public Hearing: September 28, 1998

Adopted by City Council: December 23, 1998

Effective Date: January 13, 1999

Article 5 Use, Density & Dimensional Requirements

Amend Sec. 5.3.14 (b)(2)(B); 96-01

Article 5 Use, Density & Dimensional Requirements

Add "Historic Inn" to Table 5A; 96-02

Article 30 Definitions

Add wording to Sec. 30.1.2; 96-02

Article 5 Use, Density & Dimensional Requirements

Table 5A, add Post Office as Permitted Use in a Commercial District; 98-01

Article 4, 5 Fences & Non-Design Control Exemptions

Amend Add Sec. 5.3.9(b)

Add Sec. 4.1.14(a, 1-3); 98-02

Article 12 Administrative Approval of Home Occupations

Amend Sec. 12.1.3; 98-03

Article 9 Publicly Accessible Restrooms on Public Trust Lands

Amend Section 9.1.5; 98-04

ZONING AMENDMENTS

95-01A; Sec. 3.2.8; Institutional Core Overlay

First Planning Commission Public Hearing: January 14, 1999

Adopted by Planning Commission: January 28, 1999

First City Council Public Hearing: September 13, 1999

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Adopted by City Council: September 13, 1999
Effective Date: October 13, 1999

95-01B; Sec. 3.2.8; Institutional Core Overlay

First Planning Commission Public Hearing: January 14, 1999
Adopted by Planning Commission: January 28, 1999
First City Council Public Hearing: October 4, 1999
Adopted by City Council: December 6, 1999
Effective Date: December 15, 1999

Article 3 Institutional Core Overlay
Amend Section 3.2.8; 95-01B

**99-002; Sec.13.1.3; Major Impact Developments –
Applicability**

First Planning Commission Public Hearing: June 24, 1999
Adopted by Planning Commission: June 24, 1999
First City Council Public Hearing: September 13, 1999
Adopted by City Council: December 6, 1999
Effective Date: January 12, 2000

**Article 13 Major Impact Developments –
Applicability**
Amend Section 13.1.3; 99-002

**99-005; Article 5, Use Table Footnotes; Clarification of Use
Table 5-A**

First Planning Commission Public Hearing: June 24, 1999
Adopted by Planning Commission: June 24, 1999
First City Council Public Hearing: September 13, 1999
Adopted by City Council: December 6, 1999
Effective Date: January 12, 2000

**Article 5 Use Table Footnotes, Clarification of Use
Table 5-A**
Amend Use Table Footnotes # 27; 99-005

99-007; Article 20, Noncomplying Signs

First Planning Commission Public Hearing: March 23, 2000
Adopted by Planning Commission: May 11, 2000
First City Council Public Hearing: July 17, 2000
Adopted by City Council: August 14, 2000
Effective Date: September 13, 2000

Article 20 Noncomplying signs
Add Sec. 20.1.9 (a), (b) & (C)
Amend Sec.30.1.2 (k)

99-009; Article 5, Exceptions to Waterfront Setback

First Planning Commission Public Hearing: September 16, 1999
Adopted by Planning Commission: October 14, 1999
First City Council Public Hearing: November 15, 1999
Adopted by City Council: August 14, 2000
Effective Date: September 13, 2000

**Article 5 Use, Density & Dimensional
Requirements**
Amend & add to Section 5.3.8 (a), (c) (1),
(2) (a) through (f)

ARTICLES/SECTION INDEX

Article 3 Institutional Core Overlay
Amend Section 3.2.8; 95-01A

ZONING AMENDMENTS

00-01; Quality of Life – Zoning Approach

First Planning Commission Public Hearing: August 17, 2000

Adopted by Planning Commission: August 24, 2000
First City Council Public Hearing: August 9, 1999
Adopted by City Council: October 16, 2000
Effective Date: November 22, 2000

00-04; North Street Re-Zoning

First Planning Commission Public Hearing: April 13, 2000
Adopted by Planning Commission: April 13, 2000
First City Council Public Hearing: June 12, 2000
Adopted by City Council: August 14, 2000
Effective Date: September 13, 2000

00-03; Neighborhood Activity Center

First Planning Commission Public Hearing: March 23, 2000
Adopted by Planning Commission: May 11, 2000
First City Council Public Hearing: August 14, 2000
Adopted by City Council: November 27, 2000
Effective Date: March 21, 2001

00-06; Planned Residential Development, Accessory Facilities

First Planning Commission Public Hearing: August 24, 2000
Adopted by Planning Commission: August 24, 2000
First City Council Public Hearing: October 30, 2000
Adopted by City Council: February 5, 2001
Effective Date: March 21, 2001

99-03A; Permitted Signs in Commercial District

First Planning Commission Public Hearing: June 24, 1999
Adopted by Planning Commission: June 24, 1999
First City Council Public Hearing: October 30, 2000
Adopted by City Council: February 5, 2001
Effective Date: March 21, 2001

01-02; Revisions to Provide for Development Review Board

First Planning Commission Public Hearing: September 14, 2000
Adopted by Planning Commission: September 14, 2000
First City Council Public Hearing: August 14, 2000
Adopted by City Council: October 16, 2000
Effective Date: March 28, 2001

95-03A; Intervale Enterprise/Agricultural District (IEA)

First Planning Commission Public Hearing: August 24, 2000
Adopted by Planning Commission: August 24, 2000
First City Council Public Hearing: October 30, 2000
Adopted by City Council: April 9, 2001
Effective Date: June 20, 2001

Article 30 Definitions

Add Sec. 30.1.2 (1) through (5) and (1) (a) & (b), (2)

Article 17 Conditional Use

Add Sec. 17.1.5 (d)

Article 5 Use, Density & Dimensional Requirements

Amend Table 5-A

Article 5 Use, Density & Dimensional Requirements

Amend Sec.5.3.16

Article 11 Planned Residential Development

Amend Sec.11.1.6(b)

Article 16 Signs

Amend Sec.16.2.5

Articles 2 through 30

Article 3 Zoning District & Zoning Map

Amend Sec.3.2.6

Article 9 Public Trust District

Add. Sec.9.2.1 through 9.2.7

ARTICLES/SECTION INDEX

Article 3 Zoning Districts and Zoning Map

Amend Sec. 3.1.4 (a), (b)

ZONING AMENDMENTS

01-08; Heights in CBD-T District

First Planning Commission Public Hearing: February 22, 2001

Adopted by Planning Commission: February 22, 2001
First City Council Public Hearing: April 9, 2001
Adopted by City Council: May 21, 2001
Effective Date: June 20, 2001

Article 5 Use, Density & Dimensional Requirements
Amend Sec.5.3.16

01-09; Schools in Commercial & General Commercial Zones

First Planning Commission Public Hearing: February 22, 2001
Adopted by Planning Commission: February 22, 2001
First City Council Public Hearing: April 9, 2001
Adopted by City Council: April 9, 2001
Effective Date: June 20, 2001

Article 5 Use, Density & Dimensional Requirements
Amend Table 5-A

01-03; Convenience Stores in the Enterprise District

First Planning Commission Public Hearing: October 26, 2000
Adopted by Planning Commission: October 26, 2000
First City Council Public Hearing: February 5, 2001
Adopted by City Council: June 25, 2001
Effective Date: July 19, 2001

Article 5 Use, Density & Dimensional Requirements
Amend Table 5-A

01-07; Reservoir Standing Spaces for Gas Pump Islands

First Planning Commission Public Hearing: January 25, 2001
Adopted by Planning Commission: January 25, 2001
First City Council Public Hearing: April 9, 2001
Adopted by City Council: June 25, 2001
Effective Date: July 19, 2001

Article 10 Parking
Amend Table 10-A

01-04; Definition of Convenience Store

First Planning Commission Public Hearing: October 26, 2000
Adopted by Planning Commission: October 26, 2000
First City Council Public Hearing: April 23, 2000
Adopted by City Council: July 16, 2001
Effective Date: August 22, 2001

Article 30 Definitions
Add wording to Sec. 30.1.2
Article 5 Use, Density & Dimensional Requirements
Amend Table 5-A

01-011; Neighborhood Commercial Density Clarification

First Planning Commission Public Hearing: June 28, 2001
Adopted by Planning Commission: June 28, 2001
First City Council Public Hearing: July 17, 2001
Adopted by City Council: November 19, 2001
Effective Date: December 19, 2001

Article 5 Use, Density & Dimensional Requirements
Amend Table 5-B

ARTICLES/SECTION INDEX

ZONING AMENDMENTS

01-06; Residential High Density Bonus

First Planning Commission Public Hearing: January 25, 2001

Adopted by Planning Commission: February 22, 2001
First City Council Public hearing: April 4, 2001
Adopted by City Council: January 24, 2002
Effective Date: February 20, 2002

Article 3: Zoning Districts and Zoning Map
Add Sec. 3.2.9

02-01; Trinity Campus Overlay

First Planning Commission Public Hearing: January 10, 2002
Adopted by Planning Commission: January 10, 2002
First City Council Public Hearing: January 22, 2002
Adopted by City Council: February 19, 2002
Effective Date: March 27, 2002

ARTICLES/SECTION INDEX

Article 5: Use, Density and Dimensional Requirements
Add Sec. 5.2.6 (4)

Pending Zoning Amendments

The following amendment was approved by the City Council:

- 01-06 RH Density Bonus
(Approved January 22, 2002 – Effective Date: February 20, 2002)

The following amendments are under consideration by the City Council:

- 02-01 Trinity College Overlay
(PC approved January 10, 2002)