



southburlington

VERMONT

February 6, 2023

Honorable Senator Hinsdale
Honorable Representative Bongartz
Vermont Legislature

Re: H 68, An act relating to removing State and municipal regulatory barriers for fair zoning and housing affordability, and DR 23-0091, and related bills

Dear Honorable Senator Hinsdale and Representative Bongartz:

The City of South Burlington is pleased to provide comments on H.68, “An act relating to removing state and municipal regulatory barriers for fair zoning and housing affordability”, and a similar draft bill, referred to us DR 23-0091, “An act relating to expanding access to safe and affordable housing”, that we understand is being discussed by the Vermont Senate Committee on Economic Development, Housing, and General Affairs.

The City strongly supports the goals and many of the provisions of these proposals and is deeply appreciative of your efforts, and the efforts of your committees and colleagues, to address the critical shortage of affordable housing in Vermont.

In South Burlington, we have been actively working to address this housing shortage. With the State's support and following the framework set forth in the City's Comprehensive Plan, we are developing our City Center, where UVM and the UVMCM are joining Cathedral Square and the Champlain Housing Trust in developing needed housing for our growing population. We invested \$1 million the City received in ARPA funds to help Summit Properties develop more affordable housing in a large housing development in our transit overlay district and we expect to continue to make significant future investments in affordable housing. There are approximately 1,000 permanently affordable homes in South Burlington, 169 of which were constructed or converted in the period 2016-2021 as part of the Building Homes Together campaign. Another 180 have been approved, are under construction, or have opened their doors since that count, since that time, and additional homes are in preliminary stages of review. These investments have been made using environmentally sound principles, with dense development in our city core, transit-served areas, and neighborhood developments areas.

We have also worked hard to ensure that our land development regulations provide strong incentives for affordable housing. In particular, we recently concluded an intensive three-year period of interim zoning where we heard the views of many concerned citizens and which resulted in significant changes to our zoning regulations, including the adoption of Inclusionary Zoning requirement pursuant to 24 VSA § 4414(7).

These standards provide integrated development incentives that contribute to the economic feasibility of providing affordable housing in South Burlington and apply City-wide to all developments of twelve (12) or more dwelling units. The standard requires that 15% of the total rental dwelling units and 10% of the total ownership dwelling units be perpetually affordable. In addition to the mandatory minimum number of inclusionary dwelling units, developers are incentivized to voluntarily build more affordable homes, receiving density bonuses of one market rate dwelling unit for each voluntary Inclusionary Rental unit and two market rate dwelling units for each voluntary Inclusionary Ownership unit.

In addition, we are committed to directing housing into places where it is most appropriate consistent with smart growth principles. Approximately 2,500 acres, or 24% of the City, zoned to allow 4, or 5+ units per acre, with the majority of that being over 7 units per acre. Many other areas are required to achieve compact development through high density on portions of a parcel, and conservation on the remainder. In the core of the City we have removed density maximums and rely on form based code dimensional standards for buildings. As such, we expect future investments in housing to be made through well-planned infill and with zoning regulations that promote compact development and denser development along public transit routes, in our city center and neighborhood developments areas, as well as by revitalizing, redeveloping and repurposing under-utilized commercial space and empty parking lots.

At the same time, we are acutely aware of our climate crisis and the vital need to protect the meadows, forests, grasslands, farmlands and wetlands that sequester carbon, provide a buffer against flooding, filter pollutants before they can enter Lake Champlain, provide habitat for pollinators, insects and wildlife, clean and cool our air and sustain local food production. The City has also been active in working to rapidly reduce our greenhouse gas emissions, has adopted a Climate Action Plan and recently passed an ordinance which will require all new construction to use renewable energy sources for domestic hot water and primary heating systems.

In light of the climate crisis, during the interim zoning process the City conducted multiple studies and hired outside experts to identify the specific parcels of land in South Burlington that should be protected because of the natural resources they contain. It took hundreds of discussion groups, meetings, and public hearings before the South Burlington Planning Commission agreed to new Environmental Protection Standards, which the City Council voted to approve just last year. Out of this process, some of the key changes include increasing buffer areas around wetlands, preserving some of our wildlife forest habitat blocks, adding additional natural resource protections areas from which density may be transferred to our transit-served areas through the Transfer of Development Rights (TDR) process, and creating a Conservation Planned Unit Development (PUD) option for landowners who own lands that contain natural resources. Many of these provisions are the result of consultation and in-depth discussion. The Conservation PUD is a good example, which requires a landowner to conserve a portion of his or her land, in exchange for developing densely on the remainder (minimum of 4 dwelling units per acre with incentives for higher density). These changes are consistent with and reflect the climate change adaptation, resilience measures and biodiversity goals contained in South Burlington's Climate Action Plan.

Throughout all of our deliberations, we are also keenly attuned to a looming fiscal crisis since population growth requires additional infrastructure, equipment, and city personnel. This is especially true for our schools, where we are currently facing acute space needs in two of our elementary schools and high school. A few years ago, a \$210 million bond vote for the construction of two new school buildings was roundly rejected by voters. Those needs, requiring expensive solutions, are not going away.

As such, we are deeply dismayed at the prospect that the careful balance the City has struck in light of these imperatives could be overridden by state legislation that is not attuned to our local geography or local planning: our traffic patterns and public safety issues, natural resources, climate emergency risks and challenges and fiscal concerns.

Below we provide specific input on particular provisions of the bills of most concern in relation to the above, in addition to certain other concerns.

1. Proposed 24 VSA § 4412(12) provides as follows:

In any district served by municipal sewer and water infrastructure that allows residential development, bylaws shall establish lot and building dimensional and density standards that allow five or more dwelling units per acre for allowed residential uses, and no dimensional and density standard for multiunit dwellings shall be more restrictive than those required for single family dwellings.

We have several concerns with this provision.

First, decades ago, South Burlington ran water and sewer lines into the rural areas of the city, most likely without an understanding of how this would prompt suburban sprawl and impact the climate crisis. While it is not entirely clear to us what exactly is the intended scope of “districts served by municipal sewer and water infrastructure”, it is clear to us that even a narrow reading of that scope would significantly undermine the critical natural resource protections described above and undermine the careful zoning decisions that South Burlington has made to balance competing interests. We are happy to provide more detail in this regard.

The criteria in the bill to use the existence of municipal water and sewer as the way to direct housing will result in more suburban sprawl in South Burlington. Moreover, the objectives of this bill will not be met in the numerous Vermont towns and villages that do not have municipal water and sewer infrastructure in their downtowns. So, using municipal water and sewer as a criteria to direct housing will, in some cases, do just the opposite of what is intended. In South Burlington, it will direct dense housing over our natural resource lands. In other towns it will do nothing to direct housing into their downtown centers.

We strongly urge that this provision be removed from the contemplated legislation. As an alternative, for municipalities that have neighborhood development areas, designated downtown development districts and/or designated growth centers, limit 24 VSA § 4412(12) to those areas. The legislation could also exempt municipalities that demonstrate that a substantial portion of their buildable acreage is zoned for at least 5 units/acre.

Second, it is unclear to us whether – where this provision applies – it requires a municipality to *require* development to be built at a density of at least 5 units/acre, or requires a municipality to *allow* development to be built at a density of at least 5 units/acre. We would recommend clarifying that this is an allowance for development.

2. Proposed 24 VSA § 4412(13) provides as follows:

In any district served by municipal sewer and water infrastructure that allows residential development, any mixed use developments and affordable housing developments, as defined in section 4303(2) of this title, may exceed building height limitations by one additional habitable floor beyond the maximum height and using that additional floor may exceed density limitations for residential developments by an additional 40 percent, provided that the structure complies with the Vermont Fire and Building Safety Code.

As described above, South Burlington has a detailed framework for providing relaxed zoning criteria and/or zoning bonuses in connection with mixed use developments and affordable housing developments. Proposed Section 24 VSA § 4412(13) would pre-empt South Burlington's carefully considered framework and we strongly urge that this provision be removed from the contemplated legislation or only apply to municipalities that have not adopted an affordable housing bonus structure such as inclusionary zoning.

3. Proposed 24 VSA § 3101(a) (contained only in H.86) provides as follows:

Any energy codes and regulations adopted after July 1, 2023 shall not be more restrictive than the Residential Building Energy Standards or the stretch code adopted under 30 V.S.A. § 51 or the Commercial Building Energy Standards adopted under 30 V.S.A. § 53, except where enabled by a municipal charter.

It appears that this provision would preempt ordinances that South Burlington is contemplating adopting to address our climate crisis, and would have preempted our new construction ordinance described above (which will require all new construction to use renewable energy sources for domestic hot water and primary heating systems) had proposed 24 VSA § 3101(a) been effective at the time that ordinance was adopted.

We strongly urge that this provision be deleted from H.68. Indeed, we would urge that across the State all new construction be required to adhere at a minimum to the Residential Building Energy Standards stretch code.

4. Proposed 24 VSA § 4471(e) provides as follows:

Notwithstanding subsection (a) of this section, a determination by an appropriate municipal panel that a residential development will not result in an undue adverse effect on the character of the area affected shall not be subject to appeal if the proposed residential development seeking conditional use approval under subdivision 4414(3) of this title is within a designated downtown development district, designated growth center, or designated neighborhood development area.

We are concerned that this provision could weaken protections for historic areas in downtown districts and would recommend that an exception be made for historic areas.

In contrast to the provisions above, we recommend that state legislators continue, as in the past, to provide incentives to build affordable housing. We here in South Burlington have benefited from this clear-sighted leadership in Montpelier. Carrots work more effectively than sticks, and we submit to you that the stick is only justified, in the public's mind at least, in the rarest of circumstances. What circumstances specific to localities have compelled you to take the drastic step of legislating in the place

of local planning bodies? Because of the complexities of local planning, we ask you to tread very carefully before taking such extraordinary steps.

Please rest assured that we here in South Burlington are actively seeking to address the affordable housing shortage. Look upon us as partners. Engage us in dialogue so that the specific problem that you in Montpelier are trying to fix in any particular municipality is clear to you and to your constituents. Then you can assess and ascertain whether the bill would be an effective response to the problem. Otherwise, the solution you propose might do more harm than good.

Thank you for your willingness to serve and for your attention to these matters, in particular. We look forward to working in partnership with you on legislation that addresses the housing shortage, and would be pleased to offer oral testimony before your committees on these proposals.

On behalf of the City Council,

Sincerely,

A handwritten signature in blue ink that reads "Helen Riehle". The signature is written in a cursive style and is positioned above a horizontal line.

Helen Riehle, City Council Chair