



# southburlington

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V E R M O N T

**April 20, 2023**

**Vermont House Committee on Environment and Energy  
c/o Representative Amy Sheldon, Chair**

**Re: S.100 Feedback**

**Dear Chair Sheldon and members of the Committee,**

Thank you for the opportunity to testify before the Committee on S.100. The City supports the overall goal of the bill: to address the statewide housing crisis in a manner that reinforces the State's longstanding commitment to smart growth. Indeed the City has taken concrete actions to implement many similar changes within our own Regulations over the past several years.

Earlier this session, the City of South Burlington provided testified before the Senate Economic Development, Housing, and General Affairs Committee and provided recommendations at a topical level. Herein we please find a handful of specific language recommendations improve the bill's clarity and address these previously identified items.

## **S.100 Section 2, 24 V.S.A. § 4412 (and related statutes)**

### **Sewer Service Areas:**

Draft section 24 VSA 4412(15A) requires that areas served by municipal water & sewer allow a minimum of five (5) dwelling units per acre. The draft language now includes specific exceptions to this requirement; we are supportive of these. These exceptions, however, create a new area of uncertainty: whether municipalities retain the right to delineate current and planned water & sewer service areas.

Municipalities have long used such tools to ensure that limited capacity is applied in a thoughtful and compact manner, and to ensure that zoning and infrastructure areas can be aligned. S.100 presumably has this same intent, however the exceptions created in 4412(15A) create some uncertainty as to local authority to enact this. We recommend that the bill explicitly state that municipalities retain the authority to define current and planned water & sewer service areas. The language below also proposes to use consistent terminology. The present draft uses two different precursors: "districts" and "areas" to describe the geography served by municipal water and sewer infrastructure.

### **Net results of compact development or conservation**

S.100 strives to ensure that where development occurs, that it is allowed to proceed in a compact manner of five (5) of more dwelling units per acre. Many communities, including South Burlington, have taken several steps to promote this objective, and to do so in a manner that also supports land conservations in priority areas. State Statute enables several tools to accomplish these objectives, including Transfers of Development Rights (24 VSA 4423) and Planned Unit Developments (24 VSA 4417). The proposed language below accounts for the continued use of these tools to redistribute

development within a parcel or within the community, so long as conservation / sending land prohibit future residential development.

### **Affordable Housing Bonus**

Iterations of S.100 have applied a variety of tools to provide bonuses in support of Affordable Housing Development. South Burlington is strongly supportive of bonuses, and has included several as incentives/offsets accompanying its citywide affordable housing (inclusionary zoning) requirements. The specific tools as presented in S.100, and specifically the allotted additional story, are in our view overly blunt instruments. The language below retains the proposed density bonus for mixed use and affordable housing development but removes the blunt requirement for an additional story.

*Proposed S.100 language with proposed edits (in red underline / strikethrough)*

Sec. 2. 24 V.S.A. § 4412 is amended to read:

#### § 4412. REQUIRED PROVISIONS AND PROHIBITED EFFECTS

...

(12) In any ~~area district~~ served by municipal sewer and water infrastructure that allows residential development, bylaws shall establish lot and building dimensional standards that allow four five or more dwelling units per acre for each allowed residential use, and density standards for multiunit dwellings shall not be more restrictive than those required for single-family dwellings.

(13) In any ~~area district~~ served by municipal sewer and water infrastructure that allows residential development, any mixed-use developments and affordable housing developments, as defined in subdivision 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.

(14) No bylaw shall have the effect of limiting the square footage of a duplex that otherwise complies with the applicable building code.

(15)(A) As used in this section, an area “served by municipal water and sewer infrastructure” means:

(i) that residential connections and expansions are available to municipal water and direct and indirect discharge wastewater systems and not prohibited by:

(I) State regulations or permits;

(II) identified capacity constraints; or

(III) municipally adopted service and capacity agreements; or

(IV) ~~municipally adopted water or sewer service areas; or~~

(ii) areas established by the municipality by ordinance or bylaw that:

(I) exclude flood hazard or inundation areas as established by statute, river corridors or fluvial erosion areas as established by statute, shorelands, and wherever year-round residential development is not allowed;

(II) reflect identified service limits established by State regulations or permits, identified capacity constraints, ~~or~~ municipally adopted service and capacity agreements, or municipally adopted water or sewer service areas;

(III) exclude areas served by water and sewer to address an identified community-scale public health hazard or environmental hazard;

(IV) exclude areas serving a mobile home park that is not within an area planned for year-round residential growth;

(V) exclude areas serving an industrial site or park;

(VI) exclude areas where service lines are located to serve the areas described in subdivisions (III)–(V) of this subdivision (ii), but no connections or expansions are permitted; or

(VII) exclude areas, which, through an approved Planned Unit Development (24 VSA 4417) or Transfer of Development Rights (24 VSA 4423), prohibit year-round residential development; or

(VII) modify the zoning provisions allowed under this chapter in areas served by indirect discharge designed for less than 100,000 gallons per day.

(B) Municipally adopted areas served by municipal water and sewer infrastructure that limit water and sewer connections and expansions shall not result in the unequal treatment of housing by discriminating against a year-round residential use or housing type otherwise allowed in this chapter.

\*\*\* Water Allocations \*\*\*

Section 12A

24 VSA 3315 is amended to read:

§ 3315. Ordinances

Such municipal corporation shall have the power to make, establish, alter, amend, or repeal ordinances, regulations, and bylaws relating to the matters contained in this chapter and not inconsistent with law, including the authority to establish one or more geographic service areas, require existing customers to remain connected to such municipal system, and to impose penalties for the breach thereof, and enforce the same. (Amended 1997, No. 134 (Adj. Sess.), § 13.)

\*\*\* Sewer Allocations \*\*\*

Section 12B

24 VSA 3625 is amended to read:

§ 3625. Allocation of sewage capacity

(a) When capacity under an original or amended discharge permit under 10 V.S.A. § 1263 is or has been granted to any municipality, as defined in 1 V.S.A. § 126, except existing town school districts or incorporated school districts, that capacity shall be allocated, in a manner consistent with a municipality's obligation to its bondholders to establish rates and apply the proceeds as set forth in section 3616 of this title, pursuant to one of the following, whether in the form as adopted, or as later amended:

(1) An ordinance adopted under sections 1972 and 1973 of this title. This ordinance may authorize the municipality to establish one or more geographic service areas and include, in any specific allocation, phasing provisions and other conditions intended to implement provisions of a municipal plan adopted under section 4385 of this title or bylaws adopted under section 4442 of this title.

### **Energy Standards**

The draft bill is unclear as to whether it limits municipalities authorities to establish complementary energy regulations, for example to regulate fuel types and/or require the installation of solar PV within areas designated as “solar ready zones” in the State energy codes. The City supports the existence of a statewide energy code for building specifications that are , however there are complementary standards which municipalities are exploring as ways to meet Act 153, Global Warming Solutions Act, Act 174, Regional & Local Energy Planning, and accompanying local climate goals

#### \* \* \* Energy Codes \* \* \*

Sec. 13. 24 V.S.A. § 3101(a) is amended to read:

(a) The mayor and board of aldermen of a city, the selectboard of a town, or the trustees of an incorporated village, may, in accordance with this chapter, establish codes and regulations for the construction, maintenance, repair, and alteration of buildings and other structures within the municipality. Such codes and regulations may include provisions relating to building materials, structural design, passageways, stairways and exits, heating systems, fire protection procedures, and such other matters as may be reasonably necessary for the health, safety, and welfare of the public, but excluding electrical installations subject to regulation under 26 V.S.A. chapter 15. Any energy codes ~~and regulations~~ adopted under this Chapter 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:

- i) where enabled by a municipal charter; or,
- ii) where under 20 VSA §2736 the Commissioner of Public Safety has assigned responsibility to the municipality for enforcement and standards adopted under 20 VSA § 2731(a); or,
- iii) with regard to fuel sources;

Warmly,

Paul Conner, AICP  
Director of Planning & Zoning

cc: Helen Riehle, City Council Chair; Jessie Baker, City Manager; Senator Kesha Ram-Hinsdale