

Burlington Planning Commission

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Burlington Planning Commission

REGULAR MEETING

Tuesday, August 12, 2014 - 6:30 P.M.

Conference Room #12, Ground Floor, City Hall, 149 Church Street

AGENDA

Note: times given are approximate unless otherwise noted.

- I. **Agenda**
- II. **Public Forum** - Time Certain: 6:35 pm
The Public Forum is an opportunity for any member of the public to address the Commission on any relevant issue.
- III. **Status of Limitation Discussion (15 min)**
- IV. **Proposed Zoning Amendments (30 min)**
The Commission will review proposed amendments to the Comprehensive Development Ordinance concerning Conditional Use, Major Impact Review, Planned Unit Development and Subdivision Review.
- V. **Downtown Form-Based Code Review (45 min)**
The Commission will begin its in-depth review of the proposed downtown form-based code.
- VI. **Committee Reports (5 min)**
- VII. **Commissioner Items (5 min)**
- VIII. **Minutes/Communications (2 min)**
The Commission will review communications and approved minutes from the May 27, June 10 & 24 and July 8, 2014 meetings.
- IX. **Adjourn** (8:00 p .m.)

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Department of Planning and Zoning

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MEMORANDUM

TO: Planning Commission
FROM: David E. White, AICP, Director of Planning & Zoning
DATE: Wednesday, July 16, 2014
RE: Proposed Zoning Amendments regarding Conditional Use and Major Impact Review, PUD and Subdivision Review

For your consideration you will please find attached a series of proposed amendments to the *Burlington Comprehensive Development Ordinance* coming at the recommendation of the Planning Commission Ordinance Committee. You will recall this proposals were first presented to and discussed by the Planning Commission in February.

This collection of amendments seek to simplify and clarify the otherwise cumbersome, lengthy and complex nature of development review in Burlington. Many of the issues we are seeking to address were raised and discussed during the planBTV planning process as measures we could take to support more infill development across the city. The changes being offered will simplify the process without negatively affecting the scope or quality of the City's review or the public's ability to participate.

Taken together this collection of amendments will eliminate redundant and unnecessary steps, costs and complexity to applicants, the Planning staff and the reviewing boards by:

- Disconnecting Conditional Use Review from development that does not actually involve an identified conditional use.
- Revise the Conditional Use Review criteria to focus more specifically on the aspects of the development that may actually be effected by a proposed conditional use.
- Clarify the scope of conditions that may be imposed under Conditional Use Review and Major Impact Review.
- Revise the Major Impact Review triggers differentiate between projects of varying scales so that "major impact" is considered relative to the context of the zoning district where it is being proposed, and to reflect the likely scale a proposed development would have to take to have an effect on the review criteria.
- Disconnect Inclusionary Zoning from PUD Review in response to recent statutory changes.
- Disconnect PUD from Subdivision review in cases where no actual subdivision of land is being proposed.
- Clarify the scope of flexibility for development standards afforded by the PUD Review process.

Why?

Historically Burlington's ordinance has used "Conditional Use Review" as a catch-all requirement for any development that may not otherwise appear straightforward – when in doubt, make it subject to conditional use. This approach dates back to before the creation of Design Review where the only opportunity to look closely at the scale and design of a project was to put it through a public hearing and attach specific conditions of approval.

Today however Burlington has a number of sophisticated tools in its ordinance that enable either staff or the DAB and DRB to review and make modifications to the design of a proposed development making conditional use review often unnecessary and redundant in cases that do not include a true "conditional" use. Therefore we are proposing to disconnect conditional use review from PUD's, subdivisions, inclusionary housing projects, parking management plans and other situations unless they actually involve a listed conditional use. In addition we are proposing to revise the conditional use criteria themselves to reflect more objective standards relative to impacts on transportation, community facilities and nuisances, and remove criteria that reflect more subjective design issues that are already considered under the Design Review process.

In a similar vein, Major Impact Review also has been generously applied - in today's case where development would create more than 5 units of housing anywhere in the city. In Vermont's largest city, most urbanized place and with a complete array of public infrastructure, 5 units of housing hardly constitutes "major impact" in places like the downtown. Instead we are proposing scaling the triggers for what constitutes a Major Impact project based on the neighborhood context.

Finally, while PUD's may often be associated with the creation of new lots, it isn't always the case. Making a PUD follow the subdivision review process when it doesn't actually involved a change to property boundaries adds a significant time and cost burden on the applicant and staff, and is a significant waste of effort for everyone.

We look forward to discussing these proposals further with you at your next meeting. Thank you.

Burlington Comprehensive Development Ordinance

PROPOSED: ZA-15-1 – Conditional Use and Major Impact Review

As recommended by the Planning Commission Ordinance Committee on July 10, 2014

Changes shown (underline to be added, strike-out to be deleted) are proposed changes to the *Burlington Comprehensive Development Ordinance*.

Purpose: The purpose of this amendment is to eliminate redundant and unnecessary steps, costs and complexity to the development review process by:

- disconnecting Conditional Use Review from development that does not actually involve an identified conditional use (Sec. 3.5.2 (a) and Sec. 3.5.3);
- revise the Major Impact Review triggers to differentiate between projects of varying scales so that “major impact” is considered relative to the context of the zoning district where it is being proposed, and to reflect the likely scale a proposed development would have to take to have an effect on the review criteria (Sec. 3.5.2 (b));
- revising the Conditional Use Review criteria to focus more specifically on the aspects of the development that may actually be effected by a proposed conditional use (Sec. 3.5.6 (a) and (b)); and,
- clarifying the scope of conditions that may be imposed under Conditional Use Review and Major Impact Review (Sec. 3.5.6 (c)).

ARTICLE 3. APPLICATIONS, PERMITS AND PROJECT REVIEWS

PART 5. CONDITIONAL USE AND MAJOR IMPACT REVIEW

Sec. 3.5.1 Purpose

These conditional use regulations are enacted to provide for a more detailed consideration of development proposals which may present a greater impact on the community

Additionally, it is the intent of these regulations through the creation of a major impact review:

- (a) To ensure that projects of major significance or impact receive a comprehensive review under established criteria; and,
- (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.

Sec. 3.5.2 Applicability

(a) Conditional Use Review:

Conditional Use Review shall be required for the approval of all development subject to the following provisions of this ordinance:

1. any use identified under **Article 4** and **Appendix A – Use Table** as a “Conditional Use” or “CU;”
2. any Special Use specifically identified as being subject to conditional use review under **Article 5, Part 3**;
3. ~~any application subject to Article 9 – Inclusionary and Replacement Housing;~~
4. ~~all applications for an Institutional Parking Management Plan pursuant to the provision of Article 8, Part 3;~~
5. ~~all applications subject to Article 10 – Subdivision; and,~~
6. ~~all applications subject to Article 11 – Planned Development;~~

Commented [DEW1]: IZ housing in and of itself does not constitute a conditional use. Addressed in unit trigger below as applicable for major impact.

Commented [DEW2]: Subdivision of land in and of itself does not constitute a conditional use. Addressed in lot trigger below as applicable for major impact.

Commented [DEW3]: PUD’s in and of themselves do not constitute a conditional use. Addressed in unit and lot trigger below as applicable for major impact.

(b) Major Impact Review:

In addition, Major Impact Review shall be required for the approval of all development involving:

	<u>Zoning Districts</u>			
	<u>Downtown Mixed Use, Institutional Core Campus</u>	<u>Neighborhood Mixed Use, Institutional, Enterprise, Residential – High Density</u>	<u>Residential- Medium Density, Residential-Low Density</u>	<u>RCO-A, RCO-C, RCO-RG</u>
Dwelling Units	<u>NA¹</u>	<u>Creation of twenty-five (25) or more dwelling units</u>	<u>Creation of five ten (105) or more dwelling units or the creation through adaptive reuse, substantial rehabilitation or conversion of ten (10) or more dwelling units;</u>	<u>NA</u>
Land Subdivision	<u>NA¹</u>	<u>NA</u>	<u>Creation of five ten (105) or more lots;</u>	<u>NA</u>
Non-residential or Mixed Use Development	<u>NA¹</u>	<u>A development footprint² of twenty thousand (20,000) s.f. or more, or the</u>	<u>A development footprint² of eight thousand (8,000) s.f. or more, or the</u>	<u>Creation of five thousand (5,000) s.f. or more of gross floor area³</u>

Commented [DEW4]: Thresholds must bear some relationship to the types of impact being evaluated and the context of the proposed location

		creation of forty thousand (40,000) s.f. or more of gross floor area.	construction or substantial rehabilitation of reation of fifteen thousand (15,000) s.f. or more of gross floor area of non-residential developmen.	
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¹ Major Impact Review shall not be applicable for development in the Downtown Mixed Use Districts and the Institutional Core Campuses.

² Development Footprint: total area of impervious coverage – buildings and parking.

³ Farm structures are exempt per 10 VSA 6001.

Land disturbance			one acre or more;	
Site improvements involving			fifty (50) or more parking spaces;	
Natural Areas	Site improvements and land development on parcels that contain designated wetlands as regulated pursuant to Article 4, or natural areas of state or local significance as identified in the municipal development plan;			
Brownfields	Site improvements and land development on parcels seeking a waiver under Article 5, Part 4, Sec. 5.4.9 – Brownfields; or			
Cumulative Impact:			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.	

Commented [DEW5]: inherent to other development triggers and not by itself a major impact

Commented [DEW6]: inherent to non-residential development triggers and not by itself a major impact

Commented [DEW7]: development in these areas is not necessarily major. addressed in other development triggers if it is

Commented [DEW8]: development in these areas is not necessarily major. addressed in other development triggers if it is

Commented [DEW9]: unnecessary and creates an unfair disadvantage to larger developers

Sec. 3.5.3 Exemptions

Conditional Use and Major Impact Review shall not apply to applications involving one or more of the following:

~~(a) Single family dwellings;~~

~~(b)(a)~~ Temporary structures that do not otherwise involve a conditional use;

~~(e)(b)~~ Substantial rehabilitation that does not expand the floor area of an existing building or the structural capacity of existing development;

~~(d)(c)~~ Projects that do not result in a change of use or increased parking demand ~~as determined by the administrative officer;~~ and,

~~(e)(d)~~ Subsurface site improvements including but not limited to underground utility lines and subsurface drainage ways.

Sec. 3.5.4 and Sec. 3.5.5

Unchanged

Sec. 3.5.6 Review Criteria

The application and supporting documentation submitted for proposed development involving Conditional Use and/or Major Impact Review, including the plans contained therein, shall indicate how the proposed use and associated development will comply with the review criteria specified below:

(a) Conditional Use Review Standards:

Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:

1. Based on the scale and characteristics of the proposed use and its development, the proposal is consistent with the purpose and intent of the zoning district and specifically stated policies and standards of the municipal development plan;

2. The proposed use will not have nuisance impacts from noise, odor, dust, heat, and vibrations greater than typically generated by other permitted uses ~~allowed by right~~ in the same zoning district;

3. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation; safety for all modes; and adequate transportation demand management strategies; and,

1.4. The capacity of Existing or planned public community utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area.;

- ~~2. The character of the area affected as defined by the purpose or purposes of the zoning district(s) within which the project is located, and specifically stated policies and standards of the municipal development plan;~~
- ~~3. Traffic on roads and highways in the vicinity evaluated in terms of increased demand for parking, travel during peak commuter hours, safety, contributing to congestion, as opposed to complementing the flow of traffic and/or parking needs; if not in a commercial district, the impact of customer traffic and deliveries must be evaluated;~~
- ~~4. Any standards or factors set forth in existing City bylaws and city and state ordinances;~~
- ~~5. The utilization of renewable energy resources; and,~~

~~In addition to the General Standards specified above, the DRB;~~

- ~~5. shall consider the cumulative impact of the proposed use. For purposes of residential construction, if an area is zoned for housing and a lot can accommodate the density, the cumulative impact of housing shall be considered negligible;~~
- ~~6. In considering a request relating to a greater number of unrelated individuals residing in a dwelling unit within the RL, RL-W, RM and RM-W 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.~~
- ~~7. may control the location and number of vehicular access points to the property, including the erection of parking barriers.~~
- ~~8. may limit the number, location and size of signs.~~
- ~~9. may require suitable mitigation measures, including landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.~~
- ~~10. may specify a time limit for construction, alteration or enlargement of a structure to house a conditional use.~~
- ~~11. may specify hours of operation and/or construction to reduce the impact on surrounding properties.~~
- ~~12. may require that any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions.~~

Commented [DEW10]: this does not belong here. moved to Sec 4.4.5 (d)5C

Commented [DEW11]: a sign issue – doesn't belong here

~~13. may consider performance standards, should the proposed use merit such review.~~

~~14. may attach such additional reasonable conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.~~

(b) Major Impact Review Standards:

Before a major impact development may receive approval, the DRB 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 review standards for conditional use review above~~, shall:

1. Not result in undue water, air or noise pollution;
2. Have sufficient water available for its needs;
3. Not unreasonably burden the city's present or future water supply or distribution system;
4. 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;
5. Not cause unreasonable congestion or unsafe conditions on highways, streets, waterways, railways, bikeways, pedestrian pathways or other means of transportation, existing or proposed;
6. Not cause an unreasonable burden on the city's ability to provide educational services;
7. Not place an unreasonable burden on the city's ability to provide municipal services;
8. 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;
9. 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;
10. Be in substantial conformance with the city's municipal development plan and all incorporated plans;
11. 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
12. Not have an undue adverse impact on the present or projected park and recreation needs of the city.

(c) Conditions of Approval:

Commented [DEW12]: not review standards so moved to their own section

In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:

1. mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.
2. time limits for construction.
3. hours of operation and/or construction to reduce the impact on surrounding properties.
4. that any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions; and.
5. such additional reasonable performance standards, conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.

Sec. 4.4.5 Residential Districts

(d) District Specific Regulations:

5. Residential Density

C. Residential Occupancy Limits.

In all residential districts, the occupancy of any dwelling unit is limited to members of a family as defined in **Article 13**. Notwithstanding the following, the minimum square footage requirements shall be reduced by ten (10%) percent in situations where the residential premises are owner occupied.

Subject to Conditional Use approval by the DRB, a dwelling unit may be occupied by more than four (4) unrelated adults if it contains at least twenty-five hundred (2,500) square feet excluding its attic and basement pursuant to the following:

- (i) If in a RL district, the dwelling unit also contains at least an additional two hundred fifty (250) square feet and one (1) additional parking space per adult occupant in excess of four (4); or,
- (ii) If in a RM district, the dwelling unit also contains at least an additional two hundred (200) square feet and one (1) additional parking space per adult occupant in excess of four (4).
- (iii) If in a RH district, the dwelling unit also contains at least an additional 150 square feet and 1 additional parking space per adult occupant in excess of four (4).

In considering a request relating to permitting a greater number of unrelated individuals residing in a dwelling unit within a residential zoning district, 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. Each room proposed to be occupied as a bedroom must contain at least one hundred twenty (120) square feet.

Commented [DEW13]: relocated from conditional use section.

PROPOSED: ZA-15-01 Conditional Use and Major Impact Review
Part 2 Housing

Purpose: The purpose of this amendment is to eliminate redundant and unnecessary steps, costs and complexity to the development review process by: removing the requirement that inclusionary housing can only be applicable for subdivisions and PUD per recent statutory amendment (Sec. 9.1.5 and 9.1.12); removing the requirement for Conditional Use approval by DRB for any project involving Inclusionary Housing (Sec. 9.1.8 and 9.1.12); removes the requirement for Conditional Use approval by DRB for any project involving Replacement Housing (Sec. 9.2.3, 9.2.5, 9.2.9 and 9.2.10).

ARTICLE 9. INCLUSIONARY AND REPLACEMENT HOUSING
PART 1: INCLUSIONARY ZONING

Sec. 9.1.1- Sec. 9.1.4

Unchanged

Sec. 9.1.5 Applicability

This ordinance provision applies to ~~all subdivisions and planned unit development (PUD) pursuant to Articles 10 and 11 respectively. Any development of five or more residential units in a single structure shall be considered "minor" planned unit developments and~~ shall be subject to the standards of this article. 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.

Except as otherwise provided in this ordinance, these regulations shall apply in the instances specified below.

- (a) The creation of five (5) or more residential units through new construction and/or substantial rehabilitation of existing structures, including the development of housing units utilizing development provisions other than those specified in **Sec 9.1.5 (b)**.
- (b) Where units are created using the Adaptive Reuse or Residential Conversion criteria pursuant to the provisions of **Art 4, Sec 4.4.5**, this article shall be applicable when at least ten (10) or more dwelling units are created.
- (c) An applicant may elect to be subject to the provisions of this article if new units are added to existing units for a total of 5 or more units.

Sec. 9.1.6 Exemptions

Unchanged

Sec. 9.1.7 Certificate of Inclusionary Housing Compliance

Unchanged

~~Sec. 9.1.8 Conditional Use Approval~~

~~A covered project, except subdivisions approved by the DRB pursuant to the provisions of the Article 10, must first receive approval of such board under conditional use criteria pursuant to the requirements of Article 3, Part 5.~~

~~Sec. 9.1.9-8 – Sec. 9.1.1211~~

Unchanged – re-numbered only.

~~Sec. 9.1.13-12 Additional Density and Other Development Allowances~~

All covered projects, ~~except as outlined under (b) below,~~ shall be entitled to increases in the development allowances of the underlying zoning district 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 these entitlements shall be based on the following tables:

Table 9.1.13-1 Density/Intensity Allowance Table			
Zoning District	Additional Allowance	Maximum Units/Acre	FAR
RH	15%	46	n/a
RM, RM-W	20%	25	n/a
RL, RL-W	25%	8.75	n/a
D, DT, DW	n/a	n/a	0.5 FAR+10' height set back 10' along street facade
NMU, NAC, NAC-R, BST	n/a	n/a	0.5FAR+10' height set back 10' along street facade

Zoning District	Additional Allowance	Maximum Lot Coverage
RH, NMU, NAC, NAC-R	15%	92%
RM-W	20%	72%
RM	20%	48%
RL, RL-W	25%	44%

~~(b)~~ Major and Minor PUD shall be treated as follows:

- ~~1. "Minor" PUD shall be exempt from the standards of Article 11, but shall be subject to the requirements of this article and all development standards as otherwise required by this ordinance.~~
- ~~2. "Major" PUD as described in Sec. 11.1.3, shall be subject to the provisions of this Article and Article 11. Planned Unit Development. No additional allowances under the provisions of this article shall be permitted for the construction of the required inclusionary units. Inclusionary units in any major PUD shall be provided in accordance with Table 9 A.~~

~~(e)~~(b) Other possible allowances for the provision of Inclusionary Units may include:

1. A waiver of up to 50% waiver of parking spaces as outlined in Article 8, Sec. 8.1.14.
2. A waiver of a portion of the impact fees associated with the Inclusionary units, pursuant to the Art. 3, Part 3 Impact Fee Administrative Regulations.

~~(d)~~(c) The allowances provided for herein may be declined at the option of the applicant;

~~(e)~~(d) With the approval of the DRB, ~~applying conditional use criteria~~, units added to a project as market rate units may be substituted by 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

~~(f)~~(e) All provisions of ~~Sec. 9.1.9-8~~ through ~~9.1.12-11~~ shall apply, without exception, to any inclusionary units that are constructed.

Sec. 9.1.1413 Off-Site Option

Unchanged – re-numbered only.

Sec. 9.1.1514 General Requirements for Inclusionary Units

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

- (a) In order to assure an adequate distribution of inclusionary units by household size, the bedroom mix of inclusionary units in any project shall be in the same ratio as the bedroom mix of the non-inclusionary units of the project;
- (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
- (c) The gross floor area of the inclusionary units is not less than the following minimum requirements, unless waived by the DRB using the following criteria:
 - 1. All of the units being provided with a specific bedroom count are smaller than the standards outlined below;
 - 2. More than the required number of inclusionary units are provided on site, not all shall be subject to bedroom mix and size requirement; or,
 - 3. The units have an efficient floor plan (meaning that less than 5% of the square footage is devoted to circulation) and the bedroom size(s) is a minimum of 144sf or 12’x12’.

One bedroom.....	750	square feet
Two bedroom.....	1,000	square feet
Three bedroom.....	1,100	square feet
Four bedroom.....	1,250	square feet

- (d) Upon demonstration of inability to sell units to income eligible residents earning 75% of the median income, the Manager of the HTF may extend income eligibility to allow priority in the sale of inclusionary units to households earning as much as 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;
- (e) Except for household income limitations as set forth herein, occupancy of any inclusionary unit shall not be limited by any conditions that are not otherwise applicable to all units within the covered project unless required under federal law, e.g. local use of the Low Income Housing Tax Credit, or in conflict with the stricter bylaws of the designated housing agency (see [Sec 9.1.4615\(e\)](#)); and
- (f) The final calculations for the number of inclusionary units shall be determined by the ~~Manager DRB~~ prior to the issuance of the zoning permit. If there is any change in the project due to sales prices for these units that increases the number of inclusionary units required, such modifications shall be determined by the Manager and communicated to the administrative officer prior to the issuance of a certificate of occupancy for the covered project. The rental or sales price of the inclusionary

units shall also be determined by the Manager prior to the issuance of a certificate of occupancy.

Sec. 9.1.1615 - Sec. 9.1.1716

Unchanged – re-numbered only.

Sec. 9.1.1817 DRB Review of Proposal for Phasing

Proposals for projects to be constructed in phases shall be reviewed as a component of the initial project review and shall be included in ~~DRB~~ any conditions of approval. 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 unit(s), shall be presented ~~to the DRB~~ for review and approval as part of the permitting process, for any development subject to the provisions of this article. If phasing is not included as part of the review process, no phasing of the inclusionary units shall be allowed.

If a covered project is approved to be constructed in phases, the requirements of the following section shall be applicable to each such phase.

Commented [DEW1]: DRB review may not always be required – depends on other aspects of the proposed development

Sec. 9.1.1918 Timeline for Availability/Phasing of Inclusionary Units for Issuance of Certificate of Occupancy

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; 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 conditions of approval set forth ~~by the DRB~~ in Sec. 9.1.1817.

Sec. 9.1.2019 - Sec. 9.1.2120

Unchanged – re-numbered only.

PART 2: HOUSING PRESERVATION AND REPLACEMENT/DEMOLITION AND CONVERSION

Sec. 9.2.1 – Sec. 9.2.2

Unchanged

Sec. 9.2.3 Conditional Use Approval

Notwithstanding any other provision of this ordinance, a person who proposes to remove, demolish, or to convert to a nonresidential use, any housing unit or units, in a zone where such a use is otherwise permitted, must ~~first obtain conditional use approval from the development review board~~ pursuant to ~~the all applicable~~ provisions of ~~Article 3, Part 5~~ **this Ordinance**.

In addition to the permit application requirements contained in **Article 3**, the applicant must also submit:

- (a) 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) 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. 9.2.4 Relocation Requirements: Notice and Relocation Costs

Unchanged

Sec. 9.2.5 Housing Replacement Requirement

In addition to ~~all other~~ applicable requirements ~~for a conditional use of this Ordinance, the DRB shall require, as a condition of approval, that~~ an owner shall replace any housing units that are demolished or converted to a nonresidential use.

~~An owner shall meet the replacement requirement by creating new housing units pursuant to a plan approved by the DRB. The plan shall be in accordance with the provisions of this Article.~~ Replacement units may be provided by the owner or by the owner's designee fully in any of the following ways:

- a. New Construction. Construction of housing units within a new structure or new addition;
- b. Residential Conversion. Conversion of all or a portion of a nonresidential building to residential use; or,
- c. Subsidy. Creation of affordable 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.

An applicant may use any of the three methods to partially fulfill their replacement requirements, until the total requirement is met, ~~subject to approval by the DRB.~~

Sec. 9.2.6 – Sec. 9.2.8

Unchanged

Sec. 9.2.9 Relief

Any owner who has applied for ~~conditional use~~ approval for demolition or conversion of a housing unit or units may apply to the DRB for relief from the housing replacement requirements of **Section 9.2.5**. 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 be impossible for 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 DRB must make positive findings on each of the three (3) criteria above in order for any such adjustment to be valid.

Sec. 9.2.10 Exemptions

This article, ~~except for Section 9.2.4 pertaining to conditional use approval,~~ shall not be applicable to:

- (a) – (d) *Unchanged*

PROPOSED: ZA-15-01 Conditional Use and Major Impact Review
Part 3 Planned Development

Purpose: The purpose of this amendment is to eliminate redundant and unnecessary steps, costs and complexity to the development review process by: removing the requirement that inclusionary housing can only be applicable for subdivisions and PUD per recent statutory amendment and the necessity of having Major and Minor PUD's (Sec. 11.1.3); disconnecting PUD's from Subdivision review in cases where no actual subdivision of land is being proposed (Sec. 11.1.3); and clarifies the scope of flexibility for development standards afforded by the PUD Review process (Sec. 11.1.4, 11.1.5 and 11.1.6).

ARTICLE 11. PLANNED DEVELOPMENT
PART 1. – PLANNED UNIT DEVELOPMENT

Sec. 11.1.1 – Sec. 11.1.2

Unchanged

Sec. 11.1.3 — Major and Minor Planned Unit Development

~~A minor Planned Unit Development shall include any development consisting of:
5 or more units in a single structure, prompting the requirements of Article 9, Inclusionary and Replacement Housing;
redevelopment of existing carriage houses and other out buildings meeting density of the underlying zoning district;
development of accessory units in a detached structure.
Minor PUD's shall be exempt from the requirements and standards of this article, but shall be subject to the development standards as otherwise required by this ordinance.
All other development consisting of one or more lots, tracts or parcels of land to be developed as a single entity subject to the provisions of Sec. 11.1.4 below shall be considered a major PUD and shall be subject to the review processes and requirements as defined under this Article.~~

Sec. 11.1.43 General Requirements and Applicability.

~~Any development involving multiple lots, tracts or parcels of land to be developed as a single entity, or seeking to place multiple structures and/or uses on a single lot where not otherwise permitted, may be permitted as a PUD subject to the provisions of this Article.~~

- ~~(a) redevelopment of carriage houses and other accessory buildings existing as of January 1, 2007 for a residential use ;~~

Commented [DEW1]: Moved to Sec 4.4.5

A planned unit development may be permitted subject to ~~the provisions of this Article~~ minimum project size as follows in the following districts:

Districts	Minimum Lot -Project Size
RH, RM, RM-W, Downtown and Neighborhood Mixed Use, Institutional ¹	No minimum lot -project size.
RL, RL-W ² , RCO-R/G ¹	2 acres or more

~~1-~~ Subject to Conditional Use Review pursuant to Art 3, Part 5.

~~2-1. The two acre minimum may be waived by the DRB for the conversion of an accessory structure existing as of January 1, 2007 to a residential use.~~

~~Planned unit developments are not authorized for non-residential uses except as provided for under Sec. 11.1.7. A planned unit development must receive a certificate of appropriateness under the design review provisions of Article 3, Part 4, the development review standards of Article 6, and final subdivision plat approval in accordance with Article 10.~~

Commented [DEW2]: Confusing – Really a minimum "project" size as it refers to the minimum size of the property (or combination of properties) to be developed as a PUD

Commented [DEW3]: This is redundant to what's allowed as a minor PUD

Commented [DEW4]: Why not – they are encouraged and allowed to be mixed use.

Commented [DEW5]: Duplicative to the requirements contained in 11.1.6.

Sec. 11.1.54 Modification of Regulations.

With the approval of the DRB ~~after a public hearing, and subject to the limitations of Sec. 11.1.6,~~ the following modifications of the requirements of the underlying zoning may be altered within a planned unit development:

- ~~• density, frontage, lot coverage, and and-setback regulations~~ requirements may be altered for a planned unit development may be met as calculated across the entire project rather than on an individual lot-by-lot basis;
- ~~• required setbacks may apply only to the periphery of the project rather than on an individual lot-by-lot basis;~~
- ~~• More more~~ than one principal use and more than one principal structure may be permitted on a single lot; ~~At the discretion of the DRB the and,~~
- ~~• dwelling buildings 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~~ application submission and such modifications shall be subject to the provisions of ~~Sec. 11.1.65~~ and ~~Sec. 11.1.67~~.

Sec. 11.1.56 Approval Requirements.

The following requirements shall be met for the DRB to approve a planned unit 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;~~

- ~~(a)~~ The minimum ~~parcel-project~~ size requirements of Sec 11.1.3 shall be met ~~if the project is located in a RL or RL-W districts;~~
- ~~(b)~~ The project shall be subject to design review and site plan review of Article 3, Part 4 and the standards of Art. 6;
- ~~(c)~~ The project shall meet the requirements of Article 10 for subdivision review where applicable;
- ~~(d)~~ ~~The minimum setbacks required for the district shall apply to~~ have been met at the periphery of the project;
- ~~(e)~~ density, frontage, and lot coverage requirements of the underlying zoning district have been met as calculated across the entire project;
- ~~(f)~~ All other dimensional, density, and use requirements of the underlying zoning district shall have been met as calculated across the entire project;
- ~~(g)~~ Any proposed accessory uses and facilities shall meet the requirements of Sec. 11.1.6 below;
- (h) – (k) *Unchanged*

Commented [DEW6]: Is a reference to Sec. 11.1.4 above - the minimum "project" size, not the size of individual parcels being created.

Sec. 11.1.76 Accessory Facilities.

- (a) A planned unit development may contain a building or buildings intended for non-residential uses such as but not limited to as a community center, recreation facility, child care center and/or business office if the DRB determines that such use or uses are compatible with the intended principle residential use and will not contribute to parking problems on site or in the surrounding area.
- (b) *Unchanged*



BURLINGTON FORM-BASED CODE

Discussion Draft June 2014

ARTICLE 14 - BURLINGTON FORM-BASED CODE

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The work that provided the basis for this publication was supported by funding under an award with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the government.

Overview and Guide to the Burlington Form-Based Code

Subsections:

- 14.1.1 Purpose
- 14.1.2 Intent
- 14.1.3 Applicability

14.1.1 - Purpose

The Burlington Form-Based Code is a portion of the *Burlington Comprehensive Development Ordinance* (CDO) that pays particular attention to the intended form and character of place for the downtown and waterfront area of the City. The Form-Based Code secondarily regulates uses that are carefully chosen to maximize compatibility between uses and the intended physical form of the zone. The organizing principal of the Form-Based Code is based on a hierarchy of places in Burlington that range from the most rural to the most urban. The designation of each district along this hierarchy is determined first by the character and form, intensity of development, and type of place, and secondarily by the mix of uses within the area. Form-Based Code Form districts are used to reinforce existing or to create new walkable mixed-use urban environments.

This Section establishes the overall intent and applicability of the Burlington Form-Based Code within the *Burlington Comprehensive Development Ordinance* (CDO).

14.1.2 - Intent

The intent of this Article 14-Burlington Form-Based Code is to enable, encourage and qualify the implementation of the following within the Downtown and Waterfront District:

- a) That development contiguous to urban areas should be structured in the pattern of and be integrated with the existing urban pattern, and contribute to Burlington's moderately scaled urban form emphasizing a more efficient pattern of development.
- b) That development should be compact, pedestrian-oriented and mixed-use, and enhance the community with creative design, durable materials, and quality construction.
- c) That ordinary activities of daily living should occur within walking distance of most dwellings, allowing independence to those who do not drive, and the promotion of personal safety and accessibility for those with disabilities in the design of publicly accessible outdoor and indoor spaces .
- d) That a range of housing types and price levels should be provided to accommodate diverse ages and incomes.
- e) That buildings and landscaping should contribute to the physical definition of streets as civic places, and buildings at and near the street level are composed of human-scaled elements and details that promote pedestrian interest, comfort, and safety.
- f) That development should reinforce the implementation of Complete Streets that provide for the mobility needs of all segments of our population.
- g) That architecture and landscape design should grow from local climate, topography, history, and building practice, and incorporate modern, climate sensitive and environmentally-conscious design considerations to create healthier, more productive, and more sustainable places to live and work.
- h) That development should enhance the city's skyline and promote visual interest with a variety of roof forms and architectural styles, and architectural elements, details, and materials of a building are all integral to the whole composition.
- i) That civic buildings should be distinctive and appropriate to a role more important than the other Buildings that constitute the fabric of the City., and be designed and constructed to the highest standards in order to reflect community values, inspire future development, foster civic pride, and serve as a model to others.
- j) That the preservation and renewal of Historic Buildings should be facilitated.

14.1.3 - Applicability

This Form-Based Code shall be applicable to all lands within the Downtown and Waterfront District and/or mapped or described on the **Burlington Regulating Plan (Section 14.2)**, as such may be changed from time to time, pursuant to **Section 14.2 - Regulating Plan**. Any and all subdivision of land, development and construction or modification of all improvements, land, Buildings and Structures in the Downtown and Waterfront District shall occur only in accordance with this Article 14-Burlington Form-Based Code as in

effect on the date of acceptance of the completed application for approval of the applicable Project Plan submitted pursuant to **Section 14.7 Administration and Procedures**.

To the extent applicable and not otherwise in conflict with this Article 14-Burlington Form-Based Code, the following sections of the *Burlington Comprehensive Development Ordinance* shall also apply:

- a) Article 1—General Provisions and Article 2 Administrative Mechanisms;
- b) Article 3—Applications, Permits and Project Reviews, Parts, 1, 2, 3, 5 and 6;
- c) Article 4—Zoning Maps and Districts, Parts 1, 2, 3, and Part 5 Sec. 4.5.4;
- d) Article 5—Citywide General Regulations, Parts 3, 4, and 5;
- e) Article 9—Inclusionary and Replacement Housing;
- f) Article 10—Subdivision Review;
- g) Article 12—Variances and Appeals; and,
- h) Article 13—Definitions.

In each case, the standards and requirements applicable to the Downtown and Waterfront District Regulating Plan and this **Article 14** shall take precedence without limitation over any duplicative or conflicting provisions of the other Articles of the *Burlington Comprehensive Development Ordinance (CDO)*.

If there is any conflict between the provisions of this **Article 14** and any provisions of any other existing City codes, ordinances, regulations or standards (the “Existing Local Codes”), the provisions of this **Article 14** shall take precedence over such conflicting provisions except for City and state Building, Fire, Health and Safety Codes.

The graphics, illustrations, photographs, tables and metrics of are an integral part of Burlington Form-Based Code; however:

- a) Photographs are provided only as general illustrative examples and are not binding;
- b) The illustrations of **Table 14.3-A - Burlington Form Districts Summary Table**, **Table 14.4-A - Building Types General** and **Table 14.5-A - Frontage Types General** are provided only as general illustrative descriptions and are not binding;
- b) The graphics, illustrations, photographs in **Section 14.8 - Glossary** are provided for illustrative purposes only and are not binding;
- c) The illustrations of the Civic Space Types on **Section 14.3.10 Civic Spaces** are provided for illustrative purposes only and are not binding, but the assignment of each Civic Space Type to the various Form Districts are binding;
- d) The graphical depictions of the Form Districts on the various Tables are provided for ease of reference only and are not binding. The Form District designations and standards applicable to each Form District are binding;

Where in conflict, metrics represented in text and/or tables shall take precedence over metrics represented graphically, and a more specific standard shall take precedence a more general standard.

Section 14.2: Regulating Plan

Subsections:

- 14.2.1 Purpose
- 14.2.2 Applicability
- 14.2.3 Regulating Plan Amendments
- 14.2.4 Form Districts
- 14.2.5 Special Requirements

14.2.1 - Purpose

This section establishes the **Downtown and Waterfront District Regulating Plan** which provides the geographic framework to define and describe the location and nature of all regulation of Improvements, land, Structures, Buildings and Lots within Downtown and Waterfront District.

14.2.2 - Applicability

The **Downtown and Waterfront District Regulating Plan** is adopted as an element of the "Official Zoning Map, City of Burlington VT" established under Sec. 4.1.1 of the *Burlington Comprehensive Development Ordinance*. The **Downtown and Waterfront District Regulating Plan** indicates the boundaries of the Downtown and Waterfront District, the parts thereof that are within the Waterfront Core Official Map area, and the applicable Form Districts, Special Districts, Civic Spaces, Special Requirements, and any other elements.

All Development, re-development, Improvements, land, Structures, Buildings and Lots within Downtown and Waterfront District shall comply with the **Downtown and Waterfront District Regulating Plan** and the elements and standards for such applicable Form Districts, Special Districts, Civic Spaces, and Special Requirements reflected on the Regulating Plan.

14.2.3 - Regulating Plan Amendments

The Downtown and Waterfront District Regulating Plan may be amended from time to time pursuant to Section 4.1.3 of the *Burlington Comprehensive Development Ordinance*.

14.2.4 - Form Districts

A Form District is one of several areas on the Regulating Plan to which certain development, lot and building standards, and other elements of the intended built environment are applicable.

Form Districts shall be assigned for and mapped on the Regulating Plan, and as applicable, for and on each proposed Regulating Plan Amendment and Development Plan.

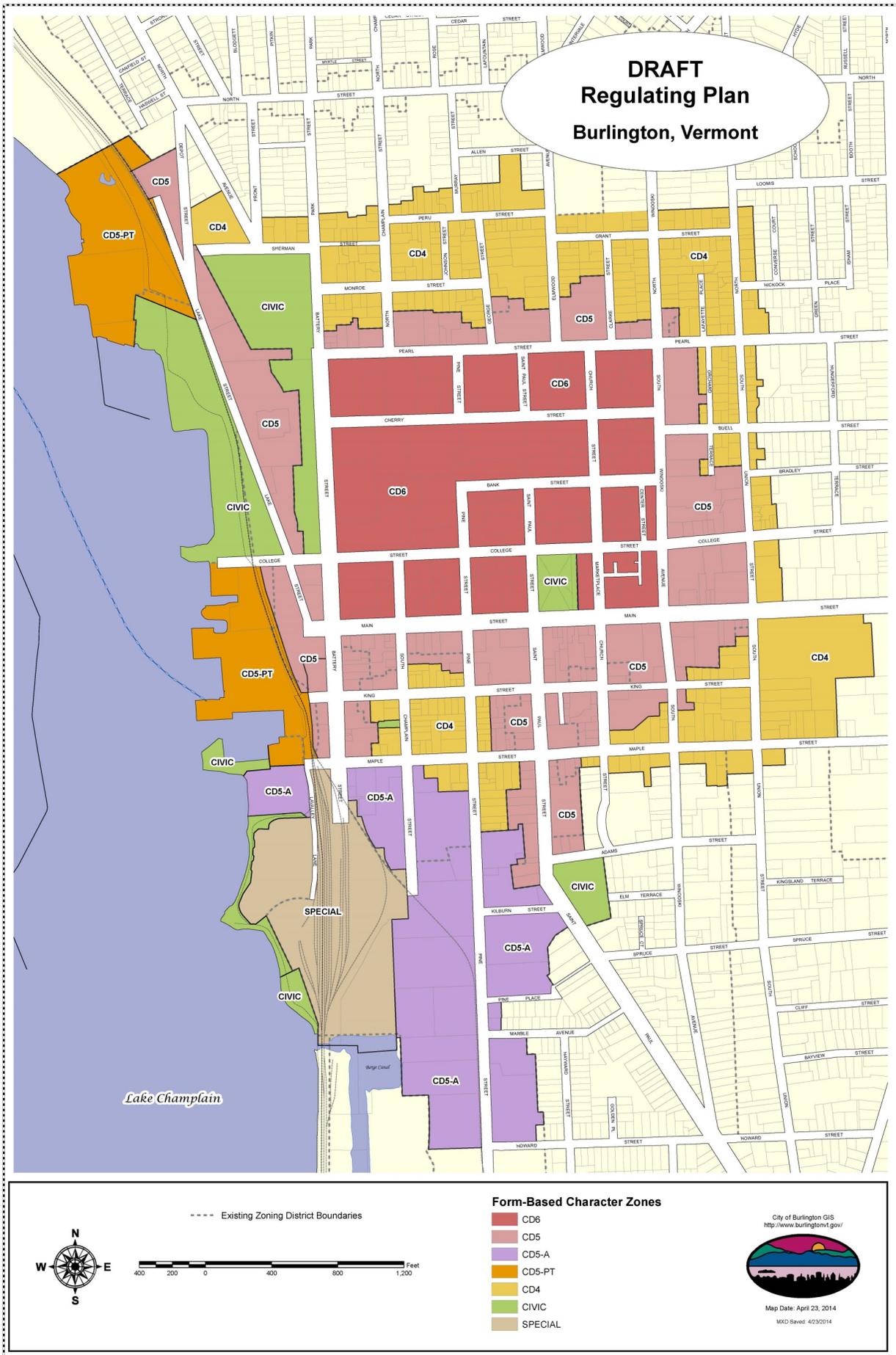
In the Burlington Downtown & Waterfront District there are five (5) Form Districts and one Special District, as follows :

- a) **FD4 - Downtown Neighborhood** (Section 14.3.4 - Specific to Form Districts - Downtown Neighborhood)
- b) **FD5-PT - Public Trust** (Section 14.3.5 - Specific to Form Districts - Public Trust)
- c) **FD5-AI - Art & Industry** (Section 14.3.6 - Specific to Form Districts - Art & Industry)
- d) **FD5-DC - Downtown Center** (Section 14.3.7 - Specific to Form Districts - Downtown Center)
- e) **FD6 - Downtown Core** (Section 14.3.8 - Specific to Form Districts - Downtown Core)
- f) **SD - Railyard/Wastewater Special District** (Section 14.3.8 - Specific to Form Districts - Railyard/Wastewater Special District)

14.2.5 - Civic Spaces

A Civic Space (CS) is an area dedicated for Civic use and defined by the combination of certain physical constants and improvements, including the relationships among their intended use, size, landscaping and any Enfronting Buildings.

Civic Space assigned for and mapped on the Regulating Plan are areas that are owned and operated by the City and which are dedicated for one or more Civic purposes. Civic Space Types are also assigned to each of the various Form Districts and may be incorporated into new development. The Civic Space Types are shown in **Section 14.3.10 (Civic Spaces)**.



14.2.6 - Special Requirements

The Regulating Plan also designates Special Requirements listed below. Where the Regulating Plan designates any one or more of such Special Requirements, such designation indicates that the following standards shall be applied as follows:

- a. **Specific Height Areas** - Areas within Form districts where the height limit of buildings differs from that specified for the applicable Form District and as regulated by Section 14.6 Supplemental to Form Districts - Building Height.
 - i. The height of a Building in FD5 with a Primary Frontage on Main Street, Pearl Street or South Winooski Avenue may be increased to a maximum of 8 stories to a depth of 150' from the Frontage Line.
 - ii. The height of a Building in FD6 with a Primary Frontage on Church Street shall be decreased to a minimum of 2 and a maximum of 4 stories to a depth of 50' from the Frontage Line.
 - iii. The height of a Building in FD5 with a Primary Frontage on Lake Street may be gradually increased beyond 50' from the Frontage Line in order to establish a second Façade and Frontage along Battery Park Extension with the building having a presence of no more than 1 story facing Battery Park Extension.
- b. **Shopfront Frontage** - Areas within Form districts where a Shopfront Frontage is required at sidewalk level along the length of the Frontage. (See Section 14.5 Specific to Frontage Types - Shopfront.)

Section 14.3: Specific to Form Districts, Special Districts

Subsections:

- 14.3.1 Purpose
- 14.3.2 Applicability
- 14.3.3 Form Districts Overview
- 14.3.4 FD4 Downtown Neighborhood (FD4)
- 14.3.5 FD5 Public Trust (FD5-PT)
- 14.3.6 FD5 Art & Industry (FD5-AI)
- 14.3.7 FD5 Downtown Center (FD5)
- 14.3.8 FD6 Downtown Core (FD6)
- 14.3.9 SD Railyard/Wastewater Special District (SD)

14.3.1 Purpose

This section provides regulatory standards governing building form and other related matters, such as land use and signage, within the Form districts. The Form-Based Code is a reflection of the community vision for implementing the intent of *planBTV–Downtown & Waterfront Master Plan* to create places of walkable urbanism. These standards are intended to ensure that proposed development is compatible with existing and future development on neighboring properties and produces a walkable, urban environment.

14.3.2 Applicability

The standards in this Section provide building form standards, use, parking and signage standards for each Form District. The standards of this section shall apply to all Form Districts, and shall be considered in combination with the standards in Section 14.4 (Specific to Building Types), Section 14.5 (Specific to Frontage Types) and Section 14.6 (Supplemental to Form Districts).

The standards and requirements applicable to a Form District shall modify and take precedence without limitation over any duplicative or conflicting provisions of Section 14.6 (Supplemental to Form Districts). Uses not listed in a use table are not permitted in the Form District.

14.3.3 Form Districts Overview

The following shall be applicable to all Form Districts:

- a) Lots being newly platted or re-platted shall be dimensioned as shown for the applicable Form District in this Section.
- b) Buildings shall be disposed in relation to the boundaries of their Lots according to the standards shown for the applicable Form District in this Section.
- c) Facades shall be built parallel to a rectilinear Principal Frontage Line or to the tangent of a curved Principal Frontage Line.
- d) The footprint area of an outbuilding may not exceed the footprint area of the main body of the principal building.
- e) Mechanical equipment, including air conditioning, piping, ducts, and conduits external to the building, shall be concealed from view from adjacent buildings and street level by landscaping, grills, screens or other enclosures. All utility service connections shall be underground for new construction and is recommended for existing buildings undergoing a renovation or addition.

Table 14.3-A provides an overview of the Burlington Form Districts.

TABLE 14.3-A - The Burlington Form Districts Summary Table

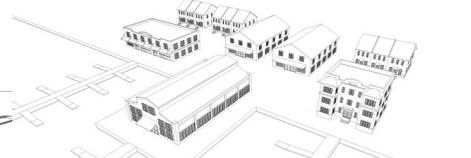
FD4 – Downtown Neighborhood	FD5-PT – Public Trust	FD5-AI - Art & Industry
		
Intent	Intent	Intent
<p>To provide a wide variety of urban housing choices, in medium to high density building types with small-scale neighborhood supportive uses primarily at corners. This district aims to reinforce and enhance the walkable nature of the neighborhood, given its close proximity to adjacent mixed use zones.</p>	<p>To enhance the vibrant urban waterfront with a variety of building types and uses. Protect and improve the lakeshore and access to the water and water-specific activities. This district aims to reinforce the walkable nature given its highly desirable waterfront location and close proximity to the urban city core.</p>	<p>To support the emerging artisan neighborhood by encouraging revitalization and investment through a very diverse range of uses and building types, including housing mixed with light industrial. This district aims to enhance the walkable nature of the neighborhood, given its close proximity to adjacent mixed use areas.</p>
Desired Form	Desired Form	Desired Form
Attached or detached buildings	Attached or detached buildings	Attached or detached buildings
Small to medium footprint	Medium to large footprint	Small to large footprint
Building at or close to frontage line	Building at or close to the frontage line	Building at or close to the frontage line
Small to no side setback	None to medium side setback	Small to no side setback
2 to 3 stories	1 to 3 stories	3 to 5 stories
Outbuildings common	Outbuildings not common	Outbuildings not common
General Use	General Use	General Use
<p>A diverse residential mix; with small to medium-sized neighborhood supportive service and retail functions primarily at corners.</p>	<p>Vertically mixed uses: primarily water-dependent, retail, service, hospitality, entertainment, civic functions on the ground floor with other commercial uses on upper floors as limited by public trust requirements.</p>	<p>Vertically and horizontally mixed use; retail, commercial, residential and light industrial functions on any floors. Ideal for live-work.</p>

TABLE 14.3-A - The Burlington Form Districts Summary Table

FD5 – Downtown Center	FD6 - Downtown Core
	
<p>Intent</p> <p>To enhance the vibrant urban center with a variety of high density building types. Provide locally and regionally serving office, retail, service, hospitality, entertainment, civic functions, as well as a wide variety of urban housing choices. This district also aims to reinforce the walkable nature of the urban core of the city.</p>	<p>Intent</p> <p>To enhance the vitality of the urban core with a variety of high density building types. Provide locally and regionally serving office, retail, service, hospitality, entertainment, civic functions, as well as a wide variety of urban housing choices. This district also aims to reinforce the walkable nature of the urban core of the city.</p>
<p>Desired Form</p> <p>Attached buildings</p> <hr/> <p>Small to large footprint</p> <hr/> <p>Building at the frontage line</p> <hr/> <p>No side setback</p> <hr/> <p>3 to 6 stories</p> <hr/> <p>Outbuildings not common</p>	<p>Desired Form</p> <p>Attached buildings</p> <hr/> <p>Small to large footprint</p> <hr/> <p>Building at the frontage line</p> <hr/> <p>No side setback</p> <hr/> <p>3 to 10 stories</p> <hr/> <p>Outbuildings not common</p>
<p>General Use</p> <p>Vertically mixed uses: retail, service, hospitality, entertainment, civic, on the ground floor with residential and other commercial uses on upper floors.</p>	<p>General Use</p> <p>Vertically mixed uses: retail, service, hospitality, entertainment, civic, on the ground floor with residential and other commercial uses on upper floors.</p>

14.3.4 - FD4 – DOWNTOWN NEIGHBORHOOD



For illustrative purposes only.



14.3.4-A - Intent

To provide a wide variety of urban housing choices, in medium to high density building types with small-scale neighborhood supportive uses primarily at corners. This district aims to reinforce and enhance the walkable nature of the neighborhood, given its close proximity to adjacent mixed use zones.

Attached or detached buildings

Small to medium footprint

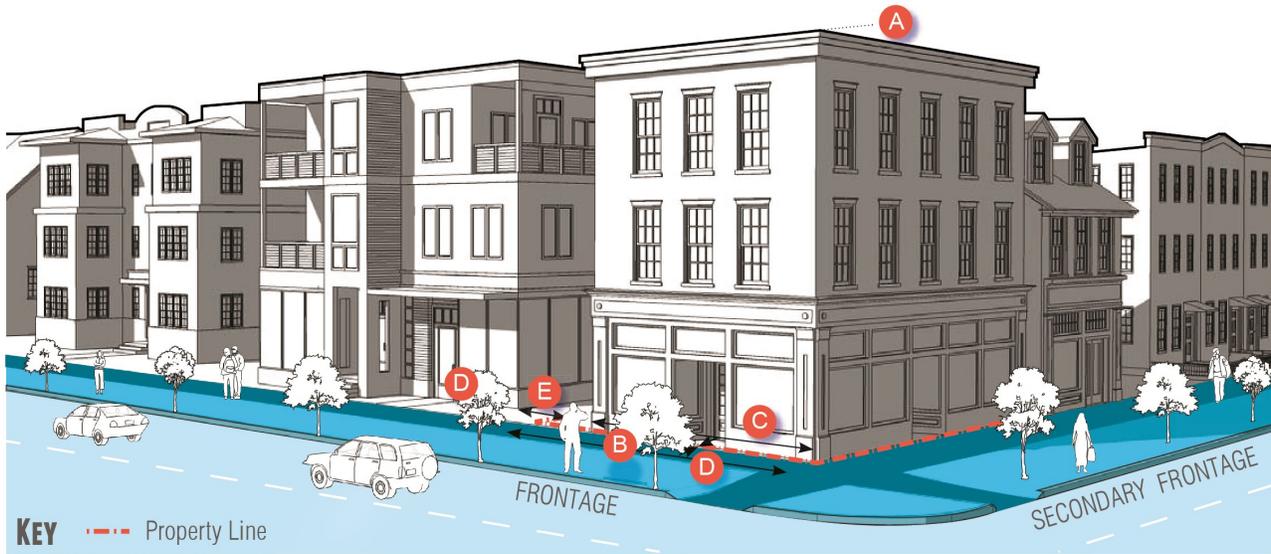
Building at or close to frontage line

Small to no side setback, larger rear setback

2 to 3 stories

Outbuildings common

14.3.4 - FD4 - Downtown Neighborhood



14.3.4-B - Allowed Building Types	
Building Type	Standards
Carriage House	Section 14.4.4
Detached House: Small	Section 14.4.5
Detached House: Large	Section 14.4.6
Duplex	Section 14.4.7
Rowhouse	Section 14.4.8
Multi-Family	Section 14.4.9
Work/Live	Section 14.4.10
Mixed-Use ¹	Section 14.4.11
Civic	Section 14.4.13

¹Allowed on corner lots only.

14.3.4-C - Building Form		
Height		
Principal Building	2 stories min. 3 stories max.	A
Outbuilding		
Carriage House	2 stories max.	
Other	1 story max.	

14.3.4-D - Lot Occupation & Building Placement		
Block Perimeter	2,400 ft max.	
Lot Width ¹	30' min. - 75' max.	B
Lot Coverage	80%	
Frontage Buildout	60% min. at setback	C
Density	40 units/ac	

¹Minimum lot width for Rowhouses may be 12' min.

14.3.4-D - Lot Occupation & Building Placement		
Building Disposition	Standards	
Edgeyard	Section 14.6.3	
Sideyard	Section 14.6.3	
Rearyard	Section 14.6.3	
Setback (Distance from ROW/Lot Line)		
Front ¹		D
Principal Building	5' min. ² ; 18' max.	
Outbuilding	In third lot layer	
Side		E
Principal Building	5' min. ³	
Outbuilding	5' min.	
Rear		F
Principal Building	5' min.	
Outbuilding	5' min.	

¹ Where existing adjacent buildings are in front of the regulated minimum front setback, the building may be set to align with the front building facade of the most immediately adjacent properties.

² 0' front setback is allowed for corner stores.

³ 0' side setback is allowed for Sideyard yard type houses, duplexes straddling a lot line, and Rowhouse building type. NOTE: Also see building code for additional requirements and limitations related to fire separation.

Only one Principal Building at the Frontage, and one Outbuilding to the rear of the Principal Building, may be built on each Lot.

Fence materials shall not include barbed or razor wire. Chain link and wire fencing shall not be used along any Frontage Line.

14.3.4 - FD4 - Downtown Neighborhood

14.3.4-E - Parking, Loading & Service

Required Spaces

Corner Stores No off-street parking required and no new off-street parking shall be established.

Refer to Section 14.6.8 (Supplemental to Form Districts - Parking, Loading, Service and Driveways) for specific requirements and bicycle parking standards.

Up to 50% of the on-site parking spaces may be leased on a monthly basis to off-site users without being considered a Parking Lot or Parking Structure.

Location on the Lot

All on-site parking, including Parking Areas and Garages, shall be located in the Second or Third Lot Layer.

Garages with front loading bays shall be recessed a minimum of one (1) foot from the façade of the Principle Building and designed to form a secondary building volume.

Parking Areas and driveways must be setback from side and rear lot lines by 3' min.

14.3.4-G - Signage

Maximum number of signs per frontage 1

Maximum number of signs per frontage (Mixed -Use Building Type only) 2

Allowed Sign Types	Standards
Awning ¹	14.6.9-C
Band ¹	14.6.9-D
Blade	14.6.9-E
Freestanding ²	14.6.9-F
Nameplate	14.6.9-H
Outdoor Display Sign ¹	14.6.9-I
Window Sign ¹	14.6.9-K

¹ These sign types are allowed for mixed-use building types on corner lots only.

² 6' height max. with no illumination.

Miscellaneous

Either one blade or freestanding sign is allowed per lot.

See Section 14.6.9 (Supplemental to Form Districts - Sign Standards) for specific requirements.

14.3.4-F - Encroachments

Encroachment Type	First lot layer	Side	Rear
Signs	A	-	-
Frontage Type ¹	A	-	-
Steps to Building Entrance	A	-	-
Balconies and Bay Windows	50%	3' max.	-
Architectural Features	3' max.	3' max.	3' max.
Landscaping	A	A	A
Fences or freestanding walls	A ²	6' max. height.	6' max. height.
Driveways, Walkways	A ³	A ⁴	A ⁵
Utility Structures	-	A	A

¹ See Section 14.5 (Specific to frontage types) for further refinements of the allowed encroachments for frontage elements.

² 4' max. height. 3' max. height within the clear site triangle.

³ Driveways shall be no wider than 10 feet in the First Lot Layer.

⁴ Allowed for shared driveways only.

⁵ Allowed accessed from rear alley or lane only.

Miscellaneous

An existing non-conforming building that encroaches into a required setback may be expanded vertically so long as that expansion does not encroach further into the required setback than the existing building.

14.3.4 - FD4 - Downtown Neighborhood

14.3.4-H - Use Type	FD4
RESIDENTIAL - GENERAL	
Single Detached Dwelling	P
Accessory Dwelling Unit ¹ (Sec. 14.6.7 e)	P
Attached Dwellings - Duplex	P
Attached Dwellings - Multi-Family (3 or more)	P
RESIDENTIAL - SPECIAL	
Assisted Living	P
Boarding House ¹	P
Community House (Sec. 14.6.7 d)	CU
Convalescent /Nursing Home	P
Group Home	P
LODGING	
Bed and Breakfast ¹	P
Historic Inn (Sec. 14.6.7 b)	P
Hotel, Motel - Short-term accommodation ⁴	P
Shelter ⁴	P
RETAIL - GENERAL⁴	
ATM	P
Convenience Store	P
General Merchandise/Retail <10,000 sqft	P
RETAIL - OUTDOOR	
Open Air Markets	P
OFFICE & SERVICE⁴	
Beauty Salon/Barber Shop/Spa	P
Crisis Counseling Center	CU
Dry Cleaning Service	P
Health Club/Studio	P
Laundromat	P
Office - General	P
Office - Medial	P
Tailor Shop	P
HOSPITALITY/ ENTERTAINMENT/ RECREATION⁴	
Café ²	P
Club, Membership	P
Community Center	P
Museum-Small < 10,000 sqft	P
Performing Arts Studio	P
Restaurant ²	P
Restaurant – Take Out ²	P

14.3.4-H - Use Type	FD4
EDUCATION & DAY CARE	
Day Care - Adult	P
Daycare - Large (Over 20 children) ⁴ (Sec. 14.6.7 a)	CU
Daycare - Small (7-20 children) ⁴ (Sec. 14.6.7 a)	CU
Daycare - Home (6 children or less)	P
School - Post-Secondary & Community College	CU
School - Primary	CU
School - Secondary	CU
CIVIC	
Fire Station	P
Library	P
Park	P
Police Station	P
Post Office	P
Worship, Place of	P
TRANSPORTATION & UTILITIES	
Parking Structure ³	CU

Key

P	Permitted Use
CU	Conditional Use

End Notes

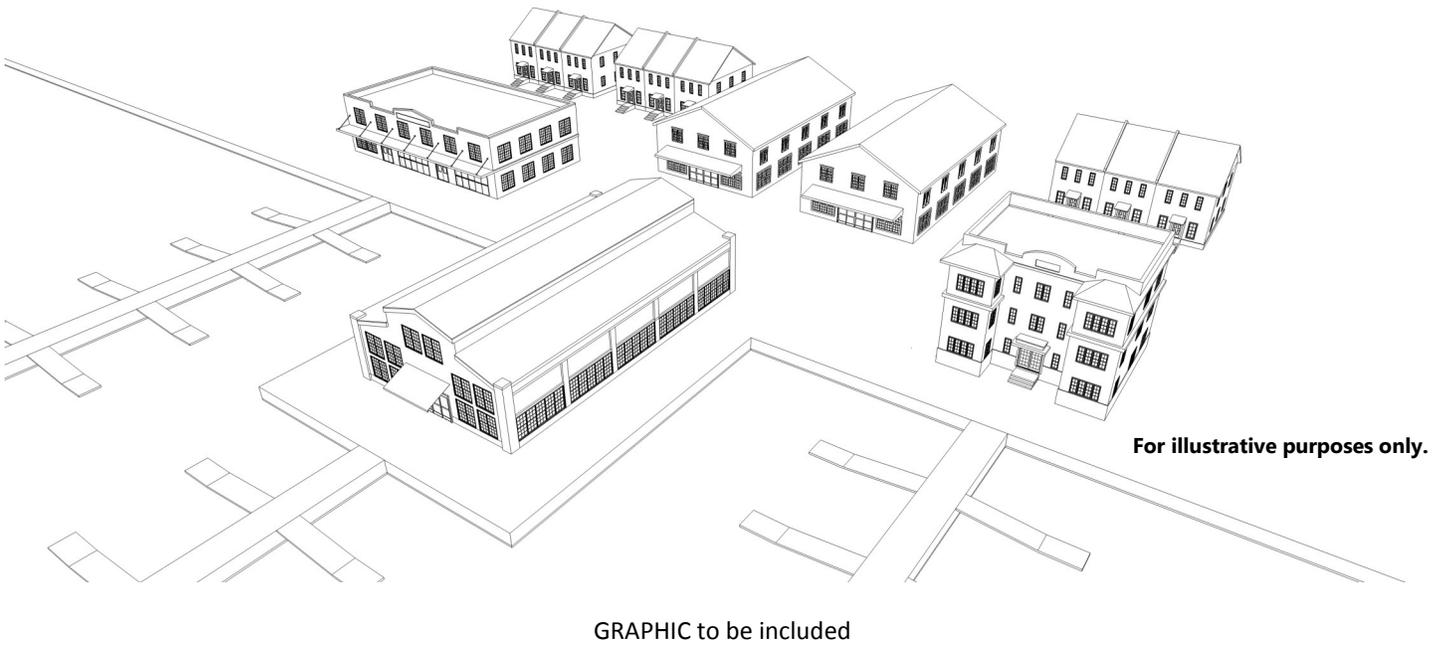
¹ Must be owner-occupied.

² No entertainment or outdoor dining allowed.

³ Parking Structures shall be located behind a Perimeter Building (see Section 14.4.13).

⁴ Only permitted in a mixed-use building type.

14.3.5 - FD5-PT – PUBLIC TRUST



14.3.5-A - Intent

To enhance the vibrant urban waterfront with a variety of building types and uses. Protect and improve the lakeshore and access to the water and water-specific activities. This district aims to reinforce the walkable nature given its highly desirable waterfront location and close proximity to the urban city core.

Detached and attached buildings

Medium to large footprint

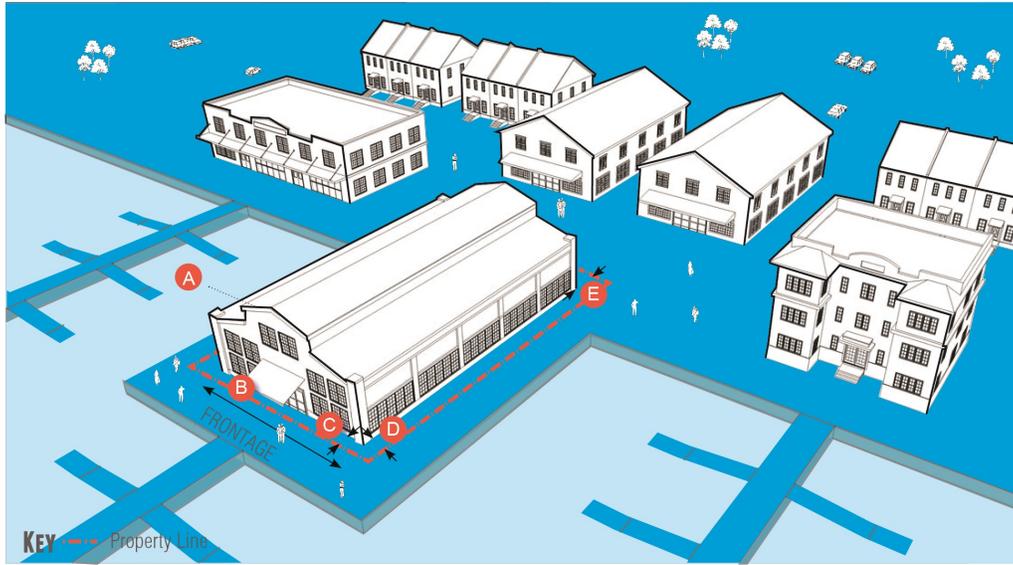
Building at or close to the frontage line

None to medium side setback

1 to 3 stories

Outbuildings not common

14.3.5 - FD5-PT - Public Trust



14.3.5-B - Allowed Building Types	
Building Type	Standards
Mixed-Use	Section 14.4.11
Perimeter	Section 14.4.12
Civic	Section 14.4.13

14.3.5-C - Building Form		
Height		
Principal Building	3 stories max.	A
Outbuilding	2 stories max.	

Miscellaneous

Lakeshore frontage shall be considered a second primary frontage.

Any buildings wider than 150' must be designed to read as a series of two or more separate buildings.

14.3.5-D - Lot Occupation & Building Placement		
Lot Coverage	100%	
Frontage Buildout ¹	60% min. at setback	B

¹ In the absence of a Building Facade along any part of a Frontage Line, a Streetscreen shall be built on the same plane as the Facade.

Building Disposition	Standards
Edgeyard	Section 14.6.3
Sideyard	Section 14.6.3
Rearyard	Section 14.6.3

14.3.5-D - Lot Occupation & Building Placement		
Setback (Distance from ROW/Lot Line)		
Front		C
Principal Building	0' min.; 6' max.	
Outbuilding ²	In third lot layer	
Side		D
Principal Building	0' min. - 12' max.	
Outbuilding	0' min. or 3' min. on secondary frontage	
Rear		E
Principal Building	3' min. or 15' from rear alley centerline	
Outbuilding	3' min. or 15' from rear alley centerline	

² In the absence of a third lot layer, outbuildings may be located in the second lot layer.

Waterfront Setback (Distance from the lake mean high water mark - 100' msl)	
Principal Building	50' min.
Outbuilding	50' min.

Miscellaneous

A building form with a chamfered corner is allowed only on corner lots and only if a corner entry is provided.

One or more Principal Building at the Frontage, and one or more Outbuildings to the rear of the Principal Building, may be built on each Lot.

See Section 4.5.4 (f) Special Flood Hazard Area regulations for specific requirements.

Fence materials shall not include barbed or razor wire. Chain link and wire fencing shall not be used along any Frontage Line.. Woven cable fencing is allowed.

14.3.5 - FD5-PT - Public Trust

14.3.5-E - Parking, Loading & Service

Required Spaces

No off-street parking required.

Up to 50% of the on-site parking spaces may be leased on a monthly basis to off-site users without being considered a Parking Lot or Parking Structure.

See Section 14.6.8 l) (Supplemental to Form Districts - Bicycle Parking Requirements) for bicycle parking standards.

Location on the Lot

All on-site parking shall be provided within an enclosed Garage or Parking Structure. New or expanded Parking Areas and Parking Lots are not permitted.

Garages shall be located in the Third Lot Layer. Garages may be located in the Second Lot Layer if located below-grade or above the first story.

With the exception of areas designed for unloading and loading of materials, parking lots shall be separated at least five feet from buildings in order to provide a sidewalk, landscaping, or other planting between the building and parking area.

Miscellaneous

At least one pedestrian route from all Parking Lots, Parking Areas, Garages, and Parking Structures shall be directly to a Frontage Line (i.e., not directly into a Building).

14.3.5-H - Signage

Maximum number of signs per frontage

Allowed Sign Types

Standards

Awning	14.6.9-C
Band	14.6.9-D
Blade	14.6.9-E
Freestanding ¹	14.6.9-F
Nameplate	14.6.9-H
Outdoor Display Case	14.6.9-I
Wall	14.6.9-J
Window	14.6.9-K

¹ 14' height max.

Miscellaneous

See Section 14.6.9 (Supplemental to Form Districts - Sign Standards) for specific requirements.

14.3.5-F - Encroachments - Required Setbacks

Encroachment Type	Rear	Lakeshore ¹
Steps to Building Entrance	A	A
Architectural Features	3' max.	3' max.
Landscaping	A	A
Signage	-	A
Awnings	-	15' max.
Fences or freestanding walls	6' max. height.	A
Driveways, Walkways	A	A
Utility Structures	A	A
Accessory structures that provide access to water-related activities, such as docks, ferries, etc.	-	A

¹ A 16' min. public pedestrian access must be maintained at all times.

Miscellaneous

An existing non-conforming building that encroaches into a required setback may be expanded vertically so long as that expansion does not encroach further into the required setback than the existing building.

14.3.5-G - Encroachments - Public Right-of-way (along Primary and Secondary Frontages)

Encroachment Type	Public ROW
Frontage Type	
Shopfront: Awning ¹	15' max.
Officefront: Awning ¹	15' max.
Architectural Features	3' max.
Signs	A ¹

¹ May encroach into the street ROW subject to the limits set forth in Section 14.6.9 (Supplemental to Form Districts - Sign Standards).

14.3.5 - FD5-PT - Public Trust

14.3.5-I - Use Type	FD5-PT
LODGING	
Hotel, Motel ¹	P
RETAIL - GENERAL	
ATM	P
Convenience Store (See Sec.5.4.3)	P
General Merchandise/Retail	P
RETAIL - OUTDOOR	
Boat Sales/Rentals	P
Open Air Markets	P
OFFICE & SERVICE	
Vehicle/Boat Repair/Service	P
HOSPITALITY/ ENTERTAINMENT/ RECREATION	
Aquarium	P
Art Gallery/Studio	P
Café	P
Club, Membership	P
Community Center	P
Marina	P
Museum	P
Performing Arts Center	P
Performing Arts Studio	P
Recreational Facility - Indoor/Outdoor	P
Restaurant	P
Restaurant – Take Out	P
MANUFACTURING/ PRODUCTION/ STORAGE	
Boat Storage	P
Food Processing	P
Machine/Woodworking Shop	P
Manufacturing	P
Manufacturing - Tour Oriented	P
Research Lab	P

14.3.5-I - Use Type	FD5-PT
CIVIC	
Park	P
TRANSPORTATION & UTILITIES	
Public Transit Terminal	P

Key

P Permitted Use

CU Conditional Use

End Notes¹Only permitted south of Main Street.

14.3.6 - FD5-AI – ART & INDUSTRY



For illustrative purposes only.



14.3.6-A - Intent

To support the emerging artisan neighborhood by encouraging revitalization and investment through a very diverse range of uses and building types, including housing mixed with light industrial. This district aims to enhance the walkable nature of the neighborhood, given its close proximity to adjacent mixed use areas.

Attached or detached buildings

Small to large footprint

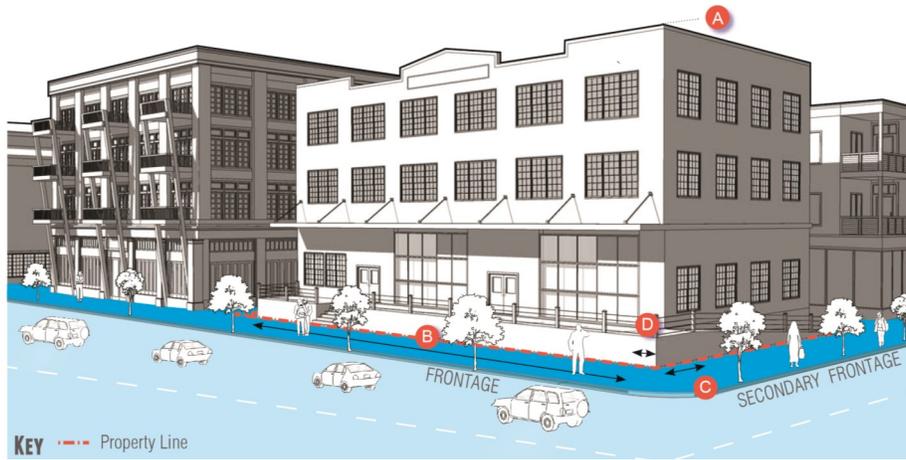
Building at or close to the frontage line

Small to no side setback

3 to 5 stories

Outbuildings not common

14.3.6 - FD5-AI - Art & Industry



14.3.6-B - Allowed Building Types

Building Type	Standards
Work/Live	Section 14.4.10
Mixed-Use	Section 14.4.11
Perimeter Building	Section 14.4.12
Civic	Section 14.4.13
Flex	Section 14.4.14

14.3.6-C - Building Form

Height		
Principal Building	3 stories min. 5 stories max.	A
Outbuilding	2 stories max.	

Within 20' of a boundary with a Form District with a lower maximum building height, buildings shall not be more than a story taller than the maximum permitted height of buildings in the adjacent Form District.

Miscellaneous

The linear distance at the Frontage between ground floor entries shall be no more than 75'.

Any buildings wider than 150' must be designed to read as a series of two or more separate buildings.

14.3.6-D - Lot Occupation & Building Placement

Lot Coverage	80%
Frontage Buildout ¹	60% min. at setback B

¹ In the absence of a Building Facade along any part of a Frontage Line, a Streetscreen shall be built on the same plane as the Facade.

Building Disposition	Standards
Edgeyard	Section 14.6.3
Sidyard	Section 14.6.3
Rearyard	Section 14.6.3

Setback (Distance from ROW/Lot Line)

Front		C
Principal Building	0' min.; 15' max.	
Outbuilding	In third lot layer	
Side		D
Principal Building	0' min. - 30' max. total for both sides	
Outbuilding	5' min.	
Rear		E
Principal Building	5' min. or 15' from rear alley centerline	
Outbuilding	5' min. or 15' from rear alley centerline	

Miscellaneous

An existing non-conforming building that encroaches into a required setback may be expanded vertically so long as that expansion does not encroach further into the required setback than the existing building.

One or more Principal Building at the Frontage, and one or more Outbuildings to the rear of the Principal Building, may be built on each Lot.

A building form with a chamfered corner is allowed only on corner lots and only if a corner entry is provided.

Fence materials shall not include barbed or razor wire. Chain link and wire fencing shall not be used along any Frontage Line.. Woven cable fencing is allowed.

14.3.6 - FD5-AI - Art & Industry

14.3.6-E - Parking, Loading & Service

Required Spaces

Refer to Section 14.6.8 (Supplemental to Form Districts - Parking, Loading, Service and Driveways) for specific requirements including bicycle parking standards.

Up to 50% of the on-site parking spaces may be leased on a monthly basis to off-site users without being considered a Parking Lot or Parking Structure.

Location on the Lot

Parking Areas shall be located in the Second or Third Lot Layer.

Parking Lots shall be located in the Third Lot Layer.

Garages shall be located in the Third Lot Layer. Garages may be located in the second Lot Layer if located below-grade or above the first story.

Parking areas must be setback from side and rear lot lines by 3' min.

With the exception of areas designed for unloading and loading, Parking Areas shall be separated at least three feet from buildings in order to provide a sidewalk, landscaping, or other planting between the building and Parking Area.

Miscellaneous

At least one pedestrian exit from all Parking Lots and Parking Structures shall be directly to a Frontage Line (i.e., not directly into a Building).

14.3.6-H - Signage

Maximum number of signs per frontage

Allowed Sign Types	Standards
Awning	14.6.9-C
Band	14.6.9-D
Blade	14.6.9-E
Freestanding ¹	14.6.9-F
Nameplate	14.6.9-H
Outdoor Display Case	14.6.9-I
Wall	14.6.9-J
Window	14.6.9-K

¹ 6' height max.

Miscellaneous

See Section 14.6.9 (Supplemental to Form Districts - Sign Standards) for specific requirements.

14.3.6-F - Encroachments - Required Setbacks

Encroachment Type	Side	Rear
Steps to Building Entrance	A	A
Architectural Features	3' max.	3' max.
Landscaping	A	A
Fences or freestanding walls	4' max. height	6' max. height
Driveways, Walkways	A	A
Utility Structures	A	A

Miscellaneous

An existing building that encroaches into a required setback may be expanded vertically so long as that expansion does not encroach further into the required setback than the existing building.

14.3.6-G - Encroachments - Public Right-of-way

(along Primary and Secondary Frontages)

Encroachment Type	Public ROW
Frontage Type	
Shopfront: Awning ¹	15' max.
Officefront: Awning ¹	15' max.
Architectural Features	3' max.
Signs	A ¹

¹ May encroach into the street ROW subject to the limits set forth in Section 14.6.9 (Supplemental to Form Districts - Sign Standards).

14.3.6 - FD5-AI - Art & Industry

14.3.6-I - Use Type	FD5-A
RESIDENTIAL - GENERAL	
Single Detached Dwelling	P
Accessory Dwelling Unit ¹ (Sec. 14.6.7 e)	P
Attached Dwellings - Duplex	P
Attached Dwellings - Multi-Family (3 or more)	P
RESIDENTIAL - SPECIAL	
Boarding House ¹ (6 persons or less)	P
Group Home	P
LODGING	
Bed and Breakfast ¹	P
Shelter	P
RETAIL - GENERAL	
ATM	P
Convenience Store	P
Fuel Service Station ³ (Sec. 14.6.7 c)	P
General Merchandise/Retail >10,000sqft	P
Wholesale Sales ³	P
RETAIL - OUTDOOR	
Automobile Sales/Rentals (Sec. 14.6.7 c)	P
Boat Sales/Rentals	P
Building Material Sales	P
Contractor Yard	P
Garden Supply Store	P
Open Air Markets	P
Recreational Vehicle Sales/Rentals	P
OFFICE & SERVICE	
Animal Grooming	P
Beauty Salon/Barber Shop/Spa	P
Car Wash	P
Crisis Counseling Center (Sec. 14.6.7 g)	P
Office – General	P
Dry Cleaning Service	P
Funeral Home	P
Health Club/Studio	P
Laundromat	P
Office – Medical	P
Tailor Shop	P
Vehicle/Boat Repair/Service	P

14.3.6-I - Use Type	FD5-A
HOSPITALITY/ ENTERTAINMENT/ RECREATION (Con't)	
Aquarium	P
Art Gallery/Studio	P
Arts Incubator (Sec.14.6.7 j)	CU
Bar, Tavern	P
Billiards, Bowling & Arcade	P
Café	P
Cinema	P
Club, Membership	P
Community Center	P
Museum–Small < 10,000 sf	P
Museum–Large >10,000 sf	P
Performing Arts Center	P
Performing Arts Studio	P
Recreational Facility - Indoor	P
Restaurant	P
Restaurant – Take Out	P
AGRICULTURE	
Composting	P
MANUFACTURING/ PRODUCTION/ STORAGE	
Boat Storage	P
Dental Lab	P
Dry Cleaning Plant	P
Food Processing	P
Machine/Woodworking Shop	P
Manufacturing	P
Manufacturing - Tour Oriented	P
Medical Lab	P
Production Studio	P
Photography Lab	P
Printing Plant	P
Research Lab	P
Warehouse/Storage	P
Warehouse, Self-Storage ³	P
EDUCATION & DAY CARE	
Day Care - Adult	P
Daycare - Large (Over 20 children) (Sec. 14.6.7 a)	P
Daycare - Small (7-20 children) (Sec. 14.6.7 a)	P
Daycare - Home (6 children or less)	P

14.3.6 - FD5-A - Art & Industry

Use Type	FD5-A
EDUCATION & DAY CARE (Con't)	
School - Post-Secondary & Community College	CU
School - Primary	CU
School - Secondary	CU
School, -Trade, or Professional	CU
CIVIC	
Fire Station	P
Park	P
Police Station	P
Post Office	P
Public Works Yard/Garage	P
Worship, Place of	P
TRANSPORTATION & UTILITIES	
Hazardous Waste Collection/Disposal	CU
Recycling Center – Large ³ (above 2,000 sf)	CU
Recycling Center - Small ³ (2,000 sf or less)	P
Solid Waste Facility - Incinerator, Landfill, Transfer Station ³	CU
Public Transit Terminal	P
Operations Center – Taxi/Bus ³	P
Operations Center - Trucking ³	P
Parking Structure ²	P
Parking Lot	P
Rail Equip. Storage & Repair	P

Key	
P	Permitted Use
CU	Conditional Use
End Notes	

¹Must be owner-occupied.

² Parking Structures shall be located behind a Perimeter Building (see Section 14.4.13).

³Exterior storage and display not permitted.

14.3.7 - FD5 – DOWNTOWN CENTER



14.3.7-A - Intent

To enhance the vibrant urban center with a variety of high density building types. Provide locally and regionally serving office, retail, service, hospitality, entertainment, civic functions, as well as a wide variety of urban housing choices. This district also aims to reinforce the walkable nature of the urban core of the city.

Attached and detached buildings

Small to large footprint

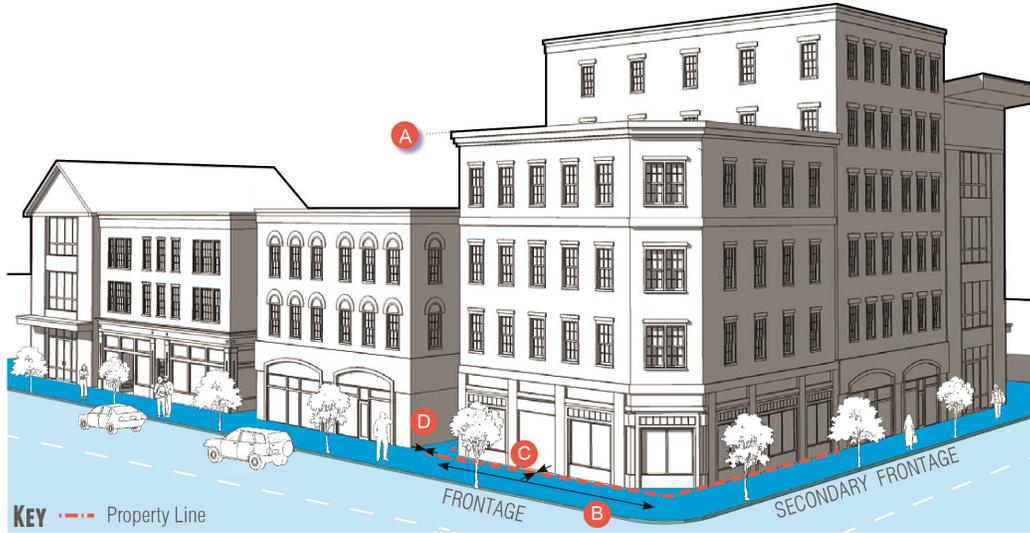
Building at the frontage line

No side setback

3 to 6 stories

Outbuildings not common

14.3.7 - FD5 - Downtown Center



14.3.7-B - Allowed Building Types	
Building Type	Standards
Rowhouses	Section 14.4.8
Multi-Family	Section 14.4.9
Work/Live	Section 14.4.10
Mixed-Use	Section 14.4.11
Perimeter	Section 14.4.12
Civic	Section 14.4.13

14.3.7-C - Building Form		
Height		
Principal Building	3 stories min. 6 stories max. ^{1, 2}	A
Outbuilding	2 stories max.	

¹ Subject to regulating plan maximum height limits.

² Within 20' of a Form District boundary with a lower maximum building height, buildings shall not be more than a story taller than the maximum permitted height of buildings in the adjacent Form District.

Miscellaneous

The linear distance at the Frontage between ground floor entries shall be no more than 60'.

Any buildings wider than 150' must be designed to read as a series of two or more separate buildings.

A building form with a chamfered corner is allowed only on corner lots and only if a corner entry is provided.

14.3.7-D - Lot Occupation & Building Placement	
Block Perimeter	2,000 ft max.
Lot Coverage	100%
Frontage Buildout ¹	80% min. at setback B

¹ In the absence of a Building Facade along any part of a Frontage Line, a Streetscreen shall be built on the same plane as the Facade.

Building Disposition	Standards
Sidyard	Section 14.6.3
Rearyard	Section 14.6.3

Setback (Distance from ROW/Lot Line)		
Front		C
Principal Building	0' min.; 6' max.	
Outbuilding	In third lot layer	
Side		D
Principal Building	0' min. - 12' max. 5' min. along a shared boundary with FD4	
Outbuilding	0' min. or 3' min. on secondary frontage	
Rear		E
Principal Building	3' min. or 15' from rear alley centerline	
Outbuilding	3' min. or 15' from rear alley centerline	

Miscellaneous

One or more Principal Building at the Frontage, and one or more Outbuildings to the rear of the Principal Building, may be built on each Lot.

Fence materials shall not include barbed or razor wire. Chain link and wire fencing shall not be used along any Frontage Line. Woven cable fencing is allowed.

14.3.7 - FD5 - Downtown Center

14.3.7-E - Parking, Loading & Service**Required Spaces**

No on-site parking is required.

Up to 50% of the on-site parking spaces may be leased on a monthly basis to off-site users without being considered a Parking Lot or Parking Structure.

See Section 14.6.8 I) (Supplemental to Form Districts - Bicycle Parking Requirements) for bicycle parking standards.

Location on the Lot

Parking Areas shall be located in the Third Lot Layer.

Garages shall be located in the Third Lot Layer. Garages may be located in the second Lot Layer if located below-grade or above the first story.

Miscellaneous

At least one pedestrian route from all Parking Lots and Parking Structures shall be directly to a Frontage Line (i.e., not directly into a Building).

14.3.7-H - Signs

Maximum number of signs per frontage

Allowed Sign Types	Standards
Awning Sign	14.6.9-C
Band	14.6.9-D
Blade	14.6.9-E
Freestanding ¹	14.6.9-F
Marquee	14.6.9-G
Nameplate	14.6.9-H
Outdoor Display Case	14.6.9-I
Wall	14.6.9-J
Window	14.6.9-K

¹ 14' height max.

Miscellaneous

See Section 14.6.9 (Supplemental to Form Districts - Sign Standards) for specific requirements.

14.3.7-F - Encroachments - Required Setbacks

Encroachment Type	Rear
Steps to Building Entrance	A
Architectural Features	3' max.
Landscaping	A
Fences or freestanding walls	6' max. height.
Driveways, Walkways	A
Utility Structures	A

Miscellaneous

An existing non-conforming building that encroaches into a required setback may be expanded vertically so long as that expansion does not encroach further into the required setback than the existing building.

14.3.7-G - Encroachments - Public Right-of-way
(along Primary and Secondary Frontages)

Encroachment Type	Public ROW
Frontage Type	
Shopfront: Awning ¹	15' max.
Officefront: Awning ¹	15' max.
Architectural Features - Minimum 10 feet above the sidewalk	3' max.
Signs	A ¹

¹ May encroach into the street ROW subject to the limits set forth in Section 14.6.9 (Supplemental to Form Districts - Sign Standards).

14.3.7 - FD5 - Downtown Center

14.3.7-I - Use Type	FD5
RESIDENTIAL - GENERAL	
Single Detached Dwelling	P
Accessory Dwelling Unit ¹ (Sec. 14.6.7 e)	P
Attached Dwellings - Duplex	P
Attached Dwellings - Multi-Family (3 or more)	P
RESIDENTIAL - SPECIAL	
Assisted Living	P
Boarding House ¹	P
Community House (Sec. 14.6.7 d)	P
Convalescent /Nursing Home	P
Group Home	P
LODGING	
Bed and Breakfast ¹	P
Historic Inn (Sec. 14.6.7 b)	P
Hotel, Motel	P
Shelter	P
RETAIL - GENERAL	
ATM	P
Convenience Store	P
Fuel Service Station ² (Sec. 14.6.7 c)	P
General Merchandise/Retail	P
RETAIL - OUTDOOR	
Automobile Sales/Rentals (Sec. 14.6.7 c)	P
Boat Sales/Rentals	P
Garden Supply Store	P
Open Air Markets	P
Recreational Vehicle Sales/Rentals	P
OFFICE & SERVICE	
Animal Grooming	P
Beauty Salon/Barber Shop/Spa	P
Car Wash	P
Crisis Counseling Center (Sec. 14.6.7 g)	P
Office – General	P
Dry Cleaning Service	P
Funeral Home	P
Health Club/Studio	P
Laundromat	P
Mental Health Crisis Center	P
Office – Medical	P
Tailor Shop	P
Vehicle/Boat Repair/Service ²	P

14.3.7-I - Use Type	FD5
HOSPITALITY/ ENTERTAINMENT/ RECREATION	
Aquarium	P
Art Gallery/Studio	P
Arts Incubator (Sec. 14.6.7 j)	P
Bar, Tavern	P
Billiards, Bowling & Arcade	P
Café	P
Cinema	P
Club, Membership	P
Community Center	P
Conference/Convention Center	P
Museum	P
Performing Arts Center	P
Performing Arts Studio	P
Recreational Facility - Indoor	P
Restaurant	P
Restaurant – Take Out	P
MANUFACTURING/ PRODUCTION/ STORAGE	
Boat Storage	P
Dental Lab	P
Food Processing	P
Machine/Woodworking Shop	P
Manufacturing	P
Manufacturing - Tour Oriented	P
Medical Lab	P
Production Studio	P
Photography Lab	P
Printing Plant	P
Research Lab	P
Warehouse/Storage ²	P
Warehouse, Self-Storage ²	P
EDUCATION & DAY CARE	
Day Care - Adult	P
Daycare - All (Sec. 14.6.7 a)	P
School - Post-Secondary & Community College	P
School - Primary	P
School - Secondary	P
School, -Trade, or Professional	P

14.3.7 - FD5 - Downtown Center

14.3.7-I - Use Type	FD5
CIVIC	
Courthouse	P
Fire Station	P
Library	P
Park	P
Police Station	P
Post Office	P
Worship, Place of	P
TRANSPORTATION & UTILITIES	
Recycling Center - Small ³ (2,000 sf or less)	P
Public Transit Terminal	P
Operations Center – Taxi/Bus ³	P
Parking Structure ²	P

Key

P Permitted Use

CU Conditional Use

End Notes¹Must be owner-occupied.² Parking Structures shall be located behind a Perimeter Building (see Section 14.4.13).³ Exterior storage and display not permitted.

14.3.8- FD6 – DOWNTOWN CORE



14.3.8-A - Intent

To enhance the vitality of the urban core with a variety of high density building types. Provide locally and regionally serving office, retail, service, hospitality, entertainment, civic functions, as well as a wide variety of urban housing choices. This district also aims to reinforce the walkable nature of the urban core of the city.

Attached buildings

Small to large footprint

Building at the frontage line

No side setback

3 to 10 stories

Outbuildings not common

14.3.8 - FD6 - Downtown Core



14.3.8-B - Allowed Building Types		
Building Type	Standards	
Rowhouses	Section 14.4.8	
Multi-Family	Section 14.4.9	
Mixed-Use	Section 14.4.11	
Perimeter	Section 14.4.12	
Civic	Section 14.4.13	

14.3.8-C - Building Form		
Height		
Principal Building	3 stories min. 10 stories max. ¹	A
Outbuilding	2 stories max.	

¹ Also subject to Regulating Plan maximum height limits.

Miscellaneous
 The linear distance at the Frontage between ground floor entries shall be no more than 60'.
 Any buildings wider than 150' must be designed to read as a series of two or more separate buildings.
 A building form with a chamfered corner is allowed only on corner lots and only if a corner entry is also provided.

14.3.8-D - Lot Occupation & Building Placement		
Block Perimeter	2,000 ft max.	
Lot Coverage	100%	
Frontage Buildout ¹	100% along Primary Frontage	B
	80% along Secondary Frontage	

¹ In the absence of a Building Facade along any part of a Frontage Line, a Streetscreen shall be built on the same plane as the Facade.

Building Disposition	Standards
Sidyard	Section 14.6.3
Rearyard	Section 14.6.3

Setback (Distance from ROW/Lot Line)		
Front		C
Principal Building	0' min.; 6' max.	
Outbuilding	In third lot layer	
Side		D
Principal Building	0' min. - 12' max.	
Outbuilding	0' min. or 3' min. on secondary frontage	
Rear		E
Principal Building	0' min. or 15' from rear alley centerline	
Outbuilding	0' min. or 15' from rear alley centerline	

Miscellaneous
 One or more Principal Buildings at the Frontage, and one or more Outbuildings to the rear of the Principal Building, may be built on each Lot.

Fence materials shall not include barbed or razor wire. Chain link and wire fencing shall not be used along any Frontage Line. Woven cable fencing is allowed.

14.3.8 - FD6 - Downtown Core

14.3.8-E - Parking, Loading & Service

Required Spaces

No on-site parking is required.

Up to 50% of the on-site parking spaces may be leased on a monthly basis to off-site users without being considered a Parking Lot or Parking Structure.

See Section 14.6.8 I) (Supplemental to Form Districts - Bicycle Parking Requirements) for bicycle parking standards.

Location on the Lot

Parking Areas shall be located in the Third Lot Layer.

Garages shall be located in the Third Lot Layer. Garages may be located in the second Lot Layer if located below-grade or above the first story.

Miscellaneous

At least one pedestrian exit from all Parking Lots and Parking Structures shall be directly to a Frontage Line (i.e., not directly into a Building).

14.3.8-H - Signs

Maximum number of signs per frontage

Allowed Sign Types	Standards
Awning Sign	14.6.9-C
Band	14.6.9-D
Blade	14.6.9-E
Freestanding ¹	14.6.9-F
Marquee	14.6.9-G
Nameplate	14.6.9-H
Outdoor Display Case	14.6.9-I
Wall	14.6.9-J
Window	14.6.9-K

¹ 14' height max.

Miscellaneous

See Section 14.6.9 (Supplemental to Form Districts - Sign Standards) for specific requirements.

14.3.8-F - Encroachments - Required Setbacks

Encroachment Type	Rear
Steps to Building Entrance	A
Architectural Features	3' max.
Landscaping	A
Fences or freestanding walls	6' max. height.
Driveways, Walkways	A
Utility Structures	A

Miscellaneous

An existing non-conforming building that encroaches into a required setback may be expanded vertically so long as that expansion does not encroach further into the required setback than the existing building.

14.3.8-G - Encroachments - Public Right-of-way (along Primary and Secondary Frontages)

Encroachment Type	Public ROW
Frontage Type	
Shopfront: Awning ¹	15' max.
Officefront: Awning ¹	15' max.
Architectural Features - Minimum 10 feet above the sidewalk	3' max.
Signs	A ¹

¹ May encroach into the street ROW subject to the limits set forth in Section 14.6.9 (Supplemental to Form Districts - Sign Standards).

14.3.8- FD6 - Downtown Core

14.3.8-I - Use Type	FD6
RESIDENTIAL - GENERAL	
Single-Family and Multi-Family	P
RESIDENTIAL - SPECIAL	
Assisted Living	P
Boarding House ¹	P
Community House (Sec. 14.6.7 d) & Group Home	P
Convalescent /Nursing Home	P
LODGING	
Bed and Breakfast ¹	P
Historic Inn (Sec. 14.6.7 b)	P
Hotel, Motel	P
Shelter	P
RETAIL - GENERAL	
ATM	P
Convenience Store	P
Fuel Service Station ² (Sec. 14.6.7 c)	P
General Merchandise/Retail	P
Auto/Boat/RV Sales/Rentals ³ (Sec. 14.6.7 c)	P
RETAIL - OUTDOOR	
Open Air Markets	P
OFFICE & SERVICE	
Animal Grooming	P
Beauty Salon/Barber Shop/Spa	P
Car Wash	P
Crisis Counseling Center (Sec. 14.6.7 g)	P
Office – General	P
Dry Cleaning Service	P
Funeral Home	P
Health Club/Studio	P
Laundromat	P
Mental Health Crisis Center	P
Office – Medical	P
Tailor Shop	P

14.3.8-I - Use Type	FD6
HOSPITALITY/ ENTERTAINMENT/ RECREATION	
Aquarium	P
Art Gallery/Studio	P
Arts Incubator (Sec. 14.6.7 j)	P
Bar, Tavern	P
Billiards, Bowling & Arcade	P
Café	P
Cinema	P
Club, Membership	P
Community Center	P
Conference/Convention Center	P
Marina	P
Museum	P
Performing Arts Center	P
Performing Arts Studio	P
Recreational Facility - Indoor	P
Restaurant	P
Restaurant – Take Out	P
MANUFACTURING/ PRODUCTION/ STORAGE	
Dental Lab	P
Food Processing	P
Machine/Woodworking Shop	P
Manufacturing	P
Manufacturing - Tour Oriented	P
Medical Lab	P
Production Studio	P
Photography Lab	P
Printing Plant	P
Research Lab	P
Warehouse/Storage ³	P
Warehouse, Self-Storage ³	P
EDUCATION & DAY CARE	
Day Care - Adult	P
Daycare - All (Sec. 14.6.7 a)	P
School - Post-Secondary & Community College	P
School - Primary	P
School - Secondary	P
School, -Trade, or Professional	P

Key

P Permitted Use

CU Conditional Use

End Notes¹Must be owner-occupied.²Automobile sales not permitted as an accessory use.³Exterior storage and display not permitted.

14.3.8- FD6 - Downtown Core

14.3.8-I - Use Type	FD6
CIVIC	
Courthouse	P
Fire Station	P
Library	P
Park	P
Police Station	P
Post Office	P
Worship, Place of	P
TRANSPORTATION & UTILITIES	
Recycling Center - Small ⁴ (2,000 sf or less)	P
Public Transit Terminal	P
Operations Center – Taxi/Bus	P
Parking Structure ⁵	P

Key	
P	Permitted Use
CU	Conditional Use
End Notes	

⁴ Exterior storage and display not permitted.

⁵ Parking Structures shall be located behind a Perimeter Building (see Section 14.4.13).

14.3.9 - SD - RAILYARD/WASTEWATER SPECIAL DISTRICT

GRAPHIC to be included

14.3.9-A - Intent

To accommodate municipal wastewater treatment; and railroad operations, inter-modal transfers, rail equipment servicing, storage and repair, material storage and administrative functions.

Detached buildings

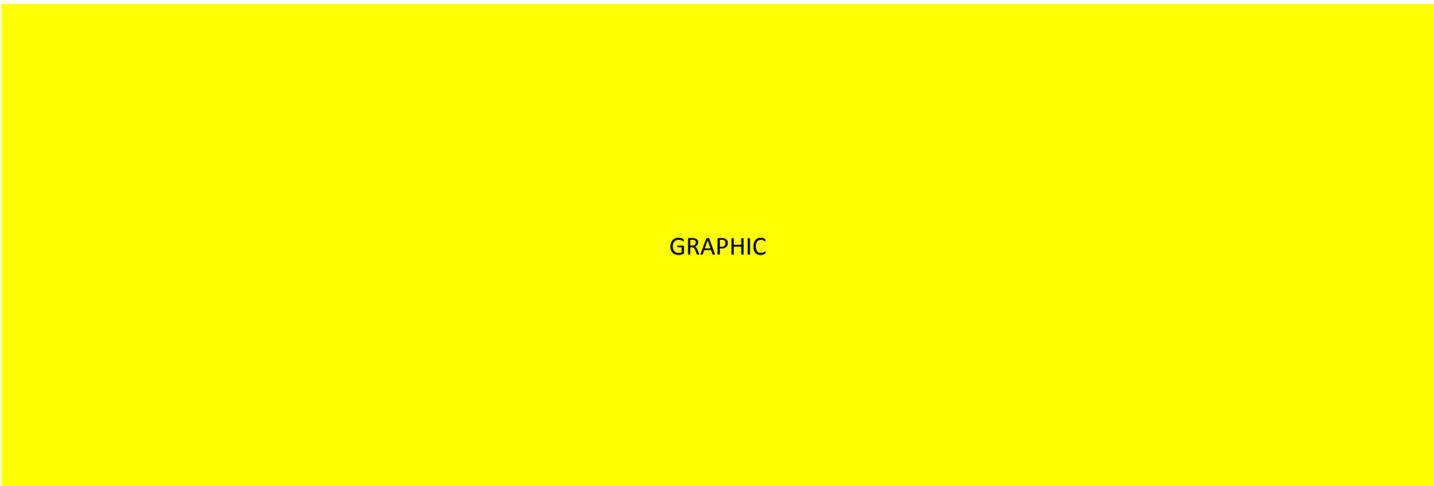
Medium to large footprint

2 to 3 stories

Outbuildings are common

Outdoor storage is common

14.3.9 - SD - Railyard Special District



14.3.9-B - Allowed Building Types

Building Type	Standards
---------------	-----------

Do not apply.

14.3.9-C - Building Form

Height		
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Principal Building	3 stories max.	A
Outbuilding	2 stories max.	

Miscellaneous

Lakeshore frontage shall be considered a second primary frontage.

Loading, parking and service areas, overhead doors, and other service entries shall be screened by a building or streetscreen from the primary frontage.

14.3.9-D - Lot Occupation & Building Placement

Lot Coverage	80%
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Frontage Buildout	N/A
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Building Disposition	Standards
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Edgeyard	Section 14.6.3
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Sidyard	Section 14.6.3
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Rearyard	Section 14.6.3
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Setback (Distance from ROW/Lot Line)

Front		B
Principal Building	5' min.	
Outbuilding	In third lot layer	

Side		C
Principal Building	5' min.	
Outbuilding	5' min.	

Rear		D
Principal Building	5' min. or 15' from rear alley centerline	
Outbuilding	5' min. or 15' from rear alley centerline	

Waterfront Setback
(Distance from the lake mean high water mark - 100' msl)

Principal Building	50' min.
Outbuilding	50' min.

Miscellaneous

See Section 4.5.4 (f) Special Flood Hazard Area regulations for specific requirements.

A Lot may contain any number of Principal Buildings and any number of Outbuildings.

Fence materials shall not include barbed or razor wire. Chain link and wire fencing shall not be used along any Frontage Line. Woven cable fencing is allowed.

14.3.9 - SD - Railyard Special District

14.3.9-E - Parking, Loading & Service

Required Spaces

No on-site parking required.

Refer to Section 14.6.8 (Supplemental to Form Districts - Parking, Loading, Service and Driveways) for bicycle parking standards.

Up to 50% of the on-site parking spaces may be leased on a monthly basis to off-site users without being considered a Parking Lot or Parking Structure.

Location on the Lot

Parking Areas, Parking Lots and Garages shall be located in the Second or Third Lot Layer.

Parking Areas and Parking Lots must be setback from side and rear lot lines by 3' min.

Miscellaneous

At least one pedestrian exit from all Parking Lots and Parking Structures shall be directly to a Frontage Line (i.e., not directly into a Building).

14.3.9-F - Encroachments - Required Setbacks

Encroachment Type	Front	Side	Rear
Steps to Building Entrance	A	A	A
Architectural Features	3' max.	3' max.	3' max.
Landscaping	A	A	A
Fences or freestanding walls	A ¹	A ¹	A ²
Driveways, Walkways	A	A	A
Utility Structures	A	A	A

¹ 4' max. height.

² 6' max. height.

Miscellaneous

An existing non-conforming building that encroaches into a required setback may be expanded vertically so long as that expansion does not encroach further into the required setback than the existing building.

14.3.9-H - Signs

Allowed Sign Types	Standards
Awning	14.6.9-C
Band	14.6.9-D
Blade	14.6.9-E
Freestanding ¹	14.6.9-F
Nameplate	14.6.9-H
Outdoor Display Case	14.6.9-I
Wall	14.6.9-J
Window	14.6.9-K

¹ 6' height max.

Miscellaneous

See Section 14.6.9 (Supplemental to Form Districts - Sign Standards) for specific requirements.

14.3.9-I - Use Type

SD

TRANSPORTATION & UTILITIES

Public Utility Facility	P
Rail Equip. Operations, Storage & Repair	P

Key

P	Permitted Use
CU	Conditional Use

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Burlington Planning Commission Minutes

Tuesday, May 27, 2014 - 6:30 pm

Present: H. Roen, L. Buffinton, J. Wallace Brodeur, Y. Bradley, B. Baker, A. Montroll (by phone)

Absent: E. Lee

Staff: D. White, E. Tillotson

I. Agenda

No change.

II. Public Forum

No one present.

III. Report of the Chair

No report.

IV. Report of the Director

No report.

V. Form Based Code

D. White: Gave a presentation on the draft Form-Based Code for the downtown and waterfront which implement the planBTV-Downtown & Waterfront Plan recently adopted.

A form-based code is based on the transect which consists of a continuum of the most developed area to least developed. Character district T6 is the most urbanized and was chosen to be used since Burlington is the most urbanized City in the state, and it is relative to the community. District T1, the least urbanized district, an example would be something similar to the Intervale or a park.

Form Based Code is oriented to the individual municipality where it functions. For instance, the Burlington FBC is quite different from that of South Burlington. The focus for Burlington is on the pedestrian access which will make the downtown/waterfront economically viable.

Y. Bradley: One thing that is important to stress is the relationship between the FBC pedestrian experience and the developments that the Department of Public Works is incorporating.

D. White: At present there is no jurisdiction for zoning to take effect within the public right of way, but it is a possibility. The Department of Public Works has no city street standards at present and also no staff available to work on establishing standards at this point.

Y. Bradley: This is an opportunity to begin dialogue with Public Works about standards for public right of ways.

D. White: There are new national documents around these standards. FBC is typically highly graphic and very proscriptive. It provides greater certainty for the applicant and the community.

B. Baker: Can there be a risk when an overly proscriptive marketplace could move faster than the ordinance?

As approved by the Burlington Planning Commission on.

D. White: It is possible and he will touch on this further. More predictable results produce a more predictable interface. FBC are adapted to local contexts and can be written for anything. The present zoning ordinance contains a lot of elements of FBC. .

Components of Form Based Code

- Character districts
- Building types
- Frontage types

The regulating plan will contain: five character districts, also special districts, (railyard & wastewater), civic spaces (parks), special building heights and shopfront requirements will be special areas. This presently applies to downtown and waterfront only but could be expanded in the future. There will be generous illustrations and photographs to indicate predictable development for each of the character districts.

The review process will be very different as specified in Sec 14.7. The DRB only reviews on specific issues. Currently a conditional use decision by the DRB which is appealed, proceeds to State Environmental Court, and an appealed staff decision proceeds to the DRB. It is recommended with FBC that DRB decisions to be heard as on the record review.

The use will be reviewed by the DRB and will not involve the design standards. Now the DRB reviews anything/everything to do with the application. This approach will lessen the DRB workload and will streamline the process. It is possible to add more tools, to define the standards, retain predictability. Conditional uses will decrease. The Zoning Ordinance Committee is working on an amendment changing some conditional uses to permitted uses.

There is allowance for variance of the form: hierarchy: administrative relief, DRB relief, variances. This is a framework where all sorts of things can be added.

H. Roen: Where are we in terms of FBC?

D. White: We have a draft out for comments and will include the Planning Commission. He and Sandrine are scheduled to go to a couple of NPAs for a generic presentation, the Church Street Marketplace, etc. We are hoping to start the adoption process by fall and wish to include the City Council along with the Planning Commission.

L. Buffinton: Are there any specific communities as examples?

D. White: Cincinnati has a floating code; it seems to be the best example. Burlington has the same kind of organization and during the process we have compared it to lots of other cities.

Y. Bradley: You have managed to do a wonderful job of distilling the FBC.

D. White: There is still a lot of work to do. I'm always wondering what have we missed?

J. Wallace-Brodeur: I like the presentation a lot, it is well illustrated. It is the general consensus of the Commission that it will make the process easier, more predictable.

Y. Bradley: It is going to be really important to involve the City Council in the process for dialogue. The Ordinance Committee needs to work more closely with the City Council.

D. White: The focus on broad goals will need to be flushed out for the City Council and the public.

L. Buffinton: This approach to urban design could work really well.

D. White: The code (FBC) focuses on the most important components.

A. Montroll: Has real confidence in the Planning staff will be important, and fully following the rules. Will Staff practice for reviewing projects?

D. White: We have talked about developing a checklist which would be part of the record.

Y. Bradley: I keep getting back to staff interpretation of the regulations; there is a strong sense that there will be little that is arbitrary. Staff needs to have a full understanding of the process.

As approved by the Burlington Planning Commission

VI. Committee Reports

No reports.

VII. Commissioners Items

J Wallace-Brodeur: Will be traveling in July.

B Baker: Is there any decision on the previously discussed 15 year limitations? No

D White: Will mention that to the City attorney's Office.

VIII. Minutes/Communications

None.

IX. Adjourn

On a motion by H. Roen, seconded by L. Buffinton, the Commission unanimously adjourned the meeting at 8:36pm.

Y. Bradley, Chair

Date

E. Tillotson, recording secretary

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Vacant, Youth Member



Burlington Planning Commission Meeting Notes

Tuesday, June 10, 2014 - 6:30 pm

PC Present: H. Roen, A. Montroll, E. Lee (No quorum present)

Absent: B. Baker, L. Buffinton, J. Wallace-Brodeur, Y. Bradley

Staff: D. White, S. Thibault, E. Tillotson

Due to absence of a quorum, only the Parks Master Plan was presented. No other action was taken

I. Agenda

No changes.

II. Public Forum

None

III. Report of the Vice Chair

None

IV. Report of the Director

None

V. Parks Master Plan Presentation

Jesse Bridges, Director of Parks and Recreation presented the draft Parks Master Plan.

The Master Plan is in its review phase. It is the first ever comprehensive Parks Master Plan for Burlington and it addresses urban forestry, urban wilds, recreational and conservation lands.

It is an overarching plan for all the City's parks and open spaces encompassing a survey and plan for equipment similarities, identities, lighting and signage in an effort to create an identity for the City Parks areas. The Department is still doing internal staff review. August 5th will be the Parks and Recreation Commission meeting where the focus will be on the Master plan looking for adoption of the plan in September.

A. Montroll: Perhaps it is better not to break the parks down by wards, but by neighborhoods? By wards might be isolating.

E. Lee: Connectivity is defined by bike and walking trails?

J. Wallace-Brodeur: Walking is the definition, based on a ½ mile walking distance.

D. White: How far is the park from residences, does the public have adequate facilities to get to parks?

J. Wallace-Brodeur: *Schmanska* Park is very diverse but is not handicapped accessible. Biking and walking to parks is always free, we want to enhance that accessibility.

Programming and operations - Lake Champlain is one of our biggest parks. There are big deficiencies in marketing exposure, camps are led by professionals which are city employees, and are relatively inexpensive for families at about \$150 per week.

Sustainability and stewardship - For twenty years the department has received arbor awards. There is planning for increasing canopy cover. The plans for the urban wilds are being updated. The Department is working with the state to establish stewardship programs for rare and endangered species. Champ camp is continuing. The Department generates more than 60% of its own revenues. There is a struggle between public revenue focus vs recreation focuses.

Field rental rates are low and the Department is looking at increases of some fees. The focus is to have the fields not constantly reserved so that they can be used on a more random basis by park users.

J. Wallace-Brodeur: Looking more regionally, it would be nice if there was a regional park pass.

H. Roen: It could be reciprocal.

P. Wagner, city resident: Programs for kids and especially kids 18 to 25 are needed. The sailing center is not part of the parks Department but private money is being raised for a new sailing center.

J. Bridges: Parks does partner with the sailing center. Burlington City Arts, the Fletcher Free Library do offer programs. 18 to 25 is an underserved population. The Parks Department plays host to adult leagues. This area is one of the biggest deficiencies.

P. Wagner: Another group which is underserved is homeless people. Do Parks provide quasi shelters?

J. Bridges: It is a balancing act; the City is not able to provide shelter. On Thursday, the Department is doing training with an Americorp representative on this subject. The City has to find a way to connect people with appropriate services. Some of the City spaces function as defacto shelters.

D. White: Something equivalent to the street outreach program like the market place has through the Howard Center? It seems there is the potential for a parallel to this.

J. Wallace-Brodeur: It is her hope that staff will be educated about possibilities for connectivity. A system wide solution with all service groups is needed.

J. Bridges: The Burlington golf course allows wonderful winter accessibility plus running trails. There are some calls to remove some tennis court facilities. There are a plethora of community gardens but more are needed. There are 500 gardeners in the City. There is a need for a dog park in the south end. Vermont State has highest rate of pet ownership in the country. Is Oakledge Park a possibility? Dog licensing could be improved.

D. White: There is a plan to drill down to examine surpluses and deficiencies.

A. Montroll: National averages/allocations might be not appropriate for Burlington.

J. Bridges: There are drop in programs all summer, free lunches all summer, plus four hours of recreation free. This program serves multi ethnic families, with the emphasis on developing an expanded menu reflecting ethnicities.

Parks are designated by size, based on national standards.

A. Montroll: Waterfront Park feels like a regional park, not community. Perhaps it needs a different characterization.

D. White: Considering how a park is used and applying the Form Based Code approach is completely different.

A. Montroll: The report is based on consultant language, perhaps Jesse could provide a description more appropriate to Burlington.

P. Wagner: Doesn't the connectivity make all part of a system? Establishing nodes of connectivity between parks as linkage could help.

J. Bridges: This is good feedback from the Commission and the public, the language can be fine tuned for Burlington. Six of the seven most visited parks are on a waterfront. Lake trails and beaches need the most attention.

D. White: And this is an urbanized park, not rustic. Not all civic spaces are green as relates to FBC.

H. Roen: The opposite point is that the park does provide peace and quiet sometimes.

A. Montroll: Parks can be special and unique with multi functions, which is great.

J. Bridges: The Waterfront PIAP proposals, connectivity, wayfinding for the park system, bike path upgrade all are connected. There are partnership opportunities, almost all with non profits. A new logo has been designed for the department. Stormwater is addressed in sustainability; there is a new compilation of inventory, a new approach which comes back to lot coverage.

D. White: Really likes the thinking about parks and stormwater. The map shows the street tree corridor, greenbelts also serve stormwater functions as well as urban wilds, and as special habitats. The tree canopy cover is impressive.

E. Lee: Rain gardens, parks should be part of a public and neighborhood conversation system.

J. Bridges: The City has a lot of approaches to stormwater and water conservation. The key is increasing sidewalk funding, improvement of stormwater and planning.

A. Montroll: Long term specifics are very specific. He would recommend that they be made more broad.

J. Bridges: There have already been changes to plan. More graphics, assigning divisions of responsibility would be helpful. The system themes need to be right. They are pretty good right now, but fine tuning is on going.

VI. Committee Reports

None

VII. Commissioner Items

None

VIII. Minutes/Communications

None

IX. Adjourn

The meeting adjourned at 8:45 pm

Burlington Planning Commission

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Burlington Planning Commission Minutes

Tuesday, June 24, 2014 - 6:30 pm

PC Present: L. Buffinton, H. Roen, Y. Bradley, B. Baker, A. Montroll, E. Lee

Absent: J. Wallace-Brodeur

Staff: D. White, S. Thibault, E. Tillotson, K. Sturtevant

I. Agenda

A. Montroll: Suggests amendment of the agenda to add appointment of the director, 4.5.

S. Thibault: Staff suggests an amendment to the agenda to discuss approval of a contract for planBTV South, 6.5.

II. Public Forum

No public present.

III. Report of the Chair

The Chair presented the following report:

The Directors' evaluation is available on line. It was brought to his attention that there was a procedural glitch in the reappointment of the Director which will be addressed tonight.

IV. Report of the Director

The director presented the following report:

- The Planning & Zoning office has been inundated by applications.
- There is a tremendous amount of activity going on in the office. The City Council Ordinance Committee is a meeting this week, Wednesday at 5:30 to talk about residential parking, Commissioners are encouraged to attend. The Committee would love to hear directly from the Commissioners with their input on the ratio of required parking to number of bedrooms in any residential unit.
- In development review, the staff is anticipating a couple of major development projects this summer. First Fletcher Allen Health Care will soon be delivering an application which will include a request from UVM to tear down three dorms. They will present alternative plans, perhaps by the end of the month and they will also be providing temporary housing to fill in for the removed dorm spaces of approximately 400 beds. At the end of summer, there is another 80 million application anticipated from UVM, referred to as the STEM (science, technology, e , math) project. It will involve the removal of two buildings, Cook Science and Angell Lecture.

Agenda amendment 4.5

On a motion by Y. Bradley, seconded by L. Buffinton, the Commission unanimously appointed David E White as Planning and Zoning Director.

As approved by the Burlington Planning Commission on .

V. North Avenue Corridor Study

Eleni Churchill from the Regional Planning Commission and Nicole Losch, Transportation Planner, DPW

N. Losch: Describes the content of the Corridor study, which includes all transportation and land use. The project is in coordination with the Municipal Development Plan. They have changed the street perspective to reflect increased bicycle priorities. Some streets are already designated as complete streets which are structured to accommodate everyone and all modes of travel, and are associated with the current and projected land uses.

The Corridor Study encompasses the area from North Street to Plattsburgh Avenue. They are following the traditional corridor study process. Information gathering, evaluation, develop mission, provide public workshops, provide an on line tool for feedback, as well as some direct outreach. There will also be formation of an advisory committee composed of representatives from the school, the city, city departments, the Chittenden County RPC, CCTA, AARP, the City wards and others.

The Vision statement will establish priorities for the primary transportation core, North Avenue, which will be safe and convenient access, more livable and desirable neighborhoods. The EPA's building blocks for planning are being used as a tool to accomplish this.

E. Churchill: Discusses existing conditions. The volume of cars is highest north of the 127 intersection. Capacity analysis anticipates more growth around the shopping center area with possible development around Burlington College being an unknown. They are hoping to plan for 20 years down the road. There are high crash locations at the North Street end and the shopping center area.

N. Losch: Several public meetings have been held. At the first one there was discussion of pedestrian crossings, curb ramps, and poor sidewalks. At the second workshop, some anticipated improvements were discussed. Intersections, roundabouts, signals realignment, improved pedestrian and bike travel through intersections, bike accommodations and pedestrian facilities.

E. Churchill: Workshop three was held in May where refined concepts from the previous two workshops were presented. During the third open house, an addition to the voting forum with another cross section was introduced so that input from the on line tool will be utilized.

There are three conceptual options:

The first is short term. It is what can be accomplished within three years, at a lower cost, consists of the more simple actions.

The mid level is longer five to ten years. It is a more substantial cost, would reduce the street to three lanes. Bike travel is especially a problem, there is a large need to facilitate a smoother ride. Curbs are not being moved. They are trying to devise more bike visibility, perhaps with auto parking on one side of North Avenue and biking on the opposite side. There should be bike lanes on both sides of the corridor.

There are nine suggested new pedestrian crossings which DPW will implement in a staggered fashion. The intersections need to improve the capability to carry bike routes through the intersections. The 127 high speed intersection will be modified to be less accident prone. Details of the proposed improvements are on their web site.

A. Montroll: If the width is staying the same, where is the cost?

E. Churchill: The pavement has to be ground and relined. The old painted lines are too visible otherwise. The long term concepts consists of adding bike lanes to all segments, buffering the bike lanes, constructing on street one way cycle tracks, or raised two way on street cycle track. There are some constraints with the amount of available land closer to the city. The most favored concept analysis and implementation of a two way raised cycle track. The thought is to have an implementation plan ready to vote on July 1st by the advisory group, then go to the City Council in August or September.

H. Roen: Comments on the talk about sharrows, which is being proposed as a temporary measure, he finds them dangerous.

As approved by the Burlington Planning Commission on .

N. Losch: That is not our preferred solution.

Y. Bradley: His perspective, that encouraging cyclists to take up an entire lane, drivers expect cyclists to hug the side of the road. Whatever is instituted needs to be in a really safe manner, just consider Shelburne Road.

N. Losch: A culture change is needed in bike approaches/attitudes.

L. Buffinton: Education and enforcement are the keys. Cyclists are ignoring the rules, a little more enforcement would be good.

E. Lee: There has been a lot more enforcement.

N. Losch: Enforcement does come in cycles and spurts.

VI. Clean Hands Policy

K. Sturtevant: Discusses the proposed ordinance changes. The purpose is to have properties with no violations, and in compliance with applicable ordinances.

Y. Bradley: How do you approach ownership registered with different names (LLC, Trust, etc)?

L. Buffinton: Maintaining current name corrections is an ongoing issue, keeping up to date is a challenge.

Y. Bradley: Is there a way to require mandatory disclosure of ownership?

A. Montroll: A LLC form of ownership needs more thought about how to link different ownerships together.

L. Buffinton: What if a violation is minor?

K. Sturtevant: There would be a need to establish a method of differentiation.

A. Montroll: Feels that it would benefit the Commission to be thoughtful about violations and the need to move forward. The Clean Hands definition is really tight. What if there is a conflict in process of appeal/cure period, what happens at that point could be problematic.

B. Baker: One thing that is a concern is permits categorized as "permit indeterminate", which is a records problem that places the onus on the owner.

E. Lee: When a permit is approved, there is a two year period to finish a project. She has seen the clean hands policy used for outstanding fines.

L. Buffinton: I think in terms of chronic long term violators. If the open permit exceeds the cure period.

K. Sturtevant: And who is falling into that category?

L. Buffinton: On occasion, someone may not even know that they have this issue, if the owner is acting in good faith there shouldn't be penalties, it's a different story if there is a long time period of violations.

D. White: There has been a notification track as opposed to permit indeterminate. The goal is to clean up the records which are technically violations but usually there is active dialogue with property owner to cure the records.

A. Montroll: There was an instance where windows weren't permitted properly and the owners are still working on a solution.

D. White: There is an agreement with the property owner that he will put the windows back over a period of time.

B. Baker: An owner could have a condition which is in violation and not know about it. If it's serious enough, a Notice of Violation (NOV) will be issued. He thinks issuance of a NOV is a good line to determine if the clean hands policy needs to be followed.

As approved by the Burlington Planning Commission on .

D. White: This doesn't address a situation where someone comes in to get permit to add fifth unit to a property that is only entitled to two units.

K. Sturtevant: There have been different ideas about the solution to this situation from the beginning of time. She is aware of a case study situation where the property owner comes in for permit, owns three other properties, all with violations. If you are coming in for a permit your property should be in good standing.

B. Baker: Bill Ward, Code Enforcement Director, believes there is no need to hurt property owners who unknowingly have a violation. Let's say the contractor forgot to get a GFI outlet inspected, it doesn't seem a big enough problem to bother with since it is not intentional.

E. Lee: All property owners should be following city requirements.

Y. Bradley: We are all saying same thing, perhaps K Sturtevant could take the comments and try to refine them a little.

Agenda amendment 6.5

S. Thibault: Discusses planBTV South, the process is moving along nicely, an existing conditions analysis, funded and managed by Regional Planning Commission will be available soon. Land use inventory, brownfields analysis are beginning soon will end in the fall. The second piece, real estate market analysis, was recently sent out as a proposal to qualified companies. As it happened, only one firm responded, which was the firm that was anticipated to respond since they had just finished the downtown housing study. Their bid was under budget and they are being offered the standard city contract which needs to be approved by both the Planning Commission and the Board of Finance. This firm was the prime candidate since the bid period was a short time frame, the project needs to be finished by October 15, and this firm already has a lot of data from the downtown housing study.

On a motion by A. Montroll, seconded by L. Buffinton, the Commission unanimously endorsed signing of this contract.

S. Thibault: A selection committee is being formed for planBTV South End and she would like to have at least one Planning Commissioner on this committee which will review proposals, will interview the top three consultants, etc. Perhaps H. Roen since this is his neighborhood?

H. Roen volunteers.

VII. Committee Reports

Ordinance Committee -- Hasn't met, will meet next on the 10th of July.

Long Range Planning Committee - has not met, doesn't have anything on the horizon, but perhaps might discuss the south end project.

Executive Committee - has not met but suggest next Wednesday.

VIII. Commissioners Items

E. Lee: Would like information about 287-289 South Winooski Avenue where there was a permit to demolish and rebuild garage, appealed, and which is now being used as parking lot. What is the incentive for a replacement plan? There is much neighborhood concern about the lack of a future for this proposed garage.

D. White: This property now has a permit for rebuilding a garage on its original footprint. No rebuilding activity is noted, but that is all the permit allows. There is a year to start and a total of two years to finish.

Y. Bradley: Could staff get back to the Commission with thoughts about a resolution to this?

As approved by the Burlington Planning Commission on .

L. Buffinton: There is an on going need to look at density in RM zones and the addition of accessory units. The coverage should be higher than 45% and it should be easier to accomplish accessory units.

E. Lee: Has been hearing about a property on Weston Street with an accessory apartment, which is being misrepresented as a duplex.

Y. Bradley: We did promise the City Council Ordinance Committee that we would meet with them to discuss historic building materials. We should prompt them for a mutual meeting time.

IX. Minutes/Communications

B. Baker notes a correction to the May 13 minutes.

On a motion by B. Baker, seconded by H. Roen, the Commission unanimously approved the minutes of May 13 with corrections, and placed them on file.

A. Montroll: At the last meeting the Commission heard a great presentation of the draft Parks Master Plan by J Bridges, Director.

Y. Bradley: We need to get the Power Point presentation available for commissioners who missed the presentation.

X. Adjourn

On a motion by A. Montroll, seconded by H. Roen, the Commission unanimously adjourned at 8:34 pm.

Y Bradley, Chair

Date

E. Tillotson, recording secretary

Burlington Planning Commission

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*Yves Bradley, Chair
Bruce Baker, Vice-Chair
Andrew Saba
Lee Buffinton
Harris Roen
Andy Montroll
Jennifer Wallace-Brodeur
Vacant, Youth Member*



Burlington Planning Commission Minutes

Tuesday, July 8, 2014 - 6:35 pm

PC Present: L. Buffinton, H. Roen, J. Wallace-Brodeur, Y. Bradley, E. Lee, A. Montroll

Absent: B. Baker

Staff: D. White, E. Tillotson

I. Agenda

There are two amendments items to address: the fee schedule and proposed corrections to CDO.

On a motion by Y. Bradley, seconded by L. Buffinton, the Commission unanimously approved the changes to the agenda.

II. Public Forum

No members of the public were present.

III. Annual Organizational Meeting

On a motion by A. Montroll, seconded by L. Buffinton and E. Lee, the Commission unanimously appointed Y. Bradley Planning Commission Chair.

On a motion by J. Wallace-Brodeur, seconded by L. Buffinton, the Commission unanimously appointed B. Baker Planning Commission Vice-Chair.

On a motion by A. Montroll, seconded by H. Roen, the Commission unanimously appointed J. Wallace-Brodeur as Executive Committee member-at-Large.

On a motion by A. Montroll, seconded by L. Buffinton, the Commission unanimously appointed E. Tillotson Planning Commission Clerk.

Committees:

Y. Bradley: Has the sense that the LRPC might be trying to meet too frequently, are there thoughts on the frequency of the need to meet?

J. Wallace-Brodeur: Is open to a different schedule.

H. Roen: He feels lately that the Long Range Planning Committee is taking things as they come as opposed to stating goals, that's a valuable discussion to have.

Y. Bradley: The department continues to be more forward thinking. Presently the department is macro managing which is good.

J. Wallace-Brodeur: It might be good to have a LRPC meeting with all members where we could remind ourselves of our charge.

H. Roen: We may need to set goals to evaluate the committee's function.

Y. Bradley: This seems like a nimble suggestion. Suggests the membership of committees remain status quo.

On a motion by A. Montroll, seconded by L. Buffinton, the Commission unanimously reappointed all members of the committees to remain in current positions.

As approved by the Burlington Planning Commission on.

D. White: There is some confusion in the clerk's office about the fee schedule and addressing this has been a little delayed, but the fee schedule proposed is budget neutral, it creates simplicity whereas presently there are multiple fee methods based on the estimated cost of construction, and lot divisions.

L. Buffinton: The cost of construction is usually verified by the building inspector.

D. White: The other issue is fees between departments. The CAO's office wished to eliminate cross billing. As an example, a DPW project funded by the city is just an exchange of monies in the general fund; it really changes nothing and creates book keeping work. If such a project were state or federally funded, DPW would have access to outside (state or federal) monies that is another matter.

A. Montroll: Between city departments seems fine. Large projects that would produce large fees which are city projects are reflected in the budget.

D. White: The department rarely takes in enough revenues to cover all expenses.

A. Montroll: Will that come back to haunt the department?

Y. Bradley: Look at the effect of waste of staff hours, etc, seems that it would outweigh the budget gain.

D. White: Those will be small projects anyway.

A. Montroll: He would suggest that the department keep track of unrecognized revenue, if there is any question.

On a motion by A. Montroll, seconded by E. Lee, the Commission moved to unanimously approve the financial changes as described to be instituted.

IV. Downtown Housing Report

Brian Pine, Housing Specialist from Community and Economic Development Office: Presents a report from a study conducted and concluded just recently. There have been a lot of written comments on the CEDO website about the report. Housing is an issue for people at all economic levels. Does this report make a shift in approach? No it doesn't. There is now meaningful data to back up assumptions, the rate of production is so low, it has created a shortage of supply. The question now is what is the magic number of units. A 5% vacancy rate is normal. There is no simple answer about the number of new units.

The Stratos project on St Paul St transitioned from rental to condos and back several times before it moved forward as condos. About 50% of units were sold before construction.

Part of the process was comparison to peer cities, Austin, Nashville, and Portland OR. They are now looking at the next tier cities which are setting the pace.

In Chittenden County, 35% of residents are Vermonters; the remaining 65% are migrators. There are 17250 plus students in the county. Affordability is the issue through the entire spectrum. In Burlington, the rental vacancy rate is 1 to 1.5% whereas 5% is a more typical rate. Rental market rates are very high. Average annual rent growth in the county is 3.1 percent. There is an exodus of young professionals, age groups 25 to 34, and 35 to 54, from the City.

Employment in a large share of households is service or lower wage jobs, so a housing/job mismatch exists. There is a high percentage of jobs and people who work and live in Burlington, about 55%. A high need for affordable homes/ rentals is projected.

There is little opportunity for suburban type development in downtown; housing will meet only certain kinds of needs, likely for students or elders moving to denser housing which frees up single family homes for families. He will have a plan in about ten days to present too many interested groups. Some locations of possible development are the corner of Main Street and South Winooski Avenue, the mall area, and marina redevelopment.

Y. Bradley: Is the public trust area of 40 acres up for discussion? When is it okay to put it on the table?

As approved by the Burlington Planning Commission on.

D. White: The Mayor and City Council have concurred to have that conversation. Time and money are holding this conversation back presently.

L. Buffinton; It is really important to start with small incremental issues before approaching development of the 40 acres. It is necessary now to reduce our energy need, not to expand the urban footprint. We need to be so careful about the waterfront, it's our jewel.

There are financial incentives: public land, density bonuses, real estate tax abatements, tax increment financing. There has been growth and evolution in land use and zoning policy; a regional approach to inclusionary zoning, neighborhood development area designation, Form Based Code are all tools that can be used as forms of regulatory relief. There are state and local groups, education and health organizations, private and non profit entities, traditional and emerging housing investments to broaden economic development goals.

J. Wallace-Brodeur: Is there agreement on a solution?

Y. Bradley: Right now in the housing market, the public sector is the only resource to make housing grow, private development is marginal economically.

B. Pine: 30 years ago, the Reagan era tax code wiped out rental housing production and that is when the city became involved.

V. Statute of Limitation Discussion

Y. Bradley: Would like to take the temperature of the Commission as the Executive Committee has discussed this issue. Enforce even if beyond 15 years. Some cases where 15 year limitation is not appropriate.

A. Montroll: It is important to make sure things aren't grandfathered if there has been an earlier error, we do not want to endorse grandfathered violations.

Y. Bradley: It might depend on the violation perhaps.

D. White: There are a couple of different issues.

What did the city know and when did they know it?

To answer this question there are zoning records, assessors records, code enforcement records, inspector records, and a need to establish a straight face policy for the general public.

J. Wallace-Brodeur: Holding people accountable for non functioning records is inherently unfair.

L. Buffinton: Code enforcement has rental inspections, every three years and they have a record of the number of units.

A. Montroll: Code enforcement does zoning enforcement.

E. Lee: Are we asking code enforcement to verify if everything is permitted?

J. Wallace-Brodeur: Adding living units is a significant issue.

Y. Bradley: Which goes to Andy's point, you can't stop people from not getting permits. Either catch people, get information from neighbors, take remedial action over time. There is only a certain level of monitoring we can expect.

D. White: This is a life safety issue; it does not apply to the 5 years discussion.

A. Montroll: When a property has gotten back its economic value, you don't have to grandfather. Can't make them lose the economic value, but we don't have to allow grandfathering to continue.

Y. Bradley: The historic materials discussion and this are separate. This is about asking people to do things beyond a reasonable amount of time.

J. Wallace-Brodeur: The city needs to function as one entity. On important points, there usually is general agreement. The onus is on the city to get the records together, have them be associated.

As approved by the Burlington Planning Commission on.

L. Buffinton: State statute is fifteen years.

D. White: Has spoken to K Sturtevant, city attorney, who will come to the August 12th meeting. Bill Ward, Director of Code Enforcement, as well should be present.

Y. Bradley: The goal is we fail to understand the bureaucracy of the city.

H. Roen: B Baker would be able to create clean title when there is a sale.

VI. Summer Schedule

July 22, the Director will be away. August 12th is chosen as the next meeting date, August 26th will be cancelled with the regular schedule to resume in September.

On a motion by J. Wallace-Brodeur, seconded by A. Montroll, the Commission unanimously approved the changes to the meeting schedule as discussed.

VII. Committee Reports

Ordinance Committee – will meet this Thursday.

Executive Committee – has met, discussed the Director's evaluation and Form Based Code.

VIII. Commissioners Items

D. White: Staff identified residential side and rear yard set back, omitted includes: a building already encroaching can be expanded vertically

Article 5 frontage and access, two articles conflict, revised version 5.3.6 makes reference to 5.2.2

On a motion by A. Montroll, seconded by L. Buffinton, the Commission recommended approval of front yard and side yard setback corrections. E. Lee abstained.

Y. Bradley: The ordinance in RM zone looks as if there is a difference square footage requirement; section 4 and section 5 are in conflict. This could have a similar sort of fix.

D. White: State statute doesn't recognize that there are many small lots in cities.

On a motion by A. Montroll, seconded by J. Wallace-Brodeur, the Commission unanimously recommended approval of technical corrections.

H. Roen: Has been following the Board of Health livestock slaughter regulations which are quite restrictive. He will continue to follow this issue.

IX. Minutes/Communications

None.

X. Adjourn

On a motion by L. Buffinton, seconded by H. Roen, the Commission unanimously adjourned at 8:35 pm.

Y Bradley, Chair

Date

E. Tillotson, recording secretary

As approved by the Burlington Planning Commission on.

EILEEN M. BLACKWOOD, ESQ.
City Attorney
EUGENE M. BERGMAN, ESQ.
Sr. Assistant City Attorney
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CITY OF BURLINGTON, VERMONT
OFFICE OF
THE CITY ATTORNEY
AND
CORPORATION COUNSEL

MEMORANDUM RE: CHANGES TO OPEN MEETING LAW

To: Mayor, City Council, Clerk/Treasurer's Office, Department Heads
From: Eileen Blackwood, City Attorney
Gene Bergman, Sr. Asst. City Attorney
Re: Act 143, 2014 Changes to the Vermont Open Meeting Law
Date: July 28, 2014

On May 23, 2014, the Governor signed into law Act 143, a bill (H. 497) that made the first changes to Vermont's open meeting law in many years. The Act went into effect on July 1. This memo is meant to assist you and the other City committees and boards in understanding and meeting the obligations of the amended law.

Public body

The open meeting law was enacted to enable the people of Vermont to monitor the effectiveness and accountability of their governing bodies; the right of the people to have an open government is enshrined in the Vermont constitution. *Vt. Const. Ch. I, Art. VI; 1 V.S.A. § 311*. As such, every "public body" is subject to the requirements spelled out in Title 1 of the Vermont Statutes in sections 310 through 314. The amended law does not change the definition of "public body," except that it specifically exempts "meetings of restorative justice panels and meetings to conduct restorative justice group conferencing or mediation" from the law. 24 V.S.A. § 1964(b) (2014). The City Council and all the boards and commissions established by the Charter or by City Council resolution or ordinance are defined by the law as public bodies, as are all of the committees these bodies create to assist them in their work. *1 V.S.A. § 310 (3)* (definition of "public body"). It is likely that a group of citizens who meet together, but do not have an established set of members that make up that committee, even if they are recognized by the City Council, may not be a public body, but it should be assumed that all committees fall within this definition unless the City Attorney's Office has given a clear opinion that the specific committee or council is not a public body.

Open meetings

The purpose of the open meeting law is to give the public access to the meetings of public bodies so people can observe, be heard and participate in the deliberations and decisions of the public body. *State v. Vermont Emergency Bd.*, 136 Vt. 506, 508 (1978). Consequently, all public body meetings must be open to the public at all times of the meeting except during a legally called executive session, and no action can be taken by a public body unless it is taken at a meeting that is open to the public at all times of the meeting. *1 V.S.A. § 312 (a) (1)*. This means that the doors to the building and the meeting room must remain open throughout the duration of the meeting (except during an executive session). This is not a change from existing law.

At the meeting, the public must be given a reasonable opportunity to express its opinion on the matters being considered by the body during the meeting, as long as order is maintained. The chair may create reasonable rules to govern public comment--such as providing a public forum period or limiting verbal comments to a reasonable length of time to allow all to participate. *1 V.S.A. § 312 (h)*. The chair should, however, allow every member of the public who wishes to speak an opportunity to do so before the public body acts on a question. This is not a change from existing law.

Meeting defined

The law defines a meeting as “a gathering of a quorum of the member of a public body for the purpose of discussing the business of the public body or for the purpose of taking action.” *1 V.S.A. § 310 (2)*.

The new law excludes from being considered a “meeting” the exchange between members of the body (even if it is between a quorum) of written correspondence or electronic communications (i.e. email, phone calls, teleconferencing) “for the purpose of scheduling a meeting, organizing an agenda, or distributing materials to discuss at a meeting.” *Act 143 § 1, page 1, amending 1 V.S.A. § 310 (2)*, as long as those communications are available for inspection and copying under the Vermont Public Records Law. This means that if, for example, emails are sent by another means than the City's system, the individual member of the public body must make sure they are maintained, or that method may not be used for City business. Generally, all written or recorded information related to scheduling, organizing the agenda, and materials to discuss for any public body of the City should be considered a public record subject to the Public Records Act and must be made available to the public on request.

Given the purpose of the law, the courts' interpretation of the statute that broadly favors openness and, the new clarification of the definition excluding scheduling, a “meeting” under the open meeting law should be seen as happening whenever a quorum of the public body gets together and discusses business under its jurisdiction, whether or not the members came together for the purpose of discussing this business. Certainly, any time a quorum of the public body meets together for the purpose of taking action, the members are meeting and must follow all the requirements of the law.

An example would be when a quorum, a majority of the body, attends a social event or party and begins to talk about city business; this should not happen unless all the requirements of the open meeting law have been satisfied--which includes posting an agenda and keeping minutes.

The changes to the law also clarify that a meeting occurs when members of the public body discuss an issue over the phone or by email, if all or at least a quorum of the body is on the call or cc'd on the email (even if they aren't all reading it at the same time or responding), unless the task is only one of the three areas identified above (scheduling, organizing an agenda, or distributing materials). Discussions of City business that involve a quorum or more of the public body cannot be held by email! You may distribute information to be discussed at the meeting, but you may not discuss it. This means that with three-person committees, two of the members may not discuss committee business (except those three routine administrative activities) outside the meeting, no matter how informally.

The law recognizes three types of meetings: regular, special, and emergency. A "regular" meeting is one set by statute, charter, regulation, ordinance, or bylaw or by a resolution or formal action of the public body. So, public bodies who plan to have regular meetings that aren't designated in a formal legal document should take formal action to set the date and time of those meetings. A "special" meeting is a meeting that occurs outside that schedule. An "emergency" meeting is what it sounds like--a meeting to deal with an unforeseen condition that requires immediate attention. The requirements for notice and posting below vary depend on what type of meeting is being held.

Accessible meetings

The "open at all times" requirement was clarified in the new law to make it clear that meetings must comply with the public accommodation mandate established by the public accommodations law in chapter 139 of Title 9 of the Vermont Statutes. *Act 143, § 1, page 3, amending 1 V.S.A. §312(a)(1)*. The open meeting law, therefore, requires officials of the public body who are scheduling, setting up, and conducting a meeting to: (1) ensure the meeting is accessible to persons with disabilities; (2) allow service animals accompanying a person with disabilities and persons training service animals for a person with disabilities; and (3) make reasonable accommodations, including the provision of auxiliary aids and services, to allow access to and participation in the meeting by persons with disabilities.

Attendance without being physically present

Members of the body may attend a meeting through electronic or other means without being physically present in the designated meeting location. If a member attends by electronic or other means, then the member must identify himself or herself when the meeting is convened and must be able to hear the conduct of the meeting and be heard throughout the meeting. *Act 143, § 2 amending 1 V.S.A. § 312 (a) (2)*. All votes must be taken by roll call. This is a new requirement.

If a quorum attends without being physically present at the designated location, then at least 24 hours before the meeting or as soon as practicable prior to an emergency meeting, the body shall (1) "publicly announce" the meeting, (2) post a meeting notice in or near the clerk's office and at least 2 other designated public places in the city, (3) designate in the public announcement and posted notice at least 1 physical location where a member of the public can attend and participate in the meeting, and (4) ensure that at least one member of the body or at least one staff or designee of the body is physically present at each designated meeting location. *Act 143, § 2 amending 1 V.S.A § 312 (a) (2)*. These are new requirements.

Remember that voting may not be done by email or proxy, because it must be done in open session.

Notice

All meetings of public bodies must be noticed. Any adjourned meeting is considered a new meeting unless the time and place for the adjourned meeting is announced before the meeting adjourns. *1 V.S.A. § 312 (c)(4)*. All regular meetings must have the time and place of the meeting clearly designated by either statute, charter, regulation, ordinance, bylaw, resolution, or other legitimate action of the body; however, this information must be made available to any person upon that person's request. The request does not need to be in writing. *1 V.S.A § 312 (c) (1)*. None of this is a change to existing law. It is recommended that each public body that plans to meet on a regular basis act formally (by making a motion, for example) to adopt a regular meeting schedule.

"Special" meetings are those meetings that don't qualify as being either "regular" or "emergency." This means that all meetings that are not pre-designated in time or place by an authorized means (e.g. resolution) are either special or emergency meetings. The time, place, and purpose of a special meeting must be "publicly announced" at least 24 hours before the meeting. *1 V.S.A § 312 (c)(2)*. Again, this is not a change from existing law.

"Publicly announced" means that a notice is sent to an editor, publisher, or news director of a newspaper or radio station serving the area in which the body has jurisdiction and to any person who has requested notice in writing—this written notice being good only for the calendar year in which it is made unless it is made in December, in which case it goes through the next year. *1 V.S.A §§ 310 (4), 312 (c)(5)*. The newspaper and radio notices, therefore, must be sent to, at a minimum, one paper or radio station that serves Burlington. While the requirement of providing public announcements to the media is not new, the ability of any person to request personal notice of special meetings is new; that ability was previously limited to media personnel.

"Special" meeting notices must be posted in or near the City Clerk's Office and in at least 2 other designated public places in the city at least 24 hours before the meeting. *1 V.S.A. §312(c)(2)*. The City Council has designated the posting places as noted below. Notice of the special meeting must also be given to each member of the body (orally or in writing) at least 24 hours before the meeting (except the member may waive notice). *Id.*

In addition to posting the notice of a regular or special meeting, the amended law requires that the agenda for the meeting must also be posted; these could be printed on the same page. For a regular meeting, the agenda must be posted at least 48 hours before the meeting in four places: on the City's website, in or near the municipal office and in at least two other public places. The City Council has designated the following locations for all municipal public notices: outside the Clerk/Treasurer's Office, on the Fletcher Free Library bulletin board, and on the bulletin board at the Parks/Public Works building on Pine Street. The agenda for a special meeting must be posted in the same places at least 24 hours before the meeting. Agendas must be made available to any person before the meeting on request, oral or written, and any person (previously this just applied to news media) may request in writing (for the calendar year) that s/he be notified of all special meetings of a public body. When such a request is received, both the clerk of the public body and the Clerk/Treasurer's Office should be informed.

Another new requirement is that additions to or deletions from an agenda must be made as the first act of business at the meeting, but any other adjustment can be made at any time during the meeting. *Act 143, § 2, amending 1 V.S.A. § 312 (d)*. We believe this means you can still vote to table or postpone action on a matter when you get to it on the agenda, as that is taking an action on the item.

"Emergency" meetings are meetings needed to respond to an unforeseen occurrence or condition that requires immediate attention by the body. Emergency meetings can be held without a public announcement, without posting any notice, and without giving members 24 hour notice as long as some public notice is given as soon as possible before the meeting. There was no change in this provision of the law. *1 V.S.A. § 312 (c)(3)*.

Minutes

Minutes must be taken of all meetings of public bodies. *1 V.S.A. § 312 (b)*. The minutes must cover all topics and motions that come up in the meeting and give a true indication of the business that occurred in the meeting. Because the minutes are the basic notes of the meeting, a record of what was done, the audio or video recording of the meeting cannot be used as the minutes of that meeting.

There is no change to the requirements of the content of the minutes: Minutes must still include at least (1) a listing of all members of the body who were present, (2) a listing of all the other "active" participants in the meeting, (3) all the motions, proposals, and resolutions that were made, offered, and considered and what happened with them, and (4) the results of any votes, with a record of individual votes if a roll call is taken. *1 V.S.A. § 312 (b) (1)*. None of this is a change from existing law.

Minutes are public records and must be kept by the clerk or secretary of the body and must be available for inspection within 5 days from the date of the meeting. The new law, however, requires that the minutes be posted no later than 5 days from the meeting date to the body's designated website. *Act 143, § 1 amending 1 V.S.A. § 312 (b) (2)*. The City Council has designated the City's website, www.burlingtonvt.gov, as the designated website for posting.

Because for most of the City's bodies, the minutes will not be adopted within 5 days, they may be posted as "subject to approval" or "draft" until approval is obtained.

Executive sessions

Members may go into executive session (which means a session from which the public is excluded) only for certain specific, limited purposes. *1 V.S.A. § 313(a)*. To go into executive session there must be a vote by a majority of those members who are present in an open meeting, and the result of that vote must be recorded in the minutes. There must be a motion to go into the session, and the motion must indicate the nature of the executive session's business by specifically stating which of the permissible purposes in the statute apply. No other business may be conducted in the session. *1 V.S.A. § 313 (a)*. None of these requirements is new.

No formal action can be taken in executive session except for actions relating to the securing of options for the purchase or lease of real estate. Therefore, if the public body needs to take action, it must come out of executive session, resume its public meeting, and then take the action needed. *1 V.S.A. §313(a)*. No minutes of the session need to be taken and if they are, they are not made public by the provisions of § 312 (b). Again, none of these reasons is new.

These are the only reasons an executive session can only be held under 1 V.S.A. § 313:

(1) If the public body makes a specific finding that premature general public knowledge would clearly place the body or a person involved at a substantial disadvantage, the body can go into executive session to discuss contracts, labor agreements with employees, arbitration or mediation, non-tax grievances, pending or probable civil litigation or a prosecution to which the body is or may be a party, or confidential attorney-client communications made to provide professional legal services to the body. The requirement of a specific finding is new, and the legal topics have been changed. A statement of that finding of substantial disadvantage should be placed on the record as a motion. Then, a vote should be taken on that finding. Then a separate motion should be made to go into executive session. For instance, in the case of a contract under negotiation, the motion might be: "I move to find that premature general public knowledge of the city's contract with ABC Company would clearly place this council at a substantial disadvantage because the council risks disclosing its negotiation strategy if it discusses the proposed contract terms in public." In this hypothetical situation, the "substantial disadvantage" is the risk of losing the competitive edge in the negotiations by talking about the specific terms in public. For instance, once ABC Company hears the council talk about the maximum price it can afford to pay, ABC Company may refuse to take anything less than that amount. The second motion follows from the first and should recite the specific statutory provision that gives authority to enter into such session. For instance: "Based on the finding of substantial disadvantage, I move that we enter into executive session to discuss the city's contract with ABC Company under the provisions of Title 1, Section 313(a)(1)(A) of the Vermont Statutes."

(2) The body can go into executive session to discuss the negotiating or securing of real estate purchase or lease options. The word "lease" is new.

(3) The body can go into session to discuss the appointment or employment of a public officer or employee, but the body must make a final decision to hire or appoint in an open meeting and must explain the reasons for its decisions at the open meeting. The requirement to explain reasons for hiring or appointment in public session is new.

(4) The body can go into executive session to discuss a disciplinary or dismissal action against a public officer or employee, although the officer or employee has a right to a public hearing if formal charges are brought. This provision is unchanged.

(5) The body can go into executive session to discuss a clear and imminent peril to public safety. This provision is unchanged.

(6) The body can go into executive session to discuss records that are exempt from disclosure under the Public Records Act as long as the discussion of the record does not extend into the general subject to which the record pertains (unless it meets another purpose for executive session and that purpose has been stated on the record). There was some change to the language of this provision, but no real substantive changes.

(7) The body can go into executive session to discuss the academic records or suspension or discipline of students. This provision is unchanged.

(8) The body can go into executive session to discuss municipal or school security or emergency response measures if the disclosure could jeopardize public safety. This is a new provision.

Exceptions to Requirements:

Quasi-judicial proceedings, site inspections, & routine day-to-day administrative matters

The deliberations of a quasi-judicial public body are not subject to the requirements of §§ 312 or 313 (executive sessions). *1 V.S.A. §312(e)*. That means they are not required to be open to the public; prior notice and agendas do not have to be posted; and minutes do not have to be kept. A quasi-judicial proceeding is a proceeding in which the legal rights of a person or persons are adjudicated, which is conducted in a way so all parties have the chance to present evidence and cross examine witnesses, and which results in an appealable written decision. *1 V.S.A. §310(5)*. Please note that this only applies to the deliberations of that body. Deliberations do not include conducting business matters (electing officers, for example), taking evidence, or hearing the arguments of the parties--these sections of the meeting must be open to the public. *1 V.S.A. §§ 312 (e)*.

Similarly, the written decision of a quasi-judicial proceeding need not be adopted at an open meeting, as long as the decision will be a public record, *1 V.S.A. sec. 312 (f)*. This exemption means that after all the evidence has been taken, and the public body has entered into a deliberative session, it may discuss drafts of a written decision or issues that have arisen while preparing the written decision by email or phone without holding a formal meeting. This is intended to be a limited exception, however.

Also, site inspections for assessing damage or making tax assessments or abatement are not subject to the open meeting law. Neither is clerical work or staff work assignments. Routine day-to-day administrative matters that don't require action by the body can be conducted outside of a meeting as long as no money is appropriated, expended, or encumbered. *1 V.S.A. § 312 (g)*.

Enforcement and Response to Complaints

Learning these changes to the Open Meeting Law is important because a member of a public body or another person, on behalf of the public body, who knowingly and intentionally violates these provisions or knowingly and intentionally participates in the wrongful exclusion of a person from an open meeting shall be guilty of a misdemeanor and shall be fined up to \$500. While members of public bodies were subject to these remedies in the past, staff or other persons acting on their behalf had not been explicitly included.

The law delays the effective date for prosecutions of violations of posting to the website so that a failure to post minutes of a meeting held before July 1, 2015 will not be subject to prosecution for knowingly and intentionally violating the law. *Act 143, § 4, amending 1 V.S.A. § 314 (a)*. But starting next year, the failure to post will be subject to prosecution.

The new law now requires the Attorney General or an aggrieved party to notify the public body in writing of the specific violation and request a specific cure; if the public body cures the violation, it will not be liable for attorney's fees or costs. *1 V.S.A. §314(b)(1)*.

The new law also now requires a public response to any written notice of the violation. *1 V.S.A. §314(b)(2)*. When the public body receives a written notice from the AG or any other aggrieved person, asserting that there is a violation and requesting a cure, the public body must respond within seven business days by acknowledging the violation and stating an intent to cure it within 14 calendar days or by stating that it has determined there is no violation. *Id.*

Logistically, this means that the public body must immediately call a special meeting and provide adequate notice and warning of that meeting, including an agenda. During the meeting, the body should publicly discuss the situation and determine whether there was an inadvertent violation of the law. Based on this determination, it should issue a statement that either denies the allegation and states that no cure is necessary, or acknowledges that there was an inadvertent violation that will be cured within 14 calendar days. The public body should not publicly acknowledge a violation that is anything other than inadvertent without specific legal advice to do so. In the event that the public body is sued for a violation of the law, the court will assess attorneys' fees and costs based in part on whether there was a timely response to a notice of violation. *1 V.S.A. § 314(d)*.

Members of public bodies who receive a written complaint (including email) should immediately forward it to the chair of the public body; the City Attorney's Office, and the CAO so that the appropriate response may be made within the seven business days required. The chair of the public body is responsible for ensuring that the response is ultimately made, but that

response should not be made until the chair has consulted with the City Attorney's Office. The failure of a public body to respond within seven business days is treated as a denial. *1 V.S.A. §312(b)(3)*.

The cure that must occur within 14 calendar days, if the public body finds a violation, is made by either ratifying or declaring as void any action taken at (or resulting from) the meeting that was in violation and adopting specific measures that actually prevent future violations. *1 V.S.A. §314(b)(4)*. This requirement to respond and cure is new. Thus, how to cure a violation should be discussed with the City Attorney's Office before the cure is carried out.

The AG or any person aggrieved by a violation may bring an action in state civil court, but no later than one year after the meeting involved. *1 V.S.A. §314(c)*. This one-year limitation is new. If a court finds a violation, it must assess reasonable attorney's fees and costs incurred unless the public body had a reasonable basis in fact and law for its position and acted in good faith. Part of that good faith requires responding to the notice of violation in a timely manner. The court also need not assess attorney's fees and costs if the public body cured the violation. *1 V.S.A. section 314(d)*.

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28 July 2014

Burlington Planning Commission
149 Church Street
Burlington, VT 05401

Subject: Burlington Country Club Wetland Application

Dear Sir/Madam,

Enclosed is information regarding the application for a wetland permit filed by the Burlington Country Club with the Vermont Agency of Natural Resources for a golf practice facility off South Prospect Street in Burlington.

Complete copies of the Wetland Application are available for review and comment at the Burlington City Clerk's office, the Agency of Natural Resources office at 1 National Life Drive in Montpelier, and the Chittenden Regional Planning Commission in Winooski.

Sincerely,



Errol C. Briggs

ECB/s
Encls.

RECEIVED

JUL 29 2014

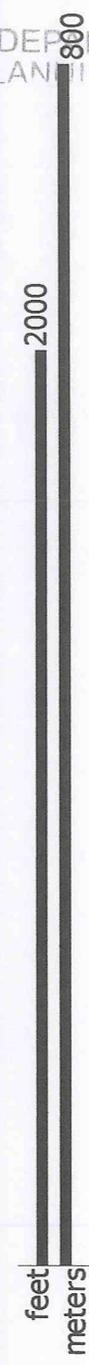
DEPARTMENT OF
PLANNING & ZONING



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DEPARTMENT OF
LANDING & ZONING



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