ARTICLE 2: ADMINISTRATIVE MECHANISMS

Introduction: This Article of the Burlington Comprehensive Development Ordinance establishes the appointment, authority, and administrative procedures for the various review boards and the administrative officer.

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PART 1: GENERAL ADMINISTRATIVE PROVISIONS

Sec. 2.1.1 Intent.

The administrative provisions delineated herein are intended to set forth rules and procedures pertaining to the following: planning commission, development review board, administrative officer, design advisory board, conservation board**,** and technical review committee. Each listed commission and board may adopt and enforce supplemental rules and procedures which are consistent with the terms of this article.

Sec. 2.1.2 Notice of Meetings/Minutes.

Meetings shall be noticed and minutes thereof shall be prepared and kept in accordance with the specifications of the then current version of Vermont's Open Meeting Law. The minutes shall be made available for public inspection during normal business hours at the department of planning and zoning. Any person shall have the right to a reproduction of the minutes, either in draft form or in final form. Draft minutes shall not be considered official until formally approved. Such person may be charged a reasonable fee for the reproduction of the minutes in an amount sufficient to cover the cost of reproduction.

Sec. 2.1.3 Quorum.

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

Sec. 2.1.4 Executive Sessions.

Executive Sessions shall be governed by the provisions of said Open Meeting Law.

Sec. 2.1.5 Conflicts.

In order to secure, protect, and preserve the highest level of public trust in the deliberations and decisions of boards and commissions, it is incumbent upon each member not only to scrupulously avoid any act which constitutes a conflict of interest established in law but also to avoid any act which gives the appearance of a conflict of interest. The provisions of Section 133 of the city charter as the same may be amended from time to time shall be fully applicable. In the event of any conflict between the requirements of Section 133 of the city charter and the provisions hereof, Section 133 shall be controlling. Additionally, a member shall withdraw from all participation, including all formal and informal discussion and voting, in any deliberation of a board or commission, or any of its committees, or from any issue upon declaration of a conflict of interest, or upon the determination by a majority of the body excluding the member in question that there is a reasonable public perception that a conflict of interest exists, and also if:

(a) the matter involves the member's own official conduct;

(b) participation in the matter would violate of a member's code of professional responsibility; or

(c) the member has such close personal ties to the applicant or other participant in the proceedings that the member cannot reasonably be expected to exercise sound judgment in the public interest.

Sec. 2.1.6 Ex Parte Communication:

When operating in a quasi-judicial capacity, no member shall communicate, directly or indirectly with any applicant, except in the presence of staff or at board or commission meetings, which have been properly noticed.

PART 2: PLANNING COMMISSION

Sec. 2.2.1 Authority.

There shall be a planning commission (or commission) created pursuant to the city charter and 24 V.S.A. Section 4321.

Sec. 2.2.2 Composition and Terms.

The planning commission shall consist of seven (7) members who shall be residents of the city. Planning commission members shall be appointed for four (4) year

staggered terms by the city council with mayor presiding. Any member may be removed by the city council with mayor presiding pursuant to city charter Section 129 as the same may be amended from time to time. Vacancies in these offices may be filled for the unexpired terms only by the city council with mayor presiding or otherwise pursuant to law.

Sec. 2.2.3 Voting.

Any action of the planning commission shall be taken by a majority of the commission members. All votes of the commission shall be recorded in the minutes of the meeting, indicating the vote of each member if a roll call is requested by a member. Abstentions shall not be permitted in a roll call vote unless a conflict of interest in present.

Sec. 2.2.4 Organization.

At its first meeting in July of each year, the commission shall, by majority vote of its members (excluding vacant seats,) elect one of its members to serve as chairperson and one member to serve as vice-chairperson. The commission shall also select a clerk who shall be either a commission member or city employee.

Sec. 2.2.5 Powers and Duties.

The planning commission shall exercise all duties specified in 24 VSA Ch.117, as well as any duties specified in the city charter or appropriately requested of it by the mayor or city council.

PART 3: ADMINISTRATIVE OFFICER

Sec. 2.3.1 Authority

This part is enacted under the provisions of 24 V.S.A. Section 4448.

Sec. 2.3.2 Appointment

The director of planning and zoning shall serve, ex officio, as the city's zoning administrative officer (ZAO or administrative officer). A chief assistant administrative officer shall be appointed annually by the city council upon the recommendation of the ZAO and the planning commission. Additional assistant administrative officers may also be appointed by the city council upon the

recommendation of the ZAO and planning commission. Any and all references in this ordinance to the ZAO or administrative officer shall mean to include the chief assistant administrative officer and any other assistant administrative officers assigned to a matter by the administrative officer unless otherwise specified in this ordinance.

Sec. 2.3.3 Powers and Duties

The administrative officer shall administer the provisions of this ordinance and any amendments thereto and other applicable bylaws literally, and shall have no power to permit any land development that is not in conformance with this ordinance.

(a) Referrals.

The administrative officer may refer questions of interpretation to the DRB if it is determined that the answer to the question has a bearing upon the jurisdiction of the DRB. Any such referral shall be considered an appeal of a decision of the administrative officer.

(b) Zoning Enforcement.

The administrative officer shall have ultimate responsibility for all matters relating to the enforcement of the zoning ordinance pursuant to Part 7 of this article. While protocols may be adopted by which the city's code enforcement office assists in zoning enforcement, the administrative officer shall retain the exclusive jurisdiction to make administrative interpretations (subject to appeal) concerning the terms of such ordinance.

(c) Assistant Administrative Officers

The chief assistant administrative officer and other assistant administrative officers shall have such authority and duties as shall be delegated to them by the ZAO.

Sec. 2.3.4 Issuance of Zoning Permits

The administrative officer shall be authorized to issue zoning permits, including certificates of appropriateness, in accordance with the provisions of this ordinance. If the administrative officer fails to act with regard to a complete application for a permit within 30 days, whether by issuing a decision or by making a referral to the appropriate municipal panel, a permit shall be deemed issued on the 31st day.

Sec. 2.3.5 Appeal of Administrative Decisions/Determinations

Any decision or act taken by the administrative officer made under this Article may be appealed to the development review board as specified under the requirements of Article 12.

Sec. 2.3.6 Issuance of Certificates of Occupancy

Only the administrative officer shall be authorized to issue certificates of occupancy in accordance with the provisions of this ordinance.

PART 4: DEVELOPMENT REVIEW BOARD

Sec. 2.4.1 Authority

There shall be a Development Review Board (DRB or board) created pursuant to *24 V.S.A. Section 4460*.

Sec. 2.4.2 Composition and Terms

The DRB shall consist of seven (7) members and two (2) alternates who shall be residents of the city. To the extent possible, members appointed to the board are encouraged to be professionals from any of the following or related fields: architecture, architectural history, landscape architecture, engineering, law, planning, contracting, archaeology, or real estate development.

DRB members and alternate members shall be appointed by the city council with mayor presiding to three (3) year staggered terms. Alternates may be assigned to serve in situations when one or more members of the board are disqualified or are otherwise unable to serve. Vacancies shall be filled by the city council for the unexpired terms and upon the expiration of such terms. All members shall continue to serve until a successor is appointed and qualified.

Any member may be removed for cause by the city council with mayor presiding upon written charges and after a public hearing pursuant to city charter Section 129 as the same may be amended from time to time.

Sec. 2.4.3 Rules of Procedure

The DRB shall adopt rules of procedure and rules of ethics with respect to conflicts of interest to guide its official conduct, as required under the 24 VSA §4461(a), and shall conduct its proceedings in accordance with Vermont's Open Meeting Law.

Sec. 2.4.4 Powers and Duties

The DRB shall have all of the powers and duties as set forth in 24 V.S.A. §4460 to administer the provisions of these regulations, in addition to those specifically

provided elsewhere in this ordinance. Such powers of review as described in 24 VSA Chapter 117 include:

(a) Review of right-of-way or easement for land development without frontage;

(b) Review of land development or use within an historic district or with respect to historic landmarks;

(c) Review of land development or use within a design control district;

(d) Review of conditional use applications;

(e) Review of planned unit development applications;

(f) Review of requests for waivers;

(g) Site plan review;

(h) Review of proposed subdivisions;

(i) Review of wireless telecommunications facilities;

(j) Appeals from the decision of the administrative officer;

(k) Review of requests for variances;

(l) Review of referrals from the ZAO; and

(m) Any other reviews required or authorized by this ordinance.

Sec. 2.4.5 Use of Alternate Members

Where a board member is unable to hear a particular matter, an alternate will be designated by the Chair to participate in that particular matter. Alternates may also be requested by the Chair to sit for a member if the member is not able to attend meetings on a long term basis (i.e. sabbatical, long term illness, etc.).

Sec. 2.4.6 Transitional Provision

The DRB became effective on October 1, 2000. Any reference in any past or present permit to the "Zoning Board of Adjustment" or to the "Planning Commission" shall be considered a reference to the board, and any and all matters which, prior to such date, would have been considered by the Zoning Board of Adjustment or the Planning Commission (regarding project review and/or permits) shall be considered to be under the exclusive jurisdiction of the DRB.

Sec. 2.4.7 Evidence and Testimony

The DRB, in connection with any of its proceedings, may examine, or cause to be examined, any property, maps, books or records bearing upon the matters concerned in such proceeding, may require the attendance of any person having knowledge of

the premises, may take testimony and require proof material for its information, and may administer oaths or take acknowledgement in respect of such matters.

Sec. 2.4.8 Decisions

(a) The DRB may recess its proceedings on any application, pending submission of additional information. It shall close the evidence promptly after all parties have submitted the requested information. It shall adjourn the hearing and issue a decision within 45 days after the adjournment of the hearing. Decisions shall be issued in writing and shall include a statement of the factual bases on which it has made its conclusions and a statement of the conclusions. The minutes of the meeting may suffice, provided the factual bases and conclusions relating to the review standards are provided in conformance with this subsection.

(b) In rendering a decision in favor of the applicant, the DRB may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of the 24 VSA Ch. 117, this ordinance and the municipal development plan then in effect.

(c) Within the period set forth in subdivision (a) of this subsection, any decision shall be sent by certified mail to the applicant and the appellant in matters on appeal. Copies of the decision shall also be mailed to every person or body appearing and having been heard at the hearing and a copy of the decision shall be filed with the administrative officer and the city clerk as a part of the public records of the city.

Sec. 2.4.9 Failure to Reach Decision

If the DRB does not render its decision within the period prescribed by Sec. 2.4.8, the board shall be deemed to have rendered a decision in favor of the applicant or appellant, and granted the relief requested as of the first day following such period.

PART 5: ADVISORY COMMITTEES

Sec. 2.5.1 Design Advisory Board

(a) Composition and Terms

There shall be a Design Advisory Board (or DAB) consisting of five (5) members and two (2) alternates appointed to staggered three (3) year terms by the city council with mayor presiding. A majority of the members shall be professionals from any of the following fields: architecture, landscape architecture, engineering, planning, contracting, archaeology, or real estate development. To the extent possible, at least two (2) of the members shall be professionals from the disciplines of history, architectural history, architecture or historical architecture. Any appointment to fill a vacancy shall be for the unexpired term. Any member may be removed at any time for just cause by vote of the city council with mayor presiding, for reasons given to the member in writing, and after a public hearing on the issue if the member so requests.

(b) Powers and Duties

In addition to other responsibilities which may by assigned by the city council, the design advisory board shall, upon request of the board or the administrative officer, review requests for certificates of appropriateness in accordance with the design review standards specified in Article 6, and prepare written advice and recommendations to the board. Such projects may include but not be limited to:

1. Applications involving site plan and design review subject to review and approval by the Board; and,
2. Applications involving historic buildings or sites; and,
3. Applications reviewed under the Major Impact (Sec. 3.5.2(b)), Planned Development (Art. 11), and Subdivision (Art. 10) provisions of these regulations.

Sec. 2.5.2 Conservation Board

(a) Composition and Terms

There shall be a conservation board (CB) composed of at least six (6), but not more than nine (9) members, appointed to four (4) year terms by the city council with mayor presiding. All members shall have a demonstrated commitment to environmental conservation. Individuals with training and experience in the following areas will be represented on the conservation board, if at all possible: environmental law, environmental science, civil engineering, and natural resource planning. Any appointment to fill a vacancy shall be for the unexpired term. Any member may be removed at any time for just cause by vote of the city council with mayor presiding, for reasons given to the member in writing, and after a public hearing on the issue if the member so requests.

(b) Powers and Duties

1. In addition to other responsibilities which may by assigned by the city council, the conservation board shall, upon request of the Board or the administrative officer, participate in the review of those projects which, due to

their size or nature of location potentially affect the environmental quality of the city, and prepare written advice and recommendations to the DRB. Such projects may include but not be limited to:

A. All projects reviewed under the Major Impact (Sec. 3.5.2(b)), Planned Development (Art. 11), and Subdivision (Art. 10) provisions of these regulations;

B. All projects proposed within the Natural Resource Protection Overlay District; and,

C. All projects on or within 100 feet of those areas that constitute a unique ecosystem as defined by the Vermont Natural Heritage Program.

2. The Conservation Board shall participate in review of all projects proposed within the Urban Reserve District in addition to its other duties.

Sec. 2.5.3 Technical Review Committee.

(a) Composition

The city's Technical Review Committee (or committee), as established by resolution of the city council on April 21, 1986 shall be composed of those department heads, or their designees, whose departments are or will be significantly affected by major development projects. The administrative officer shall serve as chair of the committee.

(b) Powers and Duties.

The Technical Review Committee may review all Major Impact (Art. 3, Part 5), Subdivision (Art 10) and/or Planned Development (Art. 11) projects at the discretion of the administrative officer either prior to or as soon as practicable following a formal submission of an application. Members of the committee shall provide written comments following such review and indicate for the applicant any and all pertinent regulations and identifiable impacts of the proposed development project. In assessing such impacts, the committee shall consider the cumulative impact of developments on city services and infrastructure within the proceeding twelve (12) month period. The comments of the committee are intended to provide general direction to the applicant and are not deemed binding on either the members of the committee or upon the applicant unless such comments are incorporated into a final decision of the DRB.

PART 6: PUBLIC HEARING AND PUBLIC NOTICE PROCEDURES

Sec. 2.6.1 Intent

The intent of these regulations is to set forth procedures for the notice and conduct of public hearings held to implement the provisions of this ordinance.

Sec. 2.6.2 Public Hearing and Notice

The DRB shall hold a warned public hearing as part of its consideration for all matters involving conditional use review, variances, administrative officer referrals and appeals, final plat review for subdivisions and any other matter as required by this ordinance.

(a) Public Hearing Notice:

A public notice for a warned public hearing shall be given not less than fifteen (15) days prior to the date of the DRB public hearing by means of all of the following:

1. Publication of the date, place, and purpose of the hearing in a newspaper of general circulation in the City of Burlington.
2. Posting of the same information in three or more public places within the City, including posting within view from the public right-of-way most nearly adjacent to the property for which an application is made.
3. Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to any public right-of-way. The notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where additional information may be obtained, and that participation in the DRB proceeding is a prerequisite to the right to take any subsequent appeal.

(b) Public Notice other than for Public Hearings:

Public notice for DRB proceedings regarding all other types of development review not otherwise requiring a public hearing, shall be given not less than seven (7) days prior to the date of the meeting, and shall include, at a minimum, all of the following:

1. Posting of the date, place, and purpose of the meeting in three or more public places within the City of Burlington.
2. Written notification to the applicant and to the owners of all properties adjoining the property subject to development, without regard to right-of-way. The notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where

additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

Sec. 2.6.3 Defect in Notice

No defect in the form or substance of any requirements in Section 2.6.2 above shall invalidate the action taken of the appropriate municipal panel, where reasonable efforts are made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the environmental court, or by the DRB itself, the action shall be remanded to the DRB to provide new posting and notice, hold a new hearing, and take a new action.

Sec. 2.6.6 Open Hearing

All hearings under this Article shall be open to the public except for executive or closed deliberative sessions called in accordance with Vermont's Open Meeting Law. No votes or other actions may be taken while in executive or closed deliberative session.

Sec. 2.6.7 Rules of Evidence

The rules of evidence at public hearings under this article shall be the same rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in 3 V.S.A. Section 810. The DRB may examine or cause to be examined any property or information bearing upon the matter(s) concerned in the hearing, require the attendance of persons having knowledge of the premises, take testimony, and administer oaths as further set forth in the Board's Rules of Procedure created pursuant to Sec 2.4.3.

PART 7. ENFORCEMENT

Sec. 2.7.1 Purpose

The purpose of this article is to set forth efficient and effective procedures for enforcement of the provisions of this ordinance.

Sec. 2.7.2 Definitions.

"Waiver Fee" shall refer to the payment that is made for a person to "waive" or relinquish a specific right (e.g. the right to a hearing) with respect to an action of the

court. For purposes of this ordinance, when a party is issued a municipal complaint ticket with a penalty fee and also a waiver fee, that party may consent to no hearing and instead pay only the designated "waiver" fee and send the payment with the ticket form in accordance with the procedures of the Judicial Bureau.

Sec. 2.7.3 Enforcement Officer: Administrative Officer and Designees

Pursuant to the provisions of Sec. 2.3.3, the administrative officer shall have ultimate responsibility for all matters relating to the enforcement of this ordinance. The administrative officer may request other city officials to assist with the enforcement of this ordinance, including planning and zoning staff, staff of the code enforcement office, building inspectors, fire marshal, police officers, staff of the city attorney's, and/or city constable.

Sec. 2.7.4 Entrance Upon Premises

The administrative officer, as representative of the DRB, may enter upon any land in the city to make examinations and surveys pursuant to 24 V.S.A. Section 4325(9). When entrance upon property is refused or denied, the administrative officer may seek a warrant for the purposes of conducting an examination of the premises. A warrant shall only be requested on the basis of administrative officer observations, when another city official has provided credible information to the administrative officer or upon notification by verified written complaint that a zoning violation allegedly exists.

Sec. 2.7.5 Observation or Complaints of Violations

Upon receipt of a written, signed complaint alleging a violation of this ordinance, the administrative officer shall investigate the complaint, take whatever action is warranted, and, if requested, inform the complainant in writing of actions that have been taken.

The observation of a violation on the part of the administrative officer shall be considered an Investigation, and the alleged violator may be issued a notice of zoning violation or a municipal civil complaint ticket.

Sec. 2.7.6 Persons Liable

The owner, tenant, or occupant of any structure or land or part thereof who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this ordinance, and any architect, builder, contractor, agent, or other person who knowingly participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this ordinance, may be held

responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

Sec. 2.7.7 Civil Offense, Penalties

A violation of this ordinance shall constitute a civil offense. Once a violation has been determined by the administrative officer, each day that a violation is continued shall constitute a separate offense. If an alleged violation is determined to exist, a formal notification shall be issued in the form of an enforcement action as described below.

(a) Municipal Civil Complaint Ticket:

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

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

(b) Enforcement Action:

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

Sec. 2.7.8 Processing Fee

If any enforcement action results in the need for a zoning permit for the subject property, the application fee(s) for processing such permit shall be twice the regular application fee charged if the application is made within 7 days of receipt of the violation notice, or triple the regular application fee if the application is made between 7 to 15 days after receipt of the violation notice, or triple the regular application fee plus $75/hour staff time up to $500 worth of staff time if the application is made after 15 days of receipt of the violation notice in order to recoup a portion of the administrative costs associated with the enforcement action. These fees shall be separate from any penalties that may be assessed hereunder

Sec. 2.7.9 Remedies

If any street, building, structure, or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained or used in violation of this ordinance, or in violation of one or more conditions of a permit issued under this ordinance, the administrative officer shall institute in the name of the city any appropriate action (see Sec. 2.7.10 below), injunction or other proceeding to prevent, restrain, correct or abate such construction or use, and to prevent, in or about such premises, any act, conduct, business or use constituting a violation.

Sec. 2.7.10 Appropriate Action

The administrative officer shall take the appropriate action, in an effort to remedy a violation(s) of a zoning permit. Such actions may include, but are not limited to any combination of the following:

(a) A new zoning permit;

(b) Referral to the DRB for review;

(c) Immediate removal of the structure;

(d) A denial of a zoning Certificate of Occupancy; and,

(e) Fines, as allowed under law, until the violation is rectified.

Sec. 2.7.11 Administrative Appeal

A decision by the administrative officer pertaining to an alleged zoning violation may be appealed to the DRB in accordance with the provisions of Article 12, provided that such appeal is filed within fifteen (15) days of the administrative officer's written decision.

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