Slide 1

As you will recall, a little more than a year ago the Council passed a resolution endorsing the development of "form-based" elements to the city's zoning regulations in order to support infill and adaptive reuse in our downtown, and advance long-held tri-partisan goals of reforming and modernizing the permitting process to ensure a timely and predictable review process.

In doing so it formed a Joint Committee with the Planning Commission to bring a final recommendation for formal adoption. As the Joint Committee is nearing the completion of it's work, members felt it important to bring the entire Council back into the conversation and bring you up-to-speed on what's been done.

This presentation provides an overview of form-based zoning codes generally - and our proposed form based code specifically – describing the separate components and how they are intended to work together. It provides background and context that is fundamental to gaining a clear and deeper understanding what we are doing, and most importantly why. It will be a refresher for some and maybe a first lesson for others.

Subsequent presentations and work sessions will delve into the details of each component individually.

Slide 2

We first have to start at the beginning…Everything starts with the plan and adopted development policy of the City that establishes clear goals and expectations regarding future development – in our case, _planBTV: Downtown and Waterfront Master Plan_,

Developed over ~2 years, and unanimously adopted by the City Council in 2013, this plan is focused on how to make the best use of our waterfront and downtown, and ensure they remain active and vital places for many years to come.

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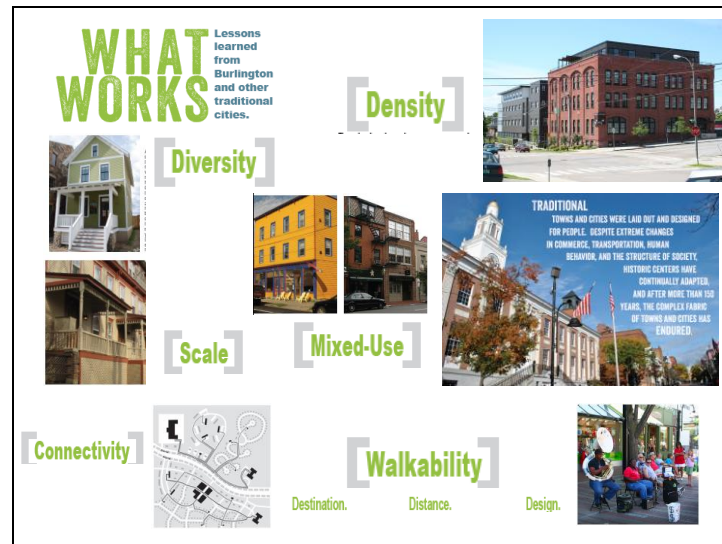
planBTV emphasizes that being a truly vital and active urban place means we need to think in terms of time-tested urban design and development principles that are at the foundation of successful communities around the world, and make sure that as Burlington continues to grow, new development happens in in a way that advances these principles.

In our case we aren't trying to create something new – a new community or downtown center. We love what we have and are trying to ensure that we maintain and expand upon an existing pattern of development, and making the best use of limited opportunities to do something a little more, a little different where the historic pattern has already been disrupted or never really established itself.

Slide 4

The plan includes illustrations of how underdeveloped areas in our downtown could be reimagined if we follow these principles, and established clear policy objectives for helping us get there.

One of the most important recommendations, directs us to re-tool our zoning to:
- facilitate infill within the scale and context our existing downtown,
- activate the streetscape for pedestrians to enhance economic vitality and make our downtown less auto-centric
- make the regulatory process more objective and predictable so that the type of development we want can actually get built

Slide 5

When creating new regulations to guide new development, people often have places like this in mind…

- Places people want to be – fun exciting mixed-use areas, and tranquil neighborhoods
- Several different things to do and places to go that are close to one another
- Interconnected network of streets and sidewalks
- Buildings that relate to and support the public realm
- Interesting things to look at – outside and inside buildings
- Other people to see and meet

Slide 6

However after everything is said and done, we often find we got a place like this instead…

- Destinations separated from one another
- No place to walk (even if you wanted to!)
- Auto-oriented with lots of parking, wide streets
- Buildings that bare no relationship to the streets they are on
- Bland and uninteresting buildings
- Little or no windows
- Buildings out of scale with surroundings

Slide 7

…something to do with zoning…

Why?

First, our local regulations **aren't focused on the things we really care about** the most - **what the development looks like and how it fits into the existing fabric of our community**, and those things that are fundamental to how people use and experience the new place.

Things like where's the front door, can I see what's going on inside (or outside), scale, diversity, mixed uses, proximity of destinations, connectivity, and putting the parking in the back.

"Perhaps what you measure is what you get. More likely, what you measure is all you'll get. What you don't (or can't) measure is lost" – *H. Thomas Johnson*

We must do a better job of measuring what we want and communicating that to developers so that they can build it for us.

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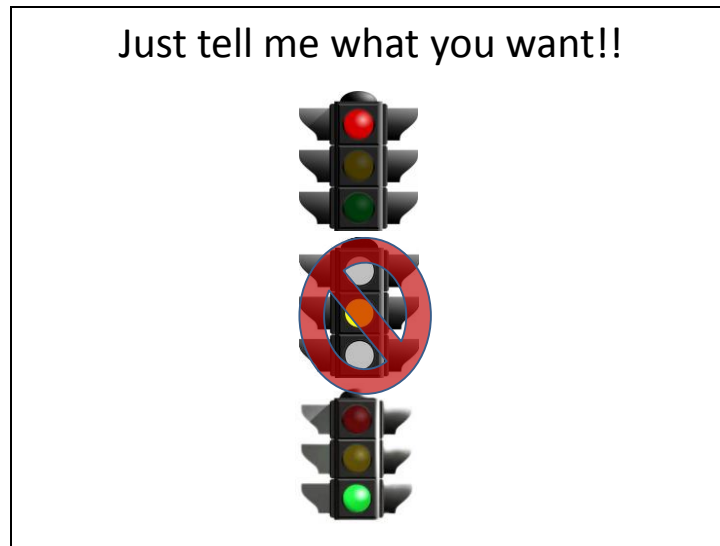
And second, because **the regulatory process itself may be making it impossible** (or at least very difficult) to build just about anything…

THE number one complaint we consistently get about Burlington permitting process is that it is highly unpredictable – the requirements are subjective and unclear, and the process is too long and unpredictable. We hear all the time: "Just tell me what you want (green lights), or don't want (red lights), but don't say maybe (yellow lights)!"

This largely because we are trying to be so flexible – we are willing to entertain lots of different options and ideas, but as a result need to very carefully consider every permit request because the regulations themselves offer no clear direction. As a result we sacrifice certainty for flexibility. At the end of the day however we can end up with neither.

Slide 9

Zoning regulations can't be <u>both</u> highly flexible and highly predicable all at the same time. Our current regulations offers great flexibility and discretion which means the outcome can be highly uncertain. We also "over-process" (lots of unnecessary hoops, Boards and criteria) development applications because of this uncertainly and a lack of confidence that we will get a good result.

Unpredictability is a really bad thing for:
- **Applicants** who are investing often hundreds of thousands of dollars just to go through the process. Many just choose to do nothing.
- **Neighbors** who are not clear about what could happen next door or in their neighborhood and fearful of any proposed change
- **The City** who is trying to encourage certain types of development in order to meet the needs of our community

As such, having greater predictability in our regulatory process is a very high priority for us, and this point has been reiterated many times by policy-makers.

So let's take a couple of minutes to understand what zoning does…

Slide 10

When it comes to zoning regulations, one size does not fit all, and not all regulations are created equal - there are different types of zoning regulations for different purposes

Slide 11

Zoning is a type of local land development regulation that helps to ensure a planned and orderly pattern of development – it is not intended to prevent development, but instead to guide development into the places where we want it,

There are many tools that fit into the zoning "tool box."

Historically, zoning has been largely **use-based**. Also known as "Euclidean" zoning, the purpose was to separate land uses from one another as a means of mitigating impacts from conflicting uses. As the US Supreme Court said in 1926 (Euclid v. Ambler Realty case that affirmed the legality of zoning), it is about "keeping the pigs out of the parlor."

While this was largely successful at keeping industrial uses out of residential areas, it also has been a significant factor in contributing to suburban sprawl. And because the physical form that the development takes is of secondary interest, the design of new development can often be out of context without the use of other regulatory tools.

As a result, other zoning tools have been added to the toolbox that directly speak to measuring the actual impacts or limits that new development can have (performance based), and those that concentrate on the physical form of new development (form based).

Ultimately, most communities - including here in Burlington- use a combination of these tools to regulate new development.

Slide 12

With that as some background, let's now talk about form based zoning specifically…

As I mentioned on the previous slide, FBC's are primarily concerned with the physical form that new development takes, particularly what happens in the "public realm" - both the **Private Frontage** (the space between the building façade and the ROW) and the **Public Frontage** (the space within the ROW) - to ensure that they are all working together to create the consistent type of place - be it a commercial, residential or mixed use.

Why – because this is where people experience development on a day-to-day basis, and therefore is most important to creating places where people want to be. **It's all about place-making**.

While use remains an important consideration, it is of secondary importance to the scale and character of the buildings and built environment that in many situations serve to define and modify the use and activity within. In this case, function often follows form.

Slide 13

Because of their emphasis on creating great places, form based codes are particularly well-suited for creating places where people – **particularly pedestrians** - want to be – mixed-use downtowns and compact residential neighborhoods.

Getting the physical form right is critical to sustaining and enhancing economic vitality because the most important factor in attracting people to a place is in fact…other people.

Slide 14

As they say "a picture is worth a thousand words" and as a result, modern FBC's are often highly illustrated, and very objective and prescriptive in their requirements. As a result they offer much greater clarity and predictability in the application and review process – they measure what we want development to actually do for us in a given place, and are very clear about what the new development must do in order to be approved.

This level of predictability and certainty to the regulatory process is of great benefit to applicants who are putting substantial investment capital at great risk, and to the community that will live with the result for a very long time.

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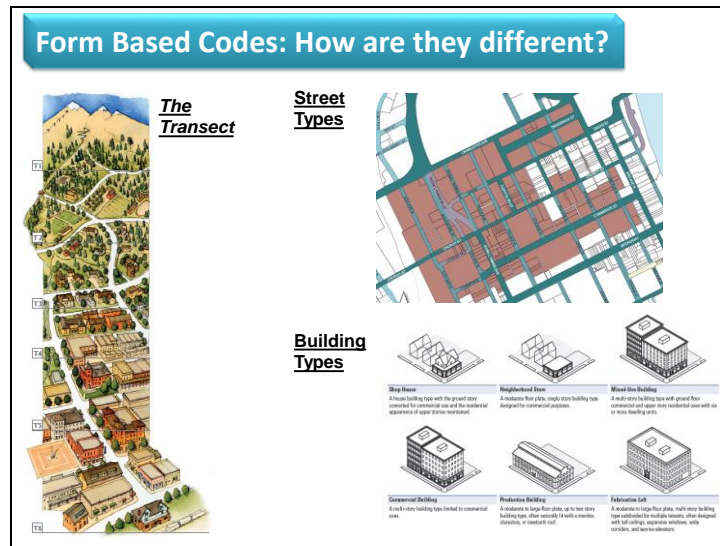
Like there are many different types of zoning codes, there are many different approaches to form-based zoning codes:

- Many are built on a progression between the least to the most developed parts of a community– often referred to as the "transect". Each transect is defined based a comprehensive set of physical characteristics – scale, intensity, character and use – that define a place and are replicated to ensure that the community's vision for those places can be realized.

- Others may be based on a range of street types (commercial streets, boulevards, avenues, neighborhood street, etc.) that form the connective tissue that ties parts of a community together and serve as the stage from which we experience different parts of our civic life.

- Still others are based on a range of building types that are represented in our communities and are among the most tangible examples of what differentiates different parts of a community and how they look and feel.

- And of course many codes contain variations of these different types and more.

Regardless of the approach, **the emphasis is always placed on the physical form that new development takes, and how people relate to it**.

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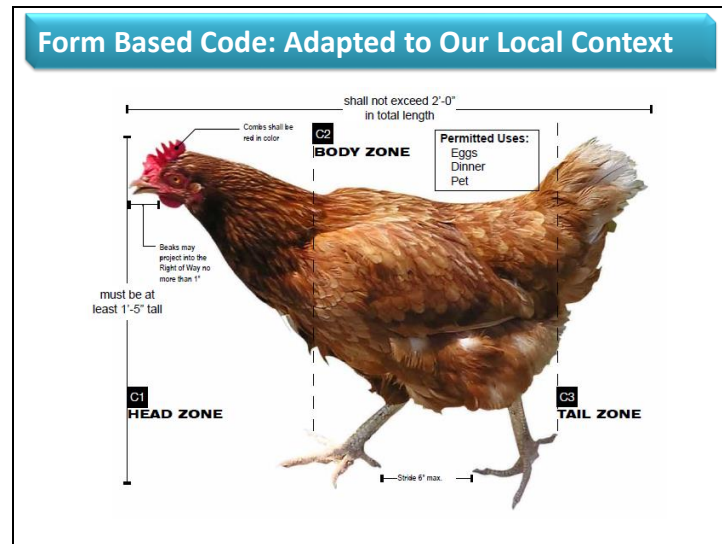
Virtually anything can be coded…one simply needs to measure the key characteristics of what defines the place (or thing) you are trying to create.

The desired form is "sugared down" to its most basic elements that we really care about which are used to prescribe what can be done in the future.

Unlike the "copy and paste" zoning ordinances of old, form based regulations are "calibrated" to the specific desired characteristics and conditions of the type of place they are trying to create.

Here in Burlington we have conducted synoptic surveys of existing development and patterns in order to insure we have "measured what we want." This, coupled with requirements in our existing zoning, form the specific requirements built into the proposed code to ensure "we get what we measure."

Slide 17
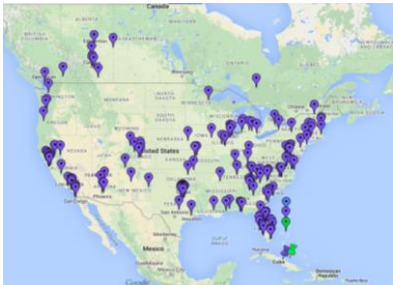
The concept behind form based coding is far from new. Communities such as Burlington have struggled with ways to regulate the form that new development takes for decades.

Many modern FBC's are derived from the *Smart Code* (originally developed by Duany Plater-Zyberk & Company in the 2003) after more than two decades of research. Since that time it has been continuously updated with help from a variety of professionals from planning and development disciplines, and many other variations of form-based regulations have also been developed.

The current generation represent a state-of-the-art regulatory tool tested in hundreds of communities around the country and increasingly beyond. Almost 280 adopted "form based codes" are in place with at least another 200 currently under development. Urban and rural, small and large communities are turning to a more form based approach to ensure that new development fits better into their existing development patter or to transform auto-dominant places into pedestrian-friendly mixed use destinations.

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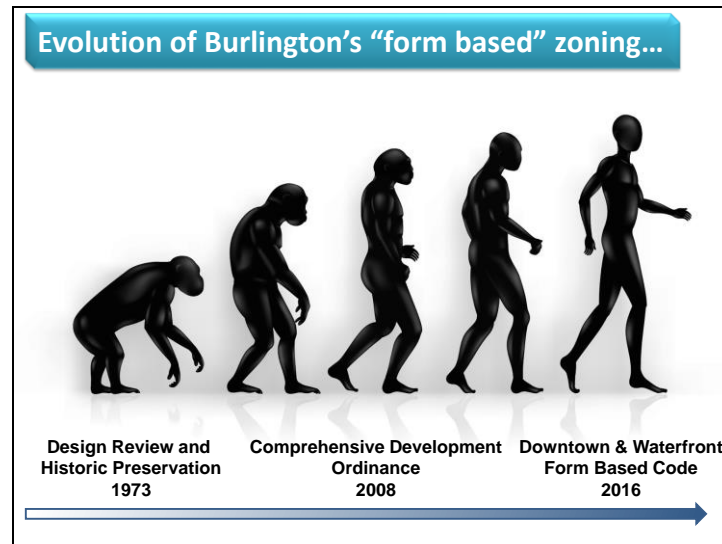
Burlington first adopted zoning to regulate land development in the 1940's…since that time our regulations have been regularly adapted to address new challenges and objectives.

Creating a more thoughtful form-based approach in our zoning is a continuation of an evolution going back more than 30 years when the city first established a design review process:
- originally "borrowed" from Brookline, MA – all text, highly subjective, process was very discretionary
- Updated in 2008 – added much more detail, some new objective standards and more staff opportunity for decision-making, but still very subjective

Our regulations today can be best described as a "hybrid" zoning code – largely euclidean, but containing numerous performance (stormwater and lighting) and form based (design review) elements as well.

It is very clearly the right approach for us to be using given our pre-occupation with high quality urban design, and desire for a more pedestrian-friendly downtown and waterfront.

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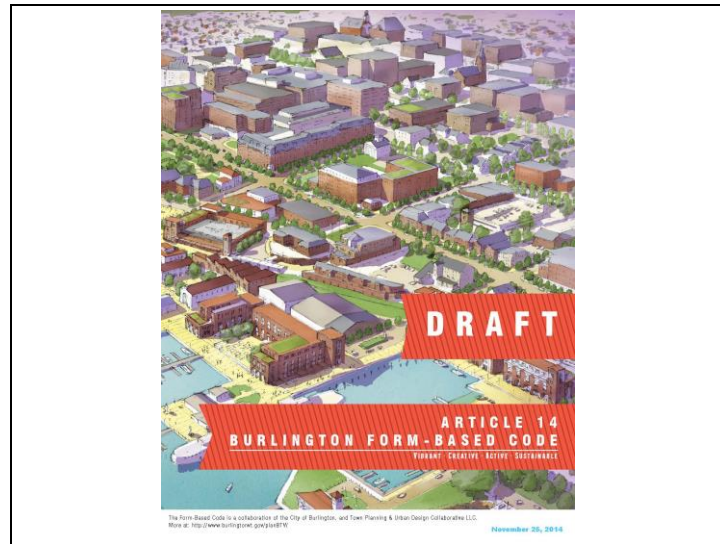
So with that as a background, let's take the last few minutes to focus on what we have been working on for BTV…I won't go into great detail tonight. Subsequent presentations and work sessions will delve into the details of each component individually.

This version (v.10+?) is the result of nearly 3 years of work. We started with an initial draft prepared by our consultants (TPUDC) that has since been significantly revised and re-worked by the Planning staff. We have added ideas and techniques found in several other state-of-the-art codes currently in use, and worked hard to ensure it works within our existing CDO and in Burlington.

In the fall of 2013 we asked a "Think Tank" of architects, LA's and developers; City staff from several other departments include CEDO, Parks, and DPW; and our consultant team to look at it closely and critically, and give us their feedback which has been tremendously helpful. And last winter we asked a handful of design professionals to actually test it on some existing sites. We asked them try to push in the envelope in at least one example so we could try to anticipate some worst-case scenarios, and as we should expect they enthusiastically took us up on our challenge!

Since last December, Planning staff – with support and collaboration from CEDO and the Mayor's Office - has been working with the Joint Form Based Code Committee – comprised of City Councilors and Planning Commissioners – to get up-to-speed on what we are working on, and prepare and refine a final draft for adoption.

Slide 20

Fundamentally our development and use of a form based code is about:
- Implementing the vision for the downtown and waterfront adopted in planBTV: Downtown and Waterfront
- and in so doing, facilitating opportunities to realize new infill and taking advantage of opportunities to develop under-developed sites
- Finally it's about modernizing the regulations and the process to clearly describe the kind of new development we want, and make the process more predicable

This is the charge we were given by the City Council - both in the *planBTV: Downtown and Waterfront Master Plan* and in the resolution creating the Joint Committee – and it remains unchanged.

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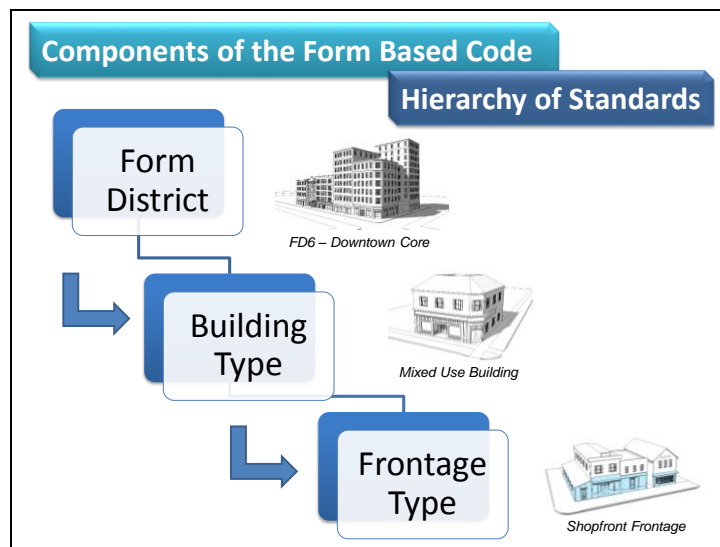
Our Code is organized around a simple hierarchy with the Form District serving as the foundation or starting point. Each Form District defines the various Building Types that are permitted in the district, and each Building Type defines the various Frontage Types that may be associated with that Building Type.

The Form Districts establish a context for new development based on what's already there, and then describes the type and scale of new development that is appropriate to that context. It doesn't worry about every possible detail of development, but instead focuses on the elements and characteristics that are most important to that context.

Form Districts: similar to zoning districts which divide a community (or part of a community) into areas of common development characteristics.

Building Type: describes the generic form and characteristics of a variety of different types of buildings. The regulations are not about architecture or use, but instead the basic form of the building.

Frontage Type: describes the area between the Facade of the building and the Frontage line, inclusive of its built and planted components. It's about how people on the outside understand, experience and gain access to the building.

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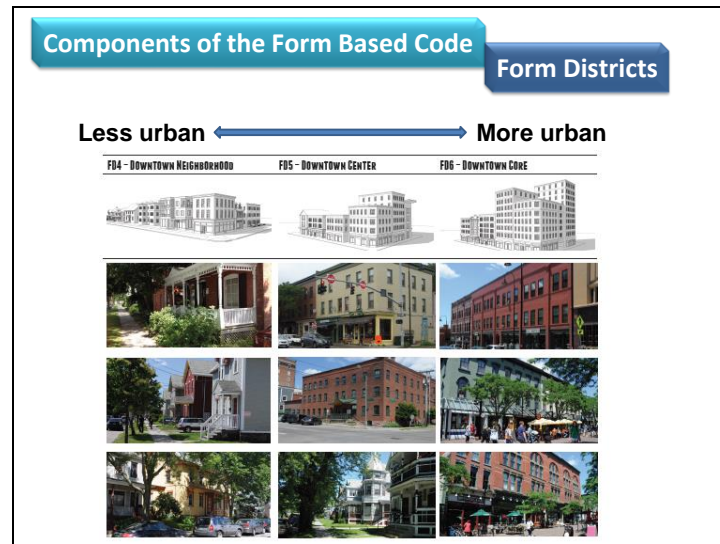
The Code is grounded in a series of "Form Districts" – remember the "transect"?

Form Districts are essentially zoning districts which divide a community (or part of a community) into areas of common development characteristics. These Form Districts form the foundation for all other development standards by defining where on a lot development may be located and its intensity, the building types and heights that are permitted, and permitted and conditionally permitted uses.

The Form District concept design is organized along a transect that describes development from the most to least urban places within a community.

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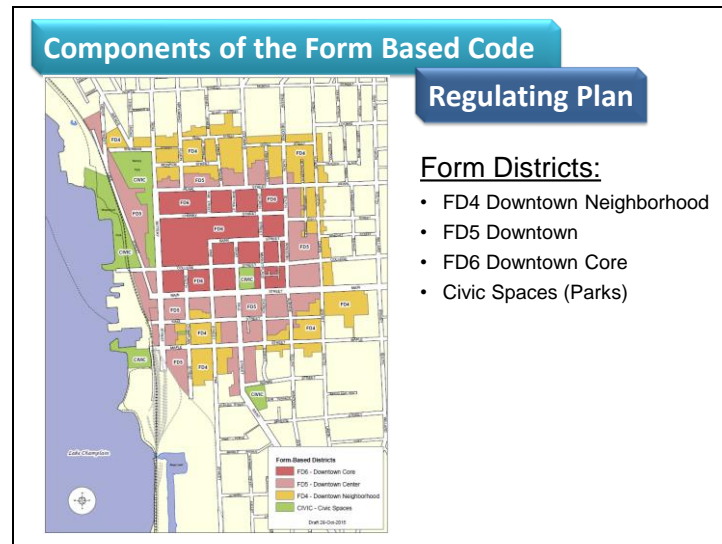
The Form Districts are established through a "Regulating Plan" that is a Zoning Map defining **WHERE** development of certain types can occur.

This map is VERY similar to the current zoning districts in this part of the city, and is limited to the approximate extent of the study area for the plan:
- FD6 Downtown Core is equivalent to the current Downtown district
- FD5 Downtown is equivalent to the remainder of the current Mixed Use Downtown district surrounding the Downtown
- FD4 Downtown Neighborhood is roughly equivalent to the current High Density Residential district
- Civic Spaces are existing City parks currently RCO-R/G

The Joint Committee has been very careful to ensure that many of the existing development limits (height, setbacks, uses and intensities) found within the existing zoning are maintained to the extent possible. Their goal has been to create a new framework of development regulations without making radical or controversial modifications to the regulations themselves.

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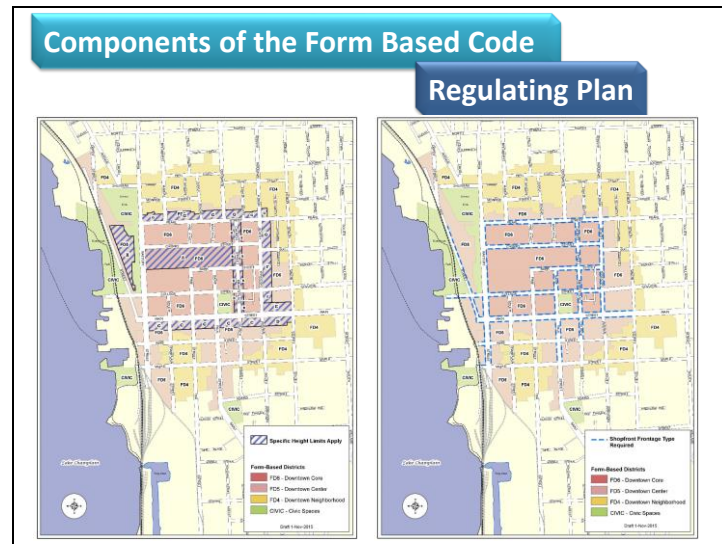
The Regulating Plan also identifies areas where 1) building heights are allowed (or restricted) differently that in the underlying Form District, and 2) where a Shopfront Frontage Type is required in order to further activate a street for more intensive pedestrian activity.

With a couple of exceptions, the height limits are the same as the current zoning allows (one being the area for the BTC which is currently a placeholder for the development agreement), and the shopfront requirement is a more nuanced way of ensuring ground floor retail-type activity than we currently require.

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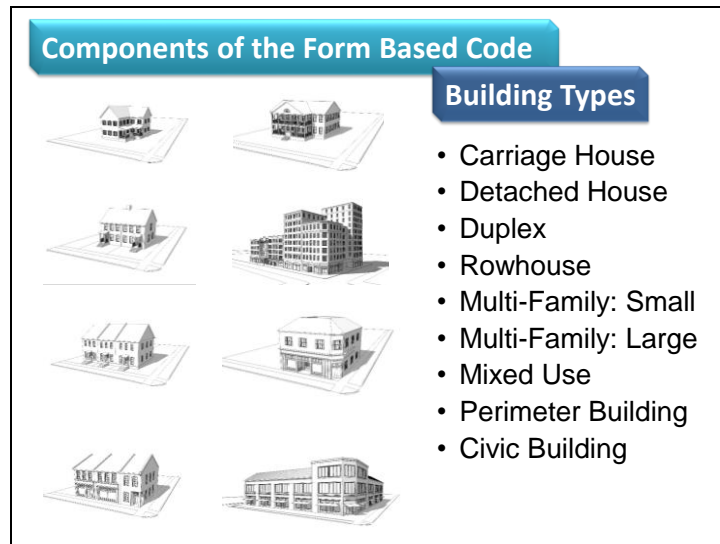
Within each Form District, a collection of Building Types are allowed based on the general context of the Form District. New development can <u>choose</u> which building type they want to follow based on what they are trying to create.

Building types describe the generic form and characteristics of a range of buildings that may be permitted within any Form District. Building types don't address uses specifically, but use is often inherent to the characteristics of a particular type of building based on its form, size and other characteristics. The regulations are also not about architecture, but instead the basic form (configuration, size and shape) of the building type.

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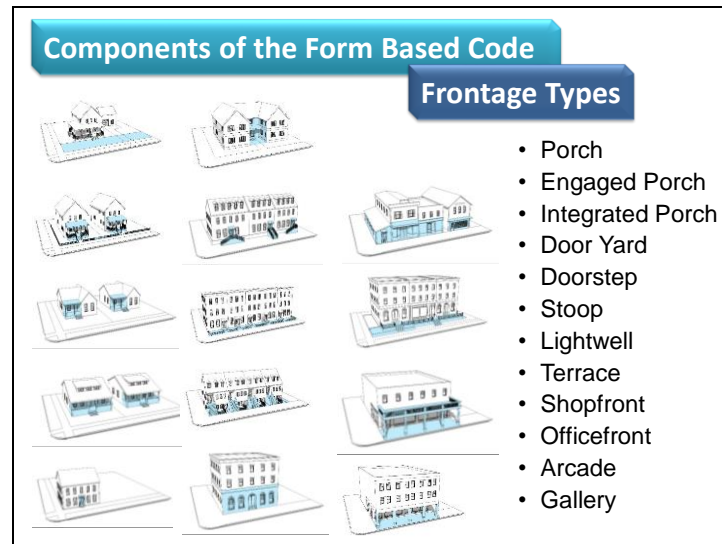
And for each Building Type, a collection of Frontage Types are allowed based on the general characteristics of the Building Type and context of the Form District. Again, new development can choose which frontage type they want to follow based on the building type they selected and what they are trying to create.

Private **Frontage Types describe the various ways that a building interfaces with the public realm** and specifically the area between the Facade of the building and the Frontage line, inclusive of its built and planted components.

It's about how the building interacts with the public realm, and ultimately how people interact with the building, and understand, experience and gain access to it.

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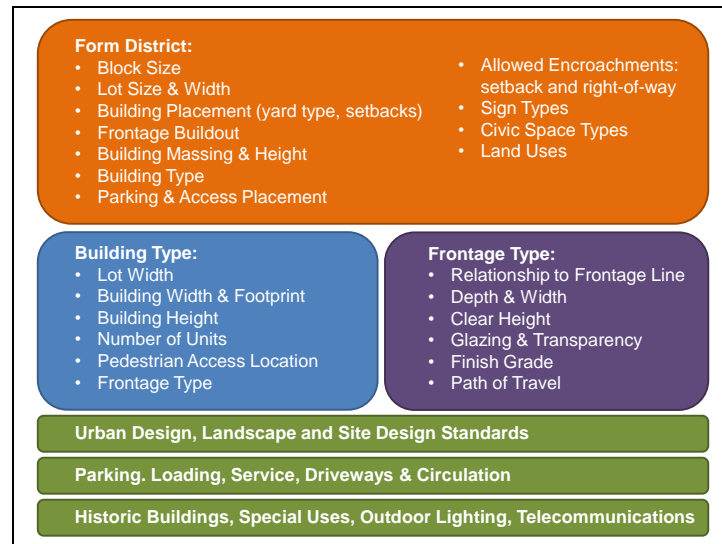
Each Form District, Building Type and Frontage Type includes a common set of standards, and there are also more generic standards that are applicable across all development regardless of the Form District.

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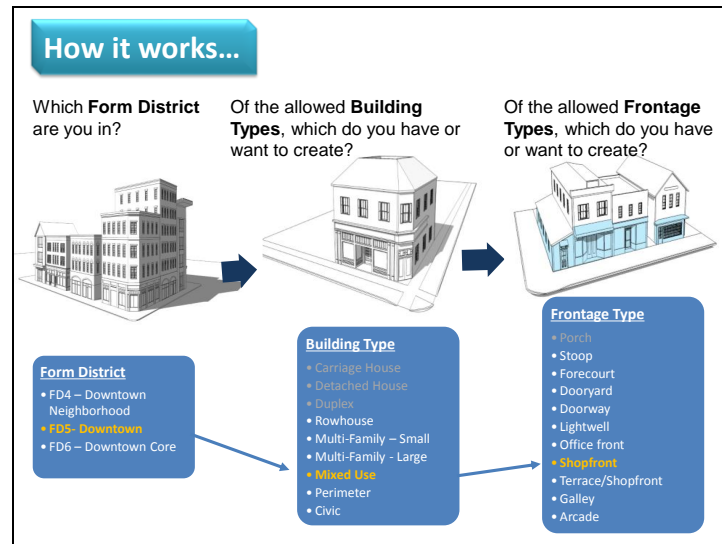
So to reinforce how this works…

Depending on your location, new development picks from a menu of options that each come with their own set of characteristics and standards.

It's very important to understand that no regulation is intended to be read like a book – there is no flow from beginning to middle to end. Think of it instead as a menu or cookbook – Breakfast, Lunch and Dinner or Appetizers, Soup & Salad, Entries, Deserts and Beverages – many different options to choose from within any given category depending on the meal and cuisine. But all omelets or soups possess a common set of characteristics that make them what they are, but still there is tremendous variation from one to another.

Slide 29

The last bit to mention is process…

We recognize that the form based requirements can be very restrictive and may not always work in every situation. We also don't want to stifle creativity – in-fact we want to encourage and support it. So we are making an effort to build some greater flexibility into the code. Our current regulations are very challenging in this regard with few opportunities to vary from any specific requirements.

As such we include three opportunities to seek and grant relief from a specific standard are provided:

- **Administrative Relief** – as provided for within the Code for specific situations and with prescribed limitations and requirements;
- **DRB Relief** - Relief from any non-numerical standard, and any numerical standard by no more than 20%, with prescribed findings;
- **Variance** – a last resort enabled under state law but subject to very strict findings

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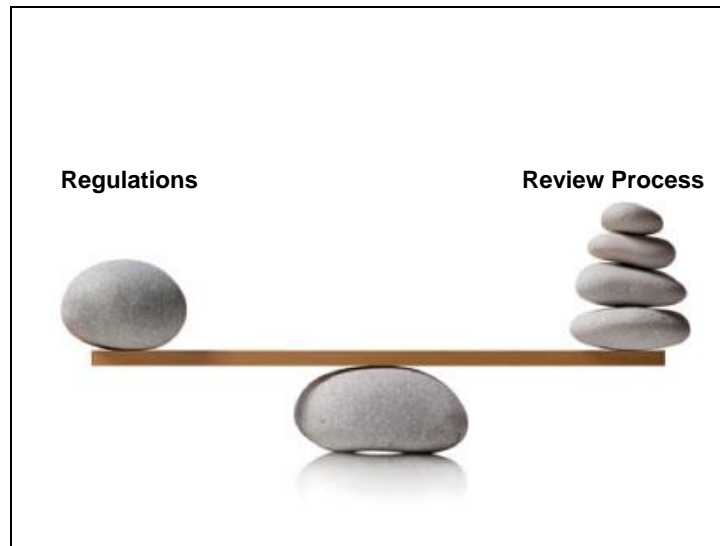
Through the process of developing any development regulations, it's important to find the right balance between what the regulations specifically allow, and the best process for administering and interpreting them. That balance point is going to be different for every community.

If the regulations are very subjective and open to wide interpretation, then you may need to have a more discretionary review process for interpreting and applying them to a particular development. On the other hand, if the regulations are very objective and easy to understand, then there is no need for an elaborate review process unless you are providing for some flexibility to account for unforeseen situations or out-of-the-box thinking.

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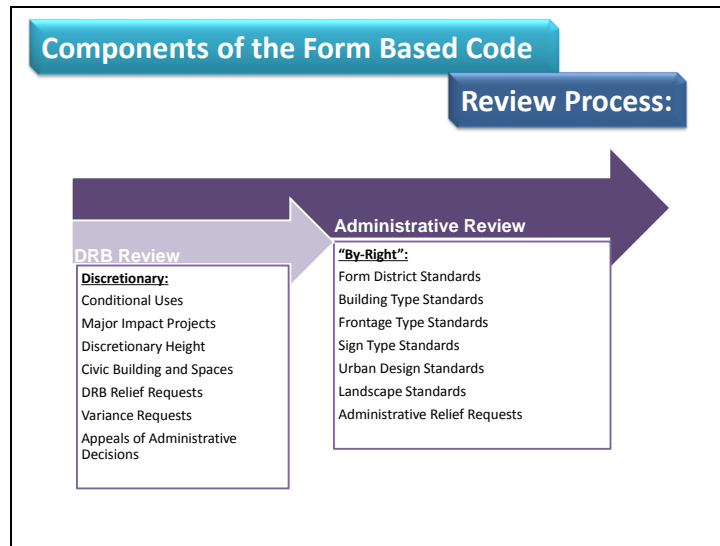
Because of the specificity and prescriptive nature of the development standards, most projects following the form based code are reviewed and approved administratively "by-right." This means that it they meet **all** of the requirements, the project is entitled to a permit issued administratively by staff. This can happen because the form based code provides a comprehensive set of clear and objective standards which all development much meet leaving very little room for discretion in decision-making.

Certain projects however (involving a Conditional Use, Major Impact, or seeking relief or a variance) will still need to go through a discretionary review by the DRB – at least in-part. The DRB (and DAB in some cases) will only review a project under very specific criteria pertaining to the specific review needed/requested rather than every element of the regulations.

Slide 32

We are at the point in the process where we are finalizing our fine tuning of the draft code. The Joint Committee expects to making their final recommendation to the Planning Commission around the end of the month. This will initiate the adoption process and will be followed by a required Public Hearing before being forwarded on to the City Council and their required Public Hearing before any final action can be taken.

Given the active involvement of both Planning Commissioners and City Councilors serving as a de facto Ordinance Committee for both bodies, we would anticipate that any changes to the final draft once introduced (if necessary) will be sent back to the Joint Committee rather than to the Ordinance Committee of either respective body.

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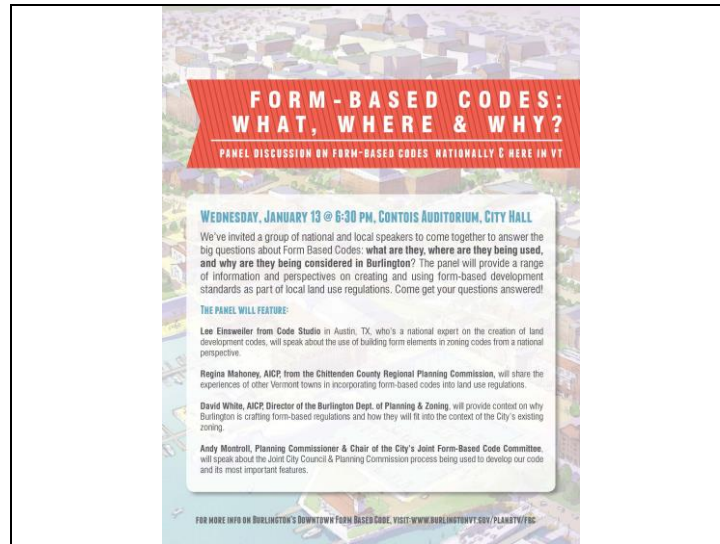
In closing I want to make sure you all have on your calendars an event we are planning for next Wednesday evening..

We've very excited to present, with generous support from the Kauffman Foundation, a panel and keynote speaker to discuss the creation and use of form based zoning codes in both a national and local context.

Come with your questions to what we hope will be a very informative evening.

In the meantime, we welcome your questions…