



**CITY COMMISSION/PLANNING BOARD
WORKSHOP SESSION AGENDA
SEPTEMBER 18, 2017
7:30 PM**



DPS Facility, 851 South Eton, Birmingham, MI 48009

Navigating through the agenda:

- Use the bookmarks on the left to navigate through the agenda.
- Tablet Users: Tap the screen for available options, select "Open in", select "Adobe Reader". The agenda will open in Adobe Reader. Scroll through the bookmarks to navigate through the agenda.
(The Adobe Reader application is required to download the agenda and view the bookmarks. This free application is available through the App Store on your tablet device.)

**BIRMINGHAM CITY COMMISSION /
PLANNING BOARD JOINT WORKSHOP SESSION
SEPTEMBER 18, 2017
DPS FACILITY, 851 SOUTH ETON
7:30 P.M.**

WORKSHOP SESSION

This will be considered a workshop session. No formal decisions will be made. The purpose of this workshop format is to focus on problem definition and desired outcomes. Each commissioner will have an opportunity to share their perspective and thoughts on problems and possible solutions and engage the Planning Board for input. Citizens will have an opportunity to make public comment at the end of the workshop meeting.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mark Nickita, Mayor

II. ROLL CALL

Cheryl Arft, Deputy City Clerk

III. ITEMS FOR DISCUSSION

A. Current Issues:

1. Review of City-Wide Master Plan Consultant Request for Proposals
2. Review of Current Draft of Personal Services Definition

IV. PUBLIC COMMENT

V. ADJOURN

NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.

Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al [\(248\) 530-1880](tel:(248)530-1880) por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).



MEMORANDUM

Planning Division

DATE: September 15, 2017

TO: Joseph A. Valentine, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Comprehensive Master Plan Update

The City of Birmingham has a history of implementing master plans and ordinances that are intended to guide and regulate the growth of the City in order to promote the type of development that the citizens and property owners value. Currently, the development of the City's planning and zoning regulations are principally governed by six documents which are currently available on the City website:

- The Birmingham Future Land Use Plan (1980);
- The Downtown Birmingham 2016 Plan (1996);
- The Eton Road Corridor Plan (1999);
- The Triangle District Plan (2007);
- The Alleys and Passages Plan (2012); and
- The Multi-Modal Plan (2013).

The Future Land Use Plan ("the Plan") was the last comprehensive master plan to be adopted by the City (1980). The Plan made specific recommendations throughout the City that are intended to protect residential areas while at the same time made recommendations that would allow the commercial areas to thrive. Since the adoption of the Plan, the City has updated the master plan through the additional subarea plans listed above. Those plans have been implemented through the three overlay zones (Downtown, Triangle and Alleys and Passages) and the rezoning of the rail district to MX (Mixed Used). The Multi-modal plan adopted in 2013 is now the guiding document for the City in regards to transportation infrastructure, major right of way improvements, and user accessibility issues. The cumulative effect of all the sub area plans has essentially updated the Future Land Use Plan in almost all of the commercially zoned areas of Birmingham.

The updating and implementation of master plans and subarea plans are important aspects of maintaining and improving the standard of excellence that is expected in Birmingham. Although there have been the subarea plans listed above established in the City over the past several years, there has not been a comprehensive Master Plan update completed since the 1980 Future Land Use Plan. There are several components of the plan that included demographic data and projections that were based on a twenty year time frame. In addition, many of the land use policies and system analysis may be considered outdated now considering the advancements in technology and lifestyle habits. Accordingly, much of the information provided in the plan was intended to be projections to the year 2000. The following list outlines

the information in the plan that is out of date or policies that should be considered for review and updating:

- Future population growth
- Existing land use
- Residential Development
- Multi-family Development
- Regional and National Development Trends
- Transportation System
- Land Use Policies
- Future Land Use Plan

Much of this information may just require a simple review to verify that the recommendations and analysis are still relevant. In other instances, there are areas of the plan such as the Transportation System chapter that has been addressed by the Multi-Modal Plan. The City has effectively updated many sections of the Master Plan in recent years and the new subarea plans could be incorporated into a new comprehensive Master Plan document. In addition, there are many issues prevalent in the planning field today that were likely not considered at the time the current plan was created, such as aging in place, housing diversity, and green infrastructure.

At the June 20, 2016 joint meeting of the City Commission and the Planning Board the need to update the City's existing comprehensive master plan was discussed in detail. A draft scope of work was reviewed by the group, and commission and board members provided input on the relevant sections to be updated, and expressed a desire to conduct a public visioning process to gather input from residents and business owners for integration into a strategic vision for the neighborhood and commercial areas within the Plan. Additional areas of study recommended to be included in the update as well were a City-wide parking analysis and the impact of emerging technology on future planning.

At the September 19, 2016 joint meeting of the City Commission and the Planning Board, the draft RFP for a City-wide comprehensive master plan was discussed. City Commissioners and Planning Board members reviewed the RFP section by section and proposed numerous alterations. All of the requested changes have now been made.

Accordingly, please find attached a revised draft Request for Proposals ("RFP") for your review that includes updates to the Scope of Work based on all recent discussions at joint meetings, and City Commission meetings.

Following the joint meeting with the Planning Board, the RFP will be presented to the City Commission for approval to issue at a regular meeting.



REQUEST FOR PROPOSALS FOR MASTER PLAN UPDATE

Sealed proposals endorsed **"MASTER PLAN UPDATE"**, will be received at the Office of the City Clerk, 151 Martin Street, PO Box 3001, Birmingham, Michigan, 48012; until _____ at 3:00pm after which time bids will be publicly opened and read.

The City of Birmingham, Michigan is accepting sealed bid proposals from qualified professional firms to conduct a comprehensive master plan update. This work must be performed as specified in accordance with the specifications contained in the Request For Proposals (RFP).

The RFP, including the Specifications, may be obtained online from the Michigan Inter-governmental Trade Network at <http://www.mitn.info> or at the City of Birmingham, 151 Martin St., Birmingham, Michigan, ATTENTION: Jana L. Ecker, Planning Director.

The acceptance of any proposal made pursuant to this invitation shall not be binding upon the City until an agreement has been executed.

Submitted to MITN:

Deadline for Submissions:

Contact Person:

_____ at 3:00pm
Jana L. Ecker, Planning Director
P.O. Box 3001, 151 Martin Street
Birmingham, MI 48012-3001
Phone: 248-530-1841
Email: jecker@bhamgov.org



REQUEST FOR PROPOSALS FOR MASTER PLAN UPDATE

Contents

INTRODUCTION.....	5
SCOPE OF WORK	5
INVITATION TO SUBMIT A PROPOSAL	10
INSTRUCTIONS TO BIDDERS.....	11
EVALUATION PROCEDURE AND CRITERIA.....	12
TERMS AND CONDITIONS.....	10
CONTRACTOR'S RESPONSIBILITIES	13
CITY RESPONSIBILITY	14
SETTLEMENT OF DISPUTES.....	14
INSURANCE	14
CONTINUATION OF COVERAGE	142
EXECUTION OF CONTRACT	14
INDEMNIFICATION	15
CONFLICT OF INTEREST	15
EXAMINATION OF PROPOSAL MATERIALS.....	15
PROJECT TIMELINE.....	153
ATTACHMENT A - AGREEMENT	16
ATTACHMENT B - BIDDER'S AGREEMENT	20
ATTACHMENT C - COST PROPOSAL.....	21
ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM.....	24

INTRODUCTION

For purposes of this request for proposals the City of Birmingham will hereby be referred to as "City" and the private consulting firm or firms will hereby be referred to as "Contractor."

The City of Birmingham, Michigan is seeking a comprehensive update of the City-wide master plan, and is accepting sealed bid proposals from qualified professional planning firms who have experience drafting comprehensive master plan updates. Qualified Contractors must demonstrate experience in conducting strategic visioning sessions, encouraging public participation, community consensus building, demographic and land use analysis, parking analysis, planning best practices, and have a strong background working in traditional, walkable communities.

During the evaluation process, the City reserves the right where it may serve the City's best interest to request additional information or clarification from proposers, or to allow corrections of errors or omissions. At the discretion of the City, firms submitting proposals may be requested to make oral presentations as part of the evaluation.

It is anticipated the selection of a firm will be completed by _____. An Agreement for services will be required with the selected Contractor. A copy of the Agreement is contained herein as Attachment A. Contract services will commence upon execution of the service agreement by the City.

The purpose of this RFP is to request sealed bid proposals from qualified parties presenting their qualifications, capabilities and costs to provide a comprehensive update of the City-wide master plan. The City's current comprehensive master plan is entitled The Birmingham Plan, and was adopted in 1980. Since the adoption of the master plan, several sub-area plans have also been adopted for specific sections of the City:

- Downtown 2016 Plan (1996);
- Eton Road Corridor Plan (1999);
- Triangle District Plan (2007);
- Alleys and Passages Plan (2012); and
- Multi-modal Transportation Plan (2013).

Each of these sub-area plans continue to be relevant and have essentially acted as updates to the City's comprehensive master plan for portions of the City.

At this time the City is seeking a comprehensive update of the 1980 Birmingham Plan, and the formal inclusion of each of the subarea plans into an updated comprehensive master plan ("the Plan"). While some portions of the Birmingham Plan may continue to be relevant today, specific areas that need to be updated include:

- Community vision and planning objectives;

- Update of Population section to include current demographic data, future projections and analysis;
- Update of Regional and Surrounding Development section to include current and projected demographic data (residential, retail, office, mix of land uses) and analysis of the region, regional and downtown development trends and regional collaboration efforts;
- Update of Residential Housing section to include neighborhood vision in residential areas, analysis of changes in residential patterns and residential areas from 1980 to now, typology and character of neighborhoods, development trends, future projections and future direction;
- Review and update of Transportation section to include current vehicular, pedestrian and bicycle data, recent and currently budgeted infrastructure improvements, current multi-modal trends, the use of one way streets, regional transportation projects, and future recommendations based on regional and national best practices;
- Update and review of existing land use, updated recommendations for future land uses and an updated future land use map including the area of Woodward between 14 Mile Rd. and Lincoln, known as the S. Woodward gateway;
- Parking analysis and recommendations for both public and private parking regulations throughout the entire City including consideration of parking requirements, public parking needs, residential parking permitting requirements or alternatives, accessible parking needs, potential for shared parking and emerging and innovative technologies;
- Review and update of the Policies section to encourage the implementation of the City's vision, current goals, best practices, current technological advances, and innovative policies.

This work must be performed as specified in accordance with the specifications outlined by the Scope of Work contained in this Request for Proposals (RFP). It is anticipated that the master plan update will commence _____ and be completed _____.

PUBLIC PARTICIPATION

Extensive public participation is vital to the success of the master plan update. During the master plan update process, the Contractor will solicit and garner the input of the public on the future vision for the City and build consensus to provide the basis for the overall direction of the master plan update. Extensive public input will also be encouraged throughout the entire master planning process, including specific discussions on residential areas, the downtown and commercial areas, and the transitional areas that connect these zones. The selected Contractor will be required to submit a detailed community engagement plan as a part of this RFP that allows for

public input throughout the entire process from visioning to formal adoption of the Plan, utilizing contemporary technologies.

SCOPE OF WORK

The selected Contractor will work with the public, City staff, the Planning Board, and the City Commission to review and update Birmingham's master plan. The Contractor will coordinate with City staff and the City Attorney to ensure compliance with all State and/or Federal laws related to a community master plan update. The scope of services is as follows:

1. **Comprehensive Community Engagement Plan.** Create a detailed and inclusive comprehensive Community Engagement Plan to encourage and facilitate ongoing public participation of all stakeholders in the master planning process, including workshops, charrettes, visioning process, surveys, walking tours and/or other such methods that have been demonstrated to stimulate public discourse to gather input from residents and business owners for integration into the strategic vision for the residential neighborhoods and commercial areas within the Plan. This process is expected to include at a minimum, a multi-day workshop that provides substantial opportunities for various local stakeholders and residents to provide input to achieve consensus on the direction of the City moving forward and ongoing engagement with elected and appointed boards and commissions throughout the entire planning process.
2. **Updated Data Collection and Analysis.** Review and update all demographic, social, economic and market data and provide future projections and trends. Review and update existing land use and zoning patterns and evaluate future land uses (ie. zoning district boundaries, transitional zoning, lot consolidation etc.). Evaluate current trends and best practices in other dense, traditional, walkable communities to make policy recommendations for the future success of Birmingham.
3. **Infrastructure Analysis.** Review existing infrastructure, current construction practices, evaluate future needs and provide recommendations. Specific emphasis should be placed on transportation infrastructure, including analysis of existing vehicular, pedestrian, bicycle and transit facilities, current multi-modal trends, the formulation of recommendations based on future projections, best practices and the incorporation of Complete Streets principles and walkability priorities.
4. **Parking Analysis.** Review current parking regulations in effect in the City of Birmingham for both private and public property. Provide best practice analyses and recommendations for updating current parking regulations for both private developments and on street public parking in residential and commercial areas, including consideration of the following:

1. A review of the Central Business District Parking Assessment District with regards to desired future land use, and the need to consider a restructuring of the Parking Assessment District to consider price variations for future expansion of buildings;
 2. A study of build-out capacity as it relates to parking needs and perceived parking issues Downtown;
 3. The potential need for a municipal parking system in the Triangle District and parking needs in the Rail District, with reference to recent analysis and recommendations;
 4. An analysis of the need for other public parking structures and locations along with ideas on financing strategies;
 5. A comprehensive review of the Zoning Ordinance parking regulations that apply outside of the Parking Assessment District;
 6. Analysis of the impact of ride sharing, autonomous vehicles and mass transit on future parking needs;
 7. The need for a written standard relative to the maximum number of dining decks that can be installed in on street parking spaces per block or other defined distance;
 8. The need for demand pricing for parking that would create dynamic hourly rates depending on daily changes in demand both on the street and in the structures;
 9. Development of a policy for electric vehicle charging stations;
 10. Residential Permit parking and alternatives (City-wide);
 11. The need for restricted on-street parking between 2am-6am; and
 12. A review of options to transition public parking decks to other uses in the future if demand for parking declines.
5. **Attendance at Meetings.** The Contractor shall expect to attend the following meetings and base their fees accordingly:
- A multi-day charrette as noted in subsection (1) above.
 - One (1) meeting with the Planning Board to discuss process and finalize a schedule to meet the requirements of this RFP.
 - Up to five (5) work sessions with City staff to discuss progress and recommendations.
 - Two (2) progress report meetings with the City Commission during the master planning process.
 - Up to three (3) work sessions/monthly meetings with the Planning Board to discuss updates to key segments of the Plan.
 - One (1) public hearing for review of the final draft at the Planning Board.
 - One (1) public hearing for review of the final draft at the City Commission.

The City reserves the right to reduce or increase the number of meetings depending on the progress of the project with an adjustment in the contract accordingly.

6. **Plan Preparation.** The Contractor will prepare a detailed progress report for review by the City Commission upon completion of 50% of the project, and another progress report for review by the City Commission upon completion of 75% of the project. The Contractor shall provide ongoing engagement with respective commissions and boards. The Contractor will prepare drafts of each key segment of the Plan for review by the Planning Board, and shall make changes as directed throughout the process. The Contractor will prepare one draft version of the Plan including updated census information, maps, charts, exhibits and graphics to create a vital and compelling statement of public policy. The Contractor will work with the public and the Planning Board to refine the draft Plan into a final draft for approval by the City Commission.
7. **Finalization and Adoption.** A draft of the updated Plan will be presented to the Planning Board for initial recommendation and to the City Commission for their concurrence. The Contractor will participate in the required public hearing(s) and prepare a completed final document with all necessary changes.

This outline is not necessarily all-inclusive and the Contractor shall include in the proposal any other tasks and services deemed necessary to satisfactorily complete the project.

DELIVERABLES

The Contractor shall provide a detailed, master graphic format of the Plan that incorporates all sub-area plans and includes an extensive use of illustrations, photos, before and after examples, charts and tables that clearly depict the plan content, vision and implementation in the following formats upon adoption of the final version of the Plan:

1. One (1) reproducible PDF digital file and twenty (20) hard copies of the draft Plan at 50% completion of plan;
2. One (1) reproducible PDF digital file and twenty (20) hard copies of the draft Plan at 75% completion of plan;
3. One (1) reproducible PDF digital file and twenty (20) hard color copies of the completed plan;
4. One reproducible PDF digital file of the final Plan for publication on the web and social media; and
5. One page infographic outlining vision, goals and recommendations of the Plan.

All data, illustrations and projections created or compiled throughout the project shall become the sole property of the City of Birmingham.

TIME SCHEDULE AND COST PROPOSAL

All proposals must include a proposed time schedule for completion of the project and a fixed price agreement with an associated fee schedule for extra meeting costs, should they be required. Reimbursable expenses will be billed at direct cost plus a 10% administrative charge. Normal reimbursable expenses associated with the project are to be included in the estimated fees as outlined in the proposal.

The Contractor shall perform all services outlined in this RFP in accordance with the requirements as defined and noted herein.

INVITATION TO SUBMIT A PROPOSAL

Proposals shall be submitted no later than _____, **2017 at 3:00pm** to:

City of Birmingham
Attn: City Clerk
151 Martin Street
Birmingham, Michigan 48009

One (1) electronic copy and ten (10) hard copies of the proposal must be submitted. The proposal should be firmly sealed in an envelope, which shall be clearly marked on the outside, **"MASTER PLAN UPDATE"**. Any proposal received after the due date cannot be accepted and will be rejected and returned, unopened, to the proposer. Proposer may submit more than one proposal provided each proposal meets the functional requirements.

SUBMISSION REQUIREMENTS

All proposals that wish to be considered must contain the following:

- (1) Cover Letter;
- (2) Outline of qualifications of the Contractor and of the key employees that will be involved in the project, including an organizational chart of the roles and responsibilities of each team member, and references for the team leader(s).
The project team should include each of the following skill sets:
 - Urban design;
 - Multi-modal transportation;
 - Sustainability;
 - Urban planning;
 - Zoning and form-based code;
 - Architecture;
 - Physical design;
 - Landscape architecture;
 - Transportation engineering;
 - Parking expertise; and
 - National Charrette Institute certification and/or training.

- (3) Outline of Contractor(s) experience with the preparation of similar master plan updates, including references from at least two relevant communities where you have completed such plans. (Portions of sample plans prepared by the Contractor should be submitted with the proposal, up to a maximum of twenty-five (25) pages);
- (4) Outline presenting a description of the scope of work to be completed, broken down into the following separate components:
 - (i) Community Engagement Plan;
 - (ii) Data collection and analysis;
 - (iii) Parking and infrastructure Analysis;
 - (iv) Preparation of draft plan;
 - (v) Presentation and Adoption;
- (5) Proposed time frame for completion of each component of the scope of work;
- (6) A statement of any additional services that you recommend, if any. Define hourly rates for additional services by discipline.
- (7) Bidders Agreement (Attachment B);
- (8) Cost Proposal (Attachment C); and
- (9) Iran Sanctions Act Vendor Certification (Attachment D).

INSTRUCTIONS TO BIDDERS

1. Any and all forms requesting information from the bidder must be completed on the attached forms contained herein (see Contractor's Responsibilities). If more than one bid is submitted, a separate bid proposal form must be used for each.
2. Any request for clarification of this RFP shall be made in writing and delivered to: Jana L. Ecker, Planning Director, 151 Martin Street, Birmingham, MI, or via email to jecker@bhamgov.org. Such request for clarification shall be delivered, in writing, no later than 5 days prior to the deadline for submissions. Email requests must contain in their subject line "Request for Clarification".
3. All proposals must be submitted following the RFP format as stated in this document and shall be subject to all requirements of this document including the instruction to respondents and general information sections. All proposals must be regular in every respect and no interlineations, excisions, or special conditions shall be made or included in the RFP format by the respondent.
4. The contract will be awarded by the City of Birmingham to the most responsive and responsible bidder and the contract will require the completion of the work pursuant to these documents.

5. Each respondent shall include in their proposal, in the format requested, the cost of performing the work. Municipalities are exempt from Michigan State Sales and Federal Excise taxes. Do not include such taxes in the proposal figure. The City will furnish the successful company with tax exemption information when requested.
6. Each respondent shall include in their proposal the following information: Firm name, address, city, state, zip code, telephone number, and fax number. The company shall also provide the name, address, telephone number and e-mail address of an individual in their organization to whom notices and inquiries by the City should be directed as part of their proposal.

EVALUATION PROCEDURE AND CRITERIA

The City will utilize a qualifications-based selection process in choosing a Contractor for the completion of this work. The evaluation panel will consist of City staff, board members, and/or any other person(s) designated by the City who will evaluate the proposals based on, but not limited to, the following criteria:

- Ability to provide services as outlined.
- Experience of the Contractor with similar projects.
- Professional qualification of key employees assigned to the project.
- Public Involvement Process.
- Content of Proposal.
- Cost of Services.
- References.

TERMS AND CONDITIONS

1. The City reserves the right to reject any or all proposals received, waive informalities, or accept any proposal, in whole or in part, it deems best. The City reserves the right to award the contract to the next most qualified Contractor if the successful Contractor does not execute a contract within ten (10) days after the award of the proposal.
2. The City reserves the right to request clarification of information submitted and to request additional information of one or more Contractors.
3. The City reserves the right to terminate the contract at its discretion should it be determined that the services provided do not meet the specifications contained herein. The City may terminate this Agreement at any point in the process upon notice to Contractor sufficient to indicate the City's desire to do so. In the case of such a stoppage, the City agrees to pay Contractor for services rendered to the time of notice, subject to the contract maximum amount.

4. Any proposal may be withdrawn up until the date and time set above for the opening of the proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide the services set forth in the proposal.
5. The cost of preparing and submitting a proposal is the responsibility of the Contractor and shall not be chargeable in any manner to the City.
6. Payment will be made within thirty (30) days after invoice. Acceptance by the City is defined as authorization by the designated City representative to this project that all the criteria requested under the Scope of Work contained herein have been provided. Invoices are to be rendered each month following the date of execution of an Agreement with the City.
7. The Contractor will not exceed the timelines established for the completion of this project.
8. The successful bidder shall enter into and will execute the contract as set forth and attached as Attachment A.

CONTRACTOR'S RESPONSIBILITIES

Each bidder shall provide the following as part of their proposal:

1. Complete and sign all forms requested for completion within this RFP.
 - a. Bidder's Agreement (Attachment B)
 - b. Cost Proposal (Attachment C)
 - c. Iran Sanctions Act Vendor Certification Form (Attachment D)
 - d. Agreement (Attachment A – **only if selected by the City**).
2. Provide a description of completed projects that demonstrate the firm's ability to complete projects of similar scope, size, and purpose, and in a timely manner, and within budget.
3. Provide a written plan detailing the anticipated timeline for completion of the tasks set forth in the Scope of Work.
4. The Contractor will be responsible for any changes necessary for the plans to be approved by the City of Birmingham.
5. Provide a description of the firm, including resumes and professional qualifications of the principals involved in administering the project.
6. Provide a list of sub-contractors and their qualifications, if applicable.

7. Provide three (3) client references from past projects, include current phone numbers. At least two (2) of the client references should be for similar projects.
8. Provide a project timeline addressing each section within the Scope of Work and a description of the overall project approach. Include a statement that the Contractor will be available according to the proposed timeline.

CITY RESPONSIBILITY

The City will provide a designated representative to work with the Contractor to coordinate both the City's and Contractor's efforts and to review and approve any work performed by the Contractor.

SETTLEMENT OF DISPUTES

The successful bidder agrees to certain dispute resolution avenues/limitations. Please refer to paragraph 17 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.

INSURANCE

The successful bidder is required to procure and maintain certain types of insurances. Please refer to paragraph 12 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.

CONTINUATION OF COVERAGE

The Contractor also agrees to provide all insurance coverages as specified. Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the agreement, the City may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the contract amount. In obtaining such coverage, Birmingham shall have no obligation to procure the most cost effective coverage but may contract with any insurer for such coverage.

EXECUTION OF CONTRACT

The bidder whose proposal is accepted shall be required to execute the contract and to furnish all insurance coverages as specified within ten (10) days after receiving notice of such acceptance. Any contract awarded pursuant to any bid shall not be binding upon the City until a written contract has been executed by both parties. Failure or refusal to execute the contract shall be considered an abandonment of all rights and interest in the award and the contract may be awarded to another. The successful bidder agrees to enter into and will execute the contract as set forth and attached as Attachment A.

INDEMNIFICATION

The successful bidder agrees to indemnify the City and various associated persons. Please refer to paragraph 13 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.

CONFLICT OF INTEREST

The successful bidder is subject to certain conflict of interest requirements/restrictions. Please refer to paragraph 14 of the Agreement attached as Attachment A for the details and what is required of the successful bidder.

EXAMINATION OF PROPOSAL MATERIALS

The submission of a proposal shall be deemed a representation and warranty by the Contractor that it has investigated all aspects of the RFP, that it is aware of the applicable facts pertaining to the RFP process and its procedures and requirements, and that it has read and understands the RFP. Statistical information which may be contained in the RFP or any addendum thereto is for informational purposes only.

PROJECT TIMELINE

Evaluate Respondents	_____
Interview Contractors	_____
Award Contract	_____
Project Kick Off Meeting	_____
50% Completion of draft Plan	_____
75% Completion of draft Plan	_____
Final Draft of Plan Completed	_____

The Contractor will not exceed the timelines established for the completion of this project.

**ATTACHMENT A - AGREEMENT
FOR MASTER PLAN UPDATE**

This AGREEMENT, made this _____ day of _____, 2017, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and _____, Inc., having its principal office at _____ (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City has heretofore advertised for bids for the procurement and performance of services required to complete an update to the City-wide comprehensive master plan, and in connection therewith has prepared a request for sealed proposals ("RFP"), which includes certain instructions to bidders, specifications, terms and conditions.

WHEREAS, the Contractor has professional qualifications that meet the project requirements and has made a bid in accordance with such request for cost proposals to complete an update to the City-wide comprehensive master plan.

NOW, THEREFORE, for and in consideration of the respective agreements and undertakings herein contained, the parties agree as follows:

1. It is mutually agreed by and between the parties that the documents consisting of the Request for Proposal to complete an update to the City-wide comprehensive master plan and the Contractor's cost proposal dated _____, 2017 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the RFP.
2. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed _____, as set forth in the Contractor's _____, 2017 cost proposal.
3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Proposals.
4. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.
5. The Contractor and the City agree that the Contractor is acting as an independent contractor with respect to the Contractor's role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and

neither the Contractor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Contractor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Contractor shall not be entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation or any other employer contributions on behalf of the City.

6. The Contractor acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. The Contractor recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the City. Therefore, the Contractor agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. The Contractor shall inform its employees of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. The Contractor further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement. The Contractor agrees that it will require all subcontractors to sign a Non-Disclosure Agreement satisfactory to the City Attorney.

7. This Agreement shall be governed by and performed, interpreted and enforced in accordance with the laws of the State of Michigan. The Contractor agrees to perform all services provided for in this Agreement in accordance with and in full compliance with all local, state and federal laws and regulations.

8. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.

9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.

10. The Contractor agrees that neither it nor its subcontractors will discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to

employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The Contractor shall inform the City of all claims or suits asserted against it by the Contractor's employees who work pursuant to this Agreement. The Contractor shall provide the City with periodic status reports concerning all such claims or suits, at intervals established by the City.

11. The Contractor shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required under this paragraph. All coverages shall be with insurance companies licensed and admitted to do business in the State of Michigan. All coverages shall be with carriers acceptable to the City of Birmingham.

12. The Contractor shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

- A. Workers' Compensation Insurance: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
- B. Commercial General Liability Insurance: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than **\$1,000,000** per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.
- C. Motor Vehicle Liability: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than \$1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- D. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.

- E. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance (and Professional Liability Insurance, if applicable), as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal, shall be sent to: Finance Director, City of Birmingham, PO Box 3001, 151 Martin Street, Birmingham, MI 48012-3001.
- F. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham, at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.
- 1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;
 - 2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
 - 3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
 - 4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance;
 - 5) If so requested, Certified Copies of all policies mentioned above will be furnished.
- G. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.
- H. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

13. To the fullest extent permitted by law, the Contractor and any entity or person for whom the Contractor is legally liable, agrees to be responsible for any liability, defend, pay on behalf of, indemnify, and hold harmless the City of Birmingham, its elected and appointed officials, employees and volunteers and others working on behalf of the City of Birmingham against any and all claims, demands, suits, or loss, including all costs and reasonable attorney fees connected therewith, and for any damages which may be asserted, claimed or recovered against or from and the City of Birmingham, its elected and appointed officials, employees, volunteers or others working on behalf of the City of Birmingham, by reason of personal injury, including bodily injury and death and/or property damage, including loss of use thereof, which arises out of or is in any way connected or associated with this Agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the sole act or omission of

its elected or appointed officials, employees, volunteers or others working on behalf of the City of Birmingham.

14. If, after the effective date of this Agreement, any official of the City, or spouse, child, parent or in-law of such official or employee shall become directly or indirectly interested in this Agreement or the affairs of the Contractor, the City shall have the right to terminate this Agreement without further liability to the Contractor if the disqualification has not been removed within thirty (30) days after the City has given the Contractor notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

15. If Contractor fails to perform its obligations hereunder, the City may take any and all remedial actions provided by the general specifications or otherwise permitted by law.

16. All notices required to be sent pursuant to this Agreement shall be mailed to the following addresses:

City of Birmingham
Attn: Jana L. Ecker
151 Martin Street
Birmingham, MI 48009
248-530-1841

CONTRACTOR

17. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds \$1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL§600.5001 et. seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.

18. FAIR PROCUREMENT OPPORTUNITY: Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.

IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.

WITNESSES:

CONTRACTOR

By:_____

Its:

CITY OF BIRMINGHAM

By:_____

Mark Nickita

Its: Mayor

By:_____

Cherilynn Mynsberge

Its: City Clerk

Approved:

Jana L. Ecker, Planning Director
(Approved as to substance)

Mark Gerber, Director of Finance
(Approved as to financial obligation)

Timothy J. Currier, City Attorney
(Approved as to form)

Joseph A. Valentine City Manager
(Approved as to substance)

**ATTACHMENT B - BIDDER'S AGREEMENT
FOR MASTER PLAN UPDATE**

In submitting this proposal, as herein described, the Contractor agrees that:

1. They have carefully examined the specifications, terms and Agreement of the Request for Proposal and all other provisions of this document and understand the meaning, intent, and requirement of it.
2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

**PREPARED BY
(Print Name)**

DATE

TITLE

DATE

AUTHORIZED SIGNATURE

E-MAIL ADDRESS

COMPANY

ADDRESS

PHONE

NAME OF PARENT COMPANY

PHONE

ADDRESS

**ATTACHMENT C - COST PROPOSAL
FOR MASTER PLAN UPDATE**

In order for the bid to be considered valid, this form must be completed in its entirety. The cost for the Scope of Work as stated in the Request for Proposal documents shall be a lump sum, as follows:

TOTAL AMOUNT	\$
Additional Meeting Charge	\$ per meeting
Additional Services Recommended (if any):	\$ / hour
	\$ / hour
	\$ / hour
	\$ / hour
	\$ / hour
	\$ / hour
	\$ / hour

Firm Name_____

Authorized signature_____ Date_____

**ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION
FORM
FOR MASTER PLAN UPDATE**

Pursuant to Michigan Law and the Iran Economic Sanction Act, 2012 PA 517 ("Act"), prior to the City accepting any bid or proposal, or entering into any contract for goods or services with any prospective Vendor, the Vendor must certify that it is not an "Iran Linked Business", as defined by the Act.

By completing this form, the Vendor certifies that it is not an "Iran Linked Business", as defined by the Act and is in full compliance with all provisions of the Act and is legally eligible to submit a bid for consideration by the City.

**PREPARED BY
(Print Name)**

DATE

TITLE

DATE

AUTHORIZED SIGNATURE

E-MAIL ADDRESS

COMPANY

ADDRESS

PHONE

NAME OF PARENT COMPANY

PHONE

ADDRESS

TAXPAYER I.D.#

**BIRMINGHAM CITY COMMISSION /
PLANNING BOARD JOINT WORKSHOP SESSION MINUTES
JUNE 20, 2016
DPS FACILITY, 851 SOUTH ETON
7:30 P.M.**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Rackeline J. Hoff, Mayor called the meeting to order at 7:30 PM.

II. ROLL CALL

ROLL CALL:	Present,	Mayor Hoff Commissioner Bordman Commissioner Boutros Commissioner DeWeese Commissioner Harris Mayor Pro Tem Nickita Commissioner Sherman
	Absent,	None
ROLL CALL OF PLANNING BOARD:		
	Present,	Mr. Clein, Chairperson Ms. Boyce Mr. Boyle Mr. Jeffares Mr. Koseck Ms. Lazar Ms. Prasad, alternate member (arrived at 7:32 PM) Mr. Share, alternate member Mr. Williams

Administration: City Manager Valentine, City Attorney Studt, Deputy Clerk Arft, City Engineer O'Meara, City Planner Ecker, Assistant City Planner Baka, Building Director Johnson

III. ITEMS FOR DISCUSSION

City Manager explained the meeting format. The city-wide master plan will be discussed, followed by discussion on various issues facing the city regarding land use. No action is anticipated this evening on any of the items. We envision there will be a consensus-driven discussion at the end as to which items are to be brought back to the City Commission to act on formally and provide direction on those issues for the Planning Board.

Public participation will be included as each item is concluded.

A short presentation outlining each item will be made by staff.

Mayor Hoff noted that they hope to have interaction here and gain consensus on how to prioritize the many issues. Through the discussion tonight we will try to prioritize and give the Planning Board some direction on next steps.

A. City-wide Master Plan Update

Assistant Planner Baka noted that the most recent comprehensive master plan was completed and adopted in 1980. Since that time, there have been sub-area plans and overlay plans that have been implemented and are essentially master plan updates, including the 2016 plan in 1996, the Eton Road corridor plan in 1999, and the Triangle plan in 2007. Also the Alleys and Passageways plan was done in 2012, and the Multi-Modal plan in 2013. All of those have been used to guide development throughout Birmingham. The discussion has been whether it is time to do a comprehensive master plan update. It has been suggested that with the sub-area plans being fairly recent, generally it is thought it may not be necessary to overhaul the master plan but tie all of the plans together in a way that creates a consistent and comprehensive guide for the future development. The 1980 plan contains outdated demographic and statistical information. The projections were for 20 years out.

Staff provided a sample RFP of the types of things thought to be important to include in the plan, and certainly, public participation is at the top of the list. If the Commission and Planning Board wants to move in that direction, staff would pursue a formal RFP and begin the process.

Mayor Hoff noticed much information to be updated is objective data and she is not certain why we need an outside consultant for that.

Mr. Valentine said part of the reason is the need for a process facilitated by an outside consultant. He agreed that the data analysis is certainly something staff could do, but the public involvement process is more defined, and that process needs to be driven by a hired consultant to insure all public input that is desired is included in the process.

She confirmed that this is scheduled for the 2016-17 budget. She noted that this is not as much a discussion topic, since we are going to move forward.

Ms. Bordman said that she was disappointed after reading the sample RFP and the memo. She did not think it asked for new ideas especially in the residential areas. She did not see a place for this visionary look at the plan.

Ms. Ecker noted that this would be addressed, but this is not going to be a comprehensive master plan. If Birmingham was a community that did not have any sub-area plans or any master plans, then a comprehensive master plan would be needed. She does not envision that we would start from scratch because Birmingham has been consistent in knowing where it wants to go in the different commercial areas. It is more fine tuning some of the areas that have almost been left out by the sub-area plans, such as the residential neighborhoods and the some of the sensitive zones between the residential neighborhoods in downtown.

Mr. Koseck said master plans should be about discovery, gathering information and analyzing information and presenting it. He would like to find someone who has creativity and can help the city connect the dots after analyzing the information. He thinks it requires a specific and unique expertise. In his opinion, the 2016 plan was very successful. He does not think a one day workshop with the public will gather enough information. The influence should be equally shared by people who live in and who have businesses in the community. He said the Planning board references the plan often. He does not want to shortchange the design piece, and suggested giving at least another day or two of workshops.

Mr. Clein agreed that more public engagement is needed and ask for a detailed public engagement plan.

Mr. Boyle thought the 1980 plan did not connect with the public until the vision was completed and presented. He agrees that we need public involvement in the planning process and let the staff and consultants keep the process moving to end up with a product acceptable with everyone in the city.

Commissioner Harris asked if this RFP mirrors the RFP issued 20 years ago for the 2016 plan since he understands it was considered to be successful. Ms. Ecker said that neither she nor Mr. Baka were employed with the city in 1996 when the 2016 plan was written and she has been unable to locate the RFP. She said the last direction staff received from the previous commission was to update the data and pull all the sub-area plans together. She agrees that the 2016 plan was more involved.

Mr. Jeffares said he views this as a strategic plan of our city. He agreed that the Planning Board relies on the plan in every decision that is made. His opinion that there have been several sea changes and doing something like this may not capture the changes. He referenced plans for electric vehicles in the near future and planning for it in the city. He thinks we need to be more all encompassing and stretching a bit more on this.

Commissioner DeWeese missed vision and direction as to where we want to go and how we get there. Residents have a vision of how neighborhoods should be and how the city acts in regard to that. It is all about integration and the perspective. He thinks we need a broader scope and to pay more attention to the vision that people have. He noted the trend in the community for big homes on small lots, and may be coming more narrow in terms of economic perspective due to need for more wealth in order to live here. We need a community consensus of what we want the community to be, and he thinks this was missing. He wants to see a document that gives us a direction and vision. It may be implied, but it was not explicit.

Commissioner Nickita thinks the RFP has to be carefully drafted. He thinks it is a matter of the right consultant to help orchestrate the very solid planning efforts that have been successfully implemented. Also, to look at the gaps that have not been looked at for many years and put it all together. He thinks we can find a consultant if we clearly define the expectations. He thinks someone needs to recognize what the city has brought to the table already, and then orchestrate it with the neighborhoods and seam it together.

Mr. Williams noted that the plans that have been approved are basically touching on commercial areas as they impact the residential areas. He would like to focus on the neighborhood input and that is different from what the city has done in the past. He said the master plan is not comprehensive as it pertains to some of the neighborhoods and some of the transitional areas but more importantly from a future planning standpoint of how the neighborhoods fit into the dynamics of the entire city. We cannot sit back and pretend that an outside entity will be successful at getting the input of the residents. That is up to the Planning Board and City Commission to reach out to the residents.

Mr. Jeffares agreed that the plans that have been implemented are good and need to be looked at now with a vision to the future to make sure they will continue to work. This plan could have a dramatic effect on the neighborhoods.

Mr. Valentine expected to hear comments about the process by which the plan is updated. Staff will go back and rework it based on the comments made and show everyone another draft for any other comments and then move forward with the process.

Ms. Ecker explained for Ms. Prasad that what generally happens in the RFP process is to advertise and invite proposals. In the past, a steering committee or a board or committee has been used to review the proposals along with staff. A number of top candidates are selected and will be invited to interview with the committee and the City Commission and a final consultant is chosen. Mr. Valentine confirmed that this would be done in the fiscal year beginning July 1. It will go through the process at this level to make certain that what is wanted in the RFP is included. It may be this fall or later.

Ms. Ecker stated the selection process would be included in the RFP. This evening was a review of the scope of service.

Mayor Hoff asked for public comments.

Paul Reagan, 997 Purdy, expressed concern about buffers contained in the master plan, emphasis by the city on commercial planning only, at the expense of neighborhoods. He is fearful for property values of homes. He stated that this process has to be neighborhood-centric when moving forward.

DeAngelo Espree, 505 E. Lincoln, asked if there is any plan for a common meeting place for all residents. Ms. Ecker said the master plan does not have a specific recommendation to provide a community center, but over the years there have been many discussions with the expansion of the YMCA and the Barnum property, but nothing has so far moved forward. It was noted there has been no discussion about expanding or adding another Department of Public Services building, nor is there a present need.

Mayor Hoff summarized that the comments heard tonight will be incorporated into a new proposed RFP which will come back to the commission.

B. Transitional Zoning (TZ2 District)

Ms. Ecker summarized the transitional zoning issues already adopted. She noted the Planning Board has been studying TZ2 district properties. The board is looking for some direction from the City Commission as to what they would like to see and also share what the board has done so far. She said the uses are always the biggest issue. The board has come up with a new proposal and would like the commission to weigh in.

Some uses in TZ2 have been eliminated, shifted around as to which are allowed as of right, and which are allowed as a special land use permit only, and looking at them clearly in relation to TZ1, TZ2 and TZ3. There was some concern that maybe there was a big jump from TZ1 to TZ2 and not a graduated system that would make it a seamless transition from TZ1 to TZ2 to TZ3 so there was a clear differentiation and it moved the most uses to TZ3. If adopted, TZ1 and TZ3 zones which were already adopted, may need to be adjusted.

Mr. Jeffares added that parking requirements were considered carefully. Ms. Ecker said the main focus has been with uses.

Mayor Hoff said traditionally the special land uses are the ones that we want to control the most. She noticed that quite a few special land uses especially in TZ2 have been eliminated and she asked where they have been moved. Ms. Ecker confirmed that some have been moved to other categories. Originally, the board made all of the food-related uses in a special land use permit category. Since then, the board decided the better demarcation would be parking and traffic and the impact to the neighborhood.

Mayor Hoff asked if the food uses have been moved to commercial permitted uses. Ms. Ecker noted that food uses have been moved there in some cases, but not all. Bank or credit union with a drive-thru have been removed due to the traffic and circulation issue for the neighborhood.

Ms. Boyce said they realized that other ordinances are in place that define noise, smell, and dumpsters, so there are other controls over those uses. Parking is more challenging. It was felt that controls are in place already to be able to put something like a bakery as a permitted use in TZ2 rather than as a special land use.

Commissioner DeWeese said part of the issue here is a different vision of the residents among themselves. Some like a more urban vision, while others that do not want them close to their homes. He has not heard complaints about the layout and structure, but has heard people complain about the uses. He thinks it would be better to have fewer permissible uses in the beginning. He said the basic notion is that it is a buffer for residential areas. He is leery about special land uses, and feels the public does not trust the special land use process. The cost burden of a special land use permit is high in both time and money to a small business owner. We want to find the uses that are acceptable, minimize the use of special land use permits and begin with fewer uses and add more in the future, if appropriate.

Commissioner Harris asked whether TZ2 should just apply in certain areas or be available generally for applicants. Ms. Ecker said there was some discussion about that and they are looking for some input from the commission in that regard. The biggest problems fall into the TZ2 category.

Mayor Hoff noted that the commission did designate specific properties for TZ1 and TZ3. Ms. Ecker agreed, and said that was the original proposal for TZ2 as well, so the board is looking for specific feedback from the commission: should they continue to study the specific properties and determine if TZ2 is a good fit, or present the TZ2 ordinance and let the commission decide to create the district and let people apply individually to come in. The Planning Board has not had a public hearing on it yet, so it is still in the draft stage.

Commissioner Sherman noted that the comments received at the commission's TZ2 public hearing were concerns about uses in the TZ2 area. The idea was to restrict the uses more than they were, and move things to areas where we could control them or add them in later. This draft expands the uses in the area, and reduces the controls rather than increases them. He does not think this has met the objective of what was suggested by the commission. If these areas are designed to protect the neighborhoods, then they need to be looked at from neighborhood side. He suggested fewer uses with more controls that can be relaxed as time goes on if appropriate. He expected to see more under SLUPs, far fewer uses and far less intense uses.

Mr. Boyle asked Commissioner Sherman for specifics. Commissioner Sherman used a delicatessen or specialty food shop as an example. Look at the definition and how is the food prepared or is it packaged. The dry cleaner was originally a special land use and now it is a permitted use. He said things that were agreed to at the time were fine as a special land use and wanted to look at the things that were there that could be done without special land use. Instead, things have been taken out of special land use and made them permitted uses. From

a neighborhood standpoint, we are trying to create a buffer and calm the area between downtown and the neighborhood.

Mr. Williams said they also took things that were in the special land use permit designation and eliminated them entirely, and there are more of those than were added. Of those things that have been eliminated, does the commission agree that some of these should be brought back in. The previous commission was generally unspecific.

Ms. Boyce said it is helpful to go back and look at what is permitted in O1 and O2. When she compares the list side by side, the new one has a lot less permitted uses.

Mr. Clein requested more specific direction. Mayor Hoff agreed with him, and the new commission has not discussed each of the new uses.

Commissioner Nickita said it is important to recognize why it was done in the first place. The fundamental issue is to recognize there was a lot of inconsistencies, edge conditions with no controls, inappropriate uses in the perimeter transitional zone. The effort so far has organized and recognized the gaps and issues and inconsistencies and pulled it all together. Now it is a matter of refining it. When we talk about this, we want to make sure we are up to speed on the accomplishment and value of what has been done. He encouraged the commission to have a dialog on that level. The land use is only one discussion.

Commissioner Harris agreed that the new commission would be helped by seeing the comparisons to O1 and O2, and in that way the degree of change can be assessed.

Commissioner DeWeese would like the board to consider there may be some areas where some of the uses are acceptable because they are not right next to residences. He said we still need to do the follow-up.

Commissioner Boutros said we agree we need to move forward and identify first if we need TZ2. If we do, we have identified lots in the area and we need to determine whether these are the final lots, or are we going to open it to even more. We need to determine the reasons why a use should not be there.

Commissioner DeWeese suggested a study session to discuss the reasons as to why this is being done, and what is being done. Then the commission can provide a policy direction, and have the board come back with the details.

Mayor Hoff stated we already approved TZ1 and TZ3. We just have to fine tune TZ2. We already have the reasons for the transition zones. She is hearing that the questions are about the uses, and perhaps we need to have the comparison discussions.

Commissioner Bordman asked is the plan to review the uses.

Mr. Valentine suggested the commission wants to look at the direction this is headed, so that when it goes back to the board, it can continue to do the work that the commission is expecting the board to do.

Commissioner Bordman has listened to the board comments and their thought process about the impact on the neighborhoods of parking and have eliminated the negative impact of

parking. The board carefully thought about what the residents would like to have that would not have a negative impact on the neighborhood. She is highly satisfied with the work done on these uses. She thinks they are compatible with a buffer zone transition area. We ought to concentrate whether we want the document as it is and apply it to specific places, or if we want this document as it is and let the owner apply for this zoning. She thinks that is the commission's decision.

Mr. Valentine said in terms of process, the commission can draft the ordinance, but that's not the role of the commission. The function is to provide the input that the planning board is looking for so they can provide the recommendation to the commission in vetting this all out. As opposed to putting specifically what you want, you could bypass the Planning Board, but that is not the intent. The intent is to give the Planning Board the direction so they can finish the work they have started with the clarity and expectation that you are expecting.

City Attorney Studt stated that the political decision is the commission's. The Planning Board is the body of experts to guide the commission to where the commission wants to go.

Mayor Hoff hears a difference of opinion here. Commissioner Sherman expressed an opinion that is different. She thinks the commission needs to discuss and decide where we go. Mr. Valentine agreed, and said the commission would review it and then provide direction to Planning Board to work out the final details so the commission can then approve it based on a recommendation.

Ms. Lazar asked would a public hearing yield more information to assist the commission. We are considering the importance of the public opinion, and then it can be furnished to the commission. It is an impact on the neighborhoods and we are trying to be sensitive to needs.

Mr. Williams commented that what is missing is the history of the review of O1 and O2 and the types of uses that began years ago. He suggested a narrative to combine with the charts for the public hearing.

Ms. Boyce would like the commission to dive into this more. General direction has not worked so far.

Mr. Koseck thinks most of the issues can be agreed on, if properly presented along with O1 and O2 discussion.

Mayor Hoff requested clarity on agreement where the public hearing should be held.

Commissioner Sherman agrees that it would be good for new commissioners to have the history of this and the comments summarized as part of the narrative for review. The Planning Board and Commission can each have their discussion before a public hearing and get some consensus. The Commission can send some additional direction based on that to the Planning Board so they can finish their work. Ms. Ecker could update her narrative to include what the public comments were and the Commission discussion before presenting it.

Mr. Williams suggested including what the properties are now and what is permitted now and what they would be. Mayor Hoff stated that was presented previously to the Commission.

Commissioner Boutros suggested what people want to know is what might be there. He said not everyone is going to agree. He is unsure that more information is what is needed.

Mayor Hoff suggested that the packet of materials should be some of the information and would be part of the narrative.

Commissioner Bordman thinks it would be an exhaustive waste of time. The board has spent a huge amount of time on this with considerations that she would apply. She does not see anything on the list of uses that is highly burdensome. She does not want to argue with fellow commissioners about the individual uses. We would be spending hours as the Planning Board did debating with each other about the uses. She suggested to have a public hearing so we can get public input, come back to the Commission to decide if we want to apply this to specific property or leave it as an option for property owners.

Mr. Share said the board should have a public hearing, after which the board will make a recommendation to the Commission. The commission can make its decision.

Commissioner DeWeese thinks it would be useful for commission to get the packet as well to become familiar.

Paul Reagan, 997 Purdy, commented that the history is important and neighborhoods have pushed back hard. The concern is intensive uses with cars, and property values. It's about keeping the encroachment of intensive commercial properties from moving into the neighborhoods.

C. Private Development Parking Requirements

Mr. Valentine stated the intent of these items is not to debate them in general but to have the conversation whether or not these issues should be coming back for further discussion.

Ms. Ecker said two different concerns have been heard over the years. Parking standards for all commercial uses of properties that are not located within a Parking Assessment District (PAD) are in the ordinance. The two central issues for discussion are: 1. Should we have minimum standards and if so, should we change the minimum standards, and 2. Should we have a maximum standard and state that we do not want more parking lots like Adams Square. As for the PAD, on-site parking is not required, except for residential uses. Do we want to provide more public parking throughout the city or not. A different kind of development happens when inside the PAD.

Ms. Ecker commented that those in the PAD have already paid in through special assessment when the parking deck was built.

Mr. Boyle suggested that parking is a feature of the city, and of land use and would like it included in the master plan.

Mr. Williams said we hear all the time there is not enough parking. He agrees city wide, parking has to be dealt with in the master plan.

Ms. Boyce said we should be focusing on the requirement on parking in residential development which drives the price of the residential units, so we are ending up with fabulous million dollar properties in town, but they are not available to everyone who would like to be in the

downtown. One dictates the other and needs to be included in the master plan and discuss where we want the city to be.

Commissioner Nickita said the city has done better than most cities in terms of how we have dealt with parking and how it has driven development. Now there are changes in how people use parking. Because of parking and the parking standards, we cannot get what we want to do in the city core. At the same time, we advocate for significant amount of walkability, increased mobility in terms of non-motorized transportation, and mass transit. There are all kinds of drivers and changes, and we should try to get on top of this as opposed to letting it just happen. He suggested taking an aggressive move of examining the current circumstances in parking and seeing how we can incorporate those as much as possible. He does not think we can do it in the master plan. He thinks that this takes a higher level of involvement, and we may want to consider incorporating some level of dialogue with a parking consultant that understands these complexities and include that into the discussion to drive the way we address our other plans and incorporate that into our master plan. There are many aspects, including future recognition of how things are going to evolve.

Mr. Boyle feels parking standards should be included in the master plan. Discussion continued.

Mark Johnson, non-resident, said the biggest problem is lack of multi modal transportation and suggested the city study alternate ways to move around the city. Currently, everyone must use their car. Study ways to move around the city at the same time the parking issues are discussed.

D. Existing commercial non-conforming buildings

Ms. Ecker described the issue as being several properties that are non-conforming with regards to height, bulk and mass. She provided some history of the buildings in question.

After discussion regarding maintenance and renovations that might be permitted, the number of variances that would be required, it was agreed that the discussion should be continued at the Planning Board level, with direction from the Commission.

There were no public comments.

E. Definition of retail

Ms. Ecker described the issue as the city's definition of retail in the ordinance, and people who would like the definition to be more specific. She said this comes up at the shopping district level. The retailers downtown want to see more retail. For the most part, the general public wants to see an active retail type use whether it is retail or restaurant. There is some debate on what percentage of each. The building owners have a different view.

Commissioner Nickita thinks this is long overdue for discussion. He feels it needs to be re-examined and cleaned up.

The consensus is to continue discussion on the definition of retail.

There were no public comments.

F. Dormer considerations

Building Director Johnson provided background on this issue. Recently, some houses appear to be three stories tall. The ordinance allows two stories in height for single family residential. It also allows a habitable attic. Dormers are utilized to give some additional height in the living space in the attic. Changes in the code over the years permitted an attic that realistically could be 100% habitable space and meet the requirements of the zoning ordinance and the residential code. Most complaints come from the neighborhoods with smaller size lots.

Commissioner DeWeese said feedback he has received indicates there is no consensus on this from the public. He prefers waiting until we go through the master plan process with residents.

Commissioner Nickita said the Building Department is having trouble legislating this. He said the department needs us to intervene soon and not wait for the master plan process to act.

Commissioner Bordman said it bothers her that the department is put in a bad position because the director does not have direction from the city to manage these requests. We need to have something developed so that the department can be consistent from project to project.

Ms. Boyce thinks the Planning Board can clean it up so there are no questions.

Mr. Boyle thinks we need the discussion with the public as well, and not just regulate this without their input.

Mr. Koseck said this is not a master plan issue, and the department needs some direction. This helps people who design as well.

Mr. Williams suggested bringing some representatives from the neighborhoods also.

Mayor Hoff said this issue will be placed on the Planning Board action list.

There were no public comments.

G. Lot consolidation process

Mr. Johnson provided background on the issue. He indicated that the city code and zoning ordinance lack regulations for lot combinations. There has been an increase in non-typical combination inquiries, which have been denied because they are inconsistent with how the block was intended to develop based on its layout and standard zoning principles for front, rear and side open spaces. Some have been approved by the BZA after being denied.

Commissioner Nickita said this goes to the master plan, and is being driven by the development community. He thinks it is an inappropriate way of city building. In the meantime, we should have a stopgap circumstance that allows the city control. At the very least, he suggested we immediately take a look at the possibility of incorporating some type of review as done in lot splits, and apply it to lot combinations in a similar manner. Then follow up with the discussion in the master plan.

The consensus was that it has to be dealt with now, and will come back to the Commission.

H. Planning Board Action List Review

It was agreed that the Action List be amended following City Commission review and discussion.

I. Public Facilities Review Process

Ms. Ecker said there was a lot of discussion when the fire station went through the public review process. In the past, a courtesy review was done because all of the city properties are zone PP (Public Property) and are not required to follow the same standards that other properties owned privately. Concerns were raised about noticing, public hearings, the process, who had input, what type of standards we would apply. She has offered a review process for discussion purposes.

Ms. Ecker said the Library (Phases 2 and 3) may be renovated potentially. Mr. Valentine said this public facility review process would be more for external type changes, not interior renovations.

Mayor Hoff said she does not think this has the immediacy of the other issues, but does think it is a good idea.

Mr. Jeffares said he does not want to lose track and wait too long to discuss this process.

Mayor Hoff said maybe this is something that staff can do and then go to the Commission, and not to Planning Board.

Mr. Valentine said we have a solid framework for a process that we created going through the fire station project.

There were no public comments.

V. ADJOURN

The meeting adjourned at 10:17 PM

/ca

**BIRMINGHAM CITY COMMISSION /
PLANNING BOARD JOINT WORKSHOP MINUTES
SEPTEMBER 19, 2016
DPS FACILITY, 851 SOUTH ETON
7:30 P.M.**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Rackeline J. Hoff called the meeting to order at 7:30 PM.

II. ROLL CALL

Present: Commissioner Bordman
Commissioner Boutros
Commissioner DeWeese
Commissioner Harris
Mayor Hoff
Mayor Pro Tem Nickita
Commissioner Sherman

Ms. Boyce
Mr. Boyle
Mr. Jeffares
Mr. Koseck
Ms. Lazar
Ms. Prasad, alternate member
Mr. Williams

Absent: Mr. Clein
Mr. Share, alternate member

Administration: City Manager Valentine, City Attorney Currier, Deputy Clerk Arft, City Planner Ecker, Building Director Johnson

III. ITEMS FOR DISCUSSION

A. Comprehensive Master Plan Update

Ms. Ecker described what has transpired with the RFP for a Master Plan. In June, 2016 a draft scope of work was presented to the commission and board. At that time, it was agreed that a more holistic, comprehensive approach was desired, including a visioning process that would look at the character and future of the neighborhoods and how that would fit in with the commercial districts. Transitional zoning, parking concerns, and the use of present and future technology, among others, were also concerns. The intention is to get feedback tonight on the draft RFP and then bring the RFP formally to the City Commission for issuance. She said if the RFP is issued soon, respondents could submit in October, with interviews following, and an award in December of this year, with a kick-off meeting in January 2017.

Some of the additions to the draft include a public visioning process, a public engagement plan from firms. The Planning Board would work with the consultant to get a draft plan and then bring it to the City Commission. The Commission would be involved throughout the process in

the various design sessions, input sessions, and workshops. More detail was added to the parking analysis, including residential permit parking, city-wide parking plan.

Ms. Ecker said transitional zoning is not specifically called out for a study, but is referred to within the RFP as it relates to residential areas, the downtown, and commercial areas.

Mr. Williams would like to see representatives from residential communities added to the evaluation committee.

Ms. Ecker noted that the proposals would be reviewed by staff and the Planning Board, be narrowed down to two or three candidates, and be interviewed by the Planning Board. It would be brought to the City Commission to make the final selection. Ms. Ecker explained how the process was handled for the sub-area plans.

Mayor Hoff asked for thoughts on including residents on the selection committee. City Manager Valentine said the options would be to stay with the Planning Board, or create an ad hoc committee to serve as the evaluation panel for the proposals.

Mr. Williams said residents have complaints about a lack of input and he would like to get them involved. He would like the residents to appoint their own representatives from the beginning.

City Manager Valentine asked if the residents are part of the evaluation panel, are they going to have the same voting privileges as other members of the board.

Ms. Boyce thinks important for the Planning Board to make recommendations to the City Commission, and agrees it is important to have residents involved early in the process. She does not think there should be a separate committee and that the residents should not have a vote. The Planning Board already has qualified people on the board who have the knowledge and skills in this area.

Commissioner Boutros said the residents elected the commissioners to represent them and make decisions. He welcomes public involvement, but his fear is finding qualified residents to make the evaluations and decisions on this important plan.

Mayor Pro Tem Nickita said the key to public involvement is during the process to include as much as possible the public's interest and concerns and reaction to the proposals. In terms of selecting, he suggested we stay with the Planning Board or create an ad hoc committee to include members of different boards and some commissioners. He suggested it would be helpful to include the public in that dialog during the evaluation process with specific invitations and keep the final selection to the Planning Board.

Mr. Williams said since this plan will deal with residential areas and not just commercial as the sub-area plans have, the residents should be invited to participate at the beginning of the process. The residents would have opinions on what the study is going to look like as opposed to who the consultant is going to be.

Commissioner Bordman thinks an ad hoc committee could be created for the purpose of selecting the contractor to include MMTB, Parks & Recreation as well as the Planning Board and residents.

Mr. Boyle suggested those who respond to the RFP be asked how they would engage the public. He thinks we can deal with the selection of appropriate consultants by using the people who are experienced in this including the commission, staff and with a public meeting at the Planning Board with the consultants who respond.

Mayor Hoff said there are now two different opinions on how we should proceed. One is to create an ad hoc committee consisting of members of different boards and including members of the general public. The other is to have the Planning Board conduct the interviews with invitations to members of the public to attend that session and invite them to give their opinions on selecting the contractor.

Ms. Ecker said historically we have used an ad hoc committee if we do not have a specific board dedicated to the topic. She stated that the state law and city code specifically task the planning board with the planning of the city and making recommendations for land use, etc. to the City Commission.

Mayor Pro Tem Nickita prefers to base the decision making on some level of precedent that we have had success with. This is a special plan, more broad, more inclusive, more unique in the sense it has not been done in 30 years, so it may be appropriate to have the Planning Board lead, but incorporate some of the other boards as an option.

Commissioner DeWeese suggested a compromise of perhaps three or more Planning Board members that the board selects and maybe one member of other boards that are critical, along with a public representative.

Commissioner Harris agrees with the creation of an ad hoc committee for this review.

Mr. Jeffares suggested using the Planning Board and adding a few people to that. After the decision is made, the Planning Board will be working with the plan, and it is important to have the seven Planning Board members all feel like they were in on the decision.

Commissioner Sherman suggested that what is contemplated is how the city is going to grow and fit together, and he thinks it falls more in the category of a committee as we have set up for things like Shain Park where we had multiple aspects that went into it. All of the boards will be involved in various aspects of this plan, but he would limit the task of this committee solely to selecting the contractor. The plan itself is going to come back to each of the boards for review. At that point, the board's comments and interpretation are going to be incorporated into the plan. Selection is only part of it. Getting the right candidates to submit their proposals is more important.

Commissioner Boutros asked how the individual members feel.

Mr. Williams wants to be inclusive and go beyond the Planning Board.

Mr. Jeffares is in favor of the Planning Board and add a few of the other key players.

Ms. Prasad has experience in working on master plans and she does not believe that she has ever presented to a group that has not been tailor made to select the planner for that particular exercise. She agrees with including members of other committees that could add value with the Planning Board would be the right approach.

Ms. Boyce said the Planning Board is the appropriate board to make the selection for the recommendation and agrees that it would be beneficial to have others invited and hear their comments at a public meeting. She would not put them on the board and specifically give them a vote

Mr. Boyle is in favor of inclusiveness and wants the Planning Board members to be involved. At the end of the day, the board will be working with the consultant and their teams. He suggested that Parking, Multi-Modal Transportation Board, Parks and Recreation, and Design Review Boards be included, and there may be others.

Mr. Koseck said the Planning Board members have been appointed by the commission. Members of other committees would bring expertise to the group which might make it better.

Mayor Hoff said we are now talking about the Planning Board and four other people, or an ad hoc committee comprised of three or four planning board members and people from the other committees and boards. She believes the makeup makes a difference.

Ms. Boyce said this discussion began with including residents and asked if that is important or not.

Commissioner Sherman does not think the entire board should sit on the selection committee plus other committee members. He would rather see a couple board members plus the other committees mentioned, and a couple of residents. It will be looked at from different points of view made up of a mixed bag of people with different skill sets.

Mayor Hoff said if that is the way we go, we need to discuss the composition of the committee.

Mayor Hoff noted the contractor selection recommendation committee will be made up of three Planning Board members, two residents (one property owner), and one member of each of the following committees: Multi-Modal Transportation Board, Advisory Parking Committee, Parks and Recreation, Design Review Board.

Mayor Hoff asked for comments on the Introduction.

Commissioner DeWeese suggested changes in the reference to dense urban communities.

Mayor Pro Tem Nickita agreed and suggested the words "...traditional, walkable..." be used.

Commissioner Bordman suggested adding the words "...encouraging residents to participate in a public involvement process,...".

Mayor Hoff suggested "conducting strategic visioning sessions with residents".

Commissioner Bordman would like to see it in the introduction on the first page. She questioned the use of only "current" demographic data, and suggested that "projected" be added. Ms. Ecker noted it was spelled out in more detail on the next in the Updated Data Collection and Analysis section. Ms. Ecker said the word would be added.

Resident Deangelo Espree commented.

Commissioner DeWeese referred to bullet point 4, and said he would like to have something referring to a vision for neighborhoods. There is disagreement in this city over how the neighborhoods look and he would like to more directly address that with a vision on which we can get some agreement.

Mr. Williams would like to address the trends in the city since 1980, and analyze what has taken place in neighborhoods.

Commissioner DeWeese said we have a clear vision for the downtown and commercial areas, but we do not have a clear vision of the neighborhoods.

Commissioner Bordman suggested "Update of residential housing section to include an analysis of changes in residential areas from 1980 to present, neighborhood goals, projections..."

Commissioner DeWeese wants some direction. He wants to know where the city needs to be moving.

Mr. Boyle suggested adding "...future direction" to Commissioner Bordman's suggestion.

Mayor Pro Tem Nickita thinks it is more involved and maybe we need to expand the bullet, because it is going back to the percentage of the city that is single family residential for the most part and the amount of emphasis we have had on the planning and directing the non-residential. In order for us to identify where we want these neighborhoods to go, we have to recognize exactly what we have. Part of that is the distinction of identifying the characteristics of the different neighborhoods so that there is some definition of physical conditions of one neighborhood over another, because if we are going to start identify or analyze some type of variation of what is there, we need to understand how it is different from the next. He thinks the bullet point should expand to include "neighborhood typeology, neighborhood characteristics and neighborhood evolution". He said we cannot competently direct vision and set the stage for future development if we do not understand that.

Commissioner Harris suggested incorporating the RTA in the discussion in bullet 5.

Commissioner Bordman suggested adding "anticipated effects of autonomous vehicles". Ms. Ecker said that is covered on the next page under Parking Analysis.

Mr. Jeffares asked if that would cover the utility aspect since autonomous is mostly going to be electrical. Ms. Ecker agreed that should be added in section 3.

Commissioner DeWeese would like the words "and alternatives" added to item 4. Residential Permit Parking (city-wide). It would be clear that we are looking for alternatives.

Mayor Pro Tem Nickita said we need to be somewhat specific when referring to demographic data to include residential, office and commercial.

Mayor Pro Tem Nickita suggested adding to bullet point 7 "to incorporate current technological advancements" and "innovative policies". He feels "best practices" is too broad.

Mayor Pro Tem Nickita suggested under Public Participation language to include provide an app to develop and encourage as much public participation as possible.

Mr. Boyle suggested the words “,...utilizing contemporary technologies.” at the end of the last sentence.

Commissioner Bordman did not see anything like a monkey survey that the consultant would put together and offer to the public. She thought the city could use the email that we use now for the bulletins we send out so we could have a monkey survey ahead of or around the same time as the charrettes. It would involve people who due to work or family commitments cannot come to the charrette, but would still like to play a role to help figure out where we are going with this plan.

Mr. Boyle suggested more of a rewrite in the Visioning Process section to indicate we are looking for a consultant who understands the importance of capturing all views and brings these views early and often. He would like to put the onus on them to present to us a detailed plan for comprehensive community engagement, and that we assess that as part of the review process. They should bring experience of where it has been done before.

Mayor Hoff asked how we communicate that we want one public meeting for review of the final draft at the Planning Board and one before the City Commission.

Ms. Ecker suggested “....shall include at a minimum...”

Mayor Pro Tem Nickita suggested that the commission be involved in a preliminary meeting that provides a progress report.

Commissioner DeWeese suggested replacing the words “urban areas” with “dense, traditional, walkable communities” in 2. Updated Data Collection and Analysis.

Mr. Koseck suggested adding words “residential” before neighborhood in 1. Visioning Process.

Mayor Pro Tem Nickita suggested adding in 3. Infrastructure Analysis “and the incorporation of complete streets policies and walkable priorities.”

Ms. Prasad said whatever we find in the infrastructure analysis and parking analysis, should feed the visioning process, and that the community engagement goes on throughout the whole term of the project.

Commissioner DeWeese suggested changes to item 6 on page 6. He said it needs to be more inclusive especially as it relates to the City Commission. Ms. Ecker will add language requiring progress reports and/or updates.

Mr. Boyle suggested the words “ongoing engagement with....”

Mayor Pro Tem Nickita said we may want to be more specific in the Deliverables section. He suggested that we add “...that clearly depict the plan concepts, proposed vision, and recommendations.” We should be very clear on the documentation that they give us. We may want to add before and after illustrations, three dimensional illustrations of particular concepts, detailed plan document, including elements like buildings, pedestrian network, including sub-

area plans. We want to have in our hands at the end of the day that will give us the ability to implement the plan.

Mr. Boyce asked if we need the hard color copies. Ms. Ecker said historically we have supplied a copy of the plan to the commissioners.

Mr. Koseck said it might be more important to get a hard copy of a 90% complete set. It is common for architects to provide hard copies at 50% and 90% completion so the clients can mark it up.

Mr. Jeffares suggested an infographic might be helpful.

Mr. Koseck suggested that item 2 under Submission Requirements, identify key people and their roles, ask for references for those people, and a separate category for past projects that the firm has done with references.

Mr. Williams suggested we need to be flexible to accept both a contractor who brings along sub-contractors as opposed to a joint venture situation.

Mayor Pro Tem Nickita said it is important how we frame our desired qualifications.

City Attorney Currier said a joint venture agreement gives the city more protection and more accessibility.

Mr. Koseck suggested requesting an organizational chart in the submission requirements.

City Manager Valentine clarified this RFP will be bid under our normal procedure which is open and public as all bids are.

Mr. Williams said he is not sure a month is enough time to put together a joint venture. He thinks firms should have 60 days to respond.

Mayor Hoff adjourned the meeting at 9:44 pm.

Cheryl Arft
Deputy City Clerk



MEMORANDUM

Planning Division

DATE: September 15, 2017

TO: Joseph A. Valentine, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Definition of Personal Services

Over the past several months, the Planning Board has been studying potential definitions for personal service uses as directed by the City Commission earlier this year. On August 9, 2017, the Planning Board conducted a public hearing to discuss the following proposed definition:

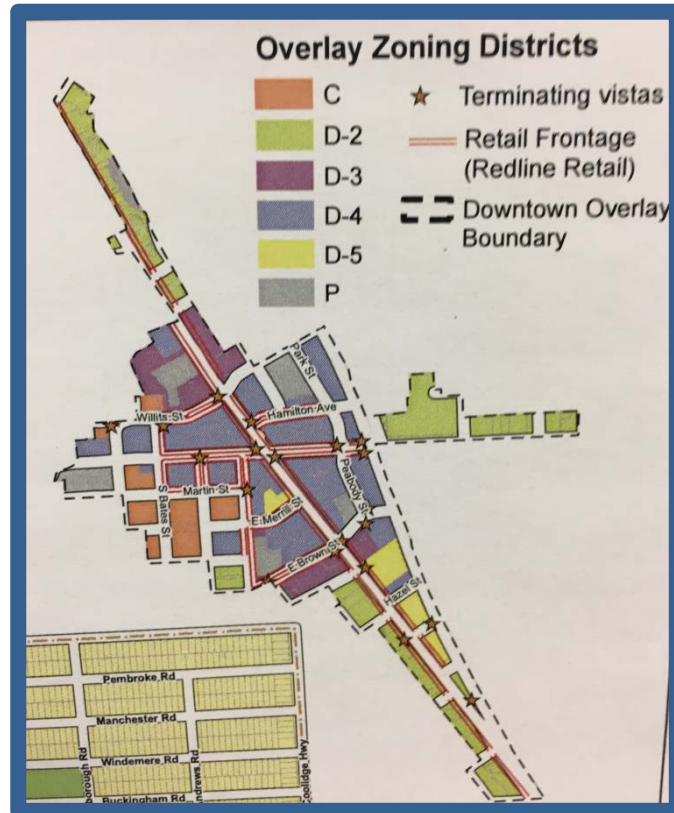
Personal Services: An establishment that is open to the general public and engaged primarily in providing services directly to individual consumers, including, but not limited to, personal care services, services for the care of apparel and other personal items, but not including business to business services, medical, dental and/or mental health services.

The purpose of the joint meeting is to foster discussion between the City Commission and the Planning Board that is focused on creating a definition of personal services to clarify the types of uses permitted in the Redline Retail District.

Retail discussion and background

Over the past decade, there has been an ongoing desire by some City Boards and Commissions to review the current definition of retail to ensure that we are encouraging true retail downtown, and not allowing office and other service uses to dominate. The issue is specifically relevant in the Downtown Overlay, where retail use is required in the first 20' of depth for all buildings in the Redline Retail District as illustrated below.

At the joint meeting with the City Commission on June 19, 2016, both the City Commission and the Planning Board members agreed that the existing definition of retail and the related definitions in the Zoning Ordinance should be discussed in further detail. This issue was added to the Planning Board's 2016 – 2017 Action List for future discussion. Accordingly, the Planning staff assembled the following information regarding the existing ordinance requirements which affect permitted commercial uses within the Redline Retail District.



Zoning Ordinance regulations:

Article 3, Section 3.04 (C)(6) states:

Buildings that have frontage along the required retail frontages, as specified on the Regulating Plan, shall consist of retail with a minimum depth of 20 feet from the frontage line within the first story. Lobbies for hotels, offices, and multiple-family dwellings may be considered as part of the required retail frontage, provided that any such lobby occupies no more than 50% of the frontage of said building.

Accordingly, all buildings built under the Downtown Overlay in the areas marked in red on the map inset above, must contain retail uses in the first 20' of depth of the first floor. Article 9, section 9.02 of the Zoning Ordinance provides the following retail related definitions:

Retail Use: Any of the following uses: artisan, community, commercial, entertainment (including all establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development), bistro or restaurant uses.

Artisan Use: Any premises used principally for the repair, manufacture, and sale of domestic furniture, arts, and crafts. The work must take place entirely within an enclosed building using only hand-held and/or table-mounted manual and electric tools.

Community Use: Premises used principally for education, worship, cultural performances, and gatherings administered by nonprofit cultural, educational, and religious organizations; premises used principally for local, state, and federal government, administration, provision of public services, education, cultural performances, and gatherings.

Commercial Use: Premises used generally in connection with the purchase, sale, barter, display, or exchange of goods, wares, merchandise, or personal services.

Office: A building or portion of a building wherein services are performed, including professional, financial (including banks), clerical, sales, administrative, or medical services.

As defined in Article 9, retail uses include the direct sale of products from the premises, but also include restaurants, entertainment and the purchase, sale or exchange of personal services (given the inclusion of personal services in the definition of commercial uses, which are included as retail uses). No definition for personal services is provided. Personal financial services, beauty services, banking services, real estate services, advertising services and other similar uses have been permitted within the Redline Retail District under the umbrella of personal services, provided that there is a display area for the sale or exchange of such goods and services in the first 20' of the storefront, and the storefront is open to the public during regular business hours. Concern has been raised that this small display area 20' in depth is not sufficient to create an activated, pedestrian-friendly retail district.

Recent Planning Board activity

In April of 2017, the City Manager directed staff to consider measures to provide temporary relief to halt the addition of non-retail uses into storefronts in Downtown Birmingham located within the Redline Retail District, while the Planning Board continues to study this issue.

Accordingly, on May 8, 2017, the City Commission directed the Planning Board to move forward with ordinance amendments to provide temporary relief to halt the addition of non-retail uses into storefronts in Downtown while the Planning Board continues to study the issue of retail uses Downtown. However, the City Commission appeared to be supportive of allowing beauty salons and similar uses in the Downtown given the foot traffic that they create, and thus requested a definition of personal services be added.

On May 10, 2017, the Planning Board discussed the direction from the City Commission to consider an ordinance amendment that would temporarily stop some of the uses that fall under the current undefined category of personal services and to stop community uses from being permitted in first-floor retail space Downtown while the board studies the full issue. After

extensive discussion, the board directed the matter back to staff to provide ordinance language that would define personal services to include beauty salons, retail bank branches and other similar uses, and to allow personal services as defined within the Redline Retail District, but to exclude office, medical and quasi-office uses, as well as community uses until the Planning Board can complete a comprehensive study regarding retail Downtown. During this meeting, the Planning Board reviewed definitions of personal services used in other municipalities to assist in crafting a definition for Birmingham. Sample definitions are attached.

On May 24, 2017, the Planning Board reviewed draft ordinance language that excluded community uses from the Redline Retail District, added a definition of personal services that includes beauty and clothing services, but excluded office, medical and quasi-office uses, and amended the definition of retail to include personal services as newly defined. All of these changes would prohibit the use of first floor space in the Redline Retail District from being occupied by office or quasi-office uses. After much discussion, board members did not vote to set a public hearing on the proposed ordinance amendments, but requested that staff notify property owners in the Redline Retail District and invite them to attend the next Planning Board meeting to provide their input. The Planning Board also requested additional information from prospective retailers, building owners and the state of retail in the City currently. The board felt they needed more data before they could proceed, and unanimously approved a motion to continue the discussion at the Planning Board meeting on June 14, 2017.

At the June 14 meeting the Planning Board held an additional study session and received input from a large number of commercial property owners on the impact of the proposed ordinance language. At the end of the study session the Planning Board passed a motion to hold a public hearing on July 12, 2017 to consider a recommendation to the City Commission on the draft language.

On June 19th, 2017 the City held a joint workshop session with the Planning Board and City Commission. At that time there it was discussed that the Public Hearing scheduled for July 12, 2017 should be postponed and the Planning Board should have an additional study session to further discuss the proposed definition for personal services.

As stated above, during the joint meeting of the City Commission and the Planning Board it was discussed that the focus of the next Planning Board discussion should be on the definition of personal services. By creating a definition for personal services much of the ambiguity experience by City staff could be eliminated. More clear and concise direction would be readily available as to what is and is not considered a personal service, and therefore what is permitted in the redline retail district.

Based on the discussion between the City Commission and Planning Board at the June 19th, 2017 meeting regarding the definition of retail, the City Manager provided a memo outlining the course of action considered at that time. This discussion suggested postponing the public hearing to a date certain and holding study session in lieu of the public hearing to consider the

definition of personal services and to review the Redline Retail District as prescribed in the Downtown Birmingham 2016 plan for background and intent in regards to personal services. The memo from the City Manager is attached.

On July 12, 2017, the Planning Board opened a public hearing to consider amendments to Article 03 section 3.04 to exclude community uses in the Redline Retail District and Article 09, Definitions to define Personal Services. The public hearing was immediately closed and the Planning Board postponed the public hearing to August 9, 2017 to allow the Planning Board to hold an additional study session specifically with regards to drafting a definition for personal services.

The board then conducted a study session on the same topic. Based on the direction by the City Commission and City Manager to review the Redline Retail Area as prescribed by the Downtown Birmingham 2016 Report for background on the intent for retail in the downtown, staff provided a review of the retail intent in the 2016 Plan, including the type of uses and the mix of uses to be included. The 2016 Plan was clear that personal services should be a permitted use in the Redline Retail district, but did not provide a definition for personal services. Board members discussed the definition of personal services that had been drafted for the public hearing. Based on the direction by the City Commission and City Manager to focus solely on the personal services definition at this time, the board discussed the type of services that would be permitted under the draft definition, and discussed providing a further distinction for personal services to exclude business services that are primarily offered to business or corporate clients. Board members did see the value in allowing services in the Redline Retail district that were primarily offered to individuals, such as beauty services, real estate services and clothing repair services. Board members stated their desire to allow uses that enhanced the level of activity on the street by providing services to individual consumers who would then patronize these businesses. The draft definition of personal services was amended accordingly, and is attached for your review.

Further, board members discussed the City Manager's direction to remove any reference to services that were not included in the definition to help clarify the application of the proposed definition by City staff. After much discussion, board members concluded that the exclusions should remain in the draft definition to be recommended to the City Commission. The consensus was that listing these excluded services did clarify the City's intent on the appropriate personal services to be permitted in the Redline Retail district, and thus the Planning Board wished to recommend that these exclusions remain in the definition of personal services to be recommended to the City Commission.

On August 9, 2017, the Planning Board opened a public hearing to consider amendments to Article 03, section 3.04 to exclude community uses in the Redline Retail District and Article 09, Definitions, to define Personal Services. Based on the direction of the City Commission and the City Manager, board members focused on the definition of personal services specifically and did

not engage in a discussion on whether to exclude community uses in the Redline Retail District. After extensive discussion and public input, the Planning Board voted unanimously not to recommend approval to the City Commission for the draft definition proposed for Personal Services. The motion further recommended that the City expedite an immediate update to the comprehensive City wide Master Plan in order to properly address this issue and those that surround it.

As discussed at the public hearing on August 9, 2017, the most recent proposed definition for personal services is as follows:

Personal Services: An establishment that is open to the general public and engaged primarily in providing services directly to individual consumers, including, but not limited to, personal care services, services for the care of apparel and other personal items, but not including business to business services, medical, dental and/or mental health services.

The City Commission and the Planning Board may wish to discuss the proposed definition of personal services to clarify the types of uses permitted in the Redline Retail District.

May, June, July 2017 Draft Language
for Personal Services Definition

**ORDINANCE NO.
THE CITY OF BIRMINGHAM ORDAINS:**

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 9, SECTION 9.02, DEFINITIONS, TO ADD A DEFINITION FOR PERSONAL SERVICES.

Personal Services: An establishment that is engaged primarily in providing services involving the care of a person or apparel, including but not limited to: beauty and barber shops, nail care or skin salon services, other personal grooming services, laundry services, dry cleaning, shoe or clothing repair; but does not include business services, medical, dental and/or mental health services.

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Mynsberge, City Clerk

August 2017 Draft Language
for Personal Services Definition

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 9, SECTION 9.02, DEFINITIONS, TO ADD A DEFINITION FOR PERSONAL SERVICES.

Personal Services: An establishment that is open to the general public and engaged primarily in providing services directly to individual consumers, including, but not limited to, personal care services, services for the care of apparel and other personal items, but not including business to business services, medical, dental and/or mental health services.

ORDAINED this _____ day of _____, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Mynsberge, City Clerk

City Commission Minutes
June 20, 2016

E. Definition of retail

Ms. Ecker described the issue as the city's definition of retail in the ordinance, and people who would like the definition to be more specific. She said this comes up at the shopping district level. The retailers downtown want to see more retail. For the most part, the general public wants to see an active retail type use whether it is retail or restaurant. There is some debate on what percentage of each. The building owners have a different view.

Commissioner Nickita thinks this is long overdue for discussion. He feels it needs to be re-examined and cleaned up.

The consensus is to continue discussion on the definition of retail.

There were no public comments.

Planning Board Minutes March 29, 2017

5. Definition of Retail

Ms. Ecker observed that over the past decade, there has been an ongoing desire by some City Boards and Commissions to review the current definition of retail to ensure that we are encouraging true retail downtown, and not allowing office and other service uses to dominate. The issue is specifically relevant in the Downtown Overlay, where retail use is required in the first 20 ft. of depth for all buildings in the Redline Retail District.

As defined in Article 9, retail uses include the direct sale of products from the premises, but also include restaurants, entertainment and the purchase, sale or exchange of personal services. No definition for personal services is provided. Personal financial services, beauty services, banking services, real estate services, advertising services and other similar uses have been permitted within the Redline Retail District under the umbrella of personal services, provided that there is a display area for the sale or exchange of such goods and services in the first 20 ft. of the storefront, and the storefront is open to the public during regular business hours. Concern has been raised that this small display area 20 ft. in depth is not sufficient to create an activated, pedestrian-friendly retail district.

In the past, both the Planning Board and the Birmingham Shopping District Board have expressed concern with the existing retail definition, and have considered alternative definitions to tighten the definition of retail to include only shops which sell products, not financial, real estate or other such personal services. On the other hand, many property owners in the past have expressed concerns about tightening up the definitions as they desire the flexibility to lease space to a wider range of users in order to avoid vacancies.

Reviewing the research on other cities retail policies, one issue maybe that the Red Line Retail District is too big. Perhaps the City should target the Maple/Woodward core area for the strict definition of retail and then allow some of the service uses around that. Another recommendation may be to change the definition of retail use by eliminating "community and commercial uses." It would still keep in uses that would fall under entertainment. Another option is to include language that talks about what percentage of sales comes from the actual sale of products.

Mr. Share said maybe part of the answer is that mandatory true retail needs to be compressed and street activation needs to be the principle. The national market trend is that the retail footprint is shrinking and it is anchored by entertainment and by food. Ms. Whipple-Boyce commented she does not like to see offices on the first floor. They create horrible dead strips of nothing. Maybe the idea is to shrink the retail district if the market trend is shifting.

No one had an issue with removing "community and commercial uses" from the definition of retail use. Mr. Jeffares suggested looking at Walnut Creek, CA and Hinsdale, IL for ideas about encouraging retail activity.

Consensus was that this topic will need further discussion.

**Planning Board Minutes
May 10, 2017**

2. Definition of Retail

Ms. Ecker advised that last week Planning Staff was directed by the City Manager to come up with a temporary ordinance amendment that would halt the conversion of first-floor retail space to quasi office/quasi retail uses. The City Commission talked about that on May 8 and in the end they voted in favor of directing the Planning Board to bring back to them by July 24 an ordinance amendment that would be a temporary measure of relief until the board's overall discussion of retail is completed. Further, they have asked the board to consider an ordinance amendment that would temporarily stop personal services and community uses from being on first-floor retail space Downtown while the board studies the full issue. They want personal services to be defined.

After researching the subject, Ms. Ecker thought the best example of defining Personal Services came from the City of Bremerton, Washington:

Personal Service Business means an establishment engaged primarily in providing services involving the care of a person or apparel, such as: shoe repairs, laundry and dry cleaning, beauty and barber shops, clothing/costume rental, tanning, other personal grooming facilities and domestic assistance services. This does not include massage parlors, health care services, exercise establishments, nor funeral services.

At their meeting on May 8 it seemed the majority of Commission members appeared to value the beauty services as something that drives activity Downtown.

Mr. Boyle noted this is the fundamental problem of a form based code. It is not easy to take that form and assume you will get what you want in it.

Ms. Lazar observed the board needs to remember that offices like McCann Erickson that have moved into town have increased foot traffic, which also helps the retail. Chairman Clein said this board can either craft a measure for the presumed short term that solves a policy issue that the City Commission has already come to a conclusion on, and then come back and try and make it right; or they can continue to spin until the joint meeting.

Board members decided to add personal services to the definition of retail and to add a definition personal service that includes retail bank branches. Then in the Downtown Overlay, community uses should not be considered retail, but personal services should be allowed.

Consensus was to send this matter back to Staff for due consideration and they will bring back appropriate definitions to the next meeting. Also, invite the BSD Director to that meeting. The board can talk about scheduling a public hearing at that time.

Planning Board Minutes May 24, 2017

1. Definition of Retail

Ms. Ecker advised that over the past decade, there has been an ongoing desire by some City Boards and Commissions to review the current definition of retail to ensure that we are encouraging true retail Downtown, and not allowing office and other service uses to dominate. The issue is specifically relevant in the Downtown Overlay, where retail use is required in the first 20 ft. of depth for all buildings in the Redline Retail District. The City Commission talked about that on May 8, 2017 and they directed the Planning Board to move forward with ordinance amendments to provide temporary relief to halt the addition of first-floor non-retail uses into storefronts in Downtown while the Planning Board continues to study the issue of retail uses Downtown.

On May 10, 2017, the Planning Board discussed the direction from the City Commission to consider an ordinance amendment that would temporarily stop some of the uses that fall under the current undefined category of personal services and to stop community uses from being permitted in first-floor retail space Downtown while the board studies the full issue. After extensive discussion, the board directed the matter back to staff to provide ordinance language that would define personal services to include beauty salons and clothing services and other similar uses, and to allow personal services as defined within the Redline Retail District, but to exclude office, medical and quasi-office uses, and amend the definition of retail to include retail bank branches along with personal services as newly defined.

In addition, the Planning Board requested that the Birmingham Shopping District ("BSD") Director attend the Planning Board meeting on May 24, 2017. Ms. Tighe was not available to attend the meeting, but forwarded a copy of the BSD's latest retail study for Downtown Birmingham to assist the Planning Board in their review of this issue. The BSD is also working on a comparison between the market analysis that was done several years ago and the most current analysis to see what the changes have been in the different categories.

In response to the Chairman, Ms. Ecker advised that as proposed there would not be a time limit on the ordinance change. Mr. Jeffares had a concern that this is the right mechanism because the study might go on for years while they would see plywood go up on windows.

Motion by Mr. Williams

Seconded by Ms. Lazar to receive and file letters from Matthew Shiffman of Alden Development Group dated May 24, 2017 and from Faiz Simon of Simon Group Holdings dated May 19, 2017. Both letters oppose the proposed change.

Motion carried, 7-0.

VOICE VOTE

Yeas: Williams, Lazar, Boyle, Jeffares, Koseck, Prasad, Whipple-Boyce

Nays: None

Absent: Clein

Mr. Williams said he is a free market person and he thinks the market should dictate what goes into the stores. Ms. Lazar stated she did a drive-by of the businesses that are no longer there. There are four on W. Maple Rd. and four on N. Old Woodward Ave. She questioned the rationale behind stymieing a landlord from filling his space. At least it would look like there is activity. Mr. Jeffares thought the City should do some things to encourage retail such as solving the parking problem. If people can't find a place to park they won't come to Birmingham to shop. It would be better to solve that issue than to declare a moratorium that might last for a long time.

Ms. Prasad said she has noticed that most retailers close pretty early in the evening when there is a fair number of people going in and out of the first-floor offices. The business she has seen so far haven't really taken away from activation of the streets. Chairman Boyle observed if the City wants to keep the streets activated perhaps the merchants should be asked to make some modest changes in terms of hours, lighting, shades, litter, door openings etc. adjacent to their properties.

The Chairman took discussion from the public at 7:47 p.m.

Mr. Brian Najor, owner of buildings at 100-167, 600-640, and 720-726 N. Old Woodward Ave., noted there is a significant amount of change going on in retail today. He thought it is probably a big mistake to impose the proposed changes at this time when there is so much unknown. He encouraged further discussion prior to making changes. This temporary change to the ordinance could go on for years. He feels owners could be facing some challenges in filling space here. The City should be expanding its uses and keeping things open to bring in new tenants. Also, other building owners, Ted Fuller and James Esshaki, have indicated they are strongly opposed to the ordinance change.

Ms. Lazar felt there should be further discussion and consideration at another meeting so that more property owners can weigh in.

Ms. Whipple-Boyce indicated she is concerned about prime retail spaces being consumed with office use. She would very much like to see the board come up with a plan for this. Small retail stores in downtowns like ours are thriving in other communities and thriving here. Mr. Koseck said it concerns him not to put an end date on the study. Mr. Williams noted there is no factual basis that retailers are waiting and unable to find space to lease. The City Commission hasn't given the Planning Board the facts to be able to develop a proposal.

Chairman Boyle said this discussion should be continued in order to ask for evidence from retailers, building owners, and others. Mr. Jeffaries thought Ms. Tighe should be asked about the state of retail in the City.

Ms. Ecker noted that the City Commission in their meeting on May 8, 2017 was adamant that they wanted this matter moved forward to a public hearing and then back to the Commission in with all due haste.

Motion by Mr. Jeffares

Seconded by Mr. Williams to continue the discussion on the definition of retail to June 14, 2017.

Mr. Brian Najor received clarification that the board is not moving forward to June 14 for a public hearing on the proposed ordinance amendments. This discussion will be continued on June 14 to get more information and to get more people to weigh in.

Motion carried, 7-0.

VOICE VOTE

Yeas: Jeffares, Williams, Boyle, Koseck. Lazar, Prasad, Whipple-Boyce

Nays: None

Absent: Clein

Consensus was to limit the June 14, 2017 agenda to two items, the public hearing on glazing, and the retail discussion.

**PLANNING BOARD MINUTES
WEDNESDAY, JUNE 14, 2017**

1. Definition of Retail

Mr. Share recused himself because of a conflict of interest. Ms. Lazar also recused herself based on her part ownership of a commercial building in Birmingham.

Chairman Clein reiterated this is not a public hearing. The only action the board could take tonight would be if they decided to set a public hearing. This board does not approve or deny any ordinance language, they only make a recommendation to the City Commission.

He explained that the City Commission has sent forth instructions to the Planning Board to study and provide a recommendation along with a directive for a particular course of action.

Ms. Ecker advised the Planning Board has been assessing this matter for probably six months or so. Specifically the City Commission directed the Planning Board to hold a public hearing on amendments to Article 3, section 3.04 (C) (6) of the Downtown Overlay District and the Redline Retail District to take away Community Uses and Personal Service Uses as permitted uses on the first floor. They also specifically directed the board to state what would be included in retail and to come up with the definitions of Personal Services and Community Uses.

This proposal clarifies exactly what uses would be allowed on the first floor within the Redline Retail District. This is what the City Commission has asked the Planning Board to consider as a temporary measure while the board further discusses the bigger picture of retail. It would halt some of the changes they have been concerned about in terms of the types of tenants that have been coming in on the first floor and the parking implications of those tenants.

Ms. Ecker advised that the Planning Division has been working with the City Manager and the Birmingham Shopping District ("BSD") to obtain all relevant data as to the current mix of uses on the first floor in the Redline Retail District and the changes to this mix that have occurred since the inception of the 2016 Plan in 1996. Discussion followed regarding information provided by the BSD data base regarding office uses on the first floor in the Redline Retail District.

Mr. Jeffares observed the proposal would be a temporary fix but it would turn into a permanent change if the board's study continues on for a long period of time.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Koseck to add the following communications to the record:

Mr. Eric Wolfe in favor of the proposed ordinance changes;

Mr. James Esshaki opposed;

Mr. Rick Huddleston opposed.

Motion carried, 5-0.

VOICE VOTE

Yeas: Whipple-Boyce, Koseck, Clein, Jeffares, Prasad

Nays: None

Recused: Lazar, Share

Absent: Boyle, Williams

At 8:09 p.m. the chairman invited members of the public to speak.

Mr. Richard Huddleston said he represents VS Birmingham Holdings, LLC, the owner of Birmingham Place which contains 108,000 sq. ft. of office and retail. It was noted that the portion of his building that fronts on S. Old Woodward Ave. is in the Redline Retail District. They are opposed to the ordinance proposal because they believe that landlords need more flexibility to deal with 21st Century retail. He wondered if Birmingham can sustain increasing the vacancy rate by 30 or 40% and still retain the viable Downtown that everyone knows and loves.

Mr. Peter Sobelton indicated he is a resident and also a commercial property owner in Birmingham. He highlighted what most recently occurred at Fairlane Towne Center where Lord and Taylor had a 250,000 sq. ft. location. That has been converted to office use for 1,500 Ford Motor Co. employees. There was an immediate increase in traffic and the most significant increase was at the food and beverage courts. He encouraged that people not be put in a position where they are forced into only one area of commerce; i.e., retail.

Ms. Rene Acho, resident and business owner in Birmingham, said to jeopardize the balance that Downtown has had for so many years could be detrimental. Everyone can remember what happened in 2008 and 2009 when all of the retailers went down and no one was there to take those spaces. That could again be an issue for all of us.

Mr. Bedros Avedian said he owns 261-275 E. Maple Rd., the Jos. A Bank Building. Also, he owns 297-323 E. Maple Rd. He went on to name a number of Downtown businesses that have failed. He has had to reduce rents but his taxes haven't gone down. That is a big hit on all of the real estate owners.

Mr. Ken Kajoian who lives on Lakepark and owns two buildings in the Redline Retail District thought the proposed plan does not allow for the diversity that is needed in Birmingham. He noticed that Hamilton is not in the Redline Retail District and that is not equitable. He agreed it is nice to have more retail, but with the dynamics of the economy and what is going on with retail, that is not viable right now.

Ms. Jeanette Smith was present on behalf of James Esshaki. She thought the board ought to take time to really understand the data and understand what could happen as others have said. Blanket rules open the door to some issues. She asked the board to consider Birmingham's realities, the market forces at work, and the retail landscape that is changing rapidly. Keep the landlords empowered to do what they do best.

Mr. Paul Chicorian said he is Executive Manager Director for Colliers International, a commercial real estate firm. Also he is a resident at 1076 Fairfax. He believes if this change were approved it would severely damage the City and its residents. During the slowdown buildings were empty and landlords couldn't get tenants. Now things are better, and it may seem like a good idea to switch everything to retail. But if the economy goes back into a slowdown which it

inevitably will, Birmingham will have vacancies and ultimately Gypsy retails will come in and out. The present mix is ideal, so don't try to fix it.

Mr. Mark Alhermizi indicated he lives on Frank and has been a commercial tenant for the last ten years. He rents about 3,000 sq. ft. of office space in a commercially zoned building. He currently is looking for 6,000 sq. ft. and his options are extremely limited. This proposed change would only make it more difficult or impossible to attract more business prospects to this great town.

Mr. Dan Jacob noted he has been a broker in Birmingham for 28 years. He has done the majority of brokerage deals in town. It is the daytime population that co-exists with the residential that gives Birmingham its synergy. Services are needed from the people that work in town. It would be really devastating if the landlords' hands were tied so they didn't have flexibility that is reactive to the times. It is necessary to be cognizant of who wants to be here and who does not. He explained it isn't like retailers are knocking on our door, they don't have that urgency to come here.

Mr. Brian Najor said he owns several buildings Downtown. He wanted to echo everything he has heard tonight. It troubles him the board is trying to make a very important decision but doesn't have all of the facts. He has heard a lot about why this change shouldn't be done but hasn't heard a lot about why it should. Obviously more needs to be done in terms of studies. The proposal that has been discussed seems very counterintuitive. Everyone that has spoken tonight has provided evidence and facts and understands the market. He urged the City Commission to walk down the streets and talk to the owners, retailers, and the real estate brokers in order to educate themselves on where the market is today.

Mr. Dan Jacob spoke again to ask for a foot traffic study. That is very critical when you want to restrict uses to only retail and not allow quasi retail.

Chairman Clein clarified this volunteer board is not attempting to push a particular change up to the City Commission. The board was asked to start studying retail and its definition. That study would need to include all of the details that have been discussed this evening. The reason everyone is here tonight is that the City Commission passed a resolution specifically asking this board to do exactly what is at hand. The Planning Board is grappling with the same questions that the audience asks. What is the data; why are we doing this; all of these questions. The board is trying to work through a process that was specifically requested of them by the elected leaders who set policy.

Ms. Christine Jackson, the owner of Scandia Home, stated that she has lost the other two retail stores that are on her block. Now she doesn't get a lot of foot traffic. She is a destination store so people still tend to come. She proposed there will need to be some type of a compromise. Perhaps the Redline District could be narrowed down some more so all of the retailers are in context to one another. That way they will prosper and won't go out of business. Brick and mortar is different from on-line and there will always be people who want to come and experience what they are buying.

Mr. Richard Sherer stated that he presently owns 175-185 W. Maple Rd. and his sister has several stores on Pierce. His property at 185 W. Maple Rd. has been vacant for a year. That is

his reality, and to further constrict restricts free enterprise and he is entirely opposed. He questioned what the ordinance proposes to do for building owners who have long-term skin in the game.

Mr. Matt ~~Ferrill~~ **Farrell**, CEO and founder of Core Partners, a commercial brokerage company, spoke. They property manage, broker, and advise on commercial real estate transactions throughout the State of Michigan. He is opposed to the intended implication. His company tries to educate their clients that flexibility, creativity and an open market are key when it comes to marketing and advertising commercial real estate space. Any limiting factors to that and further hampering will change the result of the market condition. The reason the vacancy factor in Birmingham is in the 6% range when you look at office, retail, and multi-family combined has nothing to do with the rental rates, walkability, or urbanization; but has everything to do with being able to accommodate people coming in and out of town and the parking constraints.

Mr. Kevin Denha, the owner of 700 N. Old Woodward Ave. in the Redline Retail District as well as the building on Lincoln and Adams where Great Harvest Bread is located, added a couple of things. He thought any tweak to the ordinance needs to be analyzed very seriously and also questions why this is happening.

Mr. James Esshaki, Essco Development, said he owns three buildings that are all being affected by the proposed legislation: Park Plaza, Plaza of Birmingham, and the Wabeek Building. He noted the following:

These buildings were purchased and built based on existing ordinances. If the City were to enforce the new ordinances, it would have a devastating effect on real estate. It would reduce the value of his holdings by 20 to 30%.

He does not know of any retailer who wanted to come to this town that has been turned away. Birmingham is not a retail destination as large cities are. Large national tenants will not come here because it is not conducive to their type of product. So, chasing these people is like chasing moonbeams.

If office tenants close down and people try to replace the spaces with retail, a lot of foot traffic will be lost across the City. The retail may have six or seven employees versus 100 or 150 office workers.

There are spaces that would have to be made retail where retail could not fit, such as Google and Schecter. These will end up as permanent vacancies.

Chairman Clein announced he would not support the proposed amendment to restrict uses. The board has not had spent enough time having the detailed discussions and reviewing relevant data to support restricting uses in this way. However, the City Commission has directed the board to set a public hearing. At the joint Planning Board/City Commission meeting on Monday of next week he will be expressing his concerns about the process.

Mr. Koseck indicated the one comment he thought was brilliant was that maybe the Redline Retail District needs to be changed. He feels uncomfortable with pushing the proposal to a public hearing because he thinks it needs study. This matter can be discussed at the joint meeting.

Mr. Jeffares observed the amount of information that came out tonight was extremely helpful. Hopefully more information can be obtained from the BSD so the best possible choice can be made.

Ms. Ecker stated the direction from the City Commission is clear. The Planning Board should hold a public hearing, review it, and decide on a recommendation. Ultimately it will be up to the City Commission to make the final decision.

Ms. Whipple-Boyce thought the City Commission wants absolute clarity about what office is by today's standards. She feels it is important to get additional data on national trends along with information that will shed some light on this matter. For example, is retail dead? Or do online sales only make up 8%? For now it is clear to her that the City Commission has instructed this board to set a public hearing and she believes that should be done tonight.

Motion by Ms. Whipple-Boyce

Seconded by Ms. Prasad to set a public hearing date of July 12, 2017 at the Planning Board to consider the following ordinance amendments to Chapter 126, Zoning:

- 1) Article 3, Section 3.04, Specific Standards, to amend the Downtown Birmingham Overlay Standards to exclude community and personal service uses as permitted uses in the Redline Retail District; and**
- 2) Article 9, Section 9.02, Definitions, to add a definition for personal services, to amend the definition of commercial use to exclude personal services and to amend the definition of retail use to include retail bank branches and personal services.**

Public comments on the motion were heard at 9:20 p.m.

Mr. Brian Najor came forward again. He questioned if there is any mechanism to hold a town hall meeting. He noted this matter is being pushed down the road to the City Commission where, if the Commission decides, it could potentially pass very quickly and that is a big change. There needs to be some discussion and the City Commission needs to convince the board that this is the right thing to do and this is what needs to be passed. Ms. Ecker responded that the joint meeting next week is the best time for them to come together and have a discussion. Mr. Koseck added the public is welcome to come to that meeting next Monday.

Mr. James Esshaki said he thinks the public has spoken. Everybody was against the proposed amendment except for one person who was not 100% against or for. He doesn't know why so many additional meetings are needed.

Mr. Ken Kajoian said just as the 2016 Plan was crafted over a period of years, it is necessary to figure out how to craft this plan by implementing positive changes in certain areas. This is happening way too fast. On Monday night perhaps board members could talk about the key elements that need to be put together in terms of what other downtowns similar to Birmingham are doing; what is their makeup. Then, do these studies.

Mr. Richard Sherer added three retailers to the list of upcoming vacancies in town.

Mr. Bedros Avedian received clarification that if the changes are approved by the City Commission they would take effect seven days after publication in the newspaper and would restrict first-floor retail space to retailers, retail bank branches, beauty salons and other personal services, along with restaurant and bistro uses, artisan uses, and entertainment uses. These uses would not include business services, medical, dental, or mental health services. Mr. Avedian asked if he could lease to a live/work tenant in his building at Maple Rd. and Old Woodward Ave. if the ordinance amendment has not gone through yet. Ms. Ecker answered the tenant would have to sell either products or services to the public within the first 20 ft.

Motion carried, 5-0.

ROLLCALL VOTE

Yeas: Whipple-Boyce, Prasad, Clein, Jeffares, Koseck

Nays: None

Recused: Lazar, Share

Absent: Boyle, Williams

Chairman Clein thanked the public for its time and input.

**BIRMINGHAM CITY COMMISSION /
PLANNING BOARD JOINT WORKSHOP SESSION MINUTES
JUNE 19, 2017**

G. RETAIL DEFINITION REVISION

Ms. Ecker explained that the issue is the type of uses permitted on the first floor of the Redline Retail District. These are the streets designated on the zoning map with red lines. Primarily the streets are Old Woodward, Maple, Hamilton, sections of Pierce, Willits. In that area, the current ordinance calls for a retail use in the first 20 feet of depth, which comes from the 2016 plan. The plan recommended that retail be in the first floor for the first 20 feet of depth, and it had a definition for retail. The exact language was taken from the 2016 plan and adopted into our ordinance.

What we have to look at now is, was there enough clarity in the type of definition for retail and the associated definitions. Currently, retail is defined in the ordinance but it includes commercial. Commercial is then defined in the ordinance, and it includes personal services. Personal services is not defined. We did not vary from the 2016 plan because the author of the plan did not recommend we define it so we did not, but things change and over time, we have different uses that have come up that have tried to get into the downtown. They want to be in the downtown and they fall under this definition of personal services because we have not defined it, and they have been able to get in on the first floor spaces. The Commission has directed the Planning Board to come up with the temporary relief mechanism to change the wording of the overlay district, and to add a definition for personal services and to look at specifically taking the quasi-office type use out of being a permitted use in the Redline Retail District downtown. The Board set a public hearing for July 12th to consider the temporary relief measures that the Commission sent to them. The Board has been studying the issue of retail and the use downtown that the Commission sent to them last year; specifically, how do we define it and how has it changed. That was the bigger picture, comprehensive issue. Specifically with regards to the Redline Retail and having a temporary relief valve, that is what they set the public hearing for on July 12th.

In this case, is there interest by the Commission to direct the Board to conduct a study session to review the intent of the Redline Retail District as proposed in the 2016 Plan and evaluate whether the current application of personal services is consistent with what the intent was in the 2016 plan.

The interpretation has been that a personal service is any type of service that a person can walk in and ask and pay for that service and get that service. The business has to be open to the public so a person off the street has to be able to walk in. It is that gray. A firm selling a marketing service or website designs is a quasi-office use. Maybe these types of uses were not envisioned at the time the 2016 plan was written. We are not sure what the intent of the 2016 plan was with regards to those. Businesses have been able to get in under the definition of personal services because they are open to the public and people walk in and buy their services. The argument is that they are offering personal services. Without a definition, it is difficult to clarify and draw the line as to what constitutes personal services and what doesn't.

So the definition of personal services that is up for consideration right now was arrived at by looking at other jurisdictions and what they defined as personal services. The most common use was that personal services dealt with the care of a person or their clothing, such as tailors, salons, facials, tanning places, shoe repair, anything dealing with the person or their clothing. If that definition was adopted that would very clearly specify that only those types of personal services would fall under commercial and therefore, the quasi-office type uses that we are seeing that are almost more business-related services would not fall under permitted uses in the Redline Retail district. So it is clarifying what would be permitted, and do we want to look at the intent of the 2016 plan and some of these uses that may or may not have even been conceived of at that time.

Mayor Nickita said there are two questions. The bigger question is concerning the state of potential uses that may be available now that were not available years ago. The other question is a question that came from the Building Official which is a matter of logistics on how Mr. Johnson does his job. When he gets a set of plans, he has to determine if it is allowed under our ordinance or not allowed under our ordinance. Ordinances become gray sometimes and projects look for clear identification. We had this issue with the dormer issue being unclear. There were a number of questions whether or not they fit within our ordinance. Mr. Johnson asked for clarity in the ordinance because it was unclear for him to do his work. The Board and Commission quickly took a look at it, and we found a solution to clear up a gray area that was there. The garage house issue was the same. They were done because there was a loophole in the ordinance that created difficulty for the building staff to clarify. Over time, people interpret the ordinances differently or the interpretation gets grayer. The personal use term is too gray to identify for clarity from a legal perspective for approval. It seems like there is a misunderstanding as to what is being asked of the Planning Board. This is a clarification; we are not changing the ordinance.

The larger question brought up is the Redline Retail area accommodating uses of the day, or should it be reviewed. That is a separate issue and can be done at a different time. The issue at hand is can we help the Building Department do its job.

Commissioner Bordman understands that the problem is that we do not have a definition for an essential aspect of the Zoning Ordinance. As to the effect it might have on the Redline district or the other aspects of the Redline district, we should study it, but it can be done over time. Perhaps we make it a top priority over time. But we have an immediate issue that must be examined. Birmingham is a dynamic City and we get proposals all the time, and if our Building Official cannot address those issues right now while they are coming in, that is a problem. This creates a situation for the employees to be put in an awkward position to make a decision. She agreed that both issues should be addressed quickly. They are connected issues, but they are separate.

Mr. Williams said the distinction was not made at the time this came to the Board. One of the issues the Board is grappling with is adopting a proposed solution without a permanent or expiration date. Temporary measures tend to be permanent if they are not replaced. If we are going to have a solution here that is appropriate, we have to put a time frame on it, which would force us to prioritize it. He is quite confident that the landlords are furious because they do not understand the distinction being made tonight, nor did he.

Commissioner Sherman said it is clear that the Board received direction that was unclear, and that is what we are trying to do now. He said the idea of having a study session of what the intention was of the personal service uses under the 2016 plan is a very good next step, even before the Public Hearing. He suggested moving the July 12th Public Hearing to a date certain, have a study session to narrow the definition down a little bit, and then have the Public Hearing. When the Commission prioritizes these items, it is the Commission's job to give the Board priorities with expectations and timelines. He agreed that something should not be temporary and then allowed to become permanent.

Commissioner Hoff favors creating a personal service definition. She agrees we need a definition of personal service and then we will decide what to do with it, but we are not at the point of asking the Board to amend anything.

Commissioner DeWeese was concerned about community service also. In terms of community service, there are certain governmental units that are independent of the City that can come in regardless of our ordinances, and he didn't want it exclusionary. We need clear definition and clear intent of what our Master Plan has been trying to achieve and what works for walkable communities.

Mr. Clein said he has just heard two opinions that we kind of slow the bus, and do not have any real conversation on actual changes to the ordinance, but simply provide definitions. What he heard originally was that the Commission wanted the Board to make changes to the ordinance.

He thinks that is where the confusion came, because the Board was in the middle of its study of retail. He thought he was all clear. He would like clarity on what the Commission's goal is here.

Mayor Nickita said the idea was to make sure the Board has the ability to study this personal service determination and be able to clarify that and put off the Public Hearing until the Board is able to do that.

Commissioner Sherman said the motion was passed 4-2 to have the Public Hearing and make changes, and to define the term. There was some discussion as to what the term actually meant. The comments heard from Commissioners Hoff and DeWeese were minority opinion. The majority opinion was what you understood and articulated.

Commissioner Boutros said the message sent to the Board was different from what the intention was.

Commissioner Bordman expressed concern about the postponement in that it will be mistaken to mean take all the time needed, rather than getting this done as quickly as possible. There needs to be some direction on this idea of postpone and study.

Mayor Nickita thinks the intention driving this to begin with was Building Department staff needing help and that it is needed it sooner than later.

Commissioner Hoff commented that we should move forward on definition before July 24th. She thinks that it is still reasonable.

Mayor Pro Tem Harris said the majority position was for definition of personal use only and not a definition of community use.

Commissioner Sherman said his original comment was to postpone the Board's July 12th Public Hearing to shortly thereafter to give time for a study session.

Mr. Williams clarified that it has been suggested that Board open the July 12th Public Hearing, postpone it to a date certain, then begin study session of the personal service definition.

Mayor Nickita said this is not to be a broad review of the downtown, but recognize that ordinances become unclear and situations change. The idea is to take the Redline Retail district as a next step with current day market conditions and identifying where it could be strengthened with the intention of making it a pedestrian, walkable place is a valid thing to do, but it is not to be done when we look at personal service.

Ms. Ecker said she understands that they are to postpone the Public Hearing, focus on the personal services definition only. She asked to confirm the Commission does not wish the amendment to Article 3, Section 3.04(C)(6) right now.

Commissioner Sherman said that the ordinance amendment is still going to be the discussion at the Public Hearing, but in order to get to that point, the Board has to first study the personal services definition to incorporate it into the amended ordinance. That is what the Public Hearing is about. Ms. Ecker noted the Public Hearing was noticed for the amendment of Article 3, Section 3.04 and the personal services definition. She asked if the Commission wants the Planning Board to come up with a personal services definition and send that to the Commission first. She noted that the motion as passed directs the Board to consider the definition of personal services and Article 3.04 to exclude personal services from the Redline Retail District. She asked if the Commission still wants both of those together. Commissioner Sherman confirmed, and believes that is what was discussed. Then it will come to the Commission for a Public Hearing.

City Manager Valentine said if the Board provides the definition, the ordinance has to be amended. It has already been noticed that way. The process is being separated somewhat to add the additional review of the 2016 plan on what the intent is, and then discuss the definition.

Ms. Ecker clarified that the Commission wants the Board to postpone the Public Hearing to a later date, and focus on the definition of personal services only. Then hold the Public Hearing for the ordinance amendments and the definition. Commissioner Sherman explained that it is one ordinance. Mr. Valentine said the resolution that was passed included the definition, so it is all one action by resolution of the Commission.

Commissioner Hoff stated she did not think the Board was going to amend the Downtown Birmingham Overlay standards to exclude community and personal services when we do not know what the personal service definition is. Mr. Valentine clarified that the resolution that passed had a subsequent amendment added which stipulated that the definition of personal services be included when it comes back the Commission.

Commissioner Sherman said the Commission recognized that it made no sense to amend it without a definition of personal service. The Commission is asking the Board to come back with a definition of personal services and the change incorporated into the ordinance as a recommendation.

Commissioner Hoff clarified to exclude community and personal service uses. It is very specific to exclude them. Commissioner Sherman clarified that the Board has to define it. We need a definition to know what those are.

Commissioner Boutros asked what would happen if the Board does not have a definition in time for the July 24th Public Hearing. Commissioner Sherman noted the Commission does not have a hearing on July 24th, and that the Commission asked that the Board report back to the Commission that date.

Mr. Valentine said he will follow up with the Board with written communication outlining what was discussed tonight, so there are no questions going forward.

Mr. Williams requested that Mr. Valentine address if the Board is to include or exclude personal services.



MEMORANDUM

Office of the City Manager

DATE: June 30, 2017

TO: Planning Board

FROM: Joseph A. Valentine, City Manager

CC: City Commission

SUBJECT: Defining Personal Services

There is a desire by the City Commission to provide clarification on the definition of Retail Use under the zoning ordinance. As you know, the current definition of Retail Use includes Commercial Use as a permitted use. Commercial Use, as defined, includes the category of personal services. Personal services, however, is not defined and left to the interpretation of city staff. Over the past 10 years, roughly 46 businesses have occupied first floor spaces in the Redline Retail area under the undefined category of personal services. To assist city staff in the administration of the zoning ordinance and to clarify the intent of the personal services category, a policy directive was given to the Planning Board to promptly address this issue. This directive was intended to establish a temporary relief measure while the Planning Board continues to study the definition of retail as part of its action list that was adopted in July of 2016.

While there may have been some initial confusion with regard to temporary relief measure that was directed, the general intent is to provide an immediate definition for personal services as further study continues on this issue. The collective discussion at the joint workshop between the City Commission and Planning Board on June 19, 2017 offered the following course of action.

Postpone the public hearing set for July 12, 2017 to a date certain in the immediate future.
Hold a study session on July 12, 2017 to review the Redline Retail Area as prescribed by the Downtown Birmingham 2016 Report for background on the intent for retail in the downtown, then review the current draft definition of personal services as reviewed by the Planning Board on June 14th for appropriate application.
Conduct a public hearing on the proposed definition for personal services following this study session and provide a recommendation to the City Commission on a proposed definition at the earliest opportunity.

The latest draft definition for personal services reviewed at the Planning Board's June 14th meeting does provide a definition for further discussion. However, as it is stated below, this draft language should be modified to only include the services that are permitted and not identify excluded services. This will help further clarify the application of the proposed definition by city staff.

Personal Services: An establishment that is engaged primarily in providing services involving the care of a person or apparel, including but not limited to: beauty and barber shops, nail care or skin salon services, other personal grooming services, laundry services, dry cleaning, shoe or clothing repair; but does not include business services, medical, dental and/or mental health services.

Because Community Use is already defined and does not pose this same immediate issue, this can be further reviewed in the second stage of discussion on the definition of retail.

Following the completion of the clarification of the personal service definition, the Planning Board should continue to review the definition of retail in accordance with the previous direction to the Planning Board as follows:

To evaluate the success of the red line retail district in Downtown Birmingham to determine if the intended objectives are being met;

To study the existing definition of retail in the Zoning Ordinance and recommend any needed amendments to the definition; and

To review all retail-related requirements contained in the Zoning Ordinance and recommend any needed amendments.

**Planning Board Minutes
July 12, 2017**

PUBLIC HEARINGS

1. An ordinance to amend Chapter 126, Zoning as follows:

ARTICLE 3, SECTION 3.04, SPECIFIC STANDARDS, TO AMEND THE DOWNTOWN BIRMINGHAM OVERLAY STANDARDS TO EXCLUDE COMMUNITY AND PERSONAL SERVICE USES AS PERMITTED USES IN THE REDLINE RETAIL DISTRICT; AND

ARTICLE 9, SECTION 9.02, DEFINITIONS, TO ADD A DEFINITION FOR PERSONAL SERVICES, TO AMEND THE DEFINITION OF COMMERCIAL USE TO EXCLUDE PERSONAL SERVICES AND TO AMEND THE DEFINITION OF RETAIL USE TO INCLUDE RETAIL BANK BRANCHES AND PERSONAL SERVICES.

Ms. Lazar recused herself due to a familial relationship with the applicant.

The Chairman opened the public hearing at 7:40 p.m.

Mr. Clein stated that based on the discussion between the City Commission and Planning Board at the June 19, 2017 joint meeting regarding the definition of retail, the City Manager has provided a memo outlining the course of action considered at that time. This discussion suggested postponing the public hearing to a date certain and holding a study session in lieu of the public hearing to consider the definition of personal services and to review the Redline Retail District as prescribed in the Downtown Birmingham 2016 plan for background and intent in regards to personal services.

Motion by Mr. Williams

Seconded by Mr. Boyle to continue the public hearing to Wednesday evening, August 9, 2017.

There was no discussion from the public on that motion.

Motion carried, 6-0.

VOICE VOTE

Yeas: Williams, Boyle, Clein, Jeffares, Prasad, Whipple-Boyce

Nays: None

Recused: Lazar

Absent: Koseck

Chairman Clein closed the public hearing for tonight at 7:41 p.m.

STUDY SESSIONS

1. Definition of Personal Services

Ms. Lazar continued to be recused for this study session.

Motion by Mr. Williams

Seconded by Ms. Whipple-Boyce to accept and file the following communications as part of the official record:

- **E-Mails from various individuals -**
 - Elizabeth Elkin on July 10;
 - Tom Booth on July 10;
 - Karen Mucha on July 10;
 - Andrea Rehm on July 5.
- **E-Mail to Planning Board members from Christopher Longe on July 11.**

Motion carried, 6-0.

VOICE VOTE

Yeas: Williams, Whipple-Boyce, Boyle, Clein, Jeffares, Prasad

Nays: None

Recused: Lazar

Absent: Koseck

Ms. Ecker advised there is a desire by the City Commission to provide clarification on the definition of personal services in the Zoning Ordinance. The current definition of retail use includes commercial use as a permitted use. Commercial use, as defined, includes the category of personal services. However, the term personal services is not defined and left to the interpretation of City Staff.

Ms. Ecker advised the City Manager has provided a letter that makes clear the direction from the City Commission to the Planning Board at the joint Planning Board/City Commission meeting held on June 19, 2017, which is as follows:

1. Postpone the public hearing set for July 12, 2017 to a date certain in the immediate future.
2. Hold a study session on July 12, 2017 to review the Redline Retail Area as prescribed by the Downtown Birmingham 2016 Report for background on the intent for retail in the downtown, then review the current draft definition of personal services as reviewed by the Planning Board on June 14th for appropriate application.

3. Conduct a future public hearing on the proposed definition for personal services following this study session and provide a recommendation to the City Commission on a proposed definition at the earliest opportunity.

The latest draft definition for personal services reviewed at the Planning Board's June 14, 2017 meeting does provide a definition for further discussion, however, the City Manager's comment was that the draft language should be modified to only include the services that are permitted and not identify excluded services. This will help further clarify the application of the proposed definition by City Staff.

Personal Services: An establishment that is engaged primarily in providing services involving the care of a person or apparel, including but not limited to: beauty and barber shops, nail care or skin salon services, other personal grooming services, laundry services, dry cleaning, shoe or clothing repair; but does not include business services, medical, dental and/or mental health services.

Further direction from the City Manager states that because Community Use is already defined and does not pose this same immediate issue, this can be further reviewed in the second stage of discussion on the definition of retail.

Consensus was that at this time, the board's direction is to focus only on the definition of Personal Services.

Mr. Williams wanted to know by the time of the public hearing how many vacancies there are in the Redline Retail District and what the current mix is, by percentage of square footage and number of units. Also, if information is available what new vacancies will come up in the immediate future.

Mr. Jeffares summarized his view that the core of personal services is from a business (B) to an individual consumer (C), rather than from a business (B) to a business (B) which deals with large corporate clients and doesn't cater to individuals.

Mr. Williams thought the current definition is way too restrictive. He doesn't like making lists. Since the Building Official is the one who must deal with the practical application issues, it would be nice to have him present to provide input. Also, he wanted to hear from the representative of the Birmingham Shopping District ("BSD"). Ms. Whipple-Boyce agreed it is very difficult to provide a list of permitted uses and keep it current. In her opinion it would be more logical to list businesses that they don't want to see Downtown. She worries what may be left out in the present list of permitted services.

Mr. Boyle suggested they want the Downtown to operate as accessible, vibrant, colorful, safe, walkable. They have achieved that. Now he is worried that attempts to define all of the individual uses might backfire. So he thought the board might pay more attention to what they want the City to be and not try to tell people what uses they can or cannot have. Mr. Williams agreed. He feels the City needs a new Master Plan and thinks interim solutions are a mistake. He would rather have a definition that is more expansive and focused on individual services as opposed to corporate or institutional services. He also does not like lists, as they are soon

outdated. He supports a broader statement of intended uses by persons in activating the street.

Several board members agreed that they don't want lists. It would be better to offer guidance. Regardless of what uses they come up with, there will always be a body of uses that will not be defined.

The board then discussed whether they concur with the definition of personal services if the list of services is taken out. Ms. Whipple-Boyce observed that the ordinance contains pages and pages of lists. That is part of what makes it work for the Building Official and for people who are looking to do certain things in certain areas. They know exactly what is permitted there. Ms. Prasad agreed it is important for the board to provide examples and direction for the types of uses they want to see.

Mr. Williams did not understand why the board cannot list excluded categories.

Chairman Clein synthesized what he has heard: An establishment that is open to the general public and is primarily engaged in providing services directly to the consumer; including but not limited to personal care, care for apparel and other personal items, and any other service directly sold to the consumer; but does not include business to business services, medical, dental, or mental health services.

At 8:58 p.m. he invited members of the public to come forward to talk about Personal Service.

Mr. Richard Huddleston appeared on behalf of Unit 1 at Birmingham Place, 401 S. Old Woodward Ave., which is approximately 110,000 sq. ft. of commercial and retail space. After walking the Redline Retail District Mr. Huddleston found 10 vacancies out of 110 total storefronts, of which about forty were not retail type uses. He offered his opinion that what is good for retail is foot traffic, and the biggest source of foot traffic in a retail area is high density office.

Ms. Jeanette Smith, VP of Marketing for Core Partners, urged that before a public hearing is held an advisory group be formed that includes people from different walks of life who can weigh in. An interim solution seems a little premature.

Mr. Richard Sherer said his family owns property on Pierce and W. Maple Rd. He stated that any attempt to legislate what can be in buildings is very nebulous. It will be extremely damaging to landlords.

Ms. Cheryl Daskas who is a resident, a retailer, and a property owner, said she does not want to see first-floor offices in her town. As Tom Markus once said, It takes three things: it's your downtown, your neighborhoods, and your school system. If one falters, then the whole thing crumbles. She noted first-floor offices stop the foot traffic.

Ms. Ecker said what she heard from the majority of members is that Personal Services is an establishment that is open to the general public and engaged primarily in providing services directly to an individual consumer; including but not limited to personal care services, care of

apparel and other personal items; and not including business to business services, medical, dental, and/or mental health services.

Mr. Boyle stated the board needs to have a serious conversation about the Downtown. Everyone knows there is a lot of change happening. His thought was that it behooves the City Commission to take the leadership and create some form of opportunity for people to weigh in on this issue of the nature of our Downtown. So he strongly recommended to the City Commission to give that serious consideration and get it moving in advance of yet more delays on the Master Plan.

August 9, 2017
Planning Board Minutes

PUBLIC HEARINGS

1. An ordinance to amend Chapter 126, Zoning to consider changes to Article 03 section 3.04 to exclude community uses in the Redline Retail District and Article 09, Definitions to define Personal Services

The Chairman opened the public hearing at 8:15 p.m.

Ms. Lazar and Mr. Share recused themselves and Chairman Clein rejoined the board.

Ms. Ecker explained that at the last meeting based on the direction memo from the City Manager, the point was to solely focus on the Personal Services definition. Thus, tonight the board will focus on Article 9, section 9.02 Definitions to add a definition for Personal Services. The proposed definition is as follows:

Personal Services: An establishment that is open to the general public and engaged primarily in providing services directly to individual consumers, including but not limited to: personal care services, services for the care of apparel and other personal items but not including business to business services, medical, dental and/or mental health services.

There has been a lot of discussion so far and Ms. Ecker briefly went through some of that history. The Planning Board started discussing retail at large in March of this year. In April and again in May there was direction from the City Commission to move forward with ordinance amendments that would provide temporary relief to halt the addition of non-retail uses into storefronts in Downtown while the Planning Board continues to study the issue of retail uses Downtown. The Planning Board talked about this at several subsequent meetings.

On June 19, 2017 the Planning Board and City Commission held a joint workshop session. At that time it was discussed that the public hearing scheduled for July 12, 2017 should be postponed. The Planning Board postponed the public hearing to August 9, 2017 to allow the Planning Board to hold an additional study session on July 12, 2017, specifically with regards to drafting a definition for Personal Services. Based on the direction by the City Commission and City Manager to review the Redline Retail Area, staff provided a review of the retail intent in the 2016 Plan, including the type of uses through the definition of retail and commercial. Within the definition of commercial the 2016 Plan said that personal services should be included and permitted in the Redline Retail District. It did not, however, define personal services. Therefore, the City Commission has directed the Planning Board to zero in on a discussion of personal services and to draft a definition to be added to the Zoning Ordinance.

Thus, tonight the board will talk about a potential definition for personal services and what should be included in the Redline Retail District. In the direction from the City Manager that the Planning Board received, there was a recommendation not to list the businesses that are not included. However, at the last meeting the Planning Board felt they wanted to leave in the list of exclusions for business to business services, medical, dental and/or mental health services.

The thought was that this list clarifies which services are allowed and which services are not allowed when reading the ordinance.

Mr. Williams received information that the Red Line Retail District stops just before Oak on the east side of Woodward and goes all the way down to Lincoln. In response to Mr. Williams, Ms. Ecker noted the City does not have a listing of all vacancies, although the BSD does have a list of some vacancies as reported by brokers and property owners. Also, the City has a list of all of the Downtown businesses, but they are not categorized as retail or non-retail under the definitions in the Zoning Ordinance.

It was concluded that in order to categorize a business the City would need a letter from them indicating what their primary business is.

Mr. Boyle noted this is a very wide spread concern among other communities and not something that is specific to Birmingham. This board is attempting to try and find a way to continue to have activity on our City streets. Mr. Jeffares thought Birmingham has been incredibly successful for being able to still have its retail environment.

Chairman Clein brought out the fact that the 2016 Plan was drafted in 1996 and it is 21 years old now. If there is ever a reason a Master Plan should be updated it is this. It will be important to have a full discussion with all stakeholders about the nature of modern businesses in our community.

Mr. Williams stated it is a mistake to downplay the Master Plan in order to have piecemeal items before it on the Planning Board's Action List. On a priority basis the board will never get to it. The Master Plan should be moved up, but this board does not control that agenda. He feels the board is currently dealing with a problem that doesn't exist.

In response to a question from the board, Ms. Ecker explained that any existing use can continue as long as it is consistent and continuous and isn't stopped for more than six months.

Mr. Jeffares thought it is very remiss that the people in this building who could be of help as part of this process are not present. At this point several board members thought the list of businesses not included as Personal Services causes more trouble than it is worth.

Chairman Clein noted the following correspondence that has been received:

- Letter dated July 27, 2017 from Joseph A. Sweeney, Intercontinental, against the definition;
- Letter dated August 4, 2017 from Paul S. Magy, Clark Hill, concerned that the planned action will erode the City's tax base by restricting the use of first floor commercial in the Redline Retail District;
- Letter dated August 8, 2017 replying to Mr. Magy from Timothy J. Currier, Birmingham City Attorney, indicating that public meetings are the place for discourse;
- Letter dated August 9, 2017 from James Esshaki, Essco Development Co., against the proposed definition and citing several buildings that would be difficult if not impossible to fill with retail.

Motion by Mr. Williams

Seconded by Mr. Koseck to receive and file the four letters.

Motion carried, 6-0.

ROLLCALL VOTE

Yeas: Williams, Koseck, Clein, Boyle, Jeffares, Whipple-Boyce

Recused: Lazar, Share

Nays: None

Absent: Prasad

At 8:43 p.m. Chairman Clein opened up public discussion on the definition before the board.

Mr. James Esshaki, Essco Development Co., questioned how medical services cannot be considered as Personal Services. Chairman Clein responded there is strong consideration to just eliminate that from the definition. Further Mr. Esshaki asked what landlords, after spending millions of dollars for their buildings, should do with their spaces when they cannot lease them. No retailer would come in and pay money for a secondary location where there is no traffic. In his mind this is a take.

Mr. Paul Terrace, 1288 Bird, said he is a host of *Tough Talk with Terrace*, which is a public access TV show. It is his intention to tape a show with a developer and a broker and invited anyone who supports this proposal to come on his show also.

Mr. Ted Alsos, Retired Regional Manager of Ford Motor Credit Co, said he resides at 401 S. Old Woodward, unit 806. He is president of the Condominiums of Birmingham Place Master Association and is appearing on behalf of the members of the association. He read a statement to the effect that their association is opposed to the proposed action to limit the uses in the Redline Retail District. They believe that restructuring the uses in Downtown Birmingham will result in increased numbers of vacant storefronts. As vacant storefronts increase, the appeal of Downtown Birmingham decreases and correspondingly decreases values for property owners in Downtown Birmingham, if not the entire City. They are concerned that reduction of the tax base will fall on the residents. Lastly, the Association firmly believes that landlords need flexibility to cope with the changing market conditions for tenancy in Downtown Birmingham.

Mr. Michael Surnow, 320 Martin, co-founder of the Surnow Co. said that boards rely on experts and hire them all the time. The experts are right here - the landlord community -and they are all vehemently opposed to this action.

Mr. Richard Huddleston asked if there is a precise definition of the Redline Retail District in words in the Zoning Ordinance. Ms. Ecker answered that the ordinance refers to a map of the District, which can be found on the City's website.

Mr. Derick Hakow, 211 E. Merrill, Apt. 504, noted that he appreciates the vibrancy of the Downtown Community. He loves the live, work, play mentality that the City has created and would not want to see that jeopardized by change.

Mr. Richard Sherer said he owns multiple properties in Birmingham. He read a couple of sentences from two magazines. Amazon has online sales six times higher than those of

Walmart, Target, Best Buy, Nordstrom, Home Depot, Macy's, Kohl's and Cosco combined. The New York Times states that the retail sector looks quite vulnerable economically with the transition to e-commerce. However, health care has much better numbers. This is the direction things are going.

Ms. Jeanette Smith is VP of Core Partners who has a lot of clients and listings in Birmingham. She has been to all of these meetings and thinks there are a couple of points that are recurring:

- Incomplete data - Other communities should be investigated for either successes or failures when they have enacted a change like this. It just feels premature to make a change at this time;
- She believes it is within the Planning Board's purview to decline to vote this and send it forward as well as to urge the City Commission to work on the Master Plan.

Mr. Paul Magi from Clark Hill, 151 S. Old Woodward Ave., Suite 200, and also a Birmingham resident at 708 Shirley, said he represents many of the people in the room this evening. They not only care about their buildings, but they really deeply care about the City. It seems that it would be appropriate for the board to say they are very interested in doing the right thing. However, before they do that they will make sure they have a full and complete understanding that there is in fact a problem to solve; that they have a study of this District that identifies all of the existing uses and the vacancies; an understanding of how long those vacancies may have occurred; what efforts have been made to re-tenant those spaces, and what the prospects are. Their recommendation should be to first determine if it is broken before it is fixed. If the board has to do something it seems what they could do is request that the important studies be done, including what the long-term impact might be on the City's tax base. This is an absolutely wonderful place and it is likely to continue that way without any kind of change.

Ms. Cheryl Daskas, a resident, property owner and successful retailer spoke. She said the reason people want to come to Birmingham is because of the vibrancy of the Downtown. If it all became offices people would not want to be here. That would affect the property values of the people who do live here. Every other business would shut down at 5 p.m. and at night Downtown will be dark and dreary. It is a shame the building owners don't want to work with someone who is experienced with bringing retailers into town. They would rather lease to office.

Mr. Dan Jacob, 361 E. Maple Rd., said he works with many national retailers every day. He doesn't think the landlords should be restricted. It is not like people are knocking on their doors. He understands the synergy of retail and that some of the retailers want that co-tenancy, but trends are changing and landlords are desperate. Malls pay their tenants for co-tenancies but for individual landlords it is hard to get that synergy.

Mr. Williams noted the BSD expert has not come to these meetings. He thought it would be difficult to take a percentage of how many sales a business has to individuals versus to contractors. What evidence will be required and how will it be policed.

Mr. Koseck wondered how medical/dental crept in as an exclusion and why some are suggesting that it be included. For simplicity purposes he is willing to move this forward and let the Commission do as they please, but he really would like to study it in greater detail.

Mr. Jeffares said that personally he does not like to walk by a storefront and see people hunched over in a cube and working on a PC. It would be horrible to have that everywhere. However, this process doesn't feel right to him for something that has this kind of magnitude - the first floor on the biggest chunk of Downtown. He doesn't feel that he has all of the necessary information to move this forward. He still thinks it is something for a Master Plan and he would prioritize that as number one on the Action List.

Ms. Whipple-Boyce indicated she doesn't like the definition for a couple of different reasons. She doesn't believe that medical/dental and mental health services are an appropriate use for our first-floor retail. Also she does not see how it is possible to ~~not~~ allow a business to business service and be able to understand and keep track of that. She is in favor of a true retail situation in the Redline District and she thinks a lot of the Personal Services that are included in the definition are inappropriate. She hopes to have an opportunity to study the retail situation further through a Master Plan approach.

Mr. Williams indicated he does not like the definition for a variety of reasons. He thinks the board can vote no and send it up to the City Commission and that is what he intends to do.

Mr. Boyle proposed that the board vote tonight on a request to the City Commission that its conclusion is to delay any decision on retail zoning until the City completes its deliberations through a comprehensive Master Plan process.

Chairman Clein took that a step further and made the following motion:

Motion by Chairman Clein

Seconded by Mr. Williams that the Planning Board of the City of Birmingham acknowledges the importance of a vibrant, active Downtown with strong first-floor retail uses. However, tonight he moves that the Planning Board recommend that the City Commission does not adopt the definition of Personal Services as presented in the proposed amendment to Zoning Ordinance Article 9, section 9.02, Definitions, and further recommend that the City of Birmingham expedite an immediate update to our comprehensive City wide Master Plan in order to properly address this issue and those that surround it.

Mr. Koseck summarized that this motion suggests the Master Plan be taken off the back burner and brought to the front so that the Planning Board can bring in people with much more of a global expertise and unbiased opinions. The Chairman explained that his point is to address not only the definition but to address the limits of the Redline Retail as well as residential neighborhoods, the Triangle and Rail Districts, along with the parking implications.

Mr. Williams explained one of the reasons he felt the impetus to move towards a Master Plan was the experience with O-1, O-2, TZ-1, TZ-2, TZ-3 where they tried to grapple with transition areas affecting residents and commercial property owners in transition areas. What the board learned was that they didn't have a Master Plan and it took them seven years from the time they started talking about it until they reached a final conclusion on all of the pieces. They took their time, did it right, and didn't move on an interim solution. What they learned was that piecemeal solutions are a bad idea. That is why he thinks this City needs a Master Plan. He would like to hear from all property owners and would also like the residents to speak up.

No one from the public had comments on the motion at 9:24 p.m.

Motion carried, 6-0.

ROLLCALL VOTE

Yeas: Clein, Williams, Boyle, Jeffares, Koseck Whipple-Boyce

Recused: Lazar, Share

Nays: None

Absent: Prasad

The Chairman closed the public hearing at 9:30 p.m. and board members took a short recess.

Sample Definitions from Other Communities

DEFINITION

Personal service business

[HTTPS://DEFINEDTERM.COM/A/DEFINITION/36084](https://definedterm.com/a/definition/36084)

Personal service business means an establishment engaged primarily in providing services involving the care of a person or apparel, such as; shoe repairs, laundry and dry- cleaning, beauty and barber shops, clothing/costume rental, **tanning**, other personal grooming facilities and **domestic assistance services**. This does not include massage parlors, health care services, exercise establishments, nor funeral services.

ADDED BY RICK OWENS

👍 Endorse (44)

Share

Flag

DOCUMENT

Zoning Code

RELATED ENTITIESCity of Bremerton, Washington**DEFINITION STATISTICS**

Word Count

57

Letter Count

348**FLESCH-KINCAID READABILITY ⓘ**

Reading Ease

10.2

Grade Level

Graduate School

RELATED TOPICS

construction

zoning

property

building

real estate

development

DEFINITIONS

16.04.470 Motel or hotel. "Motel" or "hotel" means a single building or group of detached or semi-detached buildings containing guest rooms or apartments, with automobile storage space provided on the site for such rooms or apartments provided in connection therewith, which group is designed and used primarily for the accommodation of transient automobile travelers, and not containing individual cooking facilities.

16.04.475 New construction. "New construction" means the construction of a new building, construction of an addition to an existing building, or construction of a habitable mezzanine or second floor in an existing building. Except in the case of a new building, new construction results in a net increase in gross floor area. New construction does not include interior alterations, tenant improvements, repairs, maintenance or reconstruction of buildings destroyed by catastrophe.

16.04.480 Nonconforming use. "Nonconforming use" means a use or structure that does not conform to the regulations of the district in which it is situated.

16.04.490 Nursery school. "Nursery school" means a facility licensed by the appropriate state or county agency for the day care or instruction of seven or more children.

16.04.500 Open space. "Open space" means that portion of the building site open, unobstructed and unoccupied from the ground upward; including walkways, landscaping, uncovered patios and uncovered recreation facilities.

16.04.510 Parking space. "Parking space" means an accessible, paved and usable space on the building site, or adjacent lot, for the parking of a standard automobile.

16.04.520 Permitted use. "Permitted use" means a regular activity to be conducted on a building site, which activity is allowed by the regulations of the district wherein located, without a use permit.

16.04.530 Person. "Person" includes any individual, city, county, partnership, corporation, cooperative, association, trust or any other legal entity, including the state and the federal government.

16.04.535 Personal services. "Personal services" means barber shops, beauty salons, laundrettes, dry cleaning, shoe repair and other similar service businesses.

16.04.540 Professional office. "Professional office" means an office for the conduct of the following types of uses: Accountant, architect, attorney, chiropractor, optometrist, chiropodist, engineer, surveyor, drafting service, designer, dentist, physician and surgeon.

16.04.550 Research and development. "Research and development" means a scientific or engineering investigation leading to the manufacture of new material or equipment and including the making of prototypes but not including the manufacture of such material or equipment.

16.04.554 Residential care facility, large. "Large residential care facility" means any facility, place, or building that is maintained and operated to provide twenty-four (24)-hour care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual and licensed by the state of California for occupation by seven (7) or more persons.

- (113) "Patio cover" is defined in subsection (24), Canopy.
- (113.1) "Porch" means a roofed open area, attached to or part of the building and with direct access to the residence. Please see definition for "vaulted entry feature" for similar structures greater than 12 feet in height.
- (114) "Personal service" means a use providing services of a personal convenience nature, and cleaning, repair or sales incidental thereto, including:
- (A) Beauty shops, nail salons, day spas, and barbershops;
 - (B) Self-service laundry and cleaning services; laundry and cleaning pick-up stations where all cleaning or servicing for the particular station is done elsewhere; and laundry and cleaning stations where the cleaning or servicing for the particular station is done on site, utilizing equipment meeting any applicable Bay Area Air Quality Management District requirements, so long as no cleaning for any other station is done on the same site, provided that the amount of hazardous materials stored does not at any time exceed the threshold which would require a permit under Title 17 (Hazardous Materials Storage) of this code;
 - (C) Repair and fitting of clothes, shoes, and personal accessories;
 - (D) Quick printing and copying services where printing or copying for the particular service is done on site, so long as no quick printing or copying for any off-site printing or copying service is done on the same site;
 - (E) Internet and other consumer electronics services;
 - (F) Film, data and video processing shops, including shops where processing for the particular shop is done on site, so long as no processing for any other shop is done on the same site; and
 - (G) Art, dance or music studios intended for an individual or small group of persons in a class (see "commercial recreation" for other activities).
- (114.2) "Porte-cochere" means a covered structure attached to a residence or adjacent to a residence and erected over a driveway, which is completely open on three or more sides and used for the temporary unloading and loading of vehicles.
- (114.3) "Privacy" means a reasonable expectation that personal activities conducted within and around one's home will not be subject to casual or involuntary observation by others. Complete or absolute privacy is not a realistic expectation.
- (115) "Private educational facility" means a privately owned school, including schools owned and operated by religious organizations, offering instruction in the several branches of learning and study required to be taught in the public schools by the Education Code of the State of California.
- (116) "Professional office" means a use providing professional or consulting services in the fields of law, architecture and architectural design, engineering, accounting, and similar professions, including associated product testing and prototype development, but excluding product manufacturing or assembly and excluding the storage or use of hazardous materials in excess of permit quantities prescribed in Title 15 of the Municipal Code.



SINCE 1828 MENU

Law Dictionary

personal service

noun

Legal Definition of PERSONAL SERVICE

- 1** : a service based on the intellectual or manual efforts of an individual (as for salary or wages) rather than a salable product of his or her skills
- 2** : physical delivery of process to a person to whom it is directed or to someone authorized to receive it on that person's behalf

From the M-W Editors

Which Came First? Quiz

Do you know which word is older?

TAKE THE QUIZ

ludwig-richter-spring-has-arrived

April 2017 Words of the Day Quiz

Let the rain quiz you

TAKE THE QUIZ

Name That Thing

Name That Thing

Test your visual vocabulary with our 10-question challenge!

TAKE THE QUIZ

Learn a new word every day. Delivered to your inbox!

Personal Services. Establishments providing non-medical services to individuals as a primary use. Examples of these uses include:

barber and beauty shops	laundromats (self service laundries)
clothing rental	locksmiths
dry cleaning/laundry pick up	massage (licensed, therapeutic, non-sexual)
stores with limited	pet grooming with no boarding
equipment (no on-site	shoe repair shops
plant)	tailors
home electronics and small	tanning salons
appliance repair	

These uses may also include accessory retail sales of products related to the services provided.

Personal Services - Restricted. Personal services that may tend to have a blighting and/or deteriorating effect upon surrounding areas and which may need to be dispersed to minimize their adverse impacts. Examples of these uses include:

check cashing stores
fortune tellers
palm and card readers
pawnshops
psychics
spas and hot tubs for hourly rental
tattoo and body piercing services

Pharmacy, Medical Supplies. A retail store that sells prescription drugs, and/or other medical supplies.

Planning Commission. The City of San Ramon Planning Commission, appointed by the San Ramon City Council in compliance with Government Code Section 65101, referred to throughout this Zoning Ordinance as the "Commission."

Planning Permit. Authority granted by the City to use a specified site for a particular purpose. "Planning Permit" includes Use Permits, Minor Use Permits, Limited Term Permits, Variances, Minor Variances, Design Review, Master Development Plans, and Zoning Clearances, as established by Division D6 (Planning Permit Procedures) of this Zoning Ordinance.

Plant Nursery. A commercial agricultural establishment engaged in the production of ornamental plants and other nursery products, grown under cover either in containers or in the soil on the site, or outdoors in containers. The outdoor production of ornamental plants in the soil on the site is instead included under "Crop Production, Horticulture, Orchard, and Vineyard." Also includes establishments engaged in the sale of these products (e.g., wholesale and retail nurseries) and commercial-scale greenhouses (home greenhouses are included under "Residential Accessory Use or Structure"). The sale of house plants or other nursery products entirely within a building is also included under "Retail, general."

Porch. A covered but otherwise open platform that provides a transition between the interior of a building and the public space of the street.

mobile homes ("Mobile Home, RV and Boat Sales"), or building or landscape materials ("Building and Landscape Materials Sales"). Outdoor display and sales shall comply with the standards for "Outdoor Displays and Sales" in Section 20-42.110.

Outdoor Storage. See "Storage—Outdoor."

P. Definitions, "P."

Parcel. See "Lot, or Parcel."

Parking Cash-Out/Transit Incentive Programs. Cash-out parking programs allow employees to be paid cash by their employers for not parking a vehicle in the parking area associated with their business, rather than the employer subsidizing employee parking by providing on-site spaces or paying for monthly permits. Transit incentive programs work similarly, with employees being provided free transit passes instead of subsidized parking.

Parking Facility, Public or Commercial. Parking lots or structures operated by the City, or a private entity providing parking for a fee. Does not include towing impound and storage facilities, which are instead defined under "Storage—Outdoor."

Paved, Pavement. For the purposes of vehicle parking and access, paving materials include concrete, asphalt, paver units and stones, and turf block.

Pedestrian Orientation. Any physical structure or place with design qualities and elements that contribute to an active, inviting and pleasant place for pedestrians including:

1. Building façades that are highly articulated at the street level, with interesting uses of material, color, and architectural detailing, located directly behind the sidewalk;
2. Design amenities related to the street level such as awnings, paseos, arcades;
3. Visibility into buildings at the street level;
4. A continuous sidewalk, with a minimum of intrusions into pedestrian right-of-way;
5. Continuity of building façades along the street with few interruptions in the progression of buildings and stores;
6. Signs oriented and scaled to the pedestrian rather than the motorist;
7. Landscaping; and
8. Street furniture.

Pedestrian Oriented Use. A land use that is intended to encourage walk-in customers and that generally does not limit the number of customers by requiring appointments or otherwise excluding the general public. A pedestrian oriented use provides spontaneous draw from sidewalk and street due to visual interest, high customer turnover, and social interaction.

Pen. Enclosed area of sufficient size where hens may be secured. Typically includes a covered area.

Person. Any individual, firm, partnership, corporation, company, association, joint stock association; city, county, state, or district; and includes any trustee, receiver, assignee, or other similar representative thereof.

Personal Services. Establishments providing non-medical services to individuals as a primary use. Examples of these uses include:

- barber and beauty shops
- clothing rental
- dry cleaning pick-up stores with limited equipment
- home electronics and small appliance repair
- laundromats (self-service laundries)
- locksmiths
- pet grooming with no boarding

- shoe repair shops
- tailors
- tanning salons

These uses may also include accessory retail sales of products related to the services provided.

Personal Services—Restricted. Personal services that may tend to have a potentially offensive effect upon surrounding areas and which may need to be dispersed to minimize their adverse impacts. Examples of these uses include:

- check cashing stores
- fortune tellers
- palm and card readers
- psychics
- soup kitchens
- spas and hot tubs for hourly rental
- tattoo and body piercing services

Petroleum Product Storage and Distribution. A facility for the bulk storage and wholesale distribution of gasoline, diesel fuel, and/or other fuels and petroleum products.

Pharmacy. A retail store that primarily sells prescription drugs, that may also sell non-prescription drugs and medical supplies, other health care products, and a limited variety of convenience items. Where specifically identified as an allowable use by Division 2, a pharmacy is distinguished from “drug store, pharmacy” as included under the definition of “General Retail” by its emphasis on prescription drug sales as the primary business activity. See also “Accessory Retail and Services.”

Planning Commission. The City of Santa Rosa Planning Commission, appointed by the Santa Rosa City Council in compliance with [Government Code](#) Section 65101, referred to throughout this Zoning Code as the “Commission.”

Plant Nursery. A commercial agricultural establishment engaged in the production of ornamental plants and other nursery products, grown under cover either in containers or in the soil on the site, or outdoors in containers. The outdoor production of ornamental plants in the soil on the site is instead included under “Crop Production, Horticulture, Orchard, Vineyard.” Also includes establishments engaged in the sale of these products (e.g., wholesale and retail nurseries) and commercial-scale greenhouses (home greenhouses are included under “Residential Accessory Use or Structure”). The sale of house plants or other nursery products entirely within a building is also included under “General Retail.”

Primary Structure. A structure that accommodates the primary use of the site.

Primary Use. The main purpose for which a site is developed and occupied, including the activities that are conducted on the site a majority of the hours during which activities occur. See also “Accessory Use.”

Primary Zoning District. The zoning district applied to a site by the Zoning Map, to which an overlay zoning district may also be applied.

Private Residential Recreation Facility. A privately-owned, non-commercial outdoor recreation facility provided for residential project or neighborhood residents, including swimming pools, swim and tennis clubs, park and sport court facilities. Does not include golf courses and country clubs, which are separately defined.

Printing and Publishing. An establishment engaged in printing by letterpress, lithography, gravure, screen, offset, or electrostatic (xerographic) copying; and other establishments serving the printing trade such as bookbinding, typesetting, engraving, photoengraving and electrotyping. This use also includes establishments that publish newspapers, books and periodicals; establishments manufacturing business forms and binding devices. “Quick printing” services are included in the definition of “Business Support Services.”

Produce Stand. A temporary business location that sells raw, unprocessed fruits, vegetables, nuts, and other produce in its raw or natural state, and that is accessory to an on-site or adjacent agricultural operation.

Property Line. The recorded boundary of a parcel of land.

Proposed Project. A proposed new structure, new addition to an existing structure, or area of other new site development; these do not include the alteration of any portion of an existing structure other than an addition.

Public Safety Facility. A facility including ambulance dispatch facilities, fire stations, other fire prevention and fire fighting facilities, police and sheriff substations and headquarters, including interim incarceration facilities.

Q. Definitions, "Q."

Qualifying Resident. A senior citizen or other person eligible to reside in senior citizen housing.

Quasi-Public. A use owned or operated by a non-profit, religious or eleemosynary institution and providing education, cultural, recreational, physical fitness, religious or similar types of public programs.

R. Definitions, "R."

Recommend. In the context of City review of a planning permit application, "recommend" means that the review authority makes a recommendation to a higher decision-making body.

Recreational Vehicle (RV). A motor home, travel trailer, truck camper, or camping trailer, with or without motive power, originally designed for human habitation for recreational, emergency, or other occupancy, which:

1. Contains less than 320 square feet of internal living room area, excluding built-in equipment, including wardrobe, closets, cabinets, kitchen units or fixtures, and bath or toilet rooms; and
2. Contains 400 square feet or less of gross area measured at maximum horizontal projections; and
3. Is built on a single chassis; and
4. Is either self-propelled, truck-mounted, or permanently towable on the highways without a towing permit.

Recreational Vehicle Park. A site where one or more lots are used, or are intended to be used, by campers with recreational vehicles or tents. Recreational vehicle parks may include public restrooms, water, sewer, and electric hookups to each lot and are intended as a higher density, more intensively developed use than campgrounds. May include accessory retail uses where they are clearly incidental and intended to serve RV park patrons only.

Recycling Facility. This land use type includes a variety of facilities involved with the collection, sorting and processing of recyclable materials.

1. **Collection facility.** A center where the public may donate, redeem or sell recyclable materials, which may include the following, where allowed by the applicable zoning district:

- a. Reverse vending machines;
- b. Small collection facilities which occupy an area of 350 square feet or less and may include:
 - (1) A mobile unit,
 - (2) Bulk reverse vending machines or a grouping of reverse vending machines occupying more than 50 square feet, and
 - (3) Kiosk-type units which may include permanent structures;
- c. Large collection facilities which occupy an area of more than 350 square feet and/or include permanent structures.

2. **Mobile recycling unit.** An automobile, truck, trailer, or van used for the collection of recyclable materials, carrying bins, boxes, or other containers.

3. **Processing facility.** A structure or enclosed space used for the collection and processing of recyclable materials for shipment, or to an end-user's specifications, by such means as baling, briquetting, cleaning, compacting, crushing, flattening, grinding, mechanical sorting, re-manufacturing and shredding. Processing facilities include the following types, both of which are included under the definition of "Scrap and Dismantling Yards," below:

- a. Light processing facility occupies an area of under 45,000 square feet of collection, processing and storage area, and averages two outbound truck shipments each day. Light processing facilities are

Clause embodied in Report No. 4 of the Scarborough Community Council, as adopted by the Council of the City of Toronto at its meeting held on May 21, 22 and 23, 2002.

7

**Definition of Personal Service Shop Uses in
Neighbourhood Commercial and Community Commercial Zones
in the East District Zoning By-laws - TF WPS 2001 0004**

(City Council on May 21, 22 and 23, 2002, adopted this Clause, without amendment.)

The Scarborough Community Council recommends the adoption of the following report (December 6, 2001) from the Director of Community Planning, East District:

Purpose:

To report on the review of the definition of Personal Service Shop uses in the East District Zoning By-laws and seek Council direction.

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendations:

It is recommended that this report embodying the request of City Council of November 6, 7, and 8, 2001, be forwarded to the New Zoning By-law Project staff for consideration in the preparation of a comprehensive Zoning By-law for the City of Toronto.

Background:

City Council on November 6, 7, and 8, 2001, adopted a resolution of Scarborough Community Council requesting the Director of Community Planning, East District, to review the East District Zoning By-laws with a view to more clearly defining "Personal Service Uses" therein, having regard for the new type of business known as "Aromatherapy Clinics", and the clearer definition of Personal Service Uses in the former North York Zoning By-laws, and report thereon to the Scarborough Community Council.

Comments:

Personal Service Shop is not defined in any of the Scarborough Community Zoning By-laws, however, the following definition is included in the Scarborough Employment Districts Zoning By-law:

Personal Service Shop:

shall mean land, buildings or structures or parts thereof used for the beautifying or grooming of persons or care of their apparel.

Although not defined in any of the Scarborough Community Zoning By-laws, "Personal Service Shops", "Service Shops" or "Personal Services" generally are permitted uses in the following zones in all communities;

- Neighbourhood Commercial (NC); and
- Community Commercial (CC).

These uses are not permitted in the Upper Rouge, which does not have these zones. The Milliken, Morningside and Rouge Community By-laws permit only barber shops and beauty parlours in Neighbourhood Commercial zones. In addition, some communities also permit Personal Service Shops in Office (OU) zones.

The Scarborough Employment Districts Zoning By-law permits Personal Service Shops or Service Shops in areas zoned as follows:

- Community Commercial Zone (CC);
- District Commercial Zone (DC);
- Special District Commercial Zone (SDC);
- Commercial/Residential Zone (CR);
- City Centre Commercial Zone (CCC);
- Mixed Employment Zone (ME); and
- Office Uses Zone (OU).

Also, the City Centre Town Square Zone (CCTS) permits only certain service uses and service shops, which are specified.

The Personal Service Shop, Service Shop, or Personal Service zoning has been interpreted to permit businesses for personal grooming and care, and typically include beauty parlours, barbershops, masseuses, tobacconists, florists, shoe shine stands, magazine and newspaper outlets, dry cleaning and laundry services, and souvenir and jewellery shops and kiosks. Aromatherapy Clinics and Spas would also be considered permitted uses. The current situation allows Scarborough Buildings staff a certain degree of flexibility in determining the types of uses permitted under this zoning category but also introduces the possibility of inconsistency.

The definitions and permissions of Personal Service Shop, Service Shop, Personal Service zoning, called "Personal Grooming Establishment" in the former City of Toronto, were briefly examined for all former municipalities across the City. Except for the former Cities of Etobicoke and York, which do not define Aromatherapy Clinics or any of the foregoing uses, but permit these uses under "Retail Uses" and "Retail Store" respectively, the other municipalities generally define and permit these uses in a similar manner to that in Scarborough.

The North York Zoning By-law permits Personal Service Shops in commercial and industrial zones and defines Personal Service Shop as follows:

“Personal Service Shop” shall mean the use of a building or part of a building for personal grooming services and, without limiting the generality of the definition includes beauty parlours, hair styling, manicures, massages, aroma-therapy, acupuncture, and similar uses; but does not include a business office, professional office, professional medical office, or an adult entertainment parlour.

The task of determining a common definition for Personal Service Shop and amending up to thirty-three Scarborough Community Zoning By-laws and possibly the Employment Districts Zoning By-law is labour intensive, potentially costly, and would also involve extensive research to identify existing operations which would be affected, and those which would be rendered non-conforming.

City Council adopted the Planning and Transportation Committee’s recommendations for the New Zoning By-law Project on November 6, 7, and 8, 2001. The objective of this project is to produce a single, simplified, comprehensive Zoning By-law that applies to the entire City, blending the standards and regulations of existing by-laws with new regulations. Rather than undertake work on individual components of current Zoning By-laws affecting an entire municipality, it would be prudent to refer this Council request and other similar requests to the New Zoning By-law Project for integration into the new city-wide By-law.

Conclusions:

In light of the above noted Council approval to produce a new Zoning By-law city-wide, general reviews of zoning definitions and/or permissions should more appropriately be directed to the New Zoning By-law Project.

Contact:

Errol Chapman, Planner, Community Planning Division, Scarborough Civic Centre
Telephone: 416-396-4250; Fax: 416-396-4265; e-mail: echapman@city.toronto.on.ca

The Scarborough Community Council also submits the following report (April 22, 2002) from the Director of Community Planning, East District:

Purpose:

To report on the review of the definition of Personal Service Shop uses in Neighbourhood Commercial and Community Commercial zones in the East District Zoning By-laws.

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendations:

It is recommended that the staff report dated December 6, 2001, recommending that this matter be forwarded to the New Zoning By-law Project staff for consideration in the preparation of a comprehensive Zoning By-law for the City of Toronto, be recommended for City Council adoption.

Background:

Scarborough Community Council on February 25, 2002, deferred consideration of the report dated December 6, 2001, from the Director of Community Planning, East District, requesting a report to the Scarborough Community Council on May 7, 2002, providing a clear definition between Neighbourhood Commercial and Community Commercial for Personal Service Shop type of uses.

Comments:

Official Plan

A review of the Scarborough Official Plan commercial policies in the mid-1970's resulted in market area sizes and populations to be served being incorporated into the Official Plan in 1978 to assist in defining the hierarchy of commercial designations as should be built.

These policies envisaged that Neighbourhood Commercial zones would encompass areas with a radius of 0.4 kilometres serving a population of up to 10,000 within centres of up to 1,400 square metres. Community Commercial zones would encompass areas with a radius of 1.5 kilometres serving a population of 15,000 to 30,000 within centres of between 3,700 to 10,000 square metres.

Staff reviews in 1995-1997 of the Scarborough Official Plan suggested that commercial development patterns in Scarborough did not conform to hierarchical strategies and policies adopted in 1978 for commercial zones. Planning staff recommended deletion of these policies. Work in this regard was suspended after amalgamation and has been superseded by the preparation of the new Official Plan for the City, which is to be considered by the Planning and Transportation Committee on May 27, 2002.

Zoning By-laws

The Zoning By-laws generally permit Personal Service Shops in Neighbourhood Commercial zones and, because land use permissions in the commercial hierarchy are cumulative, such uses are also permitted in Community Commercial zones. A list of permissions for Personal Service Shops, Service Shops and Personal Services in Scarborough Community By-laws by zone is attached. (Attachment 1).

Personal Service Shops typically include beauty and hair styling parlours, barbershops, custom tailors and dressmakers, dry cleaning and laundry services and, subject to adequate documentation of certification, masseuses and Holistic Centres, including Aromatherapy Clinics and Spas.

Although Personal Service Shop is not defined in any of the Scarborough Community Zoning By-laws, the following definition is included in the Scarborough Employment Districts Zoning By-law:

Personal Service Shop:

shall mean land, buildings or structures or parts thereof used for the beautifying or grooming of persons or care of their apparel.

Scarborough's Zoning Examiners do not make any distinction between the types of Personal Service Shops regardless of whether the use is located in a Neighbourhood Commercial or Community Commercial zone.

The task of re-defining Personal Service Shop uses would require review of up to thirty-three Scarborough Community Zoning By-laws and possibly the Employment Districts Zoning By-law. This work would involve extensive research to identify existing operations which would be affected, and assessment of the impacts of proposed changes on these establishments, including owners' rights and reactions to those which would be rendered non-conforming. Such a review would also necessitate extensive public input. As experienced from the work to separate automotive uses into distinct categories, re-defining a category of use is labour intensive, time consuming, and potentially costly. Such a review could not be completed in time in order to provide the Scarborough Community Council meeting of May 7, 2002, with a clear definition between Neighbourhood Commercial and Community Commercial for Personal Service Shop type uses, as requested.

The first phase of the New Zoning By-law Project has been approved. An element of the first phase is an analysis of similarities and differences in existing zoning By-laws, as the initial step towards harmonization. A review of Personal Service Shop definitions in a comprehensive manner would be appropriate in the context of the New Zoning By-law Project.

Conclusions:

This matter should be forwarded to the New Zoning By-law Project staff for consideration in the preparation of a comprehensive Zoning By-law for the City of Toronto as recommended in my previous report on this matter dated December 6, 2001.

Contact:

Errol Chapman, Planner, Community Planning Division, Scarborough Civic Centre
Telephone: 416-396-4250; Fax: 416-396-4265; e-mail: echapman@city.toronto.on.ca

(The attachment referred to in the foregoing report was included in the Agenda for the Scarborough Community Council meeting held on May 7, 2002, and a copy thereof is on file in the Office of the City Clerk, Scarborough Civic Centre.)