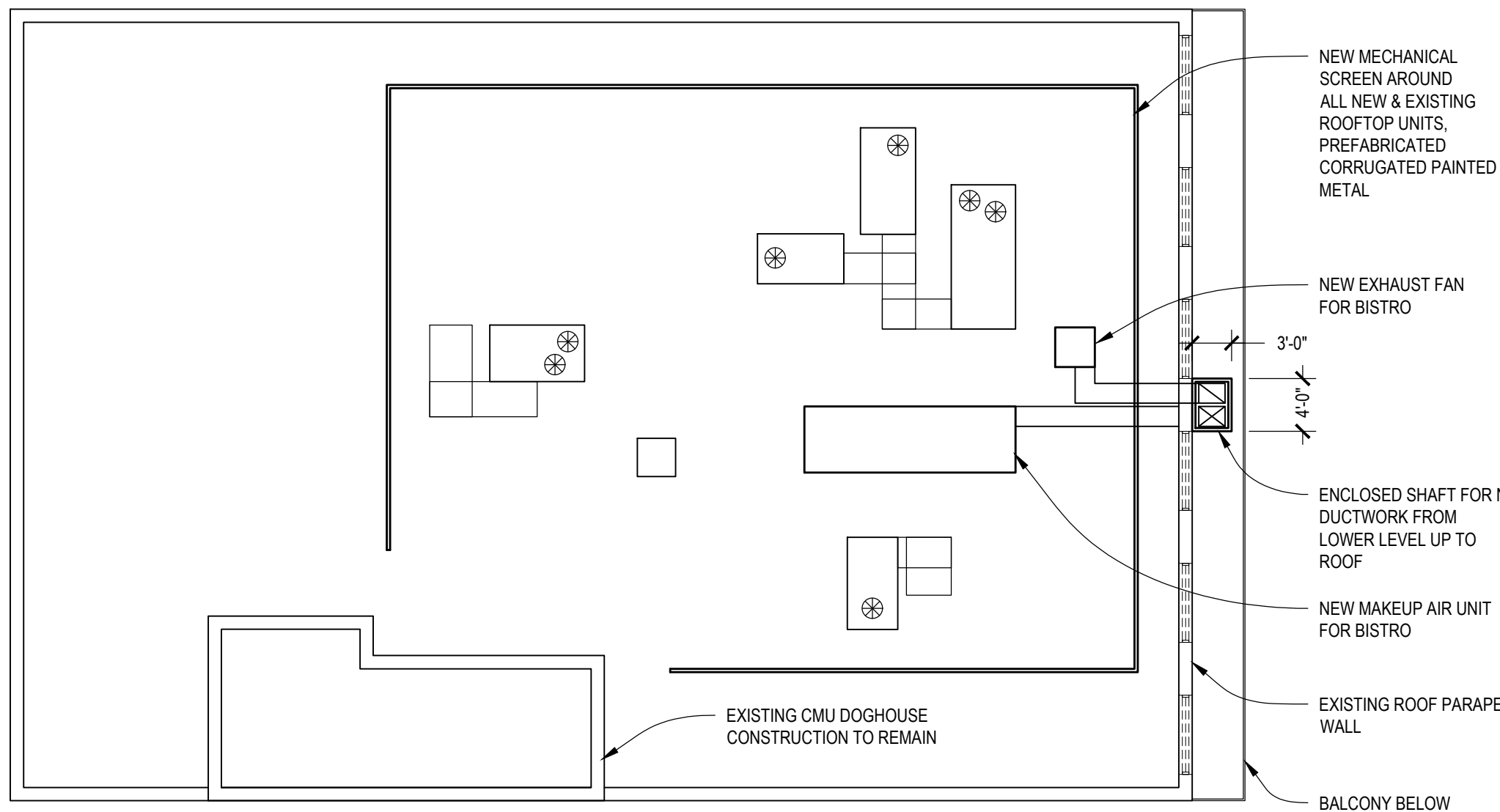
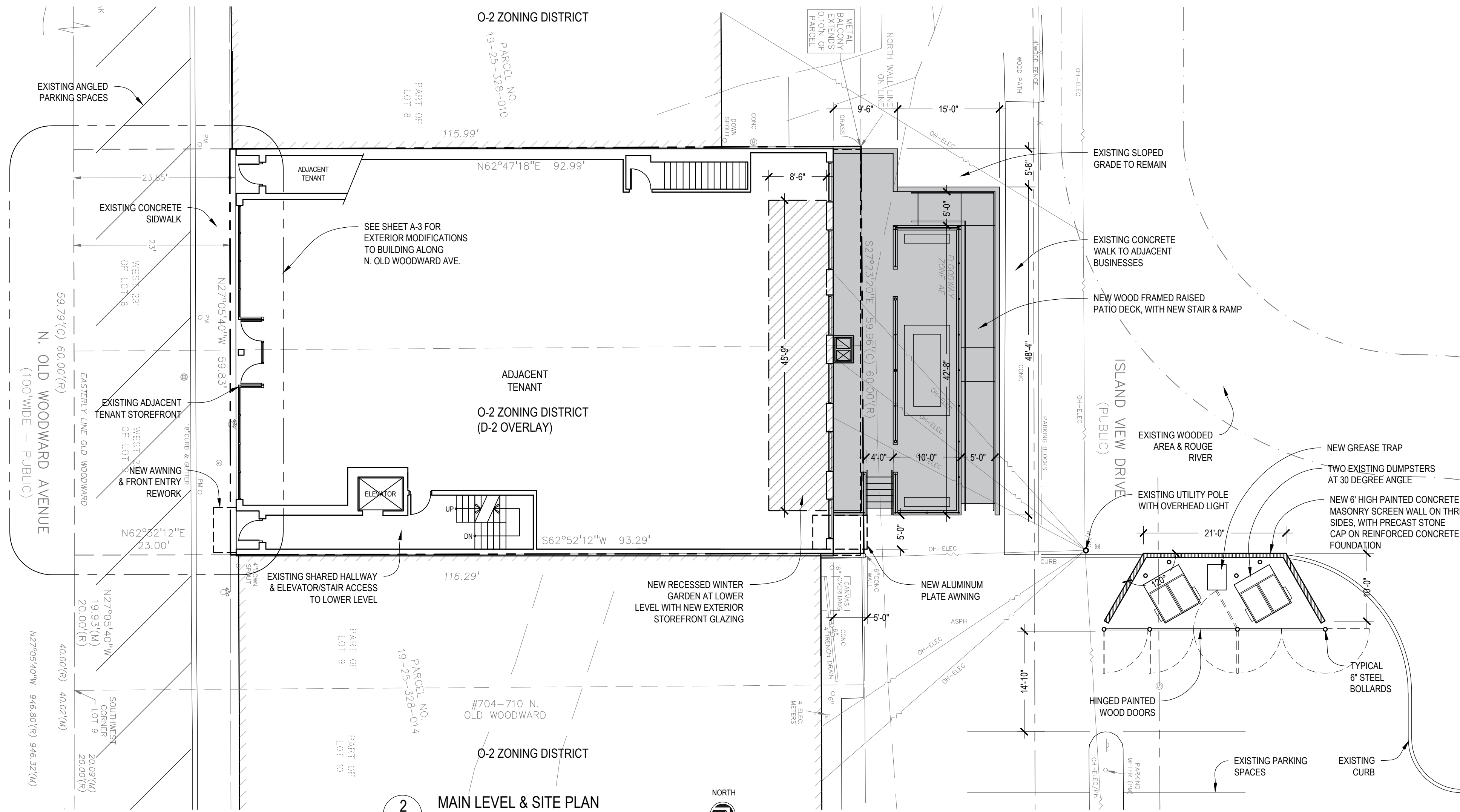


LOCATION MAP
N.T.S.

R-6 ZONING DISTRICT
ON OTHER SIDE OF
N. OLD WOODWARD AVE.

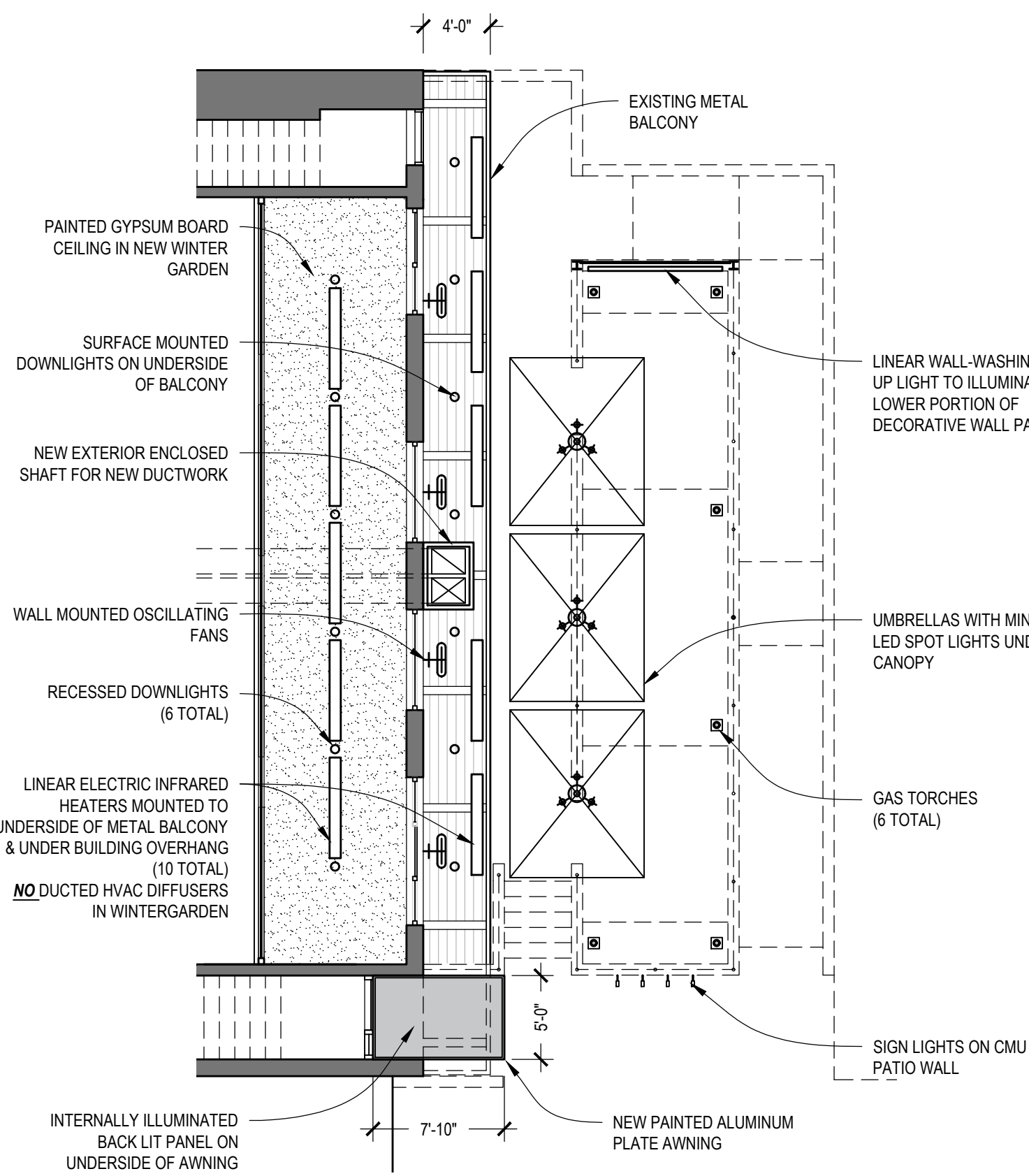


3 ROOF PLAN
scale: 3/32" = 1'-0"

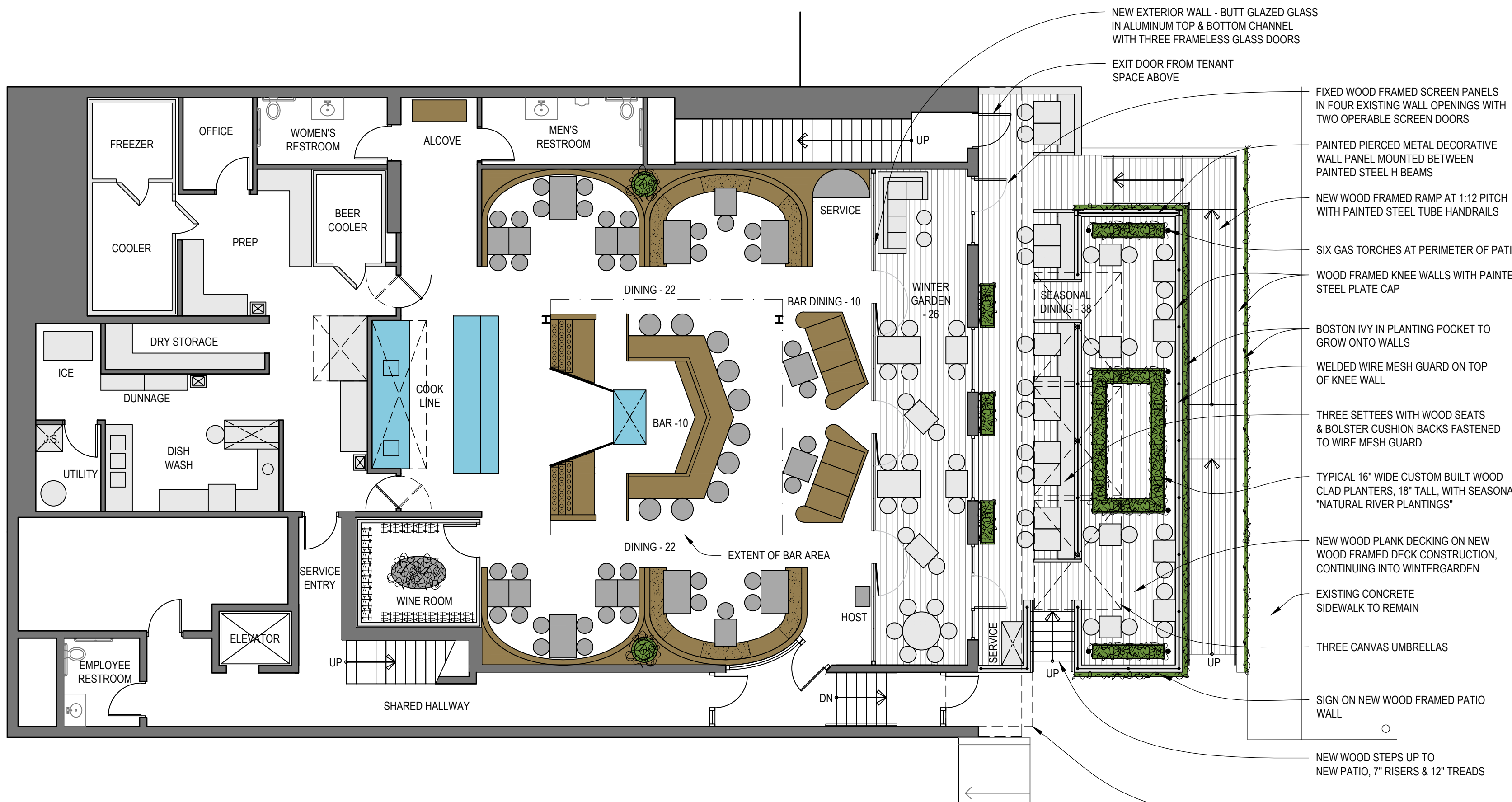


2 MAIN LEVEL & SITE PLAN
scale: 3/32" = 1'-0"

PP ZONING DISTRICT
(P OVERLAY)



4 PATIO/WINTER GARDEN LIGHTING
scale: 1/8" = 1'-0"



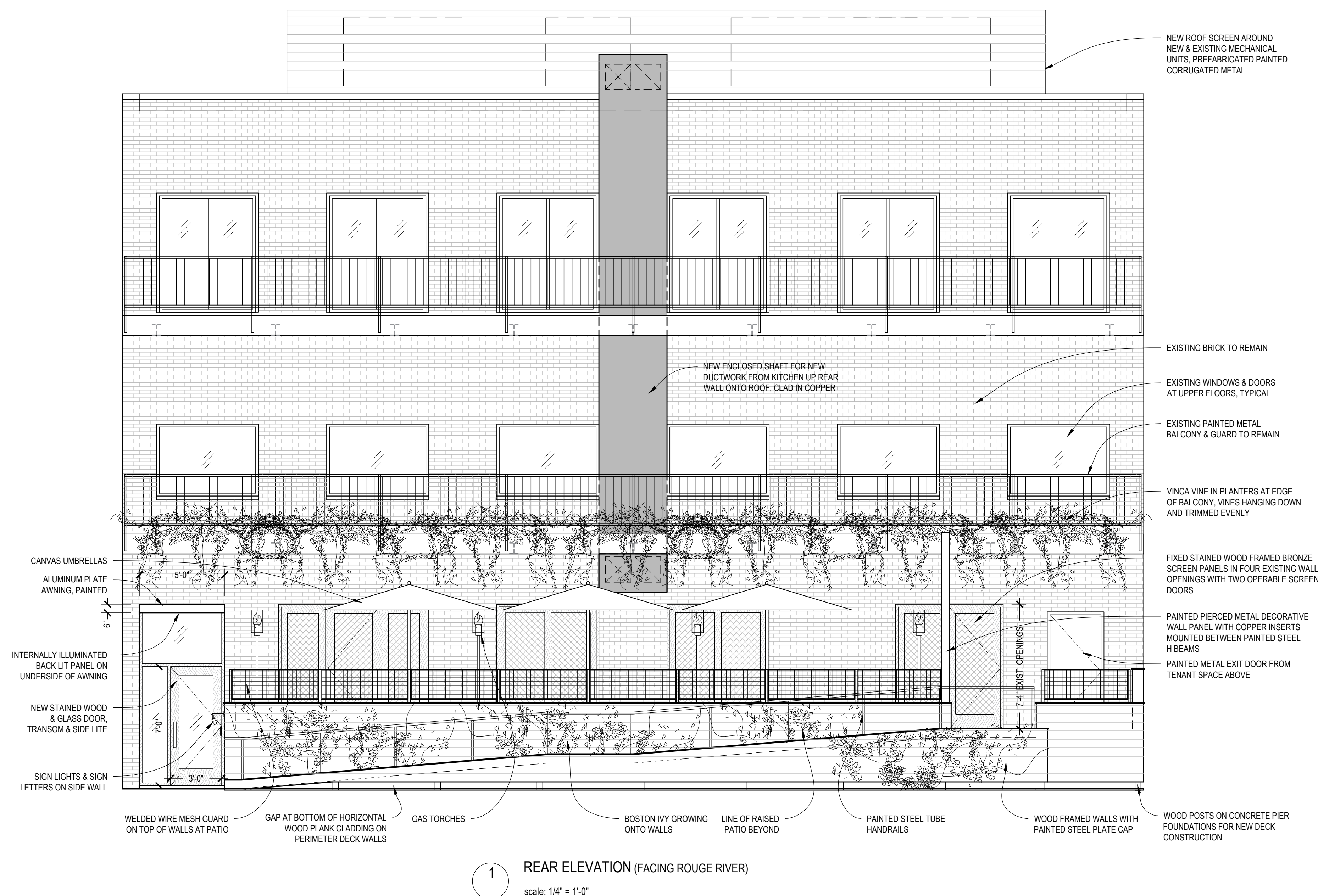
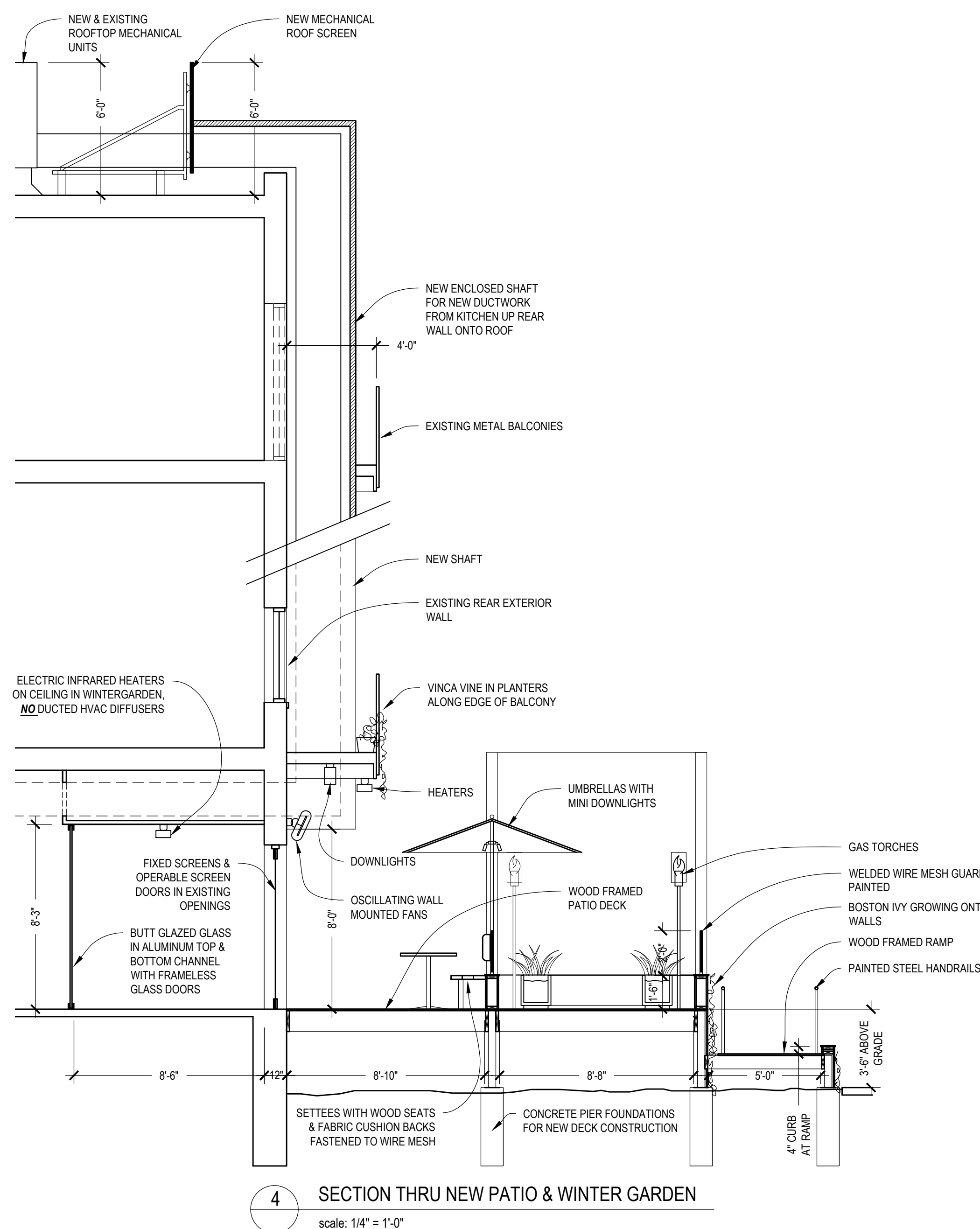
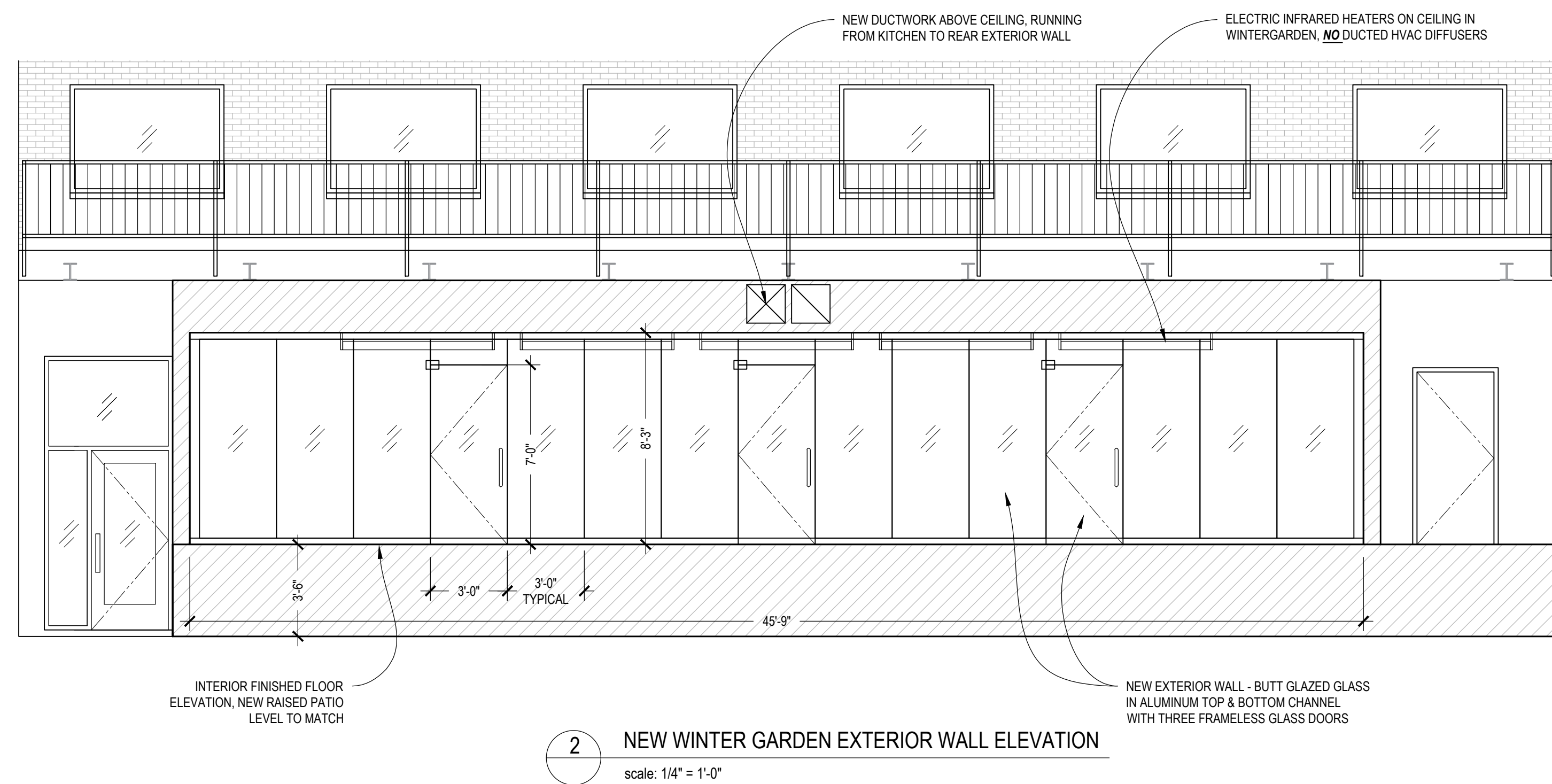
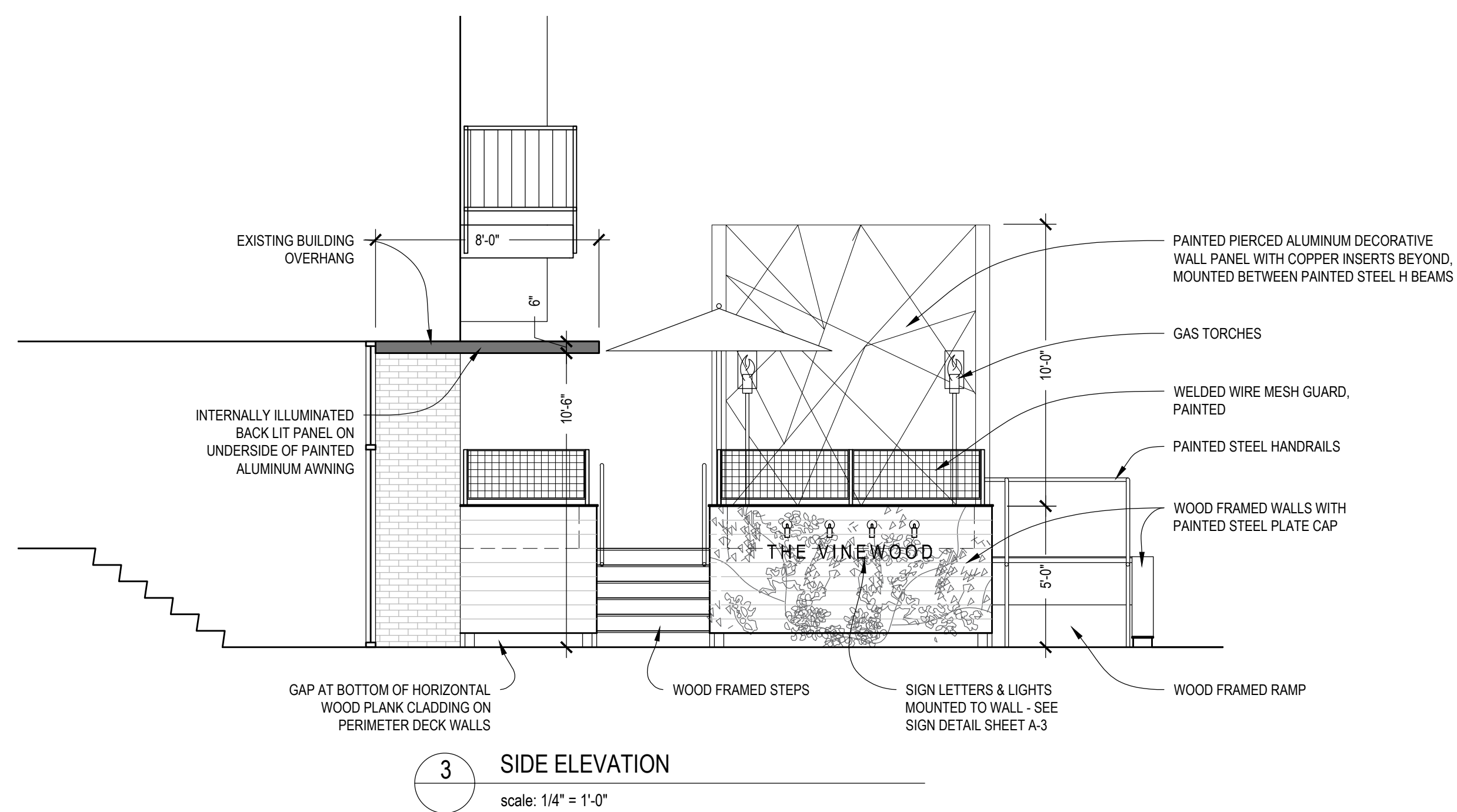
1 LOWER LEVEL FLOOR PLAN
scale: 1/8" = 1'-0"

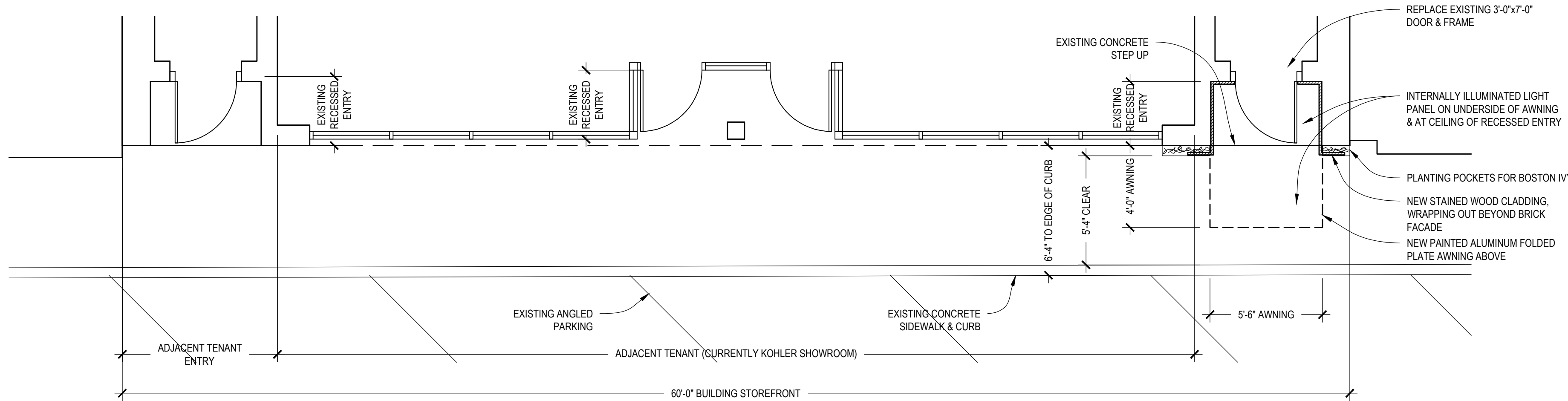
PROJECT INFORMATION:
ZONING: O-2, D-2 OVERLAY
CURRENT USE GROUP: B, BUSINESS
PROPOSED USE GROUP: A-2, RESTAURANT

PROJECT AREAS:
INTERIOR LOWER LEVEL = 3,372 SF
WINTER GARDEN = 435 SF
NEW EXTERIOR PATIO = 1,238 SF

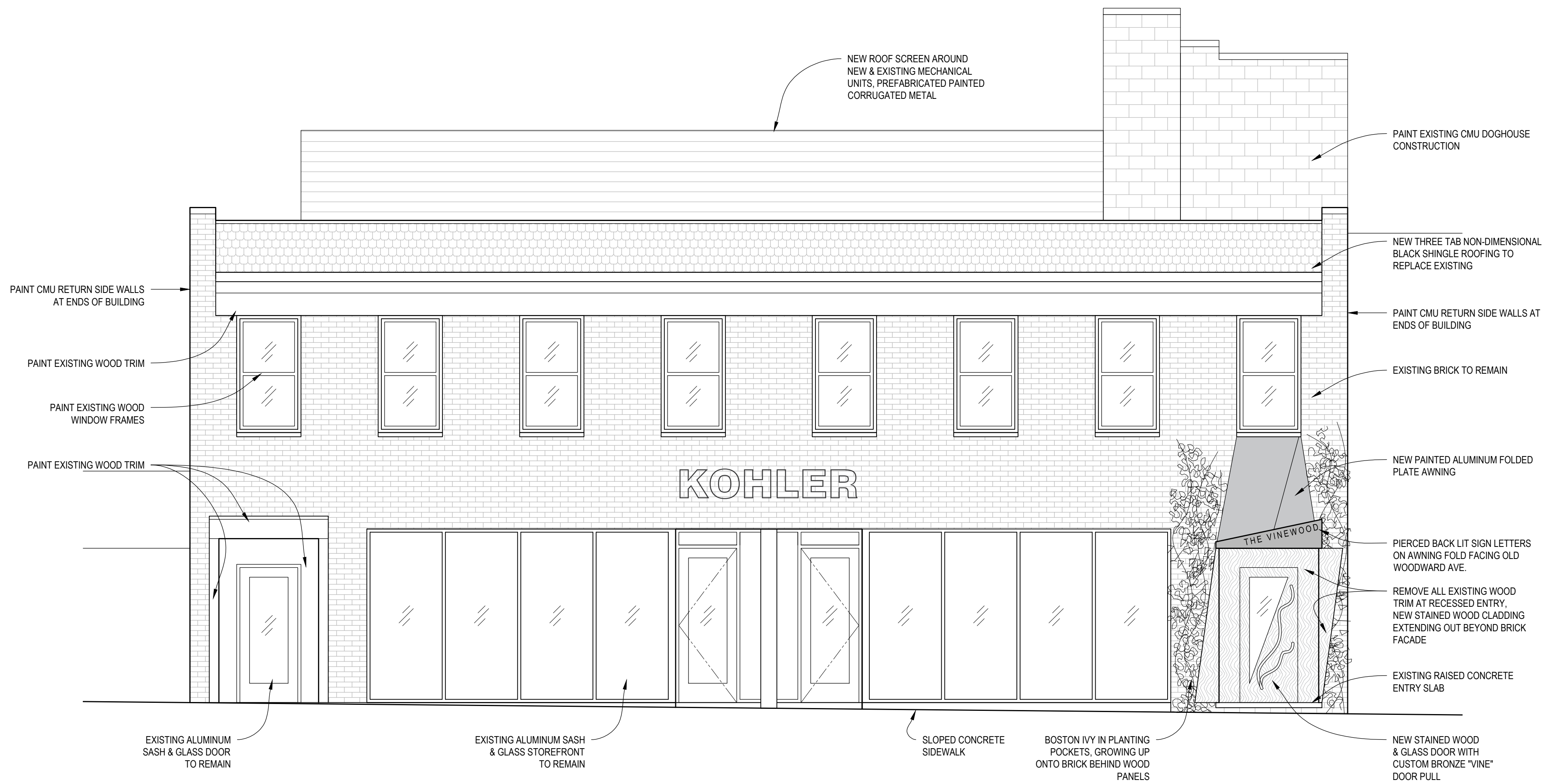
SEATING CAPACITY

INTERIOR	
BAR	10
BAR DINING	10
DINING	44
TOTAL INTERIOR	64
EXTERIOR	
WINTER GARDEN	26
PATIO	38
TOTAL EXTERIOR	64

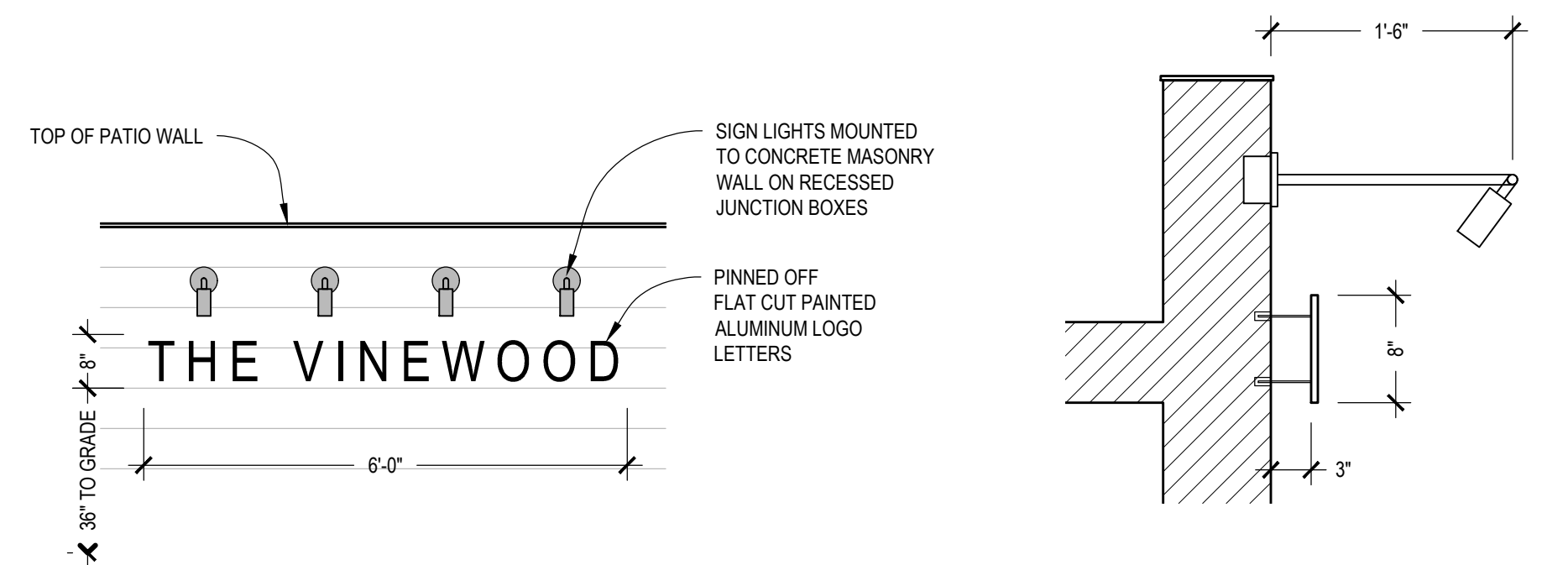




3 FRONT ENTRY PLAN
scale: 1/4" = 1'-0"

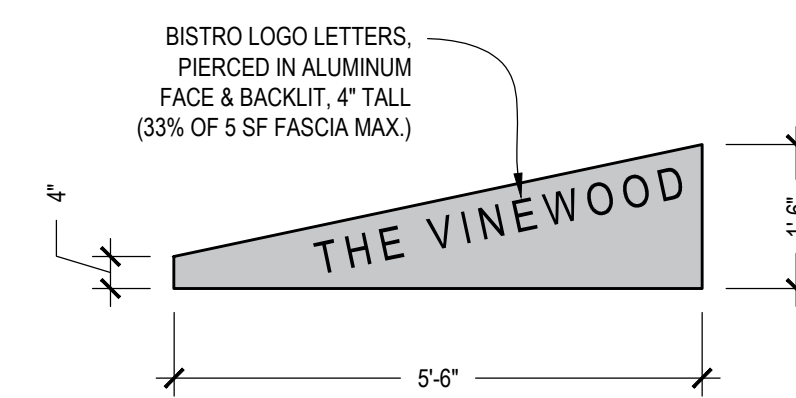


1 FRONT ELEVATION (FACING N. OLD WOODWARD AVE.)
scale: 1/4" = 1'-0"

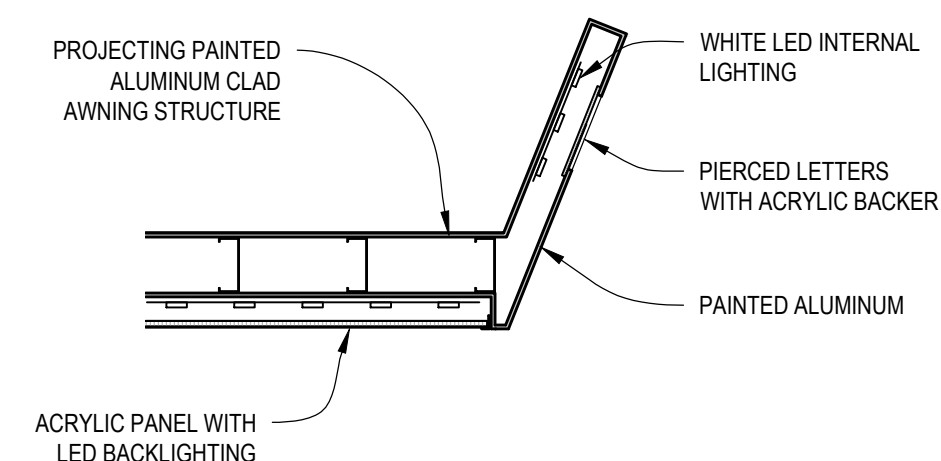


6 REAR SIGN ELEVATION
scale: 1/2" = 1'-0"

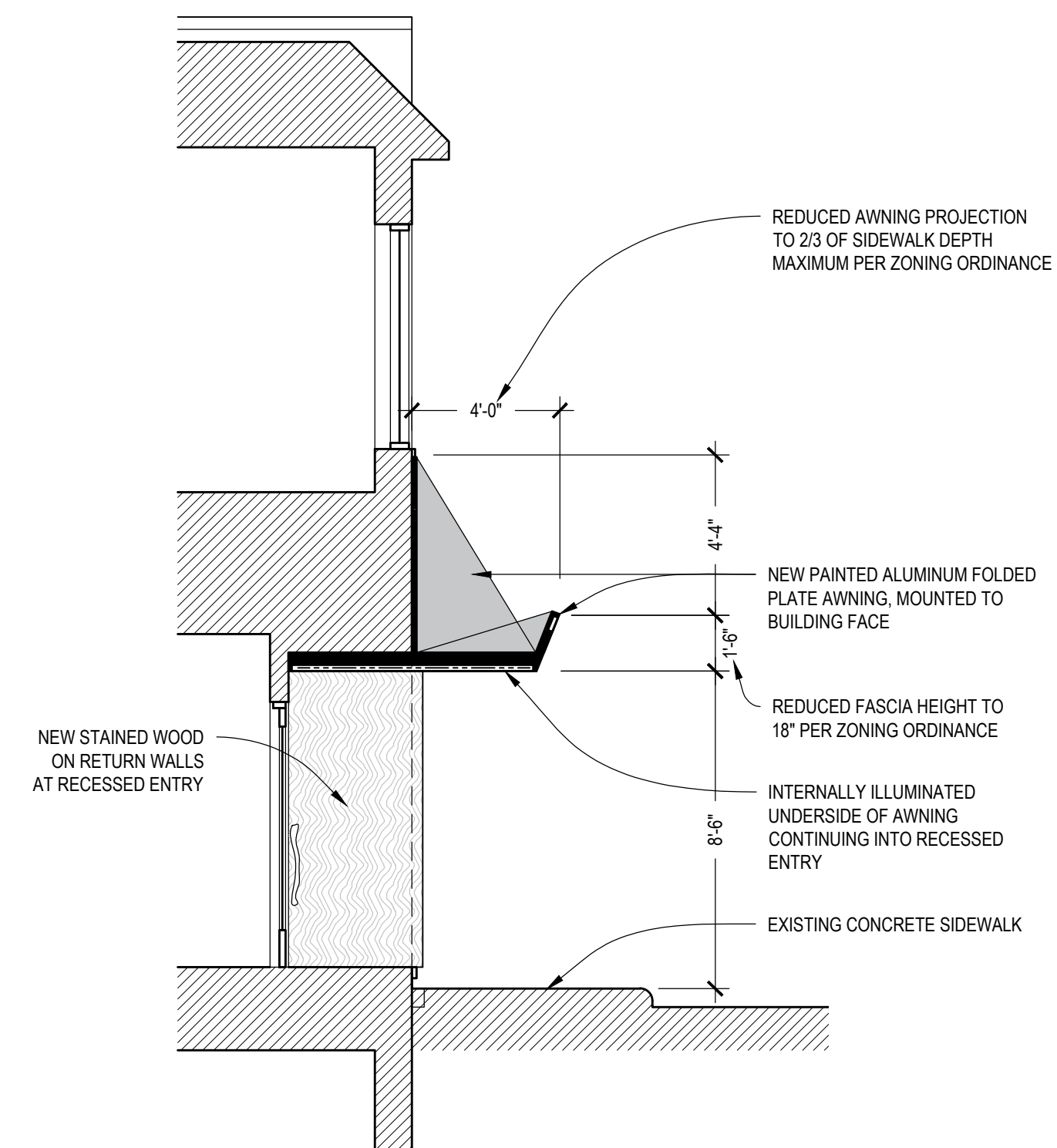
7 REAR SIGN SECTION
scale: 1" = 1'-0"



4 FRONT SIGN ELEVATION
scale: 1/2" = 1'-0"



5 FRONT SIGN SECTION
scale: 1" = 1'-0"



2 SECTION THRU ENTRY
scale: 1/4" = 1'-0"

Project:

THE VINEWOOD
NEW BISTRO IN AN EXISTING SPACE
720 N. OLD WOODWARD AVE., BIRMINGHAM, MI 48009

Seal:

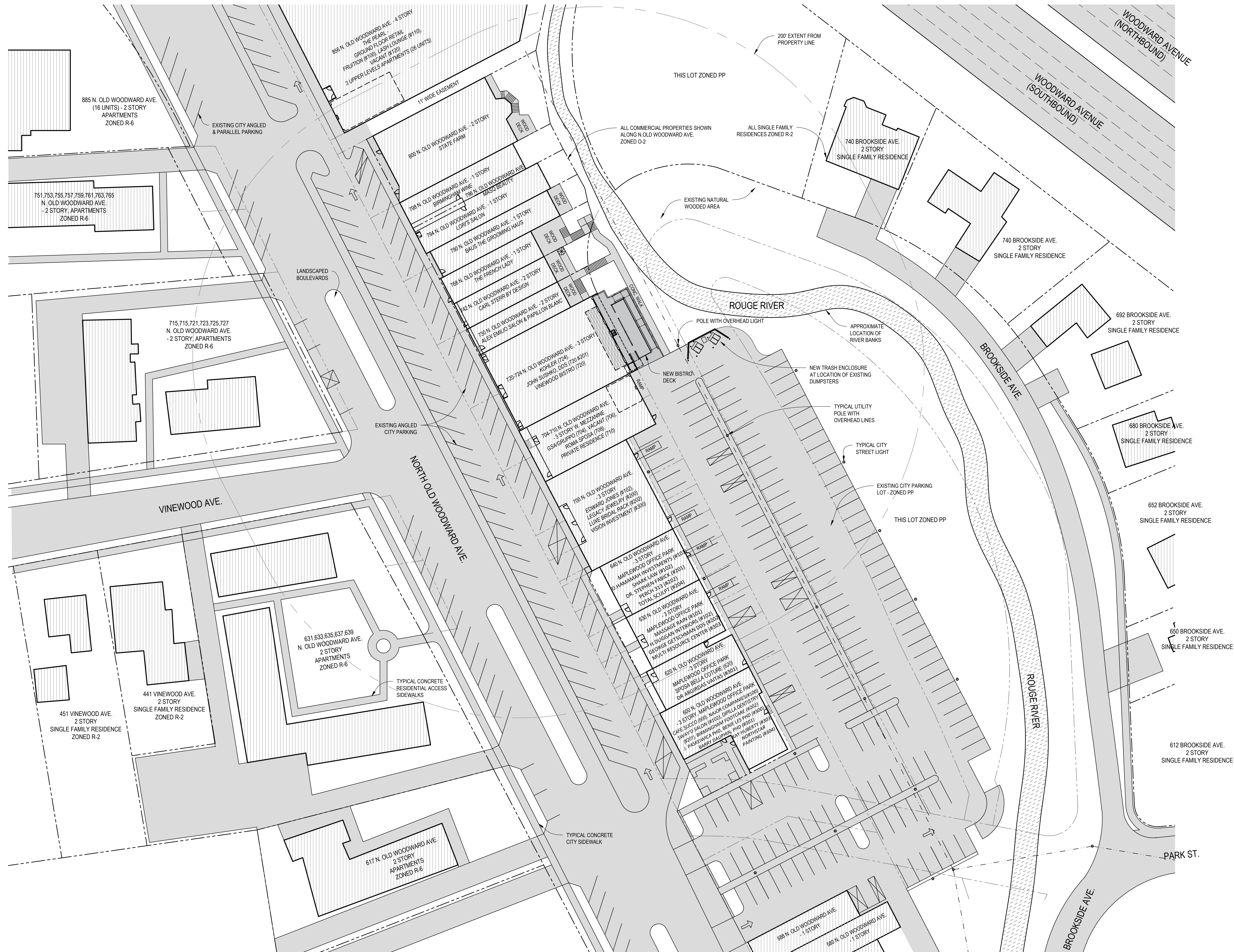
Issue Date:

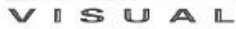
BISTRO SLUP	2/3/21
REVISION	4/6/21


Sheet Title:

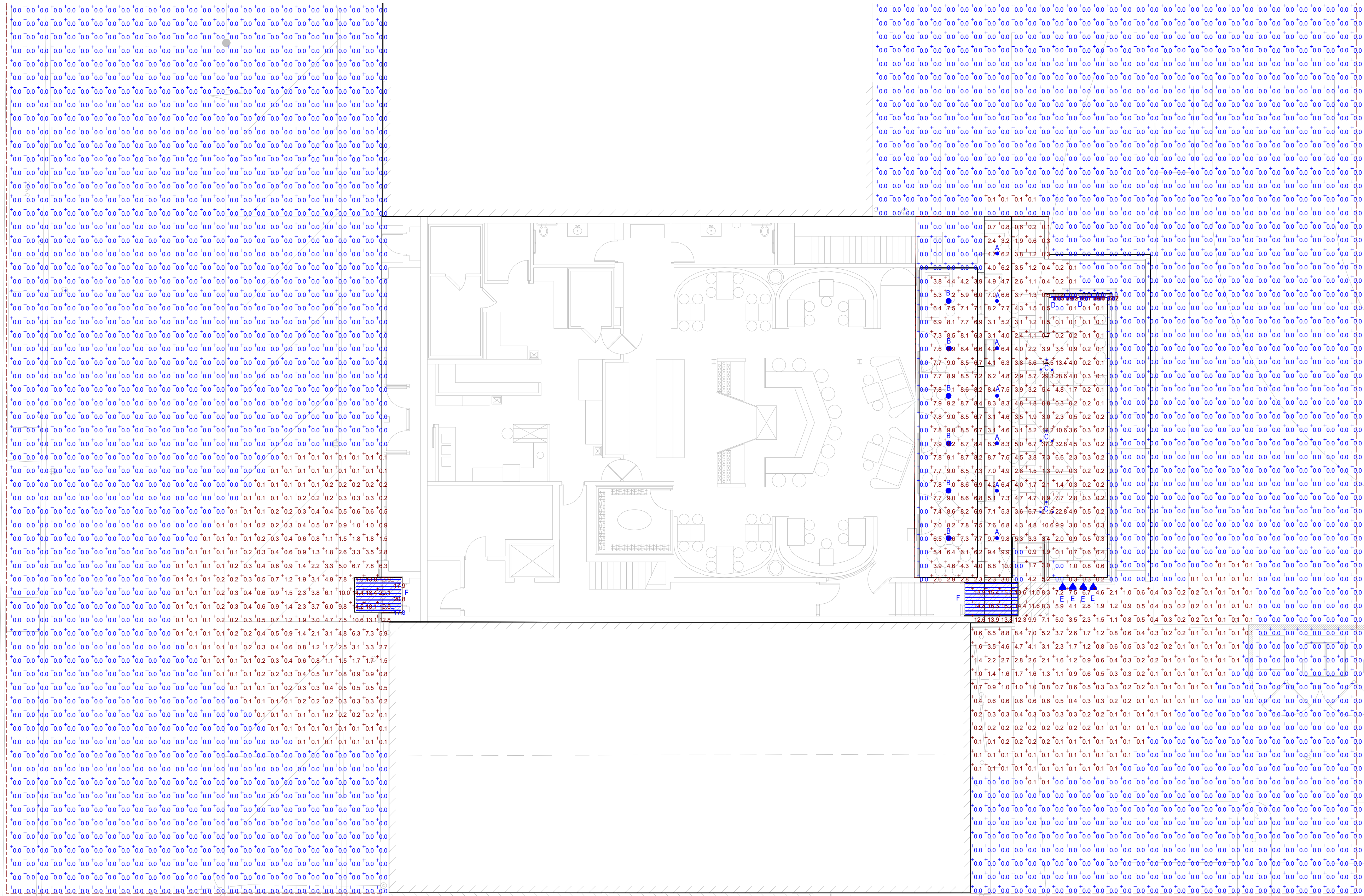
EXTERIOR
ELEVATIONS

Sheet Number:





	F		130	June Lighting	SM2 FR SL412 27K 80CRI	DEEP CHANNEL FROSTED (1FT SECTION)	SL412 20FT 27K 80CRI (1 FT SECTION)	1	SM2_FR_SL412_27K_80CRI.ies	99	1	4.4	DIRECT, SC=0=1.26, SC=90=1.24	 <p>THIS FIXTURE IS USED TO SIMULATE CUSTOM INTERNALLY ILLUMINATED PANEL, WITH CONTINUOUS LED STRIPS AT 6° O.C.</p>
--	---	--	-----	---------------	------------------------	------------------------------------	-------------------------------------	---	----------------------------	----	---	-----	-------------------------------	--



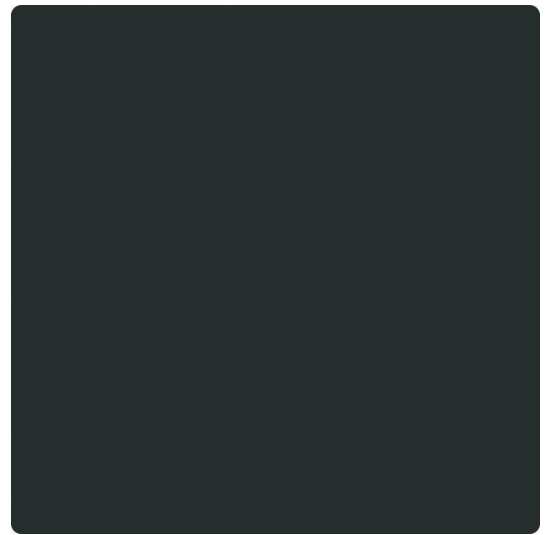


David E. Cole, PS
Agent for Professional Engineering Associates, Inc.
MI. P.S. No. 32334

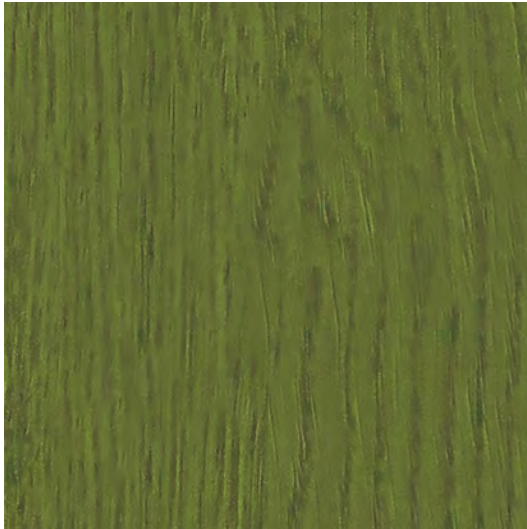
[illegible]



BENJAMIN MOORE "PERENNIAL" 405
PAINTED ALUMINUM CANOPY & AWNING,
DECORATIVE PIERCED PANEL



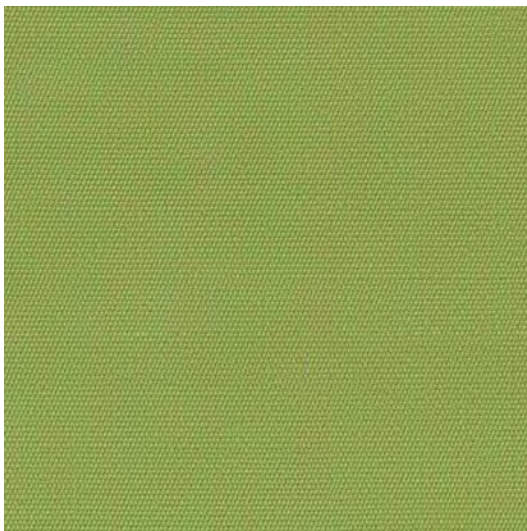
BENJAMIN MOORE "BLACK FOREST GREEN"
HC-187 - PAINTED METAL GUARD & HAND
RAILS, STEEL PLATE CAP



STAINED WOOD TO MATCH LIGHT GREEN
PAINT COLOR, AT FRONT ENTRY



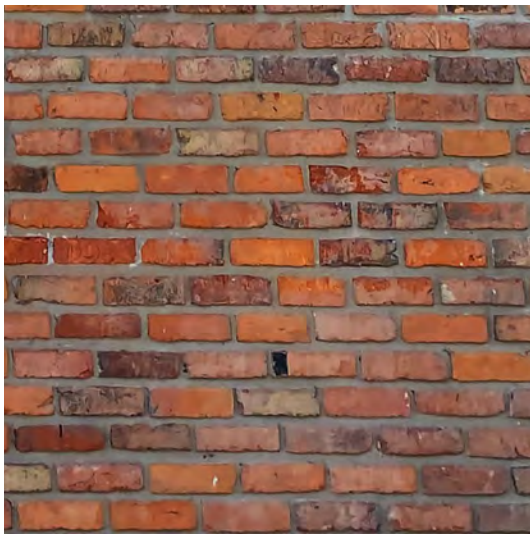
STAINED WOOD TO MATCH DARK GREEN
PAINT COLOR, AT REAR DOORS



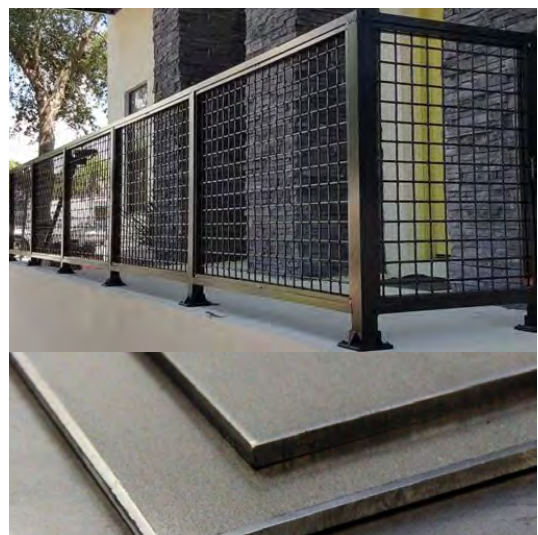
SUNBRELLA "GINKGO"
CANVAS UMBRELLAS



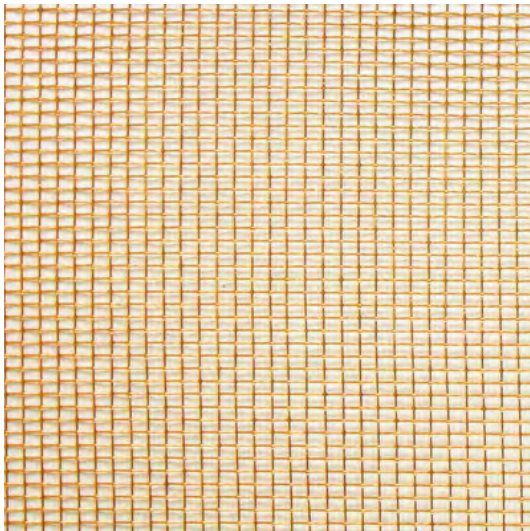
BENJAMIN MOORE "UNIVERSAL BLACK"
2118-10, EXISTING PAINTED
WOOD TRIM



EXISTING BRICK WALLS TO REMAIN



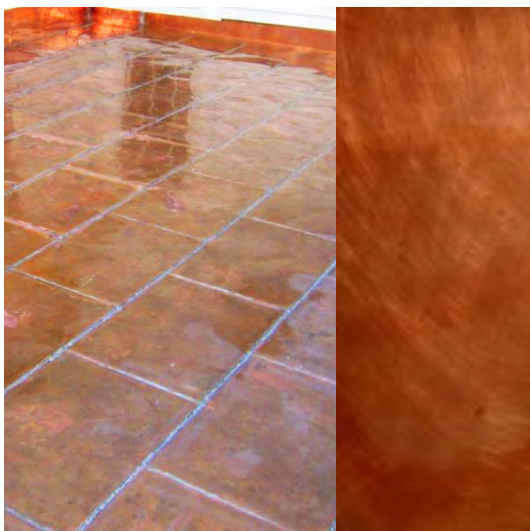
PAINTED METAL WALL CAP &
WIRE MESH GUARD RAIL



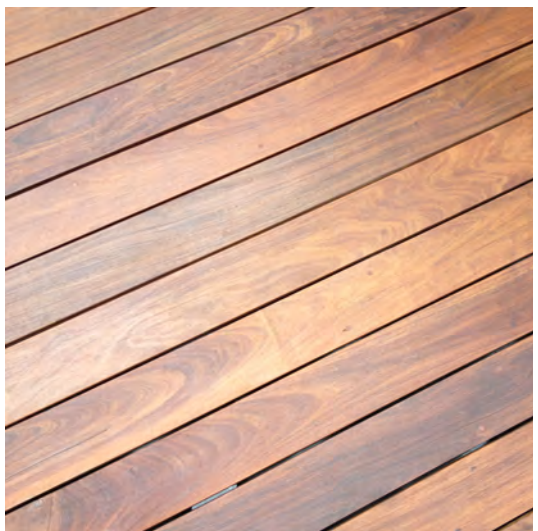
BRONZE SCREEN AT REAR DOORS



HORIZONTAL IPE WOOD PLANK CLADDING
ON PATIO KNEE WALLS, SEALED



COPPER PANELS,
CLADDING AT DUCT SHAFT ENCLOSURE,
INSERTS AT DECORATIVE PIERCED WALL



IPE WOOD DECKING ON PATIO &
WINTERGARDEN, SEALED



CLIMBING BOSTON IVY
AT PATIO WALLS
& AT FRONT ENTRY



TRAILING VINCA VINE
IN PLANTERS ON REAR BALCONY



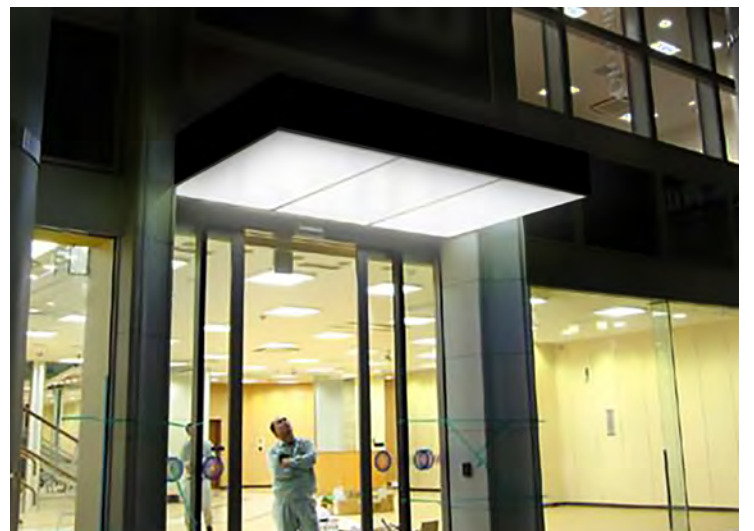
ASSORTED NATIVE GRASSES & SEASONAL FLOWERING RIVER BANK PLANTS,
IN PLANTERS ON PATIO DECK



GAS TORCHES AT PATIO



FRAMELESS GLASS DOORS & BUTT GLAZED
WINDOWS AT REAR WINTERGARDEN WALL



ILLUMINATED PANEL UNDERNEATH
FRONT AWNING & REAR CANOPY

TEMPEST™

GAS TORCHES AND LANTERNS

FIRE IN MOTION

Minimum Clearances To Combustibles

Floor: 2.5" combustible floor to bottom (base) of torch
Walls: 8" measured from glass surface
Ceiling: 26" measured from the torch top (glass frame) with or without the raincap. (Refer to the Owner's Manual for further details)

Gas Rating

	NG	LP
Btus/Hr High	20,000	20,000
Btus/Hr Low	14,000	17,000

Electronic Ignition 24V Model

Install up to six torches on a single transformer and up to five transformers on one 120 volt 15 amp circuit. This can give you up to 30 torches on a single circuit!

Testing

Applicable portions of ANSI Z21.42-2004 "Illuminating Appliances", CAN 1-2.15, CSA 4.96 U.S. (3rd Ed) "Outdoor Gas Fireplace", and AGA 8-96, "Requirement for Gas-Fired Decorative Illuminating Appliances for Outdoor Installation."

FOR YOUR SAFETY:

FOR OUTDOOR INSTALLATION ONLY!

Do not store or use gasoline or other flammable vapors and liquids in the vicinity of this or any other appliance.

WARNING:

Improper installation, adjustment, alteration, service or maintenance can cause injury or property damage. Refer to the owner's information manual provided with this appliance. For assistance or additional information consult a qualified installer, service agency or the gas supplier.



PICK THE IGNITION SYSTEM THAT BEST MEETS YOUR NEEDS

ELECTRONIC IGNITION 24V MODEL

The Electronic Ignition model can be used with a light switch, remote control, programmable timer or wired into a SmartHome system. Available in NG and LP.

PIEZO IGNITER MODEL

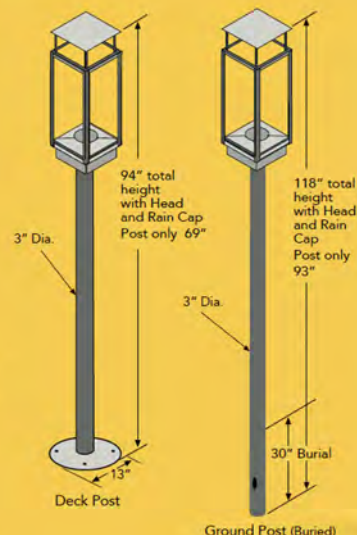
The manual light model works with a built-in Piezo igniter and easy access control panel. Available in NG and LP.



Tempest Torch™

FEATURES YOU'RE GOING TO LOVE

- The Tempest Torch™ and Tempest Lantern™ can be installed in four different ways:
 - Ground Post
 - Deck Post
 - Pillar Mount
 - Wall Mount
- Automatic gas shutoff for added safety if the flame ever goes out.
- Removable rain cap included.
- Tempered glass panels are easy to remove for cleaning and service.
- The Tempest Torch™ features a durable stainless steel frame and burner.
- The Tempest Lantern™ features a durable, high temperature black powder coated frame & cap.
- Available in your choice of natural gas or propane.



www.tempesttorch.com | 7

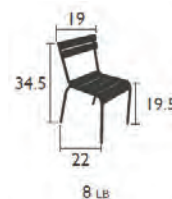
Fermob

4101 - CHAIR

Aluminium tube frame

Backrest and seat made from curved aluminium slats

Stacking: x 10 (stacked height: 48")



4102 - ARMCHAIR

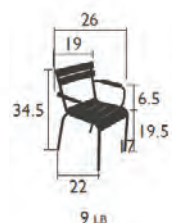
Aluminium tube frame

Backrest, seat and armrests made from curved aluminium slats

Stacking: x 4 (stacked height: 39")

Stacking: x 6 (stacked height: 42")

Stacking: x 8 (stacked height: 38")



Weight: : 23 kg

base : Liquorice steel central column

table top : Reinforced steel sheet: supporting cross-beams beneath

base : Cast iron (13 kg) - Liquorice

Stifled resonance for a more comfortable use

Thicker table top for optimal hold

VERBENA



ocean master classic

premium parasols

The Ocean Master Classic market style parasol is the culmination of durable engineering, stylish profiles and functional shade design. Manufactured to marine specifications, all Ocean Master parasols feature 100% replaceable parts for easy service and a 15/5-year warranty. Classic beauty. Classic TUUCI.



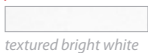
finish options

standard



polished aluminum

powder coat



textured bright white



sea shell white



espresso



ash grey



hammered bronze



jet black

shapes & sizes



square

ft.	/	m.
5.5'	/	1.65
6.5'	/	2.0
7.5'	/	2.25
*8.5'	/	2.6



octagon

ft.	/	m.
6.0'	/	1.8
7.5'	/	2.25
*9.0'	/	2.75
*10.5'	/	3.2
*11.5'	/	3.6



hexagon

ft.	/	m.
7.0'	/	2.15
*8.5'	/	2.6
*10.0'	/	3.0
*11.0'	/	3.4



rectangle

ft.	/	m.
5' x 8'	/	1.5 x 2.45
*6' x 9'	/	1.8 x 2.75

rectangle

ft.	/	m.
*8' x 12'	/	2.45 x 3.65

finial options



venice
aluminum

TUUCI®



features:

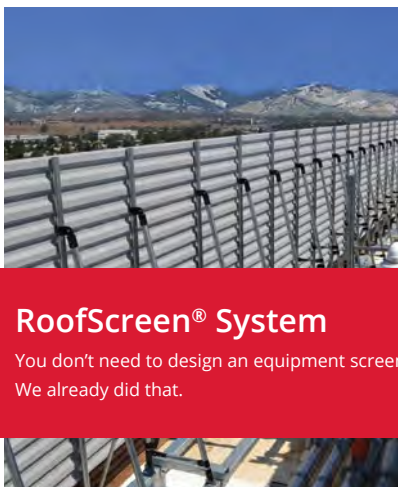
- a. Manual Lift w/ Stainless Steel Security Pin
- b. "Auto-Loc" Marine Pulley Lift System
- c. "Easy Drive" Crank Lift System
- d. Reinforced Strut Joints Construction
- e. Armor-Wall Mast
- f. Reinforced Pocket Construction





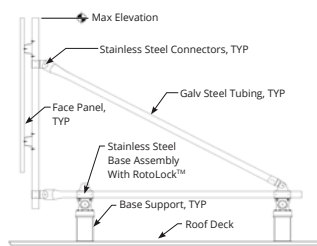
RIBBED PANELS

Economical and very strong with good spanning capability. Available in many styles including perforated and can be oriented vertically or horizontally.



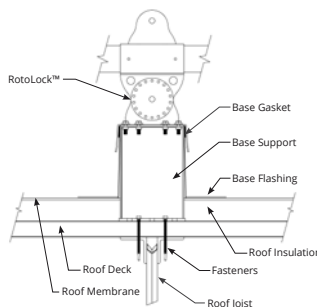
RoofScreen® System

You don't need to design an equipment screen. We already did that.



ROOF ATTACHMENTS YOU CAN TRUST

With the adjustable RotoLock™ feature, integral flashing design and a proven track record, you can have peace of mind using our attachment systems.



ENGINEERED

Full site-specific engineering and shop drawings, with engineer's stamp for any state.



WATERTIGHT

Our brilliantly designed attachments will work with any type of roofing system and will never leak.



WARRANTY

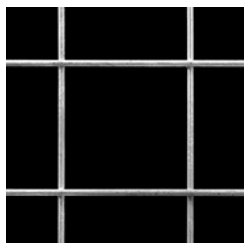
Rest easy knowing you're covered by a 20-year warranty. We don't fool around.

McNICHOLS®

Industrial & Architectural Hole Product Solutions Since 1952.



PAGE 1 OF 1



McNICHOLS® WIRE MESH

Square, Galvanized Steel, Hot Dipped, Welded - Untrimmed, 3" x 3" Mesh (Square), 2.8650" x 2.8650" Opening (Square), 0.135" Thick (10 Gauge) Wire Diameter, 91% Open Area

McNICHOLS® Wire Mesh, Square, Galvanized Steel, Hot Dipped, Mill Finish, Welded - Untrimmed, 3" x 3" Mesh (Square), 2.8650" x 2.8650" Opening (Square), 0.135" Thick (10 Gauge) Wire Diameter, 91% Open Area

ITEM 3403130041 - 48" x 120"

ITEM SPECIFICATIONS

Item Number	3403130041
Product Line	Wire Mesh
Mesh Type	Square
Construction Type	Welded
Primary Material	Galvanized Steel (GV)
Alloy, Grade or Type	Hot Dipped (HD)
Material Finish	Mill Finish
Weave or Trim Type	Welded - Untrimmed
Mesh Size	3" x 3"
Opening Size	2.8650" x 2.8650"
Wire Diameter/Wire Gauge	0.135" Thick (10 Gauge)
Percent Open Area	91%
Weight	0.41 Lbs./Square Foot
Product Form	Sheet
Sizes (Width x Length)	48" x 120"



McNICHOLS® ACCESSORIES

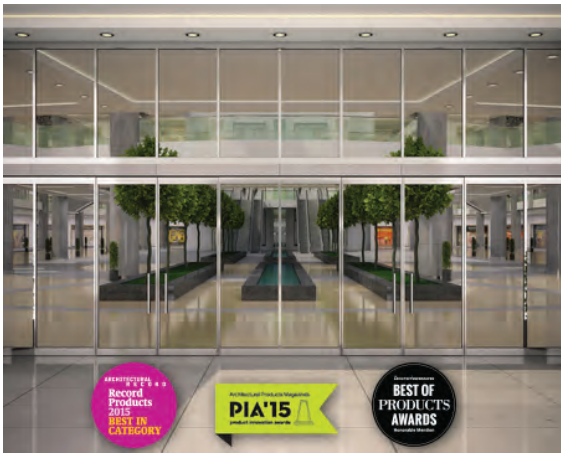
U-Edging, Carbon Steel, Hot Rolled, 14 Gauge (.0747" Thick), Type 438 U-Edging (3/8" Opening x 1" Width)

McNICHOLS® Accessories, U-Edging, Carbon Steel, Hot Rolled, Mill Finish, 14 Gauge (.0747" Thick), Type 438 U-Edging (3/8" Opening x 1" Width), Used to Frame the Edges of Carbon Steel Perforated Metal, Expanded Metal and Wire Mesh

ITEM 4003801410 - 1" x 120"

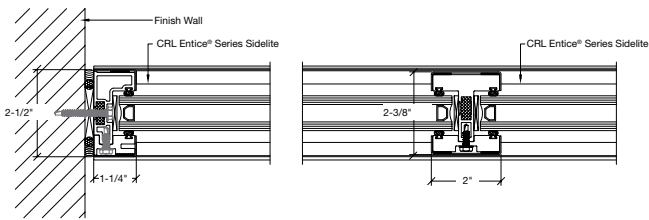
ITEM SPECIFICATIONS

Item Number	4003801410
Product Line	Accessories
Accessory Type	U-Edging
Primary Material	Carbon Steel (CS)
Alloy, Grade or Type	Hot Rolled (HR)
Material Finish	Mill Finish
Gauge/Thickness	14 Gauge (.0747" Thick)
Accessory Profile	Type 438 U-Edging (3/8" Opening x 1" Width)
Opening (Clear Space)	3/8"
Width	1"
Length	120"
Compatible With	Used to Frame the Edges of Carbon Steel Perforated Metal, Expanded Metal and Wire Mesh
Weight	0.56 Lbs./Linear Foot
Product Form	Piece
Sizes (Opening x Width x Length)	3/8" x 1" x 120" (Cut Lengths Available)



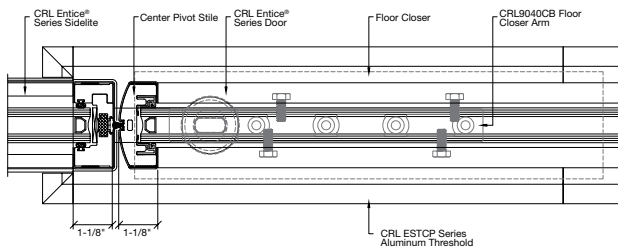
The CRL-U.S. Aluminum Entice® Series Entrance System was created to exceed demanding building code and energy conservation requirements while maintaining an elegant appearance. Entice has very slender vertical lines and the unique ability to support handle hardware on 1" (25 mm) insulating glass with a "floating on air" appearance, making Entice a perfect match for our equally elegant Blumcraft® Access Handles.

- 1-1/8" (29 mm) Ultra Narrow Vertical Stiles and Mullions With a System Depth of Only 2-1/2" (64 mm)
- Accommodates 1" (25 mm) Insulating Glass
- Complete Entrance System Including, Corners, Thresholds, Wall and Doorway Jambs, Vertical Mullions, and Fixed Lite Rails
- Header Adapter Integrates With USAL Storefronts and Curtain Walls
- Meets the requirements of AAMA SFM-1-14
- U-Factors as Low as 0.33
- Meets ASHRAE 90.1 Air Infiltration and Thermal Performance Requirements

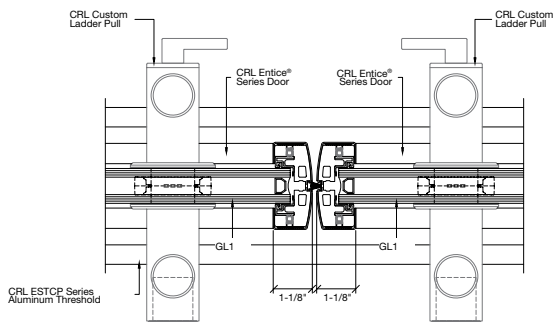


SIDELITE JAMB AT WALL

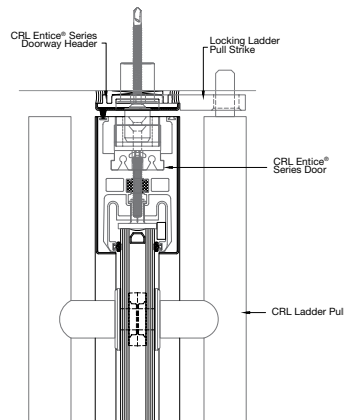
INTERMEDIATE VERTICAL MULLION



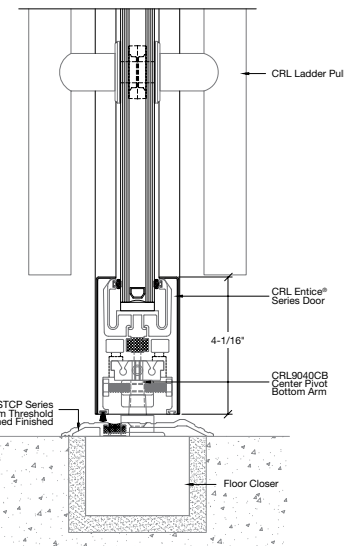
DOOR JAMB AT SIDELITE



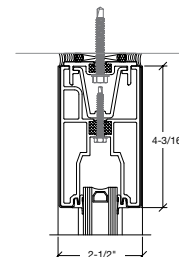
MEETING STILES



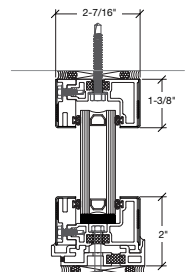
DOOR HEAD



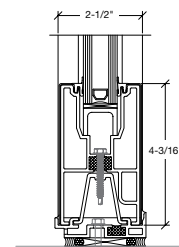
4" DOOR BOTTOM



4" SIDELITE HEAD



LOW PROFILE SIDELITE



4" SIDELITE BOTTOM

NOT TO SCALE | For Specifications, Details, and Testing visit crl-arch.com/ENTICE

CRL PROJECT RESOURCES

ENERGY CODE TOOLS:

- NFRC Bid Reports
- NFRC Label Certificates
- Thermal Performance Glazing Selection Charts
- Area Weighting Calculations
- State Energy Commission Document Coordination

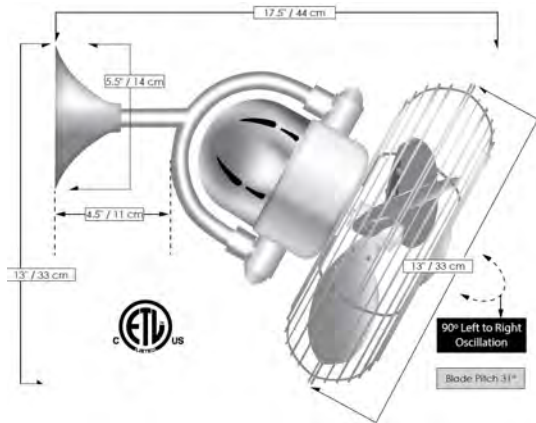
DRAFTING AND DESIGN SERVICES:

- Shop Drawings
- Fabrication Drawings
- 3D Modeling
- Engineering Services
- Project Management

Contact U.S. Aluminum Tech Sales for more information at usalum@crlaurence.com.



shown in
Matte Black



KAYE

FINISH AND BLADE OPTIONS

SKU#		KC-XX (Model+Finish)	
NEW	Finishes	Brushed Nickel	BN
		Matte Black	BK
		Polished Chrome	CR
		Textured Bronze	TB
		Gloss White	WH

TECHNICAL SPECS

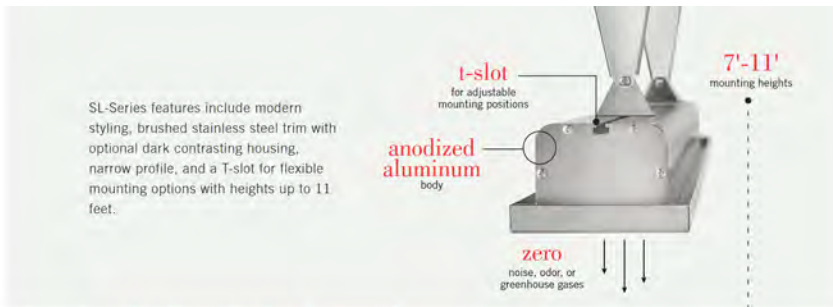
Fan Weight	10.5 lbs
Voltage	110 or 220
Motor Type	AC
Oscillation	Yes
Fan Diameter	13 inches / 33 cm
Fan Height	13 inches / 33 cm
Fan Projection	17.5 inches / 44 cm
Ceiling Mount Overall Drop	17.5 inches / 44 cm
Recommended Mounting Height	Approximately 24 inches / 61 cm from ceiling
Fan Guard	Safety Cage
Blade Pitch	31°
Environment	Damp locations for all finishes Neither coastal, saltwater nor chlorine compatible
Ambience	Soothing White Noise
Safety Certification	ETL / CETL
Warranty	Limited Lifetime

NEW JAN 21, 2020 DOE MOTOR EFFICIENCY DATA

RPM (Low / High)	1213 / 1445
CFM (Low / High)	868 / 1303
Watts (High)	47.68
CFM/Watt (High)	27.32
Blade Pitch	31°

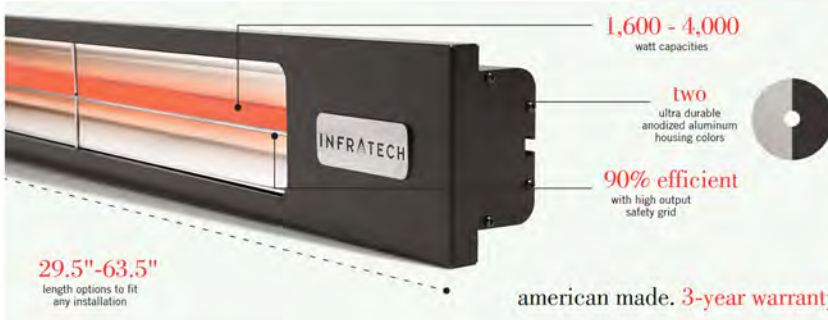
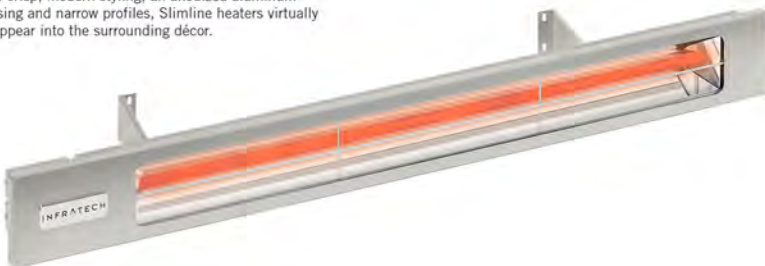
STANDARD EQUIPMENT

Safety cage
Side-mounted wall junction box



sl-series slimline single element heaters

With crisp, modern styling, an anodized aluminum housing and narrow profiles, Slimline heaters virtually disappear into the surrounding décor.



INFRATECH COMFORT



SILVER



ALL BLACK SLIMLINE
SHADOW™



Note: Indoor or well-protected environments will generally exceed average coverage areas. Heaters can provide less than average coverage in extremely cold/windy conditions.

DATE:

PROJECT:

TYPE:

CATALOG NUMBER LOGIC:



*36" maximum stem length with Power Canopy option.

**Designed for use with 12 VAC. LED transformer. Requires magnetic low voltage dimmer.

***Please see Adjust-e-Lume photometry to determine desired intensity.

****Accommodates up to 2 lens/shielding media.

CATALOG NUMBER LOGIC

Example: SN - 30 - C - LED - e65 - SP - A7 - WHW - 12 - 11 - A - PC-TRe20

MATERIAL

Aluminum

SERIES

SN - Sign Star

STEM LENGTH

18" (Standard), 24", 30", 36", *42", or *48"

STYLE

C - Straight Mount

SOURCE

LED - with Integral Dimming Driver**

LED TYPE

e64 - 7W LED/2700K e66 - 7W LED/4000K

e65 - 7W LED/3000K e74 - 7W LED/Amber

OPTICS

NSP - Narrow Spot (13°) MFL - Medium Flood (23°)

SP - Spot (16°) WFL - Wide Flood (31°)

ADJUST-E-LUME OUTPUT INTENSITY***

A9 (Standard), A8, A7, A6, A5, A4, A3, A2, A1

FINISH

Standard Finishes (BZP, BZW, BLP, BLW, WHP, WHW, SAP, VER)

Premium Finish (ABP, AMG, AQW, BCM, BGE, BPP, CAP, CMG, CRI, CRM, HUG, MDS, NBP, OCP, RMG, SDS, SMG, TXF, WCP, WIR)

(Also available in RAL Finishes. See submittal SUB-1439-00)

LENS TYPE****

12 - Soft Focus 13 - Rectilinear

SHIELDING****

11 - Honeycomb Baffle

CAP STYLE

A - 45°

B - 90°

C - Flush

D - 45° Less Weephole (Interior use only)

E - 90° Less Weephole (Interior use only)

F - 90° with Flush Lens

OPTIONS

PC-TRe20 - Power Canopy with TRe20 Electronic Transformer (105-300 VAC. 50/60 Hz. non-dimming)*

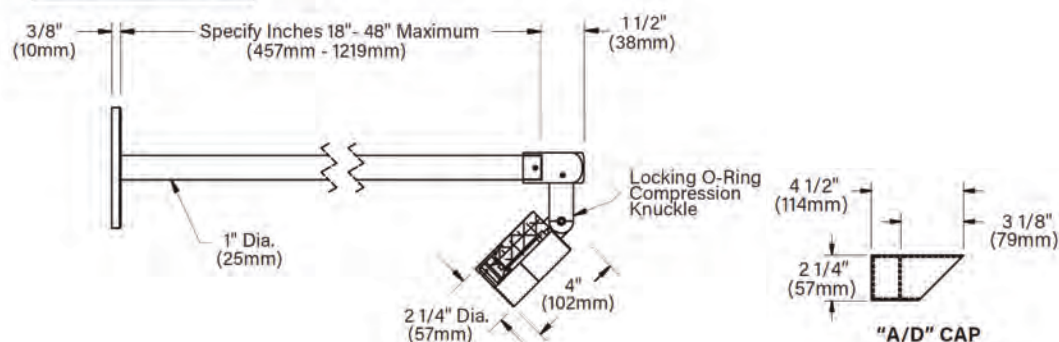
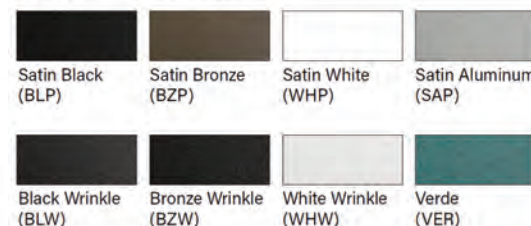
UPM - Universal Power Module

B-K LIGHTING**MADE IN THE USA**

559.438.5800 | INFO@BKLIGHTING.COM | BKLIGHTING.COM

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12/02/2020 SKU-746
SUB-2270-00

CANOPY - SIDE VIEW**STANDARD FINISHES**

Brass LED Umbrella Lights

By Focus Industries

THREE HEADED FIXTURE
UNDER EACH UMBRELLA

Product Options

Finish: Brass , Brass Acid Rust , Brass Acid Verde , Black Acid Treatment

Details

- 3 brass heads, each with independent 360° swivel
- Heavy duty formed brass bracket
- Adjustable from 1 1/4" to 1 3/4" pole sizes
- High impact clear tempered convex glass lens
- High temperature red silicone O-ring
- Life expectancy up to 25,000 hours for LED light
- Black 10 foot SPT-1W lead wire from fixture
- Connects to a 12v landscaping electrical system
- Transformer is necessary but not included
- ETL Listed Damp
- Warranty: 3 years
- Made In USA

Dimensions

Head: Height 3.5", Diameter 1.4"
Mounting Bracket: Diameter 2.5"

Lighting

- 4.5 Watt (160 Lumens) 12 Volt Integrated LED: Lifespan: 50000 hours

Additional Details

Product URL:
<https://www.lumens.com/brass-led-umbrella-lights-by-focus-industries-FOCP97822.html>
Rating: ETL Listed Damp

Product ID: FOCP97822



Notes:

Prepared by:

Prepared for:
Project:
Room:
Placement:
Approval:



PEPIN LED 12V LED16

SURFACE MOUNTED LIGHTS
UNDER EXISTING BALCONY

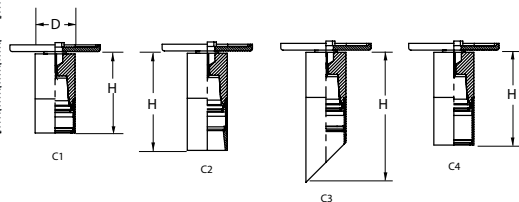


Specifications

D:	2-1/4" (58mm)
H:	4-17/32" (116mm) w/C1 5-17/32" (135mm) w/C2 7-11/32" (187mm) w/C3 5-9/32" (135mm) w/C4

*See mounting detail for additional dimensions.

Weight up to 5 lbs (2.3kg)



Suitable For Wet Locations

DESCRIPTION

The Pepin series is a nonadjustable down light suitable for ceiling mounting to provide accent or general lighting. Wet Location, Indoor/Outdoor rated, machined from billet Aluminum, Stainless Steel Hardware, Optically Clear heat strengthen borosilicate glass and Powder coated with a super durable TGIC powder coat finish, this fixture is designed to withstand the test of time. Designed with a wide range input voltage (11Vac - 14Vac) giving a nearly constant light output to combat Voltage drop, yet is dimmable using most standard Low Voltage Magnetic dimmers. LED units and Optics are replaceable. This fixture requires a remote 12Vac Transformer, purchased separately, to function.

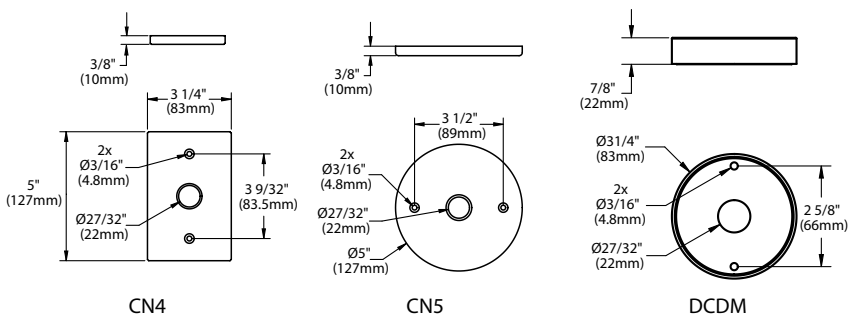
ORDERING INFORMATION

EXAMPLE: PEPIN 3LED16 30K 12 FL CN5 IHL C4 LP DBL

PEPIN	3LED16	12				
Series*	Source*	Color Temperature*	Voltage*	Distribution*	Mounting Accessories*	Mounting Stems
PEPIN	3LED16 LED 3up Round	27K 30K 40K 50K	12 ¹	NSP Narrow Spot NFL Narrow Flood FL Flood	CN4 Rectangular canopy CN5 Round 5" canopy DCDM Two part canopy	S__ Straight Stems Avail. in 3" and 6"-36" in 6" Increments

Options ²	External Caps*	Finish*
<u>Internal Louver</u>	C1 Short Flush	BL Black Textured
IHL Honeycomb Louver	C2 Recessed Lens	BRS Bronze Smooth
<u>Internal Accessory</u>	C3 45° Angle Cut	BRT Bronze Textured
L1 Prismatic Lens	C4 Long Flush	DBL Black Smooth
L2 Linear Spread Lens		DDB Designer Bronze
L3 Softening Lens		
<u>Internal Filters</u>		DNA Natural Aluminum
FA Amber		NBS Natural Bronze Smooth
FG Green		VET Verde Textured
FGD Green Dichroic		WH White
FLB Light Blue		CF Custom Finish
FM Mercury Vapor		
FMB Medium Blue		
FMBD Medium Blue Dichroic		
FR Red		
FRD Red Dichroic		

MOUNTING DETAIL



*Required Fields

Notes:

- Remote Transformer Required.
- Up to 3 Optional items can be specified.

NOTE: Hydrel Reserves The Right To Modify Specification Without Notice. Any dimension on this sheet is to be assumed as a reference dimension: "Used for information purposes only. It does not govern manufacturing or inspection requirements." (ANSI Y14.5-1973)



One Lithonia Way • Conyers, GA 30012
Phone: (800) 705-7378 • www.hydrel.com

©2014-2019 Acuity Brands Lighting, Inc.
Rev. 04/17/19
PEPIN_LED

FEATURES & SPECIFICATIONS

INTENDED USE — The OneUp™ recessed direct-wire LED downlights includes integrated junction box, trim, pre-installed non-metallic push-in connectors, and wago connectors in one package. The OneUp is the most economical means to create a well lit environment with exceptional energy efficiency and near zero maintenance.

CONSTRUCTION — Spun steel, round baffle trim. Integrated galvanized steel junction box with captive door for easy access. Suitable for daisy chaining (pulling wires). Available in 3000K color temperature LEDs.

OPTICS — Round baffle recesses optical system into the ceiling to prevent glare and provide a traditional look. Diffused lens provides even light distribution for general illumination, equivalent to 65W incandescent flood lamp. Wide flood beam angle at >90°. CRI >90. Maintains at least 70% light output for 50,000 hours.

INSTALLATION — Tool-less installation. Secure trim retention with two side-mounted spring clips for easy installation in plaster, sheet rock, or plywood ceilings. Two non-metallic push-in connectors and three wago connectors pre-installed. Rated for Type IC installations. Maximum of 4 No. 12AWG through branch circuit conductor suitable for 90°C permitted in box. Ground wire provided.

ELECTRICAL SYSTEM — LED module with high-efficiency on board driver. Dimming down to 10%. For compatible dimmers, refer to: Compatible dimmers Chart.

Actual wattage may differ by +/-5% when operating at 120V +/-10%.

LISTINGS — ETL certified to US and Canadian safety standards. California T24 compliant. WSEC ASTM E283 for Air-Tight rated with gasket or caulking between fixture trim and ceiling. ENERGY STAR® certified. Wet location listed.

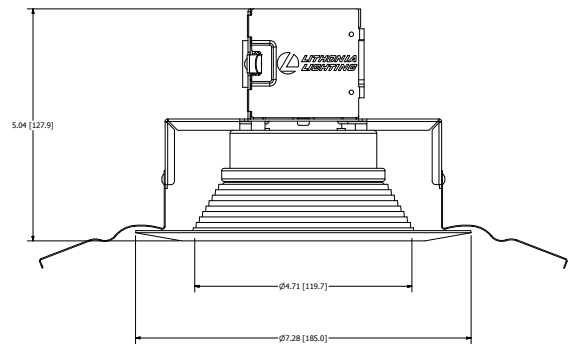
WARRANTY — 5-year limited warranty. Complete warranty terms located at: www.acuitybrands.com/CustomerResources/Terms_and_conditions.aspx

Note: Actual performance may differ as a result of end-user environment and application. All values are design or typical values, measured under laboratory conditions at 25 °C. Specifications subject to change without notice.

Specifications

Aperture:	4-3/4" (119.7)
Overlap Trim:	7-1/4" (184.6)
Height:	5" (127.9)
Ceiling Opening:	6-1/2" (165)
Min Ceiling Thickness:	1/2" (12.7)
Max Ceiling Thickness:	1-1/2" (38.1)

All dimensions are inches (millimeters).



Catalog Number
Notes
Type

Direct-Wire LED Recessed Downlight

6JBK RD

IC
Remodel



ORDERING INFORMATION

For shortest lead times, configure product using **standard options (shown in bold)**.

Example: 6JBK RD 30K 90CRI MW

Series	Shape	CCT/Watts/Lumens ¹	CRI	Finish
6JBK	RD Round	30K 3000K/10.9W/850L	90CRI 90 CRI	MW Matte White

Notes

¹ Total System Delivered Lumens.

Superior Performance and Quality of Light

Juno FlexConnect™ LED luminaires offer superb lighting performance, producing up to 450 lumens per foot of brilliant white light in CCTs of 2200K, 2700K, 3000K, 3500K, and 4000K.

CONTINUOUS LED STRIP
LIGHTS AT 6" O.C. IN CUSTOM
INTERNALLY ILLUMINATED
BOXES UNDER AWNINGS

Onboard Current Regulation – Consistent light output is maintained across the length of the run utilizing current regulators every 6-inches; unlike traditional LED tape that uses resistors which results in voltage drop and light degradation.



Indoor (SL Series, Damp Location)

- 2W/ft. (225 lm/ft.)
- 4W/ft. (425 lm/ft.)
- 12 LEDs per foot

Embedded Connectors – Patent pending, embedded connectors allow Juno FlexConnect to be field-cut in 6-inch increments and reconnected in the field to another strip, electrical feed or connector.



Indoor/Outdoor (SLW Series, IP67 Rated)

- 2W/ft. (220 lm/ft.)
- 4W/ft. (450 lm/ft.)
- 12 or 24 LEDs per foot

Patent Pending Optical Pigment

The proprietary optical pigment utilized in Juno FlexConnect luminaires is truly unique.

This UV-stable pigment maintains color throughout the life of the product and corrects color shift that regularly occurs with other encapsulated strips. CCT color points are maintained within a 3-step MacAdam ellipse, providing the ability to accurately match other architectural lighting within a space. Excellent color rendition is achieved with standard CRI of 80 minimum and CRI of 95 available in the 2700K and 3000K versions. No other flexible linear-lighting system can compare in color and performance to these exceptional luminaires.



Specifications

Weight:	4' 17.5lbs
	2' 12.5lbs

4750L STATIC WHITE

Linear
Design2Ship

AT BASE OF DECORATIVE
WALL PANEL

HIGHLIGHTS

- The The 4750L delivers industry leading durability, performance and lumen output
- Superior water resistance IP67 with Hydrel "Flow-Thru" technology, water flows around the independently sealed integral driver module and sealed LED module
- Aiming integrity with a fully adjustable and rugged knuckle design using Taper-Lock technology
- Long life in the most demanding environments with low copper content housing materials, stainless steel fasteners, and durable powder coat finish options for Coastal Regions and Natatoriums
- 3G vibration rated per ANCI C136.31

5
YEAR
warranty

LED

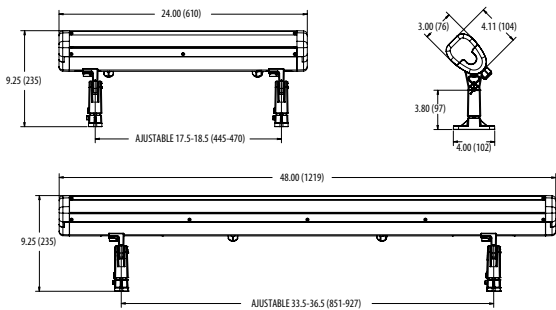
4+
CAPABLE

IP67

DS

DLC
QUALITY
LUMENS

DIMENSIONS



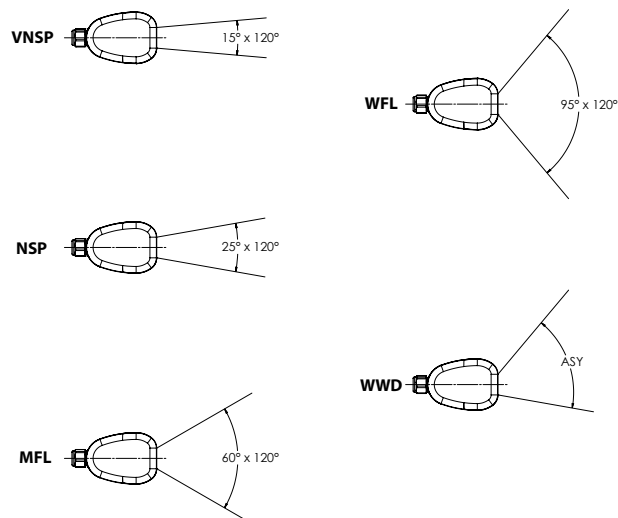
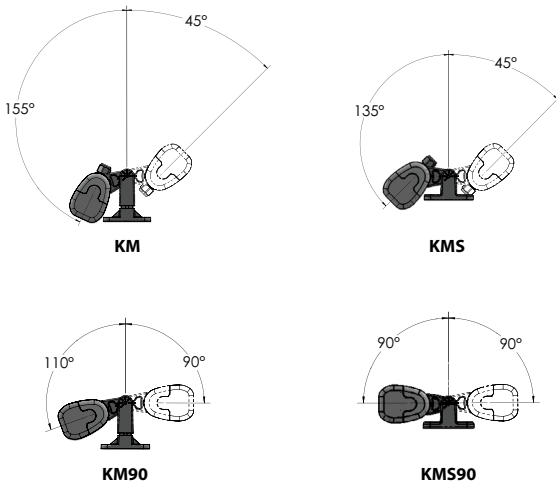
LUMEN PACKAGES

	VNSP	NSP	MFL	WFL	WWD
Delivered Lumens	6491	6646	7200	7286	6592
Watts	64	64	64	64	64
LPW	102	104	113	114	103
Peak Candela	7650	5961	4242	2683	3998

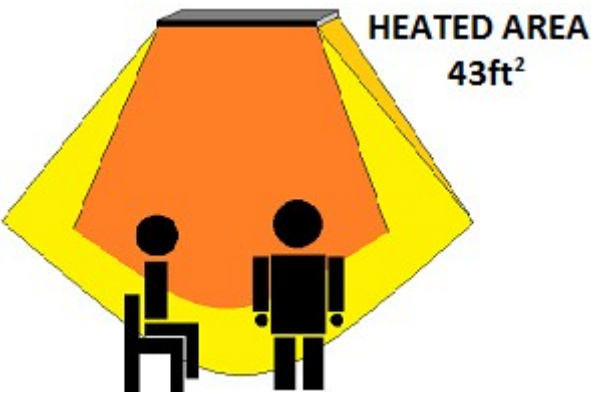
Note: Information based on 4000K @ 2000LMF on 4FT fixture

STANDARD DISTRIBUTION

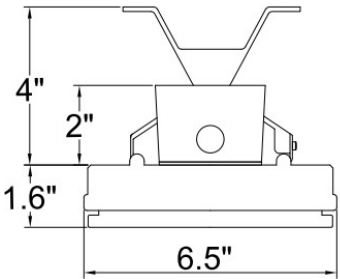
AIMING DETAILS



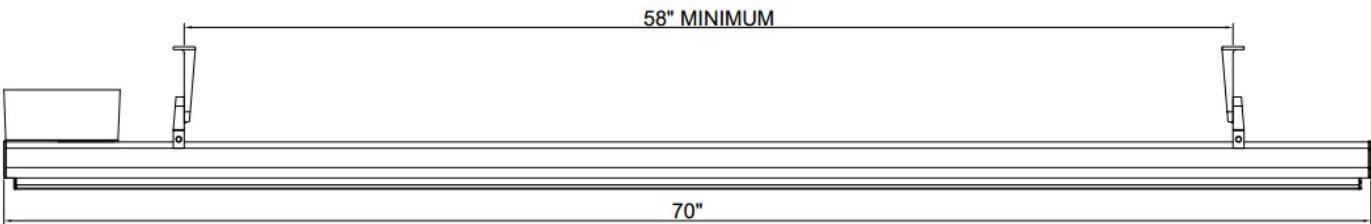
SPECIFICATION SHEET



HEATED AREA	
INDOOR PROTECTED	86 ft ² (6m ²)
OUTDOOR ENCLOSED	69 ft ² (4.8m ²)
OUTDOOR EXPOSED	57 ft ² (4m ²)



END VIEW



PART NAME: **HEATSTRIP RESTAURANT**

DESCRIPTION: High intensity electric radiant heater

PART No: THH3200AUM

POWER: 3200 Watts (11000BTU)

VOLTAGE: 208 volts @ 50 - 60Hz

CURRENT: 15 Amps

DIMENSIONS: 70 x 6.5 x 2"

WEIGHT: 22 lbs

CONNECTION: Gangbox

APPROVALS: CSA/UL E321448

PROTECTION RATING: IP55 From water ingress from all directions

MOUNTING OPTIONS: Suitable for ceiling, wall, beam, fixed umbrella and recess mounting. Also available with drop down poles or suspension kit.

MOUNTING HEIGHT:

MINIMUM 82" (2.1m)

OPTIMUM 90 to 105" (2.3 to 2.7m)

Use drop down kit or suspension kit if higher

Note: See the Product Manual for more detail

Heatstrip USA LLC.

1-877-222-0063 (Toll Free)

www.heatstripusa.com

info@heatstripusa.com

4275 Executive Square

#200

La Jolla, CA, 92037

616 Corporate Way,

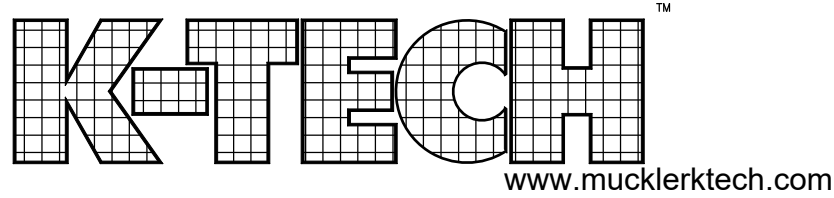
Suite 2-5771,

Valley Cottage, NY 10989



FAN #5 EA3-D750-G18-MPU - HEATER (MUA)
1. DIRECT GAS FIRED HEATED MAKE UP AIR UNIT WITH 18" BLOWER AND 18" BURNER.
2. INTAKE HOOD WITH EZ FILTERS
3. DOWN DISCHARGE - AIR FLOW RIGHT -> LEFT
4. COOLING INTERLOCK RELAY. 24VAC COIL. 120V CONTACTS. LOCKS OUT BURNER CIRCUIT WHEN AC IS ENERGIZED.
5. MOTORIZED BACK DRAFT DAMPER 30" X 30" FOR SIZE 3 STANDARD & MODULAR HEATER UNITS W/EXTENDED SHAFT, STANDARD GALVANIZED CONSTRUCTION, 3/4" REAR FLANGE, LOW LEAKAGE, NFBUP-S ACTUATOR INCLUDED
6. LOW FIRE START. ALLOWS THE BURNER CIRCUIT TO ENERGIZE WHEN THE MODULATION CONTROL IS IN A LOW FIRE POSITION.
7. GAS PRESSURE GAUGE, 0-35", 2.5" DIAMETER, 1/4" THREAD SIZE
8. GAS PRESSURE GAUGE, -5 TO +15 INCHES WC, 2.5" DIAMETER, 1/4" THREAD SIZE
9. 15-TON, 3 CIRCUIT (5/5/5) MODULAR PACKAGED COOLING OPTION FOR SIZE 3 DF/EH MODULAR PACKAGED UNIT. INCLUDES CONDENSER, DX COIL, FILTER/DRYER KIT, HARD START KIT, THERMAL EXPANSION VALVE, R410A REFRIGERANT, AND REFRIGERANT PIPING. (5,400 TO 7,000 CFM) NOT BUILT WITH OPPOSITE SIDE CONTROLS OR OPPOSITE AIRFLOW DIRECTION. CONDENSERS REQUIRE SEPARATE 208V, 3 PHASE POWER SUPPLY UNLESS ORDERED WITH SINGLE POINT CONNECTION. COIL = 3EZ1002B
10. DOWNTURN PLENUM FOR SIZE 3 COOLING COIL MODULE - REQUIRED FOR DOWN DISCHARGE COOLING COIL APPLICATIONS
11. DX COOLING INTAKE AIR THERMOSTAT AND RELAYS MOUNTED IN UNIT - SET POINT FOR THERMOSTAT SHOULD BE 85°F.
12. SEPARATE 120VAC WIRING PACKAGE FOR MAKE-UP AIR UNITS. OPTION MUST BE SELECTED WHEN MOUNTING VFD IN PREWIRE PANEL OR WITH DCV PACKAGE. PROVIDES SEPARATE 120VAC INPUT TO SUPPLY FAN. THIS 120V SIGNAL MUST BE RUN BY ELECTRICIAN FROM DCV TO MUA SWITCH.
13. SUPPORT SHELL FOR SIZE 3 MODULAR PACKAGE UNIT FOR THIRD CONDENSER. INCLUDES CONTROL VESTIBULE. INCLUDES CONDENSER SUPPORTS. DOES NOT INCLUDE RETURN AIR OR INLET AIR DAMPER.

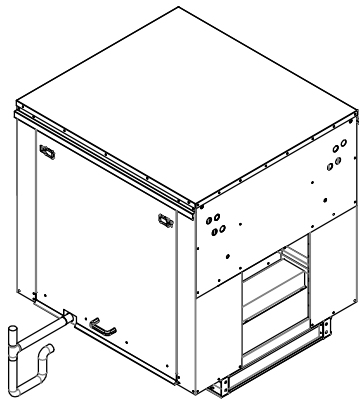
*NOTE: SUPPLY DUCT MUST BE INSTALLED TO MEET SMACNA STANDARDS. A MINIMUM STRAIGHT DUCT LENGTH MUST BE MAINTAINED DOWNSTREAM OF UNIT DISCHARGE AS OUTLINED IN AMCA PUBLICATION 201. DO NOT RELY ON UNIT TO SUPPORT DUCT IN ANY WAY. FAILURE TO PROPERLY SIZE DUCTWORK MAY CAUSE SYSTEM EFFECTS AND REDUCE PERFORMANCE OF THE EQUIPMENT. SUGGESTED STRAIGHT DUCT SIZE IS 24" x 24"



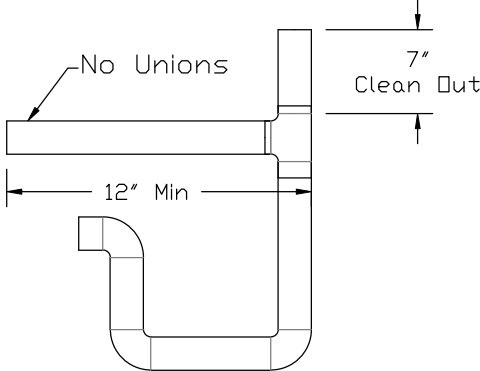
NEW MAKE UP AIR UNIT
ON ROOF



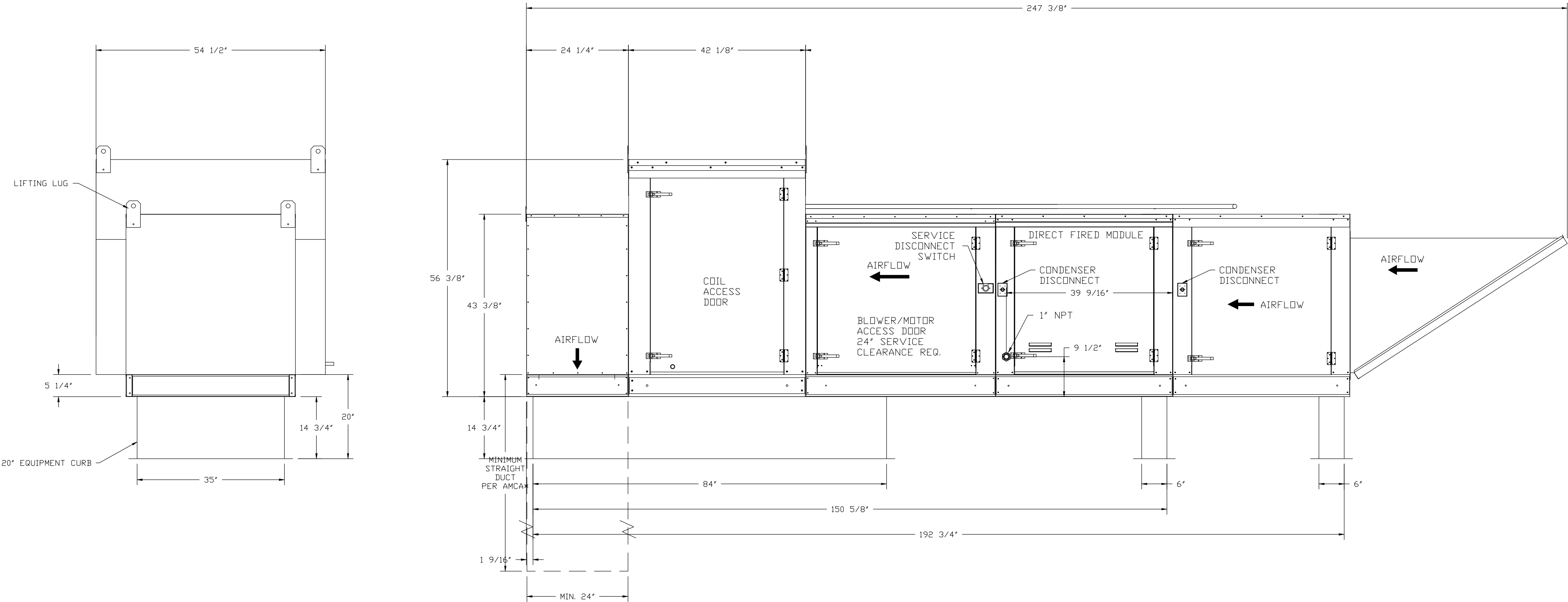
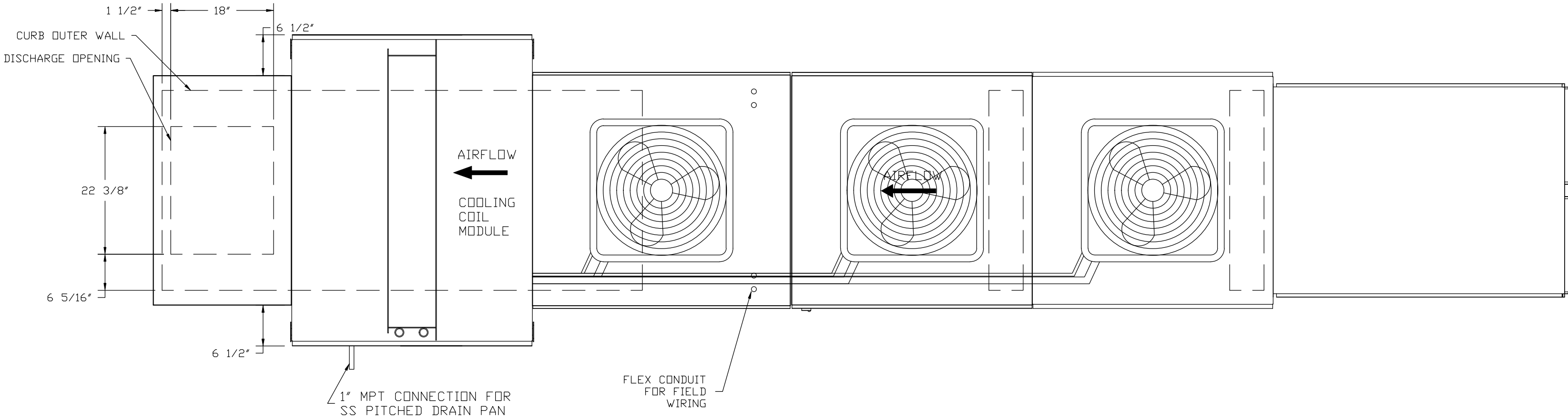
Typical Drain Trap Install

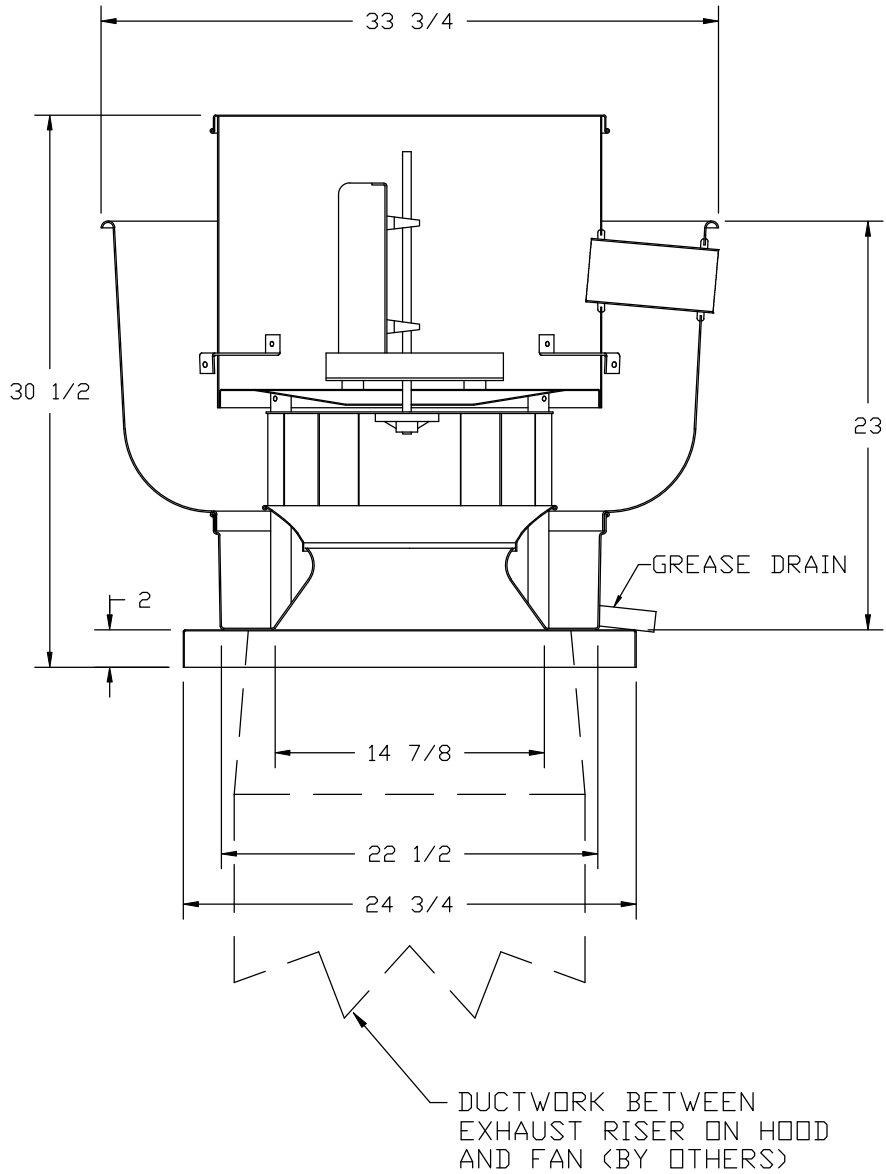


Recommended Cooling Coil
Drain Trap Configuration



- Notes:
- 1) 1" diameter PVC Pipe only
 - 2) Use only low profile couplings
 - 3) Add clean out as shown





FEATURES:

- ROOF MOUNTED FANS
- RESTAURANT MODEL
- UL705 AND UL762 AND ULC-S645
- AMCA SOUND AND AIR CERTIFIED
- WIRING FROM MOTOR TO DISCONNECT SWITCH
- WEATHERPROOF DISCONNECT
- HIGH HEAT OPERATION 300°F (149°C)
- GREASE CLASSIFICATION TESTING

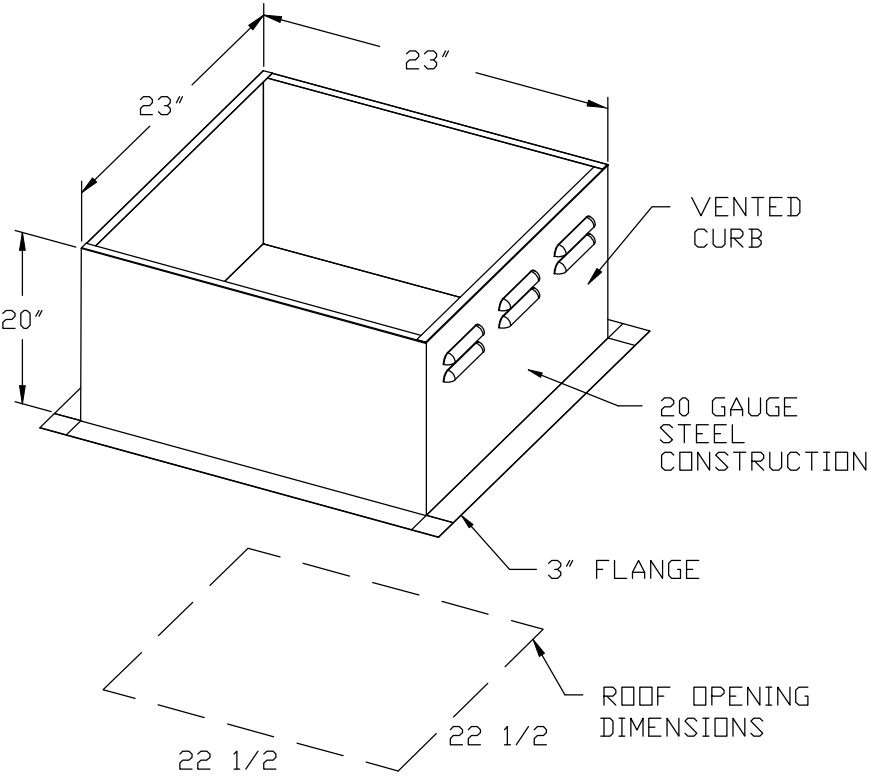
NORMAL TEMPERATURE TEST
EXHAUST FAN MUST OPERATE CONTINUOUSLY
WHILE EXHAUSTING AIR AT 300°F (149°C)
UNTIL ALL FAN PARTS HAVE REACHED
THERMAL EQUILIBRIUM, AND WITHOUT ANY
DETERIORATING EFFECTS TO THE FAN WHICH
WOULD CAUSE UNSAFE OPERATION.

ABNORMAL FLARE-UP TEST
EXHAUST FAN MUST OPERATE CONTINUOUSLY
WHILE EXHAUSTING BURNING GREASE VAPORS
AT 600°F (316°C) FOR A PERIOD OF
15 MINUTES WITHOUT THE FAN BECOMING
DAMAGED TO ANY EXTENT THAT COULD CAUSE
AN UNSAFE CONDITION.

OPTIONS

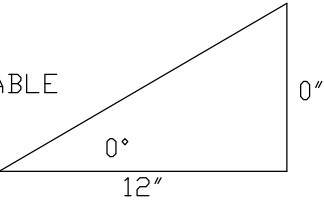
GREASE BOX.

NEW EXHAUST FAN
ON ROOF



PITCHED CURBS ARE AVAILABLE
FOR PITCHED ROOFS.

SPECIFY PITCH:
EXAMPLE: 7/12 PITCH = 30° SLOPE



TYPICAL ROOFTOP HVAC UNIT

Unit Model #: **ZJ120S24R2D5BAA2A2**

System: **ZJ120S24R2D5BAA2A2**

Cooling Performance

Total gross capacity	130.0 MBH
Sensible gross capacity	96.0 MBH
Total net capacity	120.7 MBH
Sensible net capacity	86.7 MBH
Efficiency (at ARI)	12.00 EER
Integrated eff. (at ARI)	14.60 IEER
Ambient DB temp.	95.0 °F
Entering DB temp.	80.0 °F
Entering WB temp.	67.0 °F
Leaving DB temp.	57.8 °F
Leaving WB temp.	56.7 °F
Power input (w/o blower)	9.00 kW
Sound power	83 dB(A)

Refrigerant

Refrigerant type	R-410A
Sys1	7 lbs 12 oz
Sys2	7 lbs 10 oz

Gas Heating Performance

Entering DB temp.	60 °F
Heating output capacity (Max)	192 MBH
Supply air	4000 CFM
Heating input capacity (Max)	240 MBH
Leaving DB temp.	104.4 °F
Air temp. rise	44.4 °F
SSE	80.0 %
Stages	2

Supply Air Blower Performance

Supply air	4000 CFM
Ext. static pressure	0.6 IWG
Addl. Unit Losses (Options/Accessories)	0.58 IWG
Blower speed	1181 RPM
Max BHP of Motor (including service factor)	3.45 HP
Duct location	Bottom
Motor rating	3.00 HP
Actual required BHP	2.94 HP
Power input	2.74 kW
Elevation	0 ft.
Drive type	BELT
Requires field-supplied drive	true

Electrical Data

Power supply	208-3-60	230-3-60
Unit min circuit ampacity	50.9 Amps	50.9 Amps
Unit max over-current protection	60 Amps	60 Amps

Dimensions & Weight

Hgt	51 in.	Len	89 in.	Wth	59 in.
Weight with factory installed options	1335 lbs.				

Clearances

Right	12 in.	Front	36 in.	Rear	36 in.
Top	72 in.	Bottom	0 in.	Left	36 in.

Note: Please refer to the tech guide for listed maximum static pressures



10 Ton

- JCI Pro units are manufactured at an ISO 9001 registered facility and each rooftop is completely computer-run tested prior to shipment.

Unit Features

- Two Stage Cooling
- 240 MBH Input Stainless Steel, Two Stage Gas Heat
- Unit Cabinet Constructed of Powder Painted Steel, Certified At 750 Hours Salt Spray Test (ASTM B-117 Standards)
- Full perimeter base rails with built in rigging capabilities
- Scroll Compressor[s]
- Dry Bulb Low Leak Economizer w/Barometric Relief and Power Exhaust and Hoods (Bottom or Horizontal End Return Only) with Economizer Fault Detection & Diagnostic (Meets ASHRAE 90.1-2013, IECC 2015, California Title 24, AMCA 511).
- Slide-out Blower/3 HP Belt Drive Motor Assembly
- Unit Ships with 2" Pleated Filters (MERV 8)
- Solid Core Liquid Line Filter Driers
- Replacement Filters: 4 - (24" x 20"). Unit accepts 2" or 4" wide filters.
- Non-Powered Convenience Outlet
- HACR Circuit Breaker/Disconnect
- Short Circuit Current: 5kA RMS Symmetrical
- Single Point Power Connection
- Through-the-Curb and Through-the-Base Utility Connections
- Phase Monitor
- Micro-Channel "all-aluminum" condenser coil, Copper tube/aluminum fin evaporator coil
- Composite Drain Pan - Front Connection
- Tool-free maintenance with features like hinged doors for all-access panels, slide-out blower and blower motor tray

BAS Controller

- IntelliSpeed control of the VFD based on stages of cooling. Provides Single Zone VAV Fan Operation as defined by ASHRAE 90.1 section 6.4.3.10.
- Smart Equipment Controller including Discharge Air, Return Air, and Outdoor Air Temperature Sensors.

Standard Unit Controller: Smart Equipment Control Board

- Safety Monitoring - Monitors the High and Low-Pressure Switches, the Freezestats, the Gas Valve, if Applicable, and the Temperature Limit Switch on Gas and Electric Heat Units. The Unit Control Board will Alarm on Ignition Failures, Safety Lockouts and Repeated Limit Switch Trips.

Warranty

- One (1) Year Limited Warranty on the Complete Unit
- Five (5) Year Warranty - Compressors and Electric Heater Elements
- Fifteen (15) Year Limited Warranty - Stainless Steel Heat Exchanger

R O N A N D R O M A N

April 7, 2021

Mr. Nick Dupuis
Plan Reviewer, City of Birmingham

Re: 720 N. Old Woodward – Vinewood Bistro (Lower Level in Kohler Building)

Dear Mr. Dupuis,

This letter addresses issues raised during the February 24th Planning Commission meeting at which time the project was postponed.

Since then, we have made revisions to the following items which should remove them from being contentious:

1. We have reduced the projection and valance height of the front canopy at Old Woodward to be compliant with the zoning ordinance.
2. We have reduced the projection and eliminated the ground mounted post which was not on our property at the rear entry canopy
3. We have noted the mechanical equipment screen height and included cut sheets for the proposed tallest rooftop equipment (the make up air unit).
4. We have added a new drawing showing all adjacent structures within 200 feet of the bistro and adjacent parking lot.
5. We have completed and added a photometric study plan

In addition to these specific technical requirements, a number of issues were raised by the commission which are addressed below:

Wintergarden configuration and use

The proposed wintergarden is an outdoor space where the exterior wall is comprised of permanently installed bronze screens and bronze screened man doors, with a new all glass wall with operable doors between the bistro interior and the Wintergarden. This space shall be heated with infrared electric heaters and will not utilize the HVAC system supplying the interior of the Bistro.

The screening allows for the opening of the glass wall doors between the Bistro and the Wintergarden when weather permits meeting Health Department requirements for preventing insects from entering the building. We are not proposing at any point to add any Isinglass or solid glass infills at the propose screen walls, and would propose to make that a condition of use.

The 26 proposed seats in the Wintergarden along with the proposed 38 seasonal

seats on the exterior portion of patio total 64 outdoor seats which are within the limit established by the Bistro ordinance.

The Wintergarden itself provides for the opportunity to apply for extended patio use for the 26 seats as a separate application available to all patios which is granted based on each specific location of patio in the City.

The building owner has adequate space in other floors of this building, and other spaces in the buildings he owns south of this project to store all outdoor furnishings requiring to be brought in daily.

Proximity of garage entry adjacent to proposed Bistro entry

Because of the configuration of grade at the neighboring south building garage entry, we believe there is less life safety concern with the cars entering this door due to the slow speed required to approach the grade then exists at the patios along Old Woodward where cars pull into angled spaces at speed, potentially overriding the curb and engaging patrons on sidewalk patios.

If the Planning Commission feels the need, we can add a guard component to prevent a pedestrian from engaging the change of grade.

Dumpster location and screening

We have studied the placement, configuration, enclosure and frequency of trash management for this project and the other businesses sharing this dumpster location. Currently, this project owner also owns the trash management company providing service there now.

The existing dumpsters leave a 13 ft 8 in clear drive, our solution provides for a 15 ft wide lane, allows for simpler servicing of the units, provides screening all around and accommodates a grease trap and ancillary storage space for cardboard which we have witnessed being stored at that area.

We shall work with the city to pursue any other required permits for the placement and use of this dumpster location.

Based on existing use and pickup schedule of twice weekly, we can increase the frequency of pickup to 3 times weekly or every other day as may be required based on the impact of the Bistro.

Deliveries

The typical Fedex and UPS deliveries expected for the Bistro are no different than that associated with the other businesses adjacent to this project, and the frequency is expected to be less than the adjacent businesses as they do not typically utilize those carriers for day to day business needs.

The delivery of food and dry good product will be scheduled to occur earlier daily as the operations of the restaurant require it. There will be no late night deliveries.

Clarification of number of seats and their location

This project proposes the following seats per the submitted plans:

Interior Seats	64
Wintergarden Patio Seats	26
Exterior Patio Seats	38

This results in 64 interior seats, and 64 patio seats.

Location of proposed outdoor patio

We believe strongly that the appropriate location for the patio associated with this Bistro belongs at the “storefront” of the bistro, and not dislocated on North Old Woodward. We interpret the intent of the Bistro Ordinance as providing seating in storefront windows with continuing the dynamic with the outdoor seating component. A freestanding patio on N. Old Woodward would be difficult to service and would be contrary to our interpretation of the ordinance.

We believe that the interest the City Commission expressed in this location for the Bistro promotes the proposed location of the patio.

With the changes to the construction of the patio noted in the paragraph following, we have also eliminated the fountains with lighting, and configured the patio with a built-in planter which will limit the number of patrons at the easternmost edge of the patio at its proposed location at the storefront of the Bistro.

Building within the AE floodplain/floodway

We have reviewed the State of Michigan Permit Requirements for building in the Floodplain and have revised our proposed construction of the entire rear patio and ramp area to be a wood framed structure with an IPE deck. As such we believe we can meet the requirements for permit approval with structural piers not interfering with floodwater flows. We also understand the flood insurance needs associated with building in the Floodplain.

This solution also provides for a simpler approach to the lease negotiation with the City for the proposed property on which the patio is proposed, allowing for simpler removal of the structure upon completion of the term of the lease.

The proposed use of wood also responds to the natural setting along the river.

Other Considerations:

We have visited this site during evening hours and have found that the most obtrusive component as viewed from the neighboring residential area is the existing pole mounted sodium vapor light lighting the northern end of the parking lot, and numerous pedestrian scaled city lights along the back of the building.

Signage Location:

We propose to pursue a variance for the sign location on the to be leased area for the patio. We believe this is the most reasonable location for the sign, and that its

removal would be required at the end of the term of the lease. The unique conditions of the project and the ability to provide for a subtle sign that would not set precedent as it would be tied to the lease makes the most sense. We will pursue a separate variance for this location.

Hours:

The owners shall address final operating hour considerations on hearing staff's information requested by Mr. Boyle on the operating hours of the 2 nearest bistros.

We look forward to continuing our dialogue with the commission, and hope the information provided above helps clarify the technical issues associated with this project.

Sincerely,

A handwritten signature in black ink, appearing to read "Roman Bonislowski". The signature is fluid and cursive, with a large initial "R" and "B".

Roman Bonislowski, R.A.

Ron and Roman, Inc.

cc. Brian Najor
Christ Backos

R O N A N D R O M A N

Vinewood Bistro – April 6, 2021

Site Plan Review

Itemized List of Revisions

Front awning – reduced projection & valance height to be compliant with zoning ordinance

Rear canopy – reduced projection & eliminated ground mounted posts

Trash enclosure – revised layout to increase functionality

Roof screen – noted screen height & included cut sheets for heights of new equipment

Photometrics – added new photometric plan sheet to show proposed new light levels

Surrounding site – added new adjacent properties site plan, showing structures within 200' of bistro, and adjacent parking lot

Rear patio construction – revised construction method to wood deck framing on pier foundations rather than masonry walls with concrete slabs, as a better approach to new construction in the flood plain

Updated cut sheets – new wood decking, revised infrared heater, rooftop equipment, revised light fixtures, revised plantings

Narrative – included new narrative speaking to Planning Board's concerns discussed at previous meeting









PD Ecker said the applicant would have to request another variance from the BZA because all granted variances are tied to the specific submitted plans as a condition of approval.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

Motion by Ms. Whipple-Boyce

Seconded by Mr. Boyle to recommend approval to the City Commission of the applicant's request for a Special Land Use Amendment for Birmingham Pub restaurant at 555 S. Old Woodward with the following conditions: (1) The Planning Board designates the Bowers elevation as the principal building frontage ~~or the applicant reduces the overall building signage by 47.76 sq. ft.~~; (2) The applicant remove the proposed illumination from the building identification sign on Woodward Avenue or obtain a variance from the Board of Zoning Appeals; (3) Applicant provide all material, color and lighting specifications for all signage; and (4) Applicant execute a revised contract with the City of Birmingham outlining the nature of the proposed operation of Birmingham Pub and approving the use of the existing Economic Development liquor license under the new name Birmingham Pub.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

2. 720 N. Old Woodward – Vinewood Bistro (Lower Level in Kohler Building), Special Land Use Permit request and Final Site Plan and Design Review to consider approval of Vinewood, a new bistro proposed at the rear of the building, including the service of alcoholic liquor.

CP Dupuis reviewed the item.

Chair Clein noted the Board received two emails from residents of Brookside, across the Rouge River from the proposed Vinewood Bistro. The emails were from Drew Detling and Kristen Tait, both expressing concerns about the proposed plans. He noted the emails would be included in the March 10, 2021 Planning Board agenda packet.

Brian Najor, co-applicant, Roman Bonislowski, architect, Ron Rea, architect, and Chris Bakos, restaurateur and co-applicant, were present on behalf of the application.

Mr. Bonislowski explained:

- The garage door opening at the north end of building will be removed and turned into a screen;

- There will be an infrared linear gas tube heating component in the building;
- The building will have fire sprinklers throughout;
- The rooftop mechanical will be screened;
- The proposed ducting architecture in the back of the building is because Kohler cannot have new shafts built through it;
- The grade differential outside the garage in the rear of the building means cars can only enter/exit very slowly;
- The rear canopy will be redesigned without the freestanding column;
- The part of the patio furthest from the building will be not engaged at all, with plans to sink it a bit to dampen the noise;
- There will be adequate space to take in the outdoor furniture at night in the off-season; and,
- There will be a separate natural gas radiant heater in the outdoor space, but nothing coming off of the interior HVAC into the outdoor space.

PD Ecker noted that the applicant could do off-season outdoor dining as long as they secure a permit from the City and bring in the outdoor furniture every night.

Chair Clein said the design was beautiful. He said he was supportive of the rear sign aesthetically but would defer to legal considerations on that. He asked what the applicant could do to address some of the nearby residents' concerns.

Mr. Bonislowski said that the foliage blocks a lot of the sound and light in spring and summer. The planned outdoor lighting is minimalist. He said they could add more greenery along the metal partition screening along the ramp, which faces Brookside to the east. He said the applicant team would be averse to putting any greenery between the outdoor dining and the river since part of the charm is seeing the river. He said their plans also keep the seats closer to the building rather than further out towards the ramp in order to maintain the distance from Brookside as much as possible.

Public Comment

Helene Fertal, owner/operator of Birmingham Wine, spoke largely in favor of the application. Her concerns were the often overfull dumpsters behind the building, and the grease trap given issues with flooding in the immediate area.

Kristen Tait, resident of Brookside, provided a brief overview of the concerns previously expressed in the email she submitted to the Board. She said that noise would be her biggest concern. She said that she is able to see and hear clearly across the river in all seasons. She also clarified that even when the foliage comes in, it still does not block her views into Vinewood's proposed outdoor seating area, and vice-versa.

Rob Kamenec, Brookside resident, said he was deeply concerned about the prospect of increased noise from Vinewood especially with the proposed closing hours of 1 a.m. He observed that staff would be staying after 1 a.m. to finish cleaning and closing, meaning that the noise would necessarily occur even after 1 a.m.

Mr. Share said that one evening the prior week he had been walking by Social Kitchen at 8 p.m. when the temperature was not above freezing. He said the outdoor seating area at Social was very crowded. He asked for some assurance from the applicant that the winter garden at Vinewood will not replicate some of the issues the City has faced from the outdoor seating at Social.

Some Board members asked for some clarifications of the plans in addition to the ones specified by CP Dupuis in his report. Those requests for clarifications included:

- Information about how deliveries will be handled;
- A floor plan that makes the number of seats and their location clear;
- Comments on the plans from City departments, including and especially the Fire Department; and,
- Consideration of the appropriate dumpster configuration due to the proximity of the river.

Ms. Whipple-Boyce said that two dumpsters are not enough behind Vinewood, and said she has often seen trash on the placed outside the dumpster. She recommended Mr. Najor consider a compacting dumpster for the rear of the building. She said she would not recommend adding a third dumpster. She advised the applicant team to have a conversation with the building owner to the south in order to make sure that Vinewood's plans do not conflict with the rear garage door used by the condominium owner on the top floor of that building. She said she was in favor of the winter garden idea as long as it is well-maintained.

Mr. Koseck expressed concerns about the outdoor seating not activating the street, which he stated was a significant aim of the bistro ordinance. He said that having the seating in the back could make it hard to police. He also said the logistics of trash pick-up, deliveries and cleaning would be made more difficult by the entrance in the back.

Mr. Jeffares noted that when bistro options were reviewed by the Commission at their October 26, 2020 meeting, Mr. Najor proposed two bistros: Vinewood and a bistro in the center of town that would have activated the street. He highlighted the fact that the Commissioners advanced the plans for Vinewood, even with the understanding that the outside seating would not be on the street, because it seemed like a unique opportunity to have seating by the river.

Mr. Williams, Mr. Jeffares, and Mr. Boyle expressed concern about making sure that the proposed hours do not adversely affect the residents across the river.

Mr. Williams recommended that staff return with information on the hours of operation for Market North and Luxe Bistro, the two nearest bistros, to see how those hours compare to the hours proposed for Vinewood.

Mr. Boyle said reviewing noise or other complaints for the two aforementioned bistros might clarify Vinewood's potential impact on the residents across the river since those two bistros abut residential area.

Mr. Koseck and Mr. Jeffares expressed concern about the high number of total proposed seats since the application was coming in as a bistro and not as a Class C license.

Mr. Emerine noted that the area behind the building is a regulated floodway, and that raising the ground elevation would require additional permits.

PD Ecker stated that information had been communicated to the applicant team.

Motion by Mr. Boyle

Seconded by Mr. Williams to postpone the discussion regarding 720 N. Old Woodward – Vinewood Bistro – to the April 14, 2021 Planning Board meeting.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

Motion by Mr. Williams

Seconded by Mr. Share to suspend the rules for the April 14, 2021 Planning Board meeting to allow the review of site plans.

Motion carried, 7-0.

ROLL CALL VOTE

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

Nays: None

Mr. Jeffares noted the City should take a look at the lighting in Lot Six to see whether that can be better screened so as not to adversely affect the residences across the river.

02-30-21

G. Miscellaneous Business and Communications:

a. Communications

b. Administrative Approval Correspondence

After a brief review of the proposal from CP Dupuis, the Planning Board told Randy Dickow they had no initial hesitations about the Mad Hatter moving into the vacant space next door to their current location in order to expand their access to space for outdoor dining.

In reply to Mr. Jeffares, Mr. Dickow said he would remove the two gazebos currently in front of the Mad Hatter as soon as possible.

CP Dupuis then presented a brief proposal from Brooklyn Pizza that would include two outdoor dining pods.

Mr. Williams and Mr. Boyle said they did not like the proposed pod to the north.

City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, April 14, 2021

Held Remotely Via Zoom And Telephone Access

E. Special Land Use Permit and Final Site Plan and Design Review

1. 720 N. Old Woodward, Vinewood Bistro (Lower Level in Kohler Building), Special Land Use Permit and Final Site Plan and Design Review request to consider approval of Vinewood, a new bistro proposed at the rear of the building, including the service of alcoholic liquor (Postponed from February 24, 2021).

CP Dupuis presented the item.

In reply to Board inquiries, Planning Staff stated:

- Given the dimensions, there should not be an issue with a vehicle making a turn in the rear even if the two closest spots have vehicles in them. The Engineering Department reviewed the plans, including that aspect, and did not flag it as an issue. Only one vehicle would be able get through at a time.
- There is nothing in the ordinance that would prevent the use of painted gypsum board as part of the exterior.
- The rear of the building could be considered to have a 'pedestrian passage' as required by Item E in the bistro ordinance since there is a sidewalk lined by entrances to the buildings. It might also not qualify as a 'pedestrian passage' since the aforementioned entrances are not accessible to the public.
- While the ordinance would not prevent this bistro from being located in the front of the building, it might not be desirable since it would result in the loss of a parking spot.
- In contrast with previous years, the Commission did not request that the bistros be returned to them ranked in terms of priority.

Mr. Koseck said that if the rear of the building were considered a pedestrian passage then the rear facade would need to have 70% glazing. He said he did not believe the plans as proposed met the spirit or intent of the bistro ordinance, which is to create dialogue between the interior and exterior.

Roman Bonislowski spoke on behalf of the applicant. He stated:

- The proposed lighting would only slightly extend the existing lighting. The lighting would need to remain as-proposed in order to maintain sufficient safe lighting for the patio. The lighting would meet the zero condition at the edge of the ramp. A shield component could be added to the top of the wall to trap light. The lights in the front of the building could be reduced.
- The applicant team is fully aware of the permitting requirements for floodwater areas.
- The rear of the building should be described as a pedestrian path.

Chair Clein stated that all emails from the public were received by both Staff and the Board.

Public Comment

Kristen Tait, Drew Detling, and Kristen Bongiovanni, residents of Brookside Street, spoke against many aspects of the Vinewood bistro proposal due to the impact it could have on their enjoyment of their properties. The main concerns mentioned were noise, hours of operation, the size of the proposed restaurant and the strain it would put on the area's parking.

Ms. Tait noted that in her email she meant to write 'Maplewood' and not 'Merrillwood'. She also suggested that the City should focus more on moving bistros and other establishments into vacancies in the downtown area instead of into the neighborhoods.

John Roselli spoke as the owner of the adjacent building. He said he was concerned about retaining his residential tenant on the upper floor of the building due to the hours of operation, likely parking difficulties, potential noise issues and pedestrian safety in the rear of the building. He said the dumpsters were consistently neglected by the owner and stated that he has cleaned around them hundreds of times in his fifteen years of ownership of the building.

The Chair returned the conversation to the Board.

Mr. Boyle expressed concern about the potential environmental impact of the proposal on the Rouge River.

Mr. Share observed that the applicant would not be able to move forward with operation unless a permit is secured from EGLE.

Both Mr. Share and Ms. Whipple-Boyce stated that the rear of the building was not a pedestrian passage. They also agreed that while the 'winter garden' aspect of the plans was creative, it was not outdoor space. Both concurred that the project would not meet the intent of the bistro ordinance in terms of activating the street.

Mr. Share also expressed concerns regarding the potential noise, dumpster issues, and pedestrian conflict with vehicles accessing the adjacent building.

Chair Clein and Mr. Koseck both agreed that while they appreciated many aspects of the project there were too many misalignments between the current proposal, the proposed location, and the bistro ordinance.

Chair Clein commented that the likelihood of the project receiving the necessary permits to operate in the floodplain was low and the cost would be high. He said he was aware that was a permitting issue and not a site plan one. He said the proposal would be more appropriate if it were located elsewhere in the City.

Motion by Mr. Share

Seconded by Mr. Koseck to recommend denial to the City Commission the Special Land Use Permit for 720 N. Old Woodward – Vinewood Bistro – because the proposal fails to satisfy the spirit and intent of the Zoning Ordinance as required in Section 7.26 and 7.27, specifically the outdoor enclosure issue of 3.04(c)(10)(h), and the 'no permanent structure requirement' of Section 3.04(c)(10)(i), as well as floodplain, dumpster, pedestrian interaction and storefront issues.

Mr. Koseck said the seating limits in the bistro ordinance were a key part of its appeal and efficacy. He noted that the area in the rear of 720 N. Old Woodward would be difficult to police. He also noted that even if the Planning Board did endorse the proposed plans the applicant would still have to appear before the Board of Zoning Appeals for a number of variance requests.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Share, Koseck, Jeffares, Whipple-Boyce, Clein, Ramin, Boyle

Nays: None

Motion by Mr. Share

Seconded by Mr. Koseck to recommend denial to the City Commission the final site plan and design review for 720 N. Old Woodward – Vinewood Bistro – because the proposal fails to satisfy the spirit and intent of the Zoning Ordinance as required in Section 7.26 and 7.27, specifically the outdoor enclosure issue of 3.04(c)(10)(h), and the 'no permanent structure requirement' of Section 3.04(c)(10)(i), as well as floodplain, dumpster, pedestrian interaction and storefront issues.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Share, Koseck, Jeffares, Whipple-Boyce, Clein, Ramin, Boyle

Nays: None



Special Land Use Permit Application – Bistro Planning Division

Form will not be processed until it is completely filled out.

1. Applicant

Name: -see second sheet
Address: _____

Phone Number: _____
Fax Number: _____
Email address: _____

3. Applicant's Attorney/Contact Person

Name: -see second sheet
Address: _____

Phone Number: _____
Fax Number: _____
Email address: _____

2. Property Owner

Name: -see second sheet
Address: _____

Phone Number: _____
Fax Number: _____
Email address: _____

4. Project Designer/Developer

Name: ROMAN BONISLAWSKI / RON & ROMAN
Address: 116 E. FRANK ST.
BIRMINGHAM, AL 38209
Phone Number: 248-202-3710
Fax Number: _____
Email address: ROMAN@RONANDROMAN.COM

5. Required Attachments

- I. Two (2) paper copies and one (1) digital copy of all project plans including:
 - i. A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject sites property lines;
 - ii. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
 - iii. A Certified Land Survey;
 - iv. Interior floor plans;
 - v. A Landscape Plan;
 - vi. A Photometric Plan;
 - vii. Colored elevation drawings for each building elevation;
- II. Specification sheets for all proposed materials, light fixtures and mechanical equipment;
- III. Samples of all proposed materials;
- IV. Photographs of existing conditions on the site including all structures, parking areas, landscaping and adjacent structures;
- V. Current aerial photographs of the site and surrounding properties;
- VI. Warranty Deed, or Consent of Property Owner if the applicant is not the owner;
- VII. Any other data requested by the Planning Board, Planning Department, or other City Departments.

6. Project Information

Address/Location of the property: 710 N. OLD WOODWARD
BACK SIDE OF BUDG FACING CREEK
Name of development: N.A.
Sidwell #: N.A.
Current Use: POTENTIAL STORAGE OR BUSINESS
Proposed Use: A-1 ASSEMBLY BISTRO
Area of Site in Acres: _____
Current zoning: D2 OVERLAY D2
Is the property located in the floodplain? YES
Name of Historic District Site is Located in: N.A.
Date of Historic District Commission Approval: N.A.
Date of Application for Preliminary Site Plan: _____
Date of Preliminary Site Plan Approval: _____
Date of Application for Final Site Plan: 2/3/21
Date of Final Site Plan Approval: _____
Date of Application for Revised Final Site Plan: _____
Date of Revised Final Site Plan Approval: _____
Date of Design Review Board Approval: _____
Is there a current SLUP in effect for this site? NO
Date of Application for SLUP: _____
Date of SLUP Approval: _____
Date of Last SLUP Amendment: _____



Special Land Use Permit Application – Bistro Planning Division

Form will not be processed until it is completely filled out.

1. Applicant

Name: Christ Backos - Brian Major

Address: 600 N. Old Woodward, Suite 100, Birmingham, MI 48009

Phone Number: 248-433-7000

Fax Number: 248-433-0900

Email address: kim@majorcompanies.com

3. Applicant's Attorney/Contact Person

Name: Paul Addis

Address: 18 First Street, Mt Clemens MI

Phone Number: 586-212-5227

Fax Number: 586-221-4140

Email address: paddis@michiganjustice.com

2. Property Owner

Name: Maplewood 720, LLC

Address: 600 N. Old Woodward, Suite 100, Birmingham, MI 48009

Phone Number: 248-433-7000

Fax Number: 248-433-0900

Email address: kim@majorcompanies.com

4. Project Designer/Developer

Name:

Address:

Phone Number:

Fax Number:

Email address:

5. Required Attachments

- I. Two (2) paper copies and one (1) digital copy of all project plans including:

- i. A detailed Existing Conditions Plan including the subject site in its entirety, including all property lines, buildings, structures, curb cuts, sidewalks, drives, ramps and all parking on site and on the street(s) adjacent to the site, and must show the same detail for all adjacent properties within 200 ft. of the subject sites property lines;
- ii. A detailed and scaled Site Plan depicting accurately and in detail the proposed construction, alteration or repair;
- iii. A Certified Land Survey;
- iv. Interior floor plans;

- v. A Landscape Plan;
- vi. A Photometric Plan;
- vii. Colored elevation drawings for each building elevation;

- II. Specification sheets for all proposed materials, light fixtures and mechanical equipment;
- III. Samples of all proposed materials;
- IV. Photographs of existing conditions on the site including all structures, parking areas, landscaping and adjacent structures;
- V. Current aerial photographs of the site and surrounding properties;
- VI. Warranty Deed, or Consent of Property Owner if the applicant is not the owner;
- VII. Any other data requested by the Planning Board, Planning Department, or other City Departments.

6. Project Information

Address/Location of the property: _____

Name of development: _____

Sidwell #: _____

Current Use: _____

Proposed Use: _____

Area of Site in Acres: _____

Current zoning: _____

Is the property located in the floodplain? _____

Name of Historic District Site is Located in: _____

Date of Historic District Commission Approval: _____

Date of Application for Preliminary Site Plan: _____

Date of Preliminary Site Plan Approval: _____

Date of Application for Final Site Plan: _____

Date of Final Site Plan Approval: _____

Date of Application for Revised Final Site Plan: _____

Date of Revised Final Site Plan Approval: _____

Date of Design Review Board Approval: _____

Is there a current SLUP in effect for this site? _____

Date of Application for SLUP: _____

Date of SLUP Approval: _____

Date of Last SLUP Amendment: _____

7. Details of the Proposed Development (attach separate sheet if necessary)

REWORK EXIST. SPACE & CITY OWNED PARCEL INTO NEW BISTRO W/
NEW OUTDOOR STAIRS, RAMP & PLANTINGS W/ GAS TORCHES, FOUNTAINS,
GUARDS, SCREEN ENCLOSED PORCH, BAR/RESTAURANT KITCHEN WITH
NEW EXHAUST & MAKE UP AIR DUCTING ENCLOSED ARCHITECTURALLY
ON REAR OF BUILDING WITH NEW ROOFTOP MECHANICAL EQUIPMENT
& EQUIPMENT SCREEN WALL ON ROOF, ADDING ENCLOSURE TO TRASH
RECEPTACLES, & NEW SIGNAGE & ARCHITECTURAL TREATMENT OF
EXISTING N. OLD WOODWARD BLDG ENTRANCE.

8. Buildings and Structures

Number of Buildings on Site: 1

Height of Buildings & # of Stories: APPROX 24' @ OLD WOOD.

Use of Buildings: RETAIL & OFFICE.

Height of Rooftop Mechanical Equipment: 5 FT HIGH.

9. Floor Use and Area (in Square Feet)

Structures:

Restaurant Space: 3,372 SF.

Office Space: EXIST.

Retail Space: EXIST.

Number of Residential Units: N.A.

Rental or Condominium? N.A.

Total Floor Area: 3,372.

10. Proposed Bistro Operation

Number of Indoor Seats: 64

Number of Outdoor Seats: 64

Entertainment Proposed: NO

Previous LCC Complaints? N.A.

Number of Tables along Street Façade: 2 BOOTHS 8 SEATS

Type of Cuisine: REAR.

Bar Area? YES

Number of Seats at Bar: 10

Full Service Kitchen? YES

Percentage of Glazing Proposed: 100% @ NEW INNER WALL

Years of Experience in Birmingham: N.A.

Years of Experience Outside Birmingham: N.A.

11. Required and Proposed Setbacks

Required Front Setback: 0

Required Rear Setback: 0

Required Total Side Setback: 0

Proposed Front Setback: 0

Proposed Rear Setback: 0

Proposed Total Side Setback: 0

12. Outdoor Dining Facility

Location (sidewalk right-of-way or on-street parking space):

REAR SCREEN PORCH & CITY LEASE PROP.

Hours of Operation:

Width of unobstructed sidewalk between door and café? (5 ft. required):

Platform Proposed: N.A.

Trash Receptacles: IN SERVICE STATION.

Number of Tables/Chairs: 26 TABLES/64 CHAIRS.

Material of Tables/Chairs:

Tables Umbrellas Height & Material: METAL & CANVAS.

Number and Location of Parking Spaces Utilized:

CITY PARKING LOT.

Screenwall Material: WEIDED WIRE MESH.

Enclosure Material: @ TRASH, PAINTED CMU 6' H.

13. Required and Proposed Parking

Required number of parking spaces: N.A.

Location of parking on site: ADJACENT CITY LOT & @

Screenwall material: EXIST OLD NEW WOODWARD.

Shared Parking Agreement? N.A.

Location of parking off site: N.A.

Height of screenwall: N.A.

14. Landscaping

Location of landscape areas: OUTDOOR @ EAST

END OF OUTDOOR PATIO W/ LAWN,
& PLANTED FLOWER BOXES ALONG
REAR SCREEN ENCLOSED WALL -
PLANTED WITH ENGLISH IVY (NOT
PROPOSED TO GROW ONTO BRICK) &
PLANTERS ON DECK ABOVE W/
VIRGINIA MINOR PLANTINGS.

Proposed landscape material: SEE DESCRIPTION

@ LEFT.

15. Streetscape

Sidewalk width: EXIST 5' REAR WALK.
Number of benches: N.A.
Number of planters: N.A.
Number of existing street trees: N.A.
Number of proposed street trees: N.A.
Streetscape plan submitted? N.A.

Description of benches or planters: N.A.
Species of existing trees: N.A.
Species of proposed trees: N.A.

16. Loading

Required number of loading spaces: N.A.
Typical angle of loading spaces: N.A.
Screenwall material: N.A.
Location of loading spaces on site: ADJACENT PARKING LOT.

Proposed number of loading spaces: N.A.
Typical size of loading spaces: N.A.
Height of screenwall: N.A.
Typical time loading spaces are used: N.A.

17. Exterior Waste Receptacles

Required number of waste receptacles: 1
Location of waste receptacles: @ CURRENT LOCATION
Screenwall material: PAINTED CMU.

Proposed number of waste receptacles: EXIST CITY SHARED TRASH
Size of waste receptacles: 6'
Height of screenwall: 6'

18. Mechanical Equipment

Utilities and Transformers:

Number of ground mounted transformers: -
Size of transformers (L•W•H): -
Number of utility easements: -
Screenwall material: -

Location of all utilities & easements: -
Height of screenwall: -

Ground Mounted Mechanical Equipment:

Number of ground mounted units: -
Size of ground mounted units (L•W•H): -
Screenwall material: -

Location of all ground mounted units: -
Height of screenwall: -

Rooftop Mechanical Equipment:

Number of rooftop units: 1 NEW
Type of rooftop units: MAKE-UP AIR UNIT.
Screenwall material: CORRUG. PAINTED METAL.
Location of screenwall: ROOF SURROUNDING EXIST & NEW EQUIP.

Location of all rooftop units: PER ROOF PLAN
Size of rooftop units (L•W•H): NEW ± 4'x6'x5'H.
Percentage of rooftop covered by mechanical units: MIN.
Height of screenwall: 5'H.
Distance from rooftop units to all screenwalls: MIN 3'

19. Accessory Buildings

Number of accessory buildings: -
Location of accessory buildings: -

Size of accessory buildings: -
Height of accessory buildings: -

20. Building Lighting

Number of light standards on building: 8
Size of light fixtures (L•W•H): 6"φ x 12"H.
Maximum wattage per fixture: 90 ERLV (13 W LED)
Light level at each property line: 0

Type of light standards on building: CYLINDER DOWNLIGHTS & REPLACE 1 RECESSED.
Height from grade: ± 10'
Proposed wattage per fixture: EQUAL TO 90 WATTS INCANDESCENT

21. Site Lighting

Number of light fixtures: (3) IN POOL LIGHTS
Size of light fixtures (L•W•H): -
Maximum wattage per fixture: -
Light level at each property line: 0

Type of light fixtures: IN POOL, & TIKI TORCHES.
Height from grade: @ GRADE & @ 7' @ TORCH.
Proposed wattage per fixture: -
Holiday tree lighting receptacles: YES :

22. Adjacent Properties

Number of properties within 200 ft. THE ENTIRE BLOCK EXCLUDING 620 N. OLD WOODWARD

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes made to an approved site plan. The undersigned further states that they have reviewed the procedures and guidelines for Site Plan Review in Birmingham, and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

By providing your e-mail to the City, you agree to receive news notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Owner: -see attached Date: _____

Print Name: _____

Signature of Applicant: -see attached Date: _____

Print Name: _____

Signature of Architect:  Date: 2/3/21

Print Name: ROMAN BONISLAWSKI, R.A.

Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Accepted by: _____

The undersigned states the above information is true and correct, and understands that it is the responsibility of the applicant to advise the Planning Division and / or Building Division of any additional changes made to an approved site plan. The undersigned further states that they have reviewed the procedures and guidelines for Site Plan Review in Birmingham, and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

By providing your e-mail to the City, you agree to receive news notifications from the City. If you do not wish to receive these messages, you may unsubscribe at any time.

Signature of Owner: _____

Date: 2/3/21

Print Name: Brian Najor

Signature of Applicant: _____

Date: _____

Print Name: _____

Signature of Architect: Christ Backos

Date: 2/3/21

Print Name: Christ Backos

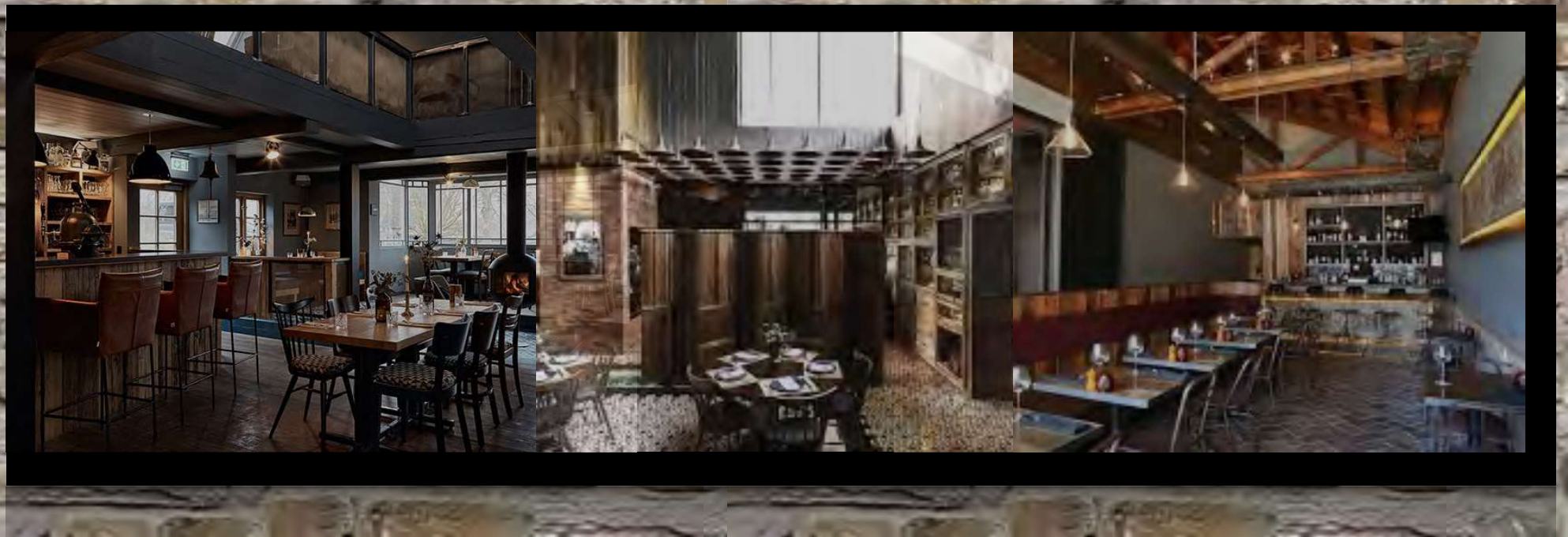
Office Use Only

Application #: _____ Date Received: _____ Fee: _____

Date of Approval: _____ Date of Denial: _____ Accepted by: _____

Vinewood

Kitchen & Cocktails



Starters

Crispy Calamari
lemon . parsley . chili aioli

Prime Meatballs
burrata . Parmesan . heirloom tomato Marinara . arugula pesto



King Crab Bruschetta
lemon butter . parsley . dill

Tuna Tartar
avocado . yuzu . homemade tortilla chips

Oysters on the half shell
yuzu granita . spicy cocktail



Chicken Nachos
homemade tortilla chips . cheddar jack . black bean queso . jalapeños . black olives . lettuce . salsa verde . sour cream . guacamole

Chips and Cheese
homemade tortilla chips . black bean queso . salsa verde

Deviled Eggs
king crab . caviar

Baked Fontina Dip
olive oil . rosemary . thyme . garlic . crostini . homemade tortilla chips

Steamed Mediterranean Mussels
spicy heirloom tomato marinara . garlic crostini

Sweet Potato French Fries
homemade ranch . honey mustard



Jumbo Shrimp Cocktail
spicy cocktail

Buffalo wings
blue cheese dressing . celery sticks



Crock of Pimento Cheese
crackers . celery sticks . carrot sticks

Salads

Imported Burrata
king crab . Heirloom Tomato . Arugula . Crostini . olive oil . balsamic

Shredded Kale
grilled chicken oregano . mushrooms . bacon . parmesan . herb vinaigrette

Steak Salad
tenderloin tips . iceberg . romaine . cucumber . tomatoes . green beans . hardboiled eggs . fingerling potatoes . blue cheese . herb vinaigrette

Classic Greek
grilled chicken oregano . imported feta . tomatoes . cucumbers . kalamata olives . roasted beets . olive oil . lemon

Roasted Beet
whipped goat cheese . pistachio . arugula . crostini . dijon mustard vinaigrette

Ora King Salmon Cobb
roasted corn . bacon . avocado . homemade ranch

Cauliflower Crunch
grilled chicken oregano . feta . apples . pistachios . dried cranberries . mint . parsley . dijon mustard vinaigrette

Soups

Vegetarian Chili
Potato cheddar
Spicy Sausage Lentil



Entree

8oz Creekstone filet
garlic & rosemary butter . roasted fingerling potatoes . sautéed green beans

Steak & Frites
16 oz bone in ribeye
special seasoning . rosemary sea salt french fries . sweet potato fries or greek fries

Spaghetti with Prime Meatballs
Heirloom tomato marinara . imported burrata (make it spicy!)

Chicken Parmesan
spaghetti with heirloom tomato marinara (make it spicy!)



Grilled Chicken Oregano
Tzadziki . greek fries

Ora King Salmon
Roasted corn and avocado salsa . wilted spinach



Fish and Chips
fresh fried halibut . rosemary sea salt french fries . homemade tartar sauce

Chicken Finger Platter
homemade ranch . honey mustard . rosemary sea salt french fries

Lamb Chops
greek fries . mini greek salad



Sides

Roasted Fingerling Potatoes
Sautéed Green Beans
Steamed Broccoli
Sweet Potato Fries
Rosemary Sea Salt Fries
Greek fries
Cauliflower Au Gratin



Sandwiches

Philly Cheesesteak
thin sliced tenderloin . peppers . onions . mushroom . provolone
rosemary sea salt french fries

Baja Fish Tacos
Fried Halibut . salsa verde . homemade tortilla chips . guacamole

Pimento Cheese Stuffed Burger
lettuce . tomatoes . chili aioli
rosemary sea salt french fries

Cheddar Burger
hand-packed patty . cheddar . caramelized onions
rosemary sea salt french fries



Desserts

Butter Cake
vanilla ice cream . homemade whipped cream

Loukamades
cinnamon . honey

Homemade Oreo Ice Cream Cake

Belgian Chocolate Soufflé Cake
Vanilla ice cream . homemade whipped cream



Kids Menu

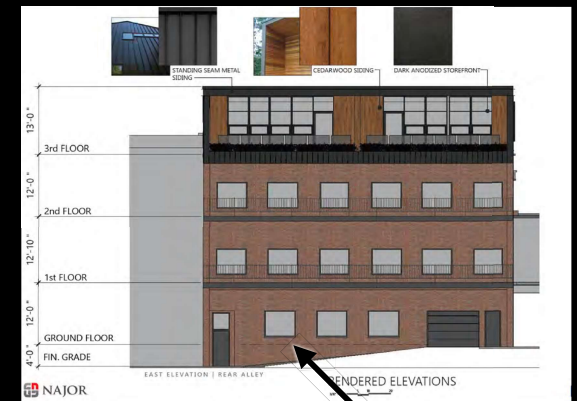
Fish and Chips
Kids Burger and Fries
Salmon and Steamed Broccoli
Chicken Fingers and Fries with Homemade Ranch
Spaghetti and Meatballs
Baked Cauliflower Au Gratin with Sautéed Green Beans

Vinewood Kitchen and Cocktails is a modern casual American restaurant, which features a wide selection of menu items with a hint of clean mediterranean influence, focusing on healthy options with a twist. Designed specifically for the Birmingham clientele, we source the highest quality ingredients to provide the very best in our industry. The full service bar offers unique craft beers, fine wine, and scratch cocktails. Our core philosophy is to provide outstanding service and food in a casual but still upscale atmosphere. Our goal is to become Birmingham's go-to neighborhood restaurant with something for everyone.

Owner/Operator Christ Backos has been in the food business for over 25 years. He has owned and operated full service restaurants, bars, and banquet facilities over that span of time. He currently owns and operates Ernie's Medditeranian Room which is an upscale mediteranian concept and banquet facility in Clinton Township. He also owns and operates three Leo's Coney Island Franchises in Macomb County, The Detroit Food Company which is a full service off premise catering company, and the Fresh Food Kitchen which is a meal prep food delivery service. For this project, he has collaborated with executive chef Sarah Nahas Hormi, a graduate of the New York Culinary Institute. She is a culinary producer for the show Chopped, Chopped Jr. & Chopped Sweets on the Food Network.



Our vision for the interior is modern meets rustic. A warm but sophisticated vibe that is family friendly, a true neighborhood restaurant.

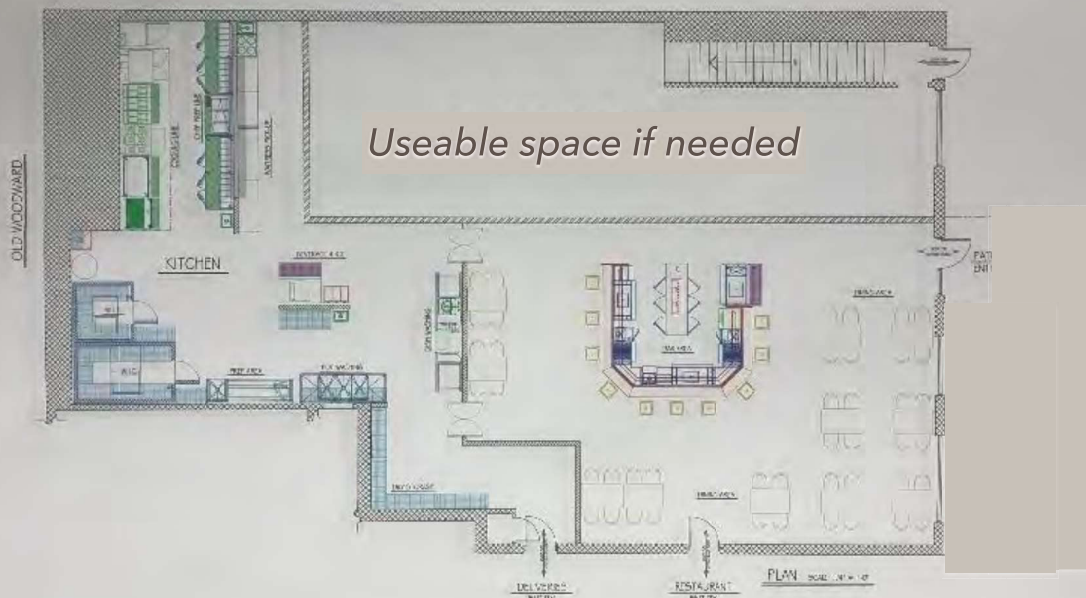


Proposed lower level space where garage doors or accordian windows would open to the outside.

**724 N. Old Woodward
Birmingham, MI 48009**



Proposed Floor Plan



ARCHITECTURAL
STAINLESS
INC.

DESIGNED BY: ASI
DRAWN BY: ASI
CHECKED BY: ASI
DATE: 11/11/11

Vinewood Kitchen & Cocktails

BIRMINGHAM, MI

SEATING-BAR: (10) PERSONS
SEATING-DINING: (44) PERSONS

PLAN APPROVED FOR EQUIPMENT

DATE:

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FS-1

Financially, after 20 plus years in the food business and having a great deal of success and currently owning multiple loacations, myself and my business partner and landlord Brian Najor will both be making capital contributions to build out the proposed space.



720 N. Old Woodward Ave.

Legend

Oak Ave

N Old Woodward Ave

Vinewood Ave

Woodward Ave

Park St

Brookside Ave

Google Earth





720
N. Woodward

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FRIENDLY DENTAL OFFICE

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FRIENDLY DENTAL OFFICE

720
MAPLEWOOD OFFICE PARK

		Restaurant Seating			Indoor Hours of Operation							
Restaurant Name	Address	Indoor	Outdoor	Total	S	M	T	W	T	F	S	Outdoor Ends
Adachi Sushi	325 S. Old Woodward	65	67	132	11:30 am - 10 pm	11:30 am - 10:30 pm			11:30 am - 11:30 pm			12:00 am
Bella Piatti	167 Townsend	62	28	90	11:00 am - 12:00 am							12:00 am
Birmingham Sushi Café	377 Hamilton Row	65	24	89	11:00 am - 9:30 pm	11:00 am - 10:30 pm			11:00 - 11:00 pm			12:00 am
Bistro Joe's	34244 Woodward	64	60	124	8:00 am - 9:30 pm							12:00 am
Churchills Bistro & Cigar Bar	116 S. Old Woodward	63	12	75	Never provided							12:00 am
Elie's Mediterranean Grill/Bar	263 Pierce	64	24	88	Never provided							12:00 am
Forest Grill	735 Forest	64	30	94	11:00 am - 12:00 am							12:00 am
La Strada Café	243 E. Merrill	65	14	79	8:00 am - 3:00 pm	7:00 am - 10:00 pm			7:00 am - 11:00 am			12:00 am
Luxe Bar & Grill	525 N. Old Woodward	59	12	71	11:00 am - 11:00 pm							12:00 am
Mad Hatter Café	185 N. Old Woodward	58	24	82	9:00 am - 10:00 pm				9:00 am - 11:00 pm			10:00 pm
Maple Road Taproom (Whole Foods)	2100 E. Maple	36	33	69	8:00 am - 10:00 pm							10:00 pm
Market North End	474 N. Old Woodward	64	44	108	11:00 am - 12:00 am							12:00 am
Pernoi	310 E. Maple	65	26	91	Special Events Only		5:00 pm - 11:00 pm					12:00 am
Salvatore Scallopini	505 N. Old Woodward	64	34	98	11:00 am - 12:00 am						9:30 am - 12:00 am	12:00 am
Social Kitchen & Bar	225 E. Maple	64	86	150	9:30 am - 12:00 am	11:00 am - 12:00 am				9:30 am - 12:00 am		12:00 am
Tallulah Wine Bar & Bistro	155 S. Bates	64	42	106	11:00 am - 12:00 am							12:00 am
Toast	203 Pierce	65	59	124	8:00 am - 4:00 pm	7:00 am - 3:00 pm		7:00 am - 8:00 pm		8:00 am - 9:00 pm		Same as Business
Townhouse	180 Pierce	50	64	114	Never provided							12:00 AM

Fwd: 720N. Old Woodward - Vinewood Bistro

Drew Dettling <dsdettling@comcast.net>
To: ndupuis@bhamgov.org

Wed, Feb 24, 2021 at 11:04 AM

Nicholas

Below is an email I just sent Jana. I'm pretty sure it's too late to distribute to Planning Board members for tonight's meeting (if you could get it in their hands, that would be great). But I did want them to know that Brookside residents do have an opinion.

Drew Dettling

Begin forwarded message:

From: Drew Dettling <dsdettling@comcast.net>
Subject: 720N. Old Woodward - Vinewood Bistro
Date: February 24, 2021 at 10:52:05 AM EST
To: jecker@bhamgov.org

Jana

I'm writing to voice my opposition to the Vinewood Bistro, which will be the subject of a Special Land Use Permit and Final Site Plan and Design Review hearing tonight before the Planning Board. I apologize in advance for the tardiness of this letter, but I've been out of town and just received the hearing notice yesterday.

By way of background, I live at 740 Brookside Ave. My home is directly across Parking Lot #6 and the Rouge River from the proposed Bistro. As you know, Brookside Ave is a quiet residential dead-end street of single family homes. I have significant concerns about the hours of operations, light and noise 'pollution' and kitchen odors of the proposed Bistro. The homes on Brookside sit at higher elevations from the street and the foliage along the river provides minimal screening from Lot #6 (even in the summer). The proximity of the proposed Bistro to our homes is roughly equivalent to having your house sitting on the play structure in Booth Park, facing Market Northend. The light, noise and odors from Vinewood will significantly detract from our ability to enjoy the peace and quiet of our homes. It will also significantly detract from the value of our homes. Since the developer / operator of Vinewood has not yet specified the hours of operation, I'm assuming the worst case; they will want to be open until 1am, similar to Luxe. This is not tenable.

Regarding the situation with the dumpsters, the current dumpsters in Lot #6 fill rapidly, requiring collection 2-3 times per week. The dump trucks typically pick up at 6am, further disturbing our peace and quiet. With the addition of Vinewood, either more dumpsters or more frequent collection will be needed. And since the dumpsters sit right next to the river, any overflow of kitchen waste will create a bad environmental situation, not to mention the need for additional pest and rodent control.

I understand the intent of the Bistro Ordinance is to activate the streetscape and promote a more pedestrian oriented environment, by requiring outdoor dining. 'Bistros must have tables located in the storefront space lining any street, or pedestrian passage'. Vinewood's outdoor dining abutting Parking Lot # 6 stretches the definition of street or pedestrian passage to the breaking point. I don't understand the purposed of 'activating' a surface parking lot. If Vinewood wanted to comply with the spirit of the Ordinance, they would find a way to place the Bistro so it's outdoor dining fronted on Old Woodward.

To the best of my knowledge, no Bistro in Birmingham has an entrance, signage and outdoor dining facing single family residential housing. I think that is for a reason; protect and respect the single

family neighborhoods. Prior Planning Board and Bistro owner decisions have respected that intent. Approving Vinewood as proposed would break with that precedent and open the possibility for further deterioration of our neighborhoods. I thought the City's recent strategic planning effort was placing more emphasis on the neighborhoods. I don't believe approving Vinewood is honoring the intent of the strategic plan.

Respectfully,

Drew Dettling
740 Brookside Ave.

Parking issues in North Old Woodward

1 message

kshama Jay <kshamajay@gmail.com>

Wed, Apr 14, 2021 at 2:26 PM

To: ndupuis@bhamgov.org

Cc: EMG Property Admin <propertyadmin@emgcondo.com>, Dennis Gistingner <dgistingner@gmail.com>, Kristin Bongiovanni <kbongi@gmail.com>, kshama Jay <kshamajay@gmail.com>

Good Afternoon,

I have been informed that the township has a planning Board meeting to discuss an addition of a new Restaurant and Bar in the Kohler Building off North Old Woodward Avenue. While this is great for the township, the parking needs to be addressed and considered a priority before entertaining approval of new businesses. As a homeowner and resident of the North end, I was on a zoom call last year when the city and planning board voted to approve the extension of luxe Bistro and Bar. I asked the question then and will ask it again, **what is the city doing to assure that the planning includes parking as well?**

We have a private parking area that is constantly occupied and used by patrons of the different restaurants, not sure how we can stop this. The city's parking ordinance states that this is a private lot. I have reached out to the owners of Luxe as well to help with the logistics of the current foot traffic and vehicle traffic. The flat lot across the area where the farmers market takes place needs to be updated to incorporate the traffic that is expected with these expansions or maybe the city as other ideas to help alleviate the congestion.

We need more traffic police in the area, FYI ,it is a good source of revenue for the city. We can provide the vehicles that are legally allowed to park in the area (we plan on using a parking decal). Bottom line is that the businesses in the area do not help as the city does not follow through on what is expected to keep the peace. As the city of Birmingham expands its commerce it would be prudent to ensure the safety of the residents while improving the infrastructure to match its expansion.

Thank you for your time and I look forward to hearing from you and/or the city of Birmingham.

Kshama Jayasuriya
kshamajay@gmail.com



Nicholas Dupuis <ndupuis@bhamgov.org>

new restaurant

Lori Karbal <lorikarbal@gmail.com>
To: ndupuis@bhamgov.org

Wed, Apr 14, 2021 at 1:00 PM

I am a business owner at 560 North Old Woodward. Please do not put in a restaurant down here. We finally have parking here after so many years of problems. Also, the noise in the neighborhood.

Thank you

Lori Karbal
560 North Old Woodward
Birmingham, Michigan 48009

Dear members of the Birmingham Planning Board:

I am writing in regard to the proposed bistro “Vinewood Bistro” at 720 N Old Woodward. This is proposed for the back lot of Parking Lot No. 6, behind the Merrillwood building & associated buildings to its north. My properties, 692 and 724 Brookside Ave., are across the Rouge to the east and look directly onto the lot and building. I disagree with the proposal and urge the Board to deny the application for the following reasons:

1. Increased noise & traffic
2. Increased light pollution
3. Location
4. Restaurant density/saturation, especially with regards to traffic & parking

To begin, let me provide some physical context to help support this comment of Nicholas Dupuis’: *“[T]here are single family residences across the river that may be affected by any noise or light emanating from the proposed patio.”*¹

Because my properties are on a substantial hill and are much higher than the level of Lot 6, they have a direct view down onto this area. After the 2018 extension of the lot and removal of trees/brush on the west side of the Rouge, which was preceded by the loss of many elm trees due to the emerald ash borer, there is now very little natural shielding. As a result, I can see everything that goes on in the lot and often what happens inside the buildings. This clear sightline is, of course, heightened during winter. From my upstairs windows I have an even more unobstructed view.

The landscaping planted after the 2018 lot extension is not thriving; as I look out of my window, 5 of the 12 evergreens I see are brown and dying/dead. During the spring thaws and large rain events the lot often is partially underwater. While plantings at the south end of the parking lot were chosen with inundation in mind, the remainder of the plantings obviously were not. Thus, shielding from mature evergreens in the landscaping is less likely and is at least several more years into the future. Because of the hill and driveways, I cannot use landscaping on my own properties to shield my view (to cover my upstairs windows, trees need to grow at least 50 feet, something only achieved by three existing 100-year old oaks).

Regarding the bistro itself, I have four main objections:

¹ Memorandum of February 24, 2021 from Nicholas Dupuis, City Planner, to Jana Ecker, Planning Director, as included in the Full Agenda of the February 24, 2021 Planning Board meeting, page 81.

1. INCREASED NOISE POLLUTION & TRAFFIC

As I stated above, there is very little shielding my properties from Lot 6 and its buildings. Luckily, during the day there is minimal noise, as the lot is used mainly by employees and short-term visitors to the businesses. At night, noise is from patrons of Market North End, Luxe, & Salvatore Scallopine; at times this can get quite raucous, but it is rare that those patrons park directly across from me. Regardless, I hear car doors, engines, the occasional car alarm, and even loud conversations. I can even set my watch by the schedule of the office cleaners, who dispose of their trash in the dumpsters and then idle their engines around midnight Monday-Saturday.

A bigger noise impact is indeed from the dumpsters (at both ends of the lot) which are emptied most days between 6 and 7:30am; the accompanying bangs and wall-shaking thuds are heard and felt quite clearly. More intrusive yet is the Farmer's Market; for 6 months (May to October), every Sunday it often gets loud enough that I cannot drown out the noise with music (played inside my home with the windows closed).²

With the exception of petitioning the Farmer's Market organizers to limit/eliminate amplified music (both recorded and live), I have accepted that these noises are part of living in what is now an urban environment. I am no stranger to city life, having lived in various downtowns during my graduate school years, and accept that sounds like dumpsters emptying and car doors are part of the city soundscape. However, with each additional noise source the enjoyment of living in my house diminishes, and I fear the value of my property will drop further. The increased traffic noise from Woodward has already affected the assessment of my property, as evidenced from the bank appraisal done last year during the course of refinancing my home equity loan.³

With Vinewood Bistro operating in this location, more noise will be constant all day long, seven days a week. Judging from behavior of diners at the three established night-time restaurants in this city block, patrons will not merely dine inside/on the patio but will also congregate around cars and on the walkways. In addition to the public hours, restaurant staff will be prepping early and cleaning up late – an impact often overlooked by planners. I do not see a staff break room on the plans, so I expect that staff will take breaks in the parking lot, much like they do in the alleys behind other Birmingham restaurants. In addition, also in the early hours deliveries will be made and dumpsters emptied more frequently and/or in greater quantity.

² An exception was the 2020 season, as the market was drive-through only that year and as a result, was hardly noticeable.

³ "[A] potentially adverse noise" because the property "is adjacent to a busy road (in the rear)...[T]his has been considered to have an effect on value or marketability". *CoreLogic Valuation of 692 Brookside Ave from March 25 and May 15 2020*.

I take this time to mention the chance for increased vermin. Rats are endemic to cities; I do not expect Birmingham to be exempt. However, we have been fortunate in my neighborhood to escape large-scale infestation.⁴ While much of this can be attributed to good garbage handling and yard maintenance, there is also the fact that the majority of the waste deposited in Lot 6's dumpsters is not from food.

2. INCREASED LIGHT POLLUTION

As detailed above, a large amount of natural shielding/buffer between Lot 6 and Brookside has been lost in recent years. With the installation of new street lamps in the lot, plus the construction of the Pearl and consequent reduction in mature trees at the north end of Brookside, my properties are now never dark. Blackout curtains in the bedrooms are necessary to block out enough light to allow the rooms to be somewhat conducive to sleep. The twinkling of the red lights from the newer parking meters has also added to the light pollution reaching my properties. We cannot afford to have more light reach us on Brookside – not only from the bistro but from the headlights of the cars of bistro patrons.

3. LOCATION

The entire back of Lot 6, and especially the new extension, are in a Special Flood Hazard Area (SFHA) as designated by FEMA⁵ (see also the attached map). In fact, the entire Merrillwood complex and the back half of buildings to its north – **including this proposed bistro location** - are in in the SFHA, with the majority of the back of Lot 6 designated further as Regulatory Floodway. This alone should be enough to dissuade the Planning Board from approving this application.

Natural flooding is common in this area, both from spring thaws and from heavy rain events. Further development/use of the area should be discouraged.

This is the back of 720-790 Woodward in March 2020:

⁴ The exception, of course, is Market North End; in recent years I have seen rats on occasion when walking on Ravine at dawn/dusk, and cannot help but think they are the direct result of the dumpsters behind that restaurant.

⁵ <https://msc.fema.gov/portal/search?AddressQuery=692%20Brookside%20Ave%2048009#searchresultsanchor> .

See also:

https://msc.fema.gov/arcgis/rest/directories/arcgisjobs/nfhl_print/agolprintb_gpserver/jbd5c654db52c4c2f9477e75f402e1796/scratch/FIRMETTE_31170d74-ed41-47a0-bfdf-8b6c911784e2.pdf



In February of 2019 (as seen from Brookside Ave)



February 2017:



February 2016 (This is a still from a 3-minute video):



4. RESTAURANT DENSITY/SATURATION

While the zoning of this portion of Old Woodward does allow for use as a bistro, within 1 block there are already 3 (soon to be 4) dining establishments that are open at night and serve alcohol. Three additional daytime cafes are also open. Had the Planning Board and the City Commissioners really wanted to expand the bistro dining opportunities in this area, there would have been an optimal chance to do so when The Pearl was proposed and built. Instead, there is now concern over the parking impact a 2-table juice bar will have – what will the impact be of a full-service lunch & dinner bistro serving alcohol? Isn't it contradictory to discourage a juice bar with its quick service and short visits at the same time you encourage an establishment that will have lengthier visits and 64 patrons?

The vehicle and pedestrian traffic at the corners of Ravine/Old Woodward and Harmon/Old Woodward is already heavy at night and on the weekends. Rare is the day/night that I use Ravine to exit/access my neighborhood. Between delivery trucks in the morning on Ravine and in the center of Old Woodward, jaywalkers at all times, and drivers who idle waiting for the perfect parking spot, the area has become increasingly risky to drivers. The perennial problem of protecting pedestrians crossing Old Woodward has yet to be solved, and I fear the day a serious (or, god forbid, fatal) accident occurs from a distracted driver. The area is utilized enough and, in my opinion, would not benefit from the additional of yet another bistro.

Based on the October 26, 2020 City Commission meeting minutes, another location in Downtown Birmingham has been also proposed for a similar concept bistro by the same owner. This location is a much more suitable property to consider, especially considering the recent closure of several restaurants in the same area. As the current pandemic continues to ravage the hospitality industry, I believe it would be prudent to encourage redevelopment of empty properties in Downtown, rather than forcing a restaurant onto a new location.

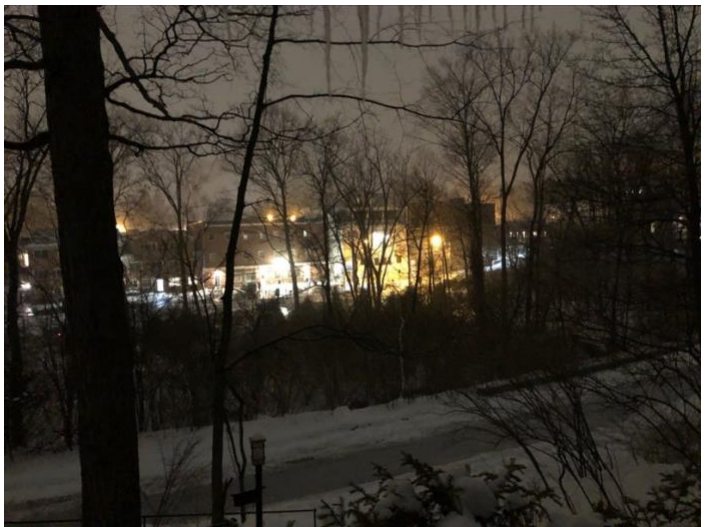
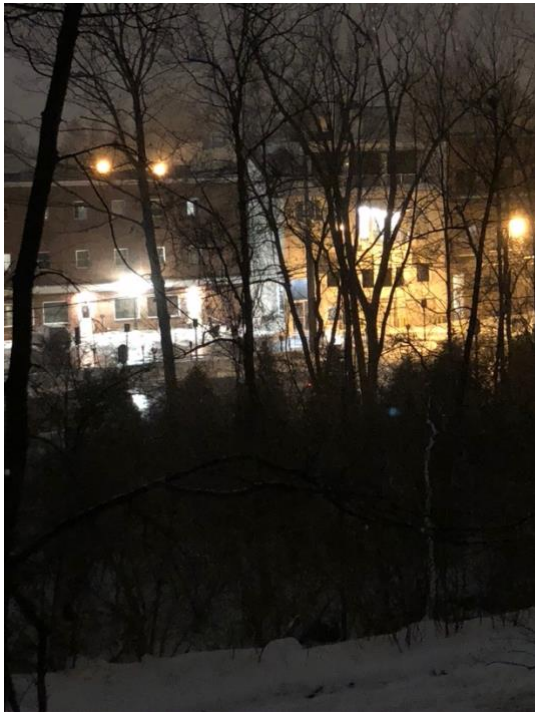
My family has lived on Brookside since 1942, I grew up here, and I moved back more than twenty years ago. I feel lucky to be still living and working here. Part of the attraction of living in my neighborhood is the seclusion from the commercial portion of Birmingham. In fact, Little San Francisco (or The Ravines, the proposed new name) is desirable because it is not just close to Old Woodward and Downtown Birmingham but is uniquely private and intimate as well. The proposed bistro does not enhance these features but instead intrudes unnecessarily into a quiet residential area.

Thank you for taking the time to consider my comments.

Sincerely,
Kristen Tait

I encourage the Planning Board members to visit my street (and climb up my stairs) to see my view for themselves. However, in case that is not feasible, here are several photos that approximate the right scale:





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www.HenkeLawGroup.com

April 13, 2021

Via Email

Members of the Birmingham Planning Board

**RE: 720 N. Old Woodward
The Vinewood**

Dear Members:

We are writing to you on behalf of a number of concerned citizens in the Brookside/Little San Francisco area. On their behalves we ask that you deny the SLUP and Design Review Application for the Vinewood, because:

- The Application does not meet either the intent or spirit of the Bistro Ordinance.
- The Winter Garden is prohibited by the Ordinance.
- Noise and Light Pollution will increase significantly.
- The outdoor raised platform is a permanent structure necessitating a lease of public property, placement of dumpster enclosure and makes no accommodation for seasonable flooding
- The Application fails to take into account the additional parking impact.

While certain city commissioners seemed to be initially intrigued by the possibility of riverside dining, the detrimental impacts on the neighborhood outweigh any potential dining experience or benefit to the community.

1. **The Application Meets Neither the Intent Nor the Spirit of the Bistro Ordinance.**

Bistros were and are intended to activate the street scape. This proposal does neither. It is simply the backside of a multi-tent building. The very northerly end of Lot 6 – the location in no way activates Woodward or any pedestrian passageway.

Moreover, the Bistro Ordinance requires, “the elevated, ADA Compliant, defined platforms must be erected on the street adjacent to the Bistro” (emphasis added).

2. **The Winter Garden is Prohibited by the Ordinance**

The Winter Garden, no matter how described is prohibited by the ordinance. Either it is indoor dining and, therefore, its twenty-eight (28) seats exceed sixty-four (64) seats already proposed as indoor; or as proposed is an “enclosure facilitating year around dining outdoors and prohibited by Article 3 of the Ordinance.

The Winter Garden, per the Applicant’s Plans (Sheets A-1 and A-2) is indoor dining. It is fully recessed (8’ 6”) into the existing building, surrounded by brick walls at the north and south ends, the proposed “New Exterior Wall – butt glazed glass in aluminum top and bottom channel with three frameless glass doors” and the brick stations of the existing exterior wall. It has a drywall ceiling with recessed lights and heat.

By the definitions of MDHHS and MIOSHA over the last year of COVID, it is indoor dining. We can find no building code definition which would define it otherwise.

Even assuming some stretch of an argument that the screens on the east wall make it somehow “outdoor” dining, it is not permitted per condition (i) of the Section 3.04 (C) (10) of the zoning ordinance.

Article 3, Section 3.04 (C) (10) condition; (i) provides “enclosures facilitating year round dining outdoors are not permitted”

Of equal concern would be enforcing the Applicant’s compliance if the Winter Garden were approved. As Ms. Ecker’s memo states:

“Enforcement beyond the permitted outdoor dining season (April – October) would be difficult due to the patio and winter garden placement at the rear and lower level of the building, which is not visible from the street, and may not even be evident from any ease vantage point in Parking Lot 6.”

3. **Noise and Light Pollution will Increase Significantly.**

The noise created by delivery trucks, garbage trucks, service vehicles, restaurant operations, post-closing cleaning and trips to the dumpsters, will be nearly twenty four hours a day, seven days a week. Delivery trucks servicing the restaurant begin early in

the morning; well before opening time. Garbage pickup in town begins at sunrise and is consistently between 6:00 a.m. and 8:00 a.m. With the Applicant's proposed hours the only possible quiet time each day is, at best, the four (4) hours of 2:00 a.m. and 6:00 a.m. The proposed elevated platform and the geography of the valley would exacerbate, not alleviate, the noise generated by the restaurant. To demonstrate the proximity to Brookside, we attached photos taken the morning and afternoon of April 13, 2021.

The proposed photometric lighting plan has a light intensity nearly 8 times greater than allowed by the Ordinance. Ms. Ecker's memo states:

"The applicant has now submitted a photometric plan demonstrating he proposed light intensity on the site. Article 4, Section 4.21 (E)(1) of the Zoning Ordinance states that the intensity of light on a site shall not 1.5 maintained foot-candles at any property line that abuts a non-residential zoning district. The light intensity shall be measured at 6' above ground level on a vertical plane. Additionally, the intensity of light on a site which provides a front setback of less than 5 ft. shall be measured from 5 ft. beyond the front property line. The photometric plan submitted shows illumination levels far exceeding 1.5 maintained foot candles on both the front and rear elevations. The light intensity is as high as 10.0 at roughly 6 ft. beyond the front property line at the front and as high as 11.6 in the rear at roughly the same distance".

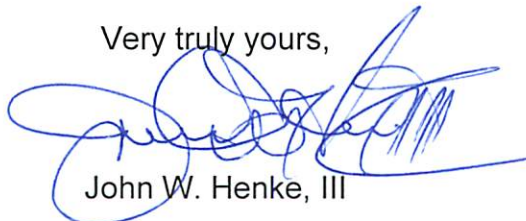
We understand from a lighting engineer, these are light levels similar to a very bright lit parking garage.

4. The Application Makes No Mention of the Parking Impact.

The parking issues of the City are well-documented. Adding a 128-seat restaurant to the north end of town simply exacerbates an already an abysmal situation.

Based upon the foregoing, as well as the other issues articulated by the Planning Division, we respectfully request the Application be denied.

Very truly yours,



John W. Henke, III

JWHIII:lac

















MEMORANDUM

Fire Department

DATE: June 8, 2021

TO: Thomas M. Markus, City Manager

FROM: Paul A. Wells, Fire Chief

SUBJECT: Woodward Dream Cruise

INTRODUCTION:

The continuation of the COVID-19 pandemic has caused us to review and evaluate our City sponsored events for this summer with concerns for the public's health and safety. All City events were canceled last summer and some large events have already been canceled for 2021.

The annual Woodward Dream Cruise event is held with the support of neighboring communities along the Woodward corridor. Several communities, including Birmingham, have shared concerns about this event occurring in the current environment.

At the request of the City Commission, a resolution is being proposed to formalize the City's "scaled down" participation in the Woodward Dream Cruise event taking place on August 21, 2021.

BACKGROUND:

The Woodward Dream Cruise event is managed through a non-profit corporation, Woodward Dream Cruise (WDC), Inc., comprised of community representatives along the Woodward corridor and representatives from Oakland County, as well as private sector media partners. This body has handled the promotion and organization of this multi-community event over the years.

This year, with the continuation of the COVID-19 pandemic and the uncertainty of safely engaging large crowds, the ability and prudence to hold this annual event has come into question. Certainly, canceling this event for a second year would be a disappointment to many who relish in this annual celebration of car culture and, as such, there is some reluctance to cancel the event. Conversely, attracting over one million people to an event during a worldwide pandemic is very concerning and is the reality we face.

At the City Commission meeting on May 24, 2021, the suggested resolution from City staff was to cancel the City's participation in the Woodward Dream Cruise for 2021. The City Commission did not support the suggested resolution and directed staff to present a possible option of a "scaled down" version of the City's participation in the Dream Cruise.

LEGAL REVIEW:

The resolution has been reviewed and approved by the City attorney.

FISCAL IMPACT:

In 2019, event related expenses were \$29,042.98, which included extra police and fire personnel, public services set up and clean up, building-related inspections, etc. The anticipated 2021 expenses are \$34,000. The Birmingham Shopping District (BSD) is anticipating this year's revenues to be around \$63,000 based on several small vendors and three tentative sponsors: General Motors, WOMC, WXYZ.

PUBLIC COMMUNICATIONS:

If the Commission adopts this resolution, the City's communications team will prepare a press release informing residents of the scaled down scope of participation.

SUMMARY:

Given the large crowds that are drawn to the annual Woodward Dream Cruise event and the continuing concerns with COVID-19, it is recommended to adopt the attached resolution for a scaled down scope of participation in the Woodward Dream Cruise on August 21, 2021. These efforts are in an attempt to properly manage the large gatherings this event produces, while still prioritizing public health and safety.

ATTACHMENTS:

- Draft Resolution for scaled down participation by the City in the 2021 Woodward Dream Cruise
- Current CDC recommendations for large gatherings
- Current MDHHS guidance on large outdoor events
- BSD map of the proposed "scaled down" site with sponsor locations

SUGGESTED RESOLUTION:

To approve a resolution that the City of Birmingham will have a scaled down participation in the annual Woodward Dream Cruise event for 2021, due to public health and safety concerns attributed to the COVID-19 pandemic, by managing the large crowds that any participation in the Dream Cruise naturally creates.

CITY OF BIRMINGHAM
RESOLUTION REDUCING THE PARTICIPATION IN THE ANNUAL
WOODWARD DREAM CRUISE EVENT FOR 2021 DUE TO PUBLIC HEALTH AND SAFETY
CONCERNS ATTRIBUTED TO THE COVID-19 PANDEMIC

WHEREAS, the Woodward Dream Cruise event has developed from a grass roots community based effort to promote a one-day, non-alcoholic car event along the Woodward Avenue corridor, and

WHEREAS, the Woodward Dream Cruise is established by the community involvement of Berkley, Birmingham, Bloomfield Hills, Bloomfield Township, Ferndale, Huntington Woods, Pleasant Ridge, Pontiac and Royal Oak to coordinate the event through an intergovernmental partnership, and

WHEREAS, the annual Woodward Dream Cruise event attracts people from around the world, the country, and the state to celebrate car history and car culture along Woodward Avenue in Oakland County, and

WHEREAS, the annual Woodward Dream Cruise event attracts crowds in excess of one (1) million people to the Woodward corridor in Oakland County, and

WHEREAS, on March 10, 2020, Michigan Governor, Gretchen Whitmer had declared a State of Emergency across the State of Michigan due to public health concerns related to a novel coronavirus (COVID-19) that was introduced in our state, and

WHEREAS, at the time of this resolution only 55% of the population 12 years and older of Michigan has been fully vaccinated, and

WHEREAS, the promotion of the 2021 annual Woodward Dream Cruise event is contributing to the current public health crisis by encouraging large crowds to convene during a worldwide pandemic, and

WHEREAS, the Center for Disease Control and Prevention (CDC) and Michigan Department of Health and Human Services (MDHHS) continue to recommend avoiding large events and gatherings regardless of vaccination status, and

WHEREAS, the City of Birmingham Commissioners gave the direction to submit a "scaled down" participation plan for the Dream Cruise event for 2021 at the May 24, 2021 Commission meeting, and

WHEREAS, it is recommended that the City Commission designate one specific public area for all City approved participation in the Dream Cruise event, and

WHEREAS, this specified zone for City approved participation shall span South Old Woodward south of Bowers Street to north of Landon Street, and

WHEREAS, this specified zone for City approved participation shall ensure a minimum of 16 feet of clearance down the center of South Old Woodward for emergency vehicle traffic, and

WHEREAS, all vendors, car clubs, sponsors, etc. wishing to do business in this specified zone for City approved participation will require all necessary City permits and fees prior to approval, and

WHEREAS, all permits for events, block parties, temporary structures, etc. outside the specified special event zone on public property for City approved participation will be denied.

NOW, THEREFORE, IT IS RESOLVED that due to concerns for the safety of the residents of the communities along the Woodward Avenue corridor and the one million attendees that normally participate in the annual event, and the potential spread of the coronavirus, the City will reduce the allowed Dream Cruise public property events within its boundaries during this event for 2021, and

BE IT FURTHER RESOLVED, the City of Birmingham will prohibit any events on public property that requires a permit, except for the designated special event zone on South Old Woodward south of Bowers Street to north of Landon Street, and

BE IT FURTHER RESOLVED, that on, before, and at the time of the 2021 Woodward Dream Cruise all MDHHS orders will be reviewed, and if any new MDHHS orders prohibit the event from continuing, the City will cancel all permits and participation.

Passed, adopted and approved this _____ day of _____, 2021.

AYES: _____

NAYS: _____

PRESENT: _____

ABSENT: _____

CERTIFICATION

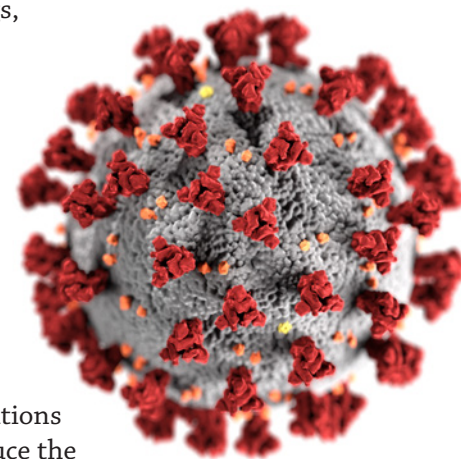
I, Alexandria Bingham, City Clerk, do hereby certify that the foregoing is a complete and true copy of a resolution adopted by the City Commission of the City of Birmingham at a regular Birmingham City Commission meeting held on June 14, 2021.

Alexandria Bingham, City Clerk

Events and Gatherings: Readiness and Planning Tool

CDC Readiness and Planning Tool to Prevent the Spread of COVID-19 at Events and Gatherings

As some communities in the United States begin to plan and hold events and gatherings, CDC offers the following readiness and planning tool to share ways event planners and administrators can help protect staff, volunteers, and attendees and slow the spread of COVID-19. This tool aligns with the [Considerations for Events and Gatherings](#) and includes the following:



- General Readiness Assessment
- Preparing for If Someone Gets Sick
- Daily/Weekly Readiness Assessment
- End-of-Day Actions and Resources

Event planners and administrators may review and complete the general readiness assessment while working with state and local officials as part of making initial preparations before the event to promote healthy behaviors, environments, and operations that reduce the spread of COVID-19. The daily/weekly readiness assessment may be used to monitor and maintain recommended practices. Planning tools are also included to help event planners and administrators prepare for if someone gets sick, plan after-event actions, and address the specific needs and circumstances of the local community. Implementation should be guided by what is feasible, practical, acceptable, and tailored to the needs and context of each community.

Guiding Principles to Keep in Mind

A gathering refers to a planned or spontaneous event, indoors or outdoors, with a small number of people participating, or a large number of people in attendance. Examples of gatherings, small or large, include a community event, concert, festival, conference, parade, wedding, or sporting event.

- The more people an individual interacts with at a gathering and the longer that interaction lasts, the higher the individual's potential risk of becoming infected with COVID-19 and then spreading COVID-19 to others.
- The [higher the level of community transmission](#) in the area where the gathering is held, the higher the risk of COVID-19 spreading at the gathering.
- The size (attendance) of an event or gathering should be determined based on state, local, territorial, or tribal safety laws and regulations.

The risk of COVID-19 spreading at events and gatherings increases as follows:

- **Lowest risk:** Virtual-only activities, events, and gatherings.
- **More risk:** Smaller outdoor gatherings in which individuals from different households remain spaced at least 6 feet apart, wear cloth face coverings, do not share objects, and come from the same local area (e.g., a community, town, city, or county).
- **Higher risk:** Medium-sized in-person gatherings that are organized/laid out to allow individuals to remain spaced at least 6 feet apart, some wear cloth face coverings and come from outside the local area (e.g., a community, town, city, or county).
- **Highest risk:** Large in-person gatherings where it is difficult for individuals to remain spaced at least 6 feet apart, do not wear cloth face coverings and travel from outside the local area.



cdc.gov/coronavirus

Events and Gatherings: General Readiness Assessment

Use the following tool when making initial preparation before the event to promote healthy behaviors, environments, and operations that reduce the spread of COVID-19.

Policies and Procedures	Facilities and Supplies	Education and Training
<p>Point Person(s): _____</p> <p>Review relevant local/state regulatory agency policies and orders, such as those related to events, gatherings, and travel.</p> <p>Consult local health officials about recommended COVID-19 testing policies for events and gatherings.</p> <p>Consult with the venue operators about their COVID-19 policies prior to the event.</p> <p>Develop a plan to conduct daily health checks (e.g., temperature screening and/or symptom checking) of staff and attendees.</p> <p>Develop a plan to allow for social distancing before, during, and after the event (e.g., limiting attendance and modifying layouts before the event, providing physical barriers during the event and staggering exit times after the event).</p> <p>Consider limiting event attendance to staff and attendees who live in the local area (e.g., community, city, town, or county) to reduce risk of spreading the virus from areas with higher levels of COVID-19. If attendance is open to staff and guests from other communities, inform attendees in advance so they can make an informed decision whether they will participate.</p> <p>Develop online attendance options in addition to in-person attendance to help reduce the number of attendees at the event.</p> <p>Develop a flexible refund policy.</p> <p>Designate a staff person responsible for responding to all COVID-19 related situations and concerns. Make sure other staff and attendees know how to contact this person.</p>	<p>Point Person(s): _____</p> <p>Obtain supplies including:</p> <ul style="list-style-type: none">soapwater for hand hygienehand sanitizer (at least 60% alcohol)paper towelstissuescleaning suppliesEPA approved disinfection suppliescloth face coveringsno-touch/foot pedal trash cansno-touch soap/hand sanitizer dispensersglovesdisposable food service itemsother: _____ <p>Develop a schedule for increased routine cleaning and disinfection.</p> <p>Close shared spaces (e.g., a lounge); otherwise develop a plan for staggered use of these spaces and cleaning and disinfecting.</p> <p>Develop a plan for the safe and correct use and storage of cleaners and disinfectants, including storing products away from children.</p>	<p>Point Person(s): _____</p> <p>Create a plan for educating staff and attendees to ensure they know that they should not come to the event if they become sick with COVID-19 symptoms, test positive for COVID-19, or have been exposed to someone with symptoms or someone suspected or confirmed to have COVID-19. Make sure they know that if they get sick at the event, they should notify event administrators (e.g., the designated COVID-19 point of contact) right away.</p> <p>Develop protocols to educate staff on flexible work and leave policies that encourage sick staff members to stay at home without fear of job loss or other consequences.</p> <p>Create a plan for educating staff and attendees about who should wear cloth face coverings, and communicate the importance of wearing them to both staff and attendees. Cloth face coverings should not be placed on.</p> <ul style="list-style-type: none">• children younger than 2 years old• anyone who has trouble breathing or is unconscious• anyone who is incapacitated or otherwise unable to remove the cover without help <p>Create information on proper use, removal, and washing of cloth face coverings and distribute to staff members.</p> <p>Create and implement training to be delivered to staff on all COVID-19 safety protocols:</p> <ul style="list-style-type: none">• Conduct training virtually or maintain social distancing during training <p>Other: _____</p>

Events and Gatherings: General Readiness Assessment

(continued from previous page)

Policies and Procedures	Facilities and Supplies
<p>Develop policies that encourage sick staff members to stay at home without fear of job loss or other consequences. Protect their privacy, particularly for those with underlying medical conditions and at higher risk for severe illness).</p> <p>Develop options for staff at higher risk for severe illness (e.g., telework or virtual learning opportunities).</p> <p>Develop flexible sick leave policies and practices.</p> <p>Develop options for flexible worksites (e.g., telework) and flexible work hours (e.g., staggered shifts).</p> <p>Develop a plan to monitor absenteeism of staff, cross-train staff, and create a roster of trained back-up staff.</p> <p>Develop a transportation and parking plan to limit contact between attendees (e.g., staggered arrival and ride share drop-off times or locations).</p> <p>Develop a plan for if someone gets sick or shows symptoms of COVID-19 while at the event or venue. (See <i>Preparing for If Someone Gets Sick</i>).</p> <p>Develop a plan to safely serve food, beverages, and merchandise, if applicable. Refer to CDC's COVID-19 considerations for restaurants and bars for guidance.</p> <p>Other: _____</p>	<p>Make sure ventilation systems operate properly. If using fans, make sure they do not blow from one person onto another, and increase circulation of outdoor air as much as possible (e.g., opening windows and doors).</p> <p>Make sure water systems and features are safe to use after a prolonged facility shutdown.</p> <p>Develop a plan to use touchless payment options .</p> <p>Develop a plan to use multiple entrances and exits to discourage crowding in waiting areas.</p> <p>Develop a plan to change seating layout or availability of seating, or block off rows or sections so that attendees can stay at least 6 feet apart.</p> <p>Create and install physical barriers, such as sneeze guards and partitions, in areas where it is difficult for individuals to remain at least 6 feet apart.</p> <p>Create physical guides, such as tape on floors and signs on walls, to promote social distancing.</p> <p>Develop a plan to eliminate lines or queues if possible or encourage people to stay at least 6 feet apart by providing signs or other visual cues such as tape or chalk marks in congregation areas such as entrances, exits, and restrooms if a 6-foot distance between attendees is hard to ensure.</p> <p>Develop a plan to reconfigure parking lots, limit congregation points and ensure proper separation (e.g., closing every other space).</p> <p>Purchase adequate supplies to minimize sharing of materials, or limit use to one per family or group of individuals at a time, and clean and disinfect between use.</p> <p>Ensure organizations that share the venue facilities such as food vendors are aware of and follow all safety protocols.</p> <p>Other: _____</p>

Events and Gatherings: General Readiness Assessment

Use the following tool when making initial preparations before the event to promote healthy behaviors, environments, and operations that reduce the spread of COVID-19.

Communication and Messaging

Point Person(s): _____

Develop a plan to create and disseminate clear messages (e.g., [videos](#)) about behaviors that prevent spread of COVID-19 to staff and attendees before the event:

websites

email

[social media accounts](#)

other _____

Create and post signs in highly visible locations that promote everyday protective measures such as wearing cloth face coverings and that describe how to stop the spread of germs in:

entrances

dining areas

restrooms

other _____

Develop a plan to communicate with partner organizations such as vendors to ensure that they are aware of all of your COVID-19 safety protocols.

Develop [signs and communication](#) (e.g., [videos](#)) in alternative formats (e.g., large print posters, braille, American Sign Language) for people who have limited vision, or are blind, or people who are deaf or hard of hearing.

Consider posting signs for the national distress hotline: 1-800-985-5990, text TalkWithUs to 66746; The National Domestic Violence Hotline: 1-800-799-7233, TTY 1-800-787-3224; and The National Suicide Prevention Lifeline: 1-800-273-TALK (8255).

Develop regular announcements on reducing the spread of COVID-19 to be broadcast on public address systems.

Create a plan for communicating with staff and attendees about whom to contact if they have questions and concerns related to COVID-19.

Other: _____

Action Planning—Notes and Next Steps

Point Person(s): _____

Use this space to note any required resources and next steps, or potential barriers and opportunities:

Events and Gatherings: Preparing for if Someone Gets Sick

Use the following tool when making initial preparations before the event for if someone gets sick with COVID-19.

Before Someone Gets Sick	When Someone Gets Sick	After Someone Gets Sick
<p>Point Person(s): _____</p> <p>Create a plan to educate staff and attendees to ensure they know that they should not come to the event if they become sick with COVID-19 symptoms, test positive for COVID-19, or have been exposed to someone with symptoms or someone with suspected or confirmed COVID-19. Make sure they know that if they get sick at the event, they should notify event planners (e.g., the designated COVID-19 point of contact) right away.</p> <p>Develop systems to:</p> <ul style="list-style-type: none">Allow staff and attendees to self-report to administrators if they have symptoms of COVID-19, a positive test for COVID-19, or were exposed to someone with COVID-19 within the last 14 days.Notify individuals of closures and restrictions put in place to limit COVID-19 exposure. <p>Develop staff policies for returning to the venue after COVID-19 illness. CDC's criteria to discontinue home isolation and quarantine can inform these policies.</p> <p>Identify and create an isolation room or area to separate anyone who has COVID-19 symptoms or who has tested positive but does not have symptoms.</p> <p>Develop procedures for safely transporting anyone who is sick to their home or to a healthcare facility.</p> <p>Develop a plan to support staff and attendees experiencing trauma or challenges related to COVID-19.</p> <p>Other: _____</p>	<p>Point Person(s): _____</p> <p>Immediately separate individual(s) with COVID-19 symptoms from others.</p> <p>Safely transport sick individuals home or to a healthcare facility, depending on how severe their symptoms are.</p> <p>If calling an ambulance or bringing someone to the hospital, try to call first to alert them that the person may have COVID-19.</p> <p>Close off areas used by a sick person and do not use these areas until after cleaning and disinfecting them (for outdoor areas, this includes surfaces or shared objects in the area, if applicable).</p> <p>Advise sick individuals that they should not return to the venue until they have met CDC's criteria to discontinue home isolation.</p> <p>Other: _____</p>	<p>Point Person(s): _____</p> <p>In accordance with state and local laws and regulations, notify local health officials, staff, and families of a person with COVID-19 while maintaining the individual's confidentiality in accordance with the Americans with Disabilities Act (ADA).</p> <p>Notify individuals of closures and restrictions put in place due to COVID-19 exposure.</p> <p>Advise those who have had close contact with a person diagnosed with COVID-19 to stay home, self-monitor for symptoms, and follow CDC guidance if symptoms develop.</p> <p>Close off the area and wait at least 24 hours before cleaning and disinfecting. If 24 hours is not feasible, wait as long as possible. Make sure of safe and correct use and storage of cleaning and disinfection products, including storing them securely away from children.</p> <p>Other: _____</p>

Notes and Next Steps:

Events and Gatherings: Daily/Weekly Readiness Assessment

Use the following tool the day of and during the event to monitor and maintain healthy behaviors, environments, and operations that reduce the spread of COVID-19.

Policies and Procedures	Facilities and Supplies	Education and Training
Point Person(s): _____	Point Person(s): _____	Point Person(s): _____
Maintain regular contact with local health authorities to ensure adherence to their most up-to-date guidance.	Monitor and restock supplies including:	Ensure that staff and attendees have received communication that they should not come to the event if they become sick with COVID-19 symptoms, test positive for COVID-19, or have been exposed to someone with symptoms or someone with suspected or confirmed COVID-19. Make sure they know that if they get sick at an event, they should notify event administrators (e.g., the designated COVID-19 point of contact).
Ensure an on-duty staff person is assigned to be responsible for responding to COVID-19 concerns.	soap	
Monitor absenteeism of staff.	water for hand hygiene	
Ensure the roster of trained back-up staff is updated in case a staff member is sick.	hand sanitizer (at least 60% alcohol)	
Conduct daily health checks (e.g., temperature screening and/or symptom checking) of staff and attendees, if feasible.	paper towels	
Ensure staff are using flexible worksites (e.g., telework) and flexible work hours (e.g., staggered shifts) when needed.	tissues	
Ensure staff and attendees have received communication about all safety protocols and COVID-19 related policies.	cleaning supplies	
Ensure that attendees have received communication about refund policies if they get sick and cannot attend the event.	EPA-approved disinfection supplies	Ensure that staff have reviewed the policies on flexible work and leave that encourage sick staff members to stay at home without fear of job loss or other consequences.
Ensure that all protocols developed, to limit contact between staff and attendees and ensure that attendees can maintain 6 feet of distance, are implemented.	cloth face coverings	Reinforce and monitor handwashing with soap and water for at least 20 seconds or using hand sanitizer containing at least 60% alcohol if soap and water are not readily available.
Ensure limited opportunities for both staff and attendees to share objects.	no-touch/foot pedal trash cans	Encourage staff to cover their mouth and nose with a tissue when coughing and sneezing and then wash hands with soap and water for at least 20 seconds.
Ensure the broadcasting of regular announcements on reducing the spread of COVID-19 on public address systems throughout the event.	no-touch soap/hand sanitizer dispensers	Ensure that communication about the proper use of cloth face coverings is easily seen or heard by staff and attendees. Cloth face coverings should not be placed on.
	disposable food service items	• children younger than 2 years old
	gloves	• anyone who has trouble breathing or is unconscious .
	other: _____	• anyone who is incapacitated or otherwise unable to remove the cover without help
	Monitor adherence to the schedule for increased, routine cleaning and disinfection of:	
	frequently touched surfaces	
	communal spaces	
	shared objects	
	other: _____	
	Monitor availability and use of gloves when removing garbage bags or handling and disposing of trash.	

Events and Gatherings: Daily/Weekly Readiness Assessment

(continued from previous page)

Policies and Procedures	Facilities and Supplies	Education and Training
<p>Review the most recent local/state regulatory agency policies for updates.</p> <p>Other: _____</p>	<p>Monitor safe and correct use and storage of cleaners and disinfectants, including storing products securely away from children.</p> <p>Ensure adequate ventilation when cleaners and disinfectants are used to prevent staff and attendees from inhaling toxic fumes.</p> <p>Monitor ventilation systems to determine if they are operating properly.</p> <p>Ensure that touchless payment options are operational.</p> <p>Ensure all physical barriers, such as sneeze guards and partitions, in areas where it is difficult for individuals to remain at least 6 feet apart are installed correctly.</p> <p>Ensure that all physical guides, such as tape on floors and signs on walls, to promote social distancing are easily seen.</p> <p>Ensure that all changes to the venue such as seating layout, entrances and exits are well marked and easy to understand.</p> <p>Ensure the staggered use and cleaning and disinfecting between uses of shared spaces.</p> <p>Ensure the circulation of outdoor air as much as possible throughout the event (e.g., opening windows and doors).</p> <p>Ensure that adequate supplies are available to minimize sharing of high-touch materials and monitor cleaning and disinfecting between use.</p> <p>Other: _____</p>	<p>Ensure that information on proper use, removal, and washing of cloth face coverings is available.</p> <p>Ensure that all staff present have been trained on relevant COVID-19 safety protocols.</p> <p>Other: _____</p>

Events and Gatherings: Daily/Weekly Readiness Assessment

Use the following tool the day of and during the event to monitor and maintain healthy behaviors, environments, and operations that reduce the spread of COVID-19.

Communication and Messaging

Point Person(s): _____

Ensure that [signs](#) are placed in highly visible locations that [promote everyday protective measures](#) such as wearing cloth face coverings and that describe how to [stop the spread](#) of germs at:

entrances

dining areas

restrooms

other _____

Continue to provide or update clear messages (e.g., [videos](#)) about behaviors that prevent spread of COVID-19 when communicating with staff and families on:

websites

email

[social media accounts](#)

other _____

Ensure that partner organizations such as vendors have received communication about all COVID-19 safety protocols.

Ensure [signs and communication](#) (e.g., [videos](#)) in alternative formats (e.g., large print posters, braille, American Sign Language) for people who have limited vision or are blind or people who are deaf or hard of hearing are readily available.

Make sure all staff and attendees have been informed which staff person is responsible for responding to COVID-19 concerns and how to contact them.

Encourage staff to take breaks from watching, reading, or listening to news stories about COVID-19, including social media if they are feeling overwhelmed or distressed throughout the event.

Promote healthy eating, exercising, getting sleep, and finding time to unwind among staff to help them cope with stress.

Encourage staff to talk with people they trust about their concerns and how they are feeling.

Other: _____

Action Planning—Notes and Next Steps

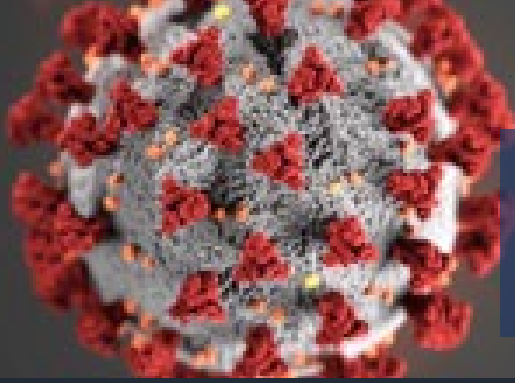
Point Person(s): _____

Use this space to note any required resources and next steps, or potential barriers and opportunities:

Events and Gatherings: End-of-Day Actions and Other Resources

Use the following resources to conduct end-of-day actions and address any additional considerations specific to your program or community context.

End-of-Day Actions	Other Considerations	Other Resources
<p>Point Person(s): _____</p> <p>Meet with the emergency operations coordinator and/or planning team(s) to discuss and note lessons learned.</p> <p>Determine ways to improve planning and implementation processes if the event will happen again.</p> <p>Inform staff and attendees of any changes made.</p> <p>Update your plans regularly according to the state and local situation and orders.</p> <p>Other: _____</p>	<p>Point Person(s): _____</p> <p>Use this space to note any other considerations unique to your program or community context.</p>	<p>Point Person(s): _____</p> <ul style="list-style-type: none">• Latest COVID-19 Information• Cleaning and Disinfection• Guidance for Businesses and Employers• Guidance for Schools and Childcare Centers• Guidance for Park Administrators• Shared and Congregate Housing• COVID-19 Prevention• Handwashing Information• Face Coverings• Social Distancing• COVID-19 Frequently Asked Questions• People at Higher Risk• People with Disabilities• Coping with Stress• HIPAA and COVID-19• CDC communication resources• Community Mitigation



LARGE OUTDOOR EVENTS GUIDANCE

Michigan.gov/Coronavirus

Issue Date: May 27, 2021

Executive Summary

MDHHS is providing guidance on how to hold safer large outdoor events – such as sporting events, festivals, and fairs – during the COVID-19 pandemic. This document provides general recommended guidance for how organizers for large outdoor events can create a safer environment.

Individuals are not required to wear face masks at outdoor events. However, the Michigan Department of Health and Human Services (MDHHS) recommends that individuals who are not yet fully vaccinated continue to wear face masks while in crowded spaces outdoors and practice social distancing.

While gathering in outdoor settings lowers the risk of COVID-19 transmission because of fresh air flow, it is still possible to breathe in enough of the respiratory droplets containing the virus that causes COVID-19 to become infected when gathered close to others unmasked.

As the epidemiology of COVID-19 around the country and the state of Michigan evolves, MDHHS will continue to review and update this guidance.

Recommended Mitigation Measures for Large Outdoor Events

MDHHS recommends the following infection control measures to reduce the risk of COVID-19 transmission in large outdoor event settings:

1. Infection Control Plans

Large event organizers may develop a plan to mitigate COVID-19 transmission. This plan should:

- Demonstrate that the event is designed such that groups of patrons can maintain six feet of distance from other groups
- Include entry and exit protocols that maintain physical distancing requirements to minimize congregation

- Cooperate with local public health officials during any case investigation and contact tracing
- Include specific protocols for social distancing (examples listed below)
- Be posted on a public website; and
- Be provided to the local health department at least seven days before scheduled events. (This submission does not constitute or require approval from the local health department, but rather is for awareness only.)

2. Food and Beverage Service Requirements

Food or beverages should only be consumed while seated in designated areas. While eating/drinking, no more than 6 people should be seated together in a group, and groups should be separated by at least 6 feet; groups should avoid mingling.

3. Wear Face Masks in Crowded Spaces

MDHHS strongly recommends that individuals continue to wear face masks while in crowded spaces outdoors, especially individuals who are not yet fully vaccinated.

- While gathering in outdoor settings lowers the risk of COVID-19 transmission because of fresh air flow, it is still possible to breathe in enough of the respiratory droplets containing the virus that causes COVID-19 to become infected when gathered close to others unmasked.

4. Participant Cohorts

It is best if participants stay in small groups or cohorts, while gathering at outdoor events.

- For outdoor events that have assigned seating, individuals should attempt to remain at least six feet from other cohorts throughout the duration of the event.

5. Physical Distancing Protocols

Organizers for outdoor events should develop plans to prevent congestion:

- Individuals should enter at designated sections of the venue during designated times to avoid mass congregation. MDHHS recommends scheduling a limited number of individuals to enter in 10-minute increments.
- Individuals should follow a staggered exit schedule as well.
 - o For example, spectators at sporting events should be dismissed by sections and required to exit at designated doors.
- Designate one-way stairwells or paths to minimize congestion.
- Establish capacity limits for restrooms and other enclosed spaces, such as gift shops.
- Institute distancing markers six feet apart for queues.

6. Self-Screening Practices

Individuals, including employees, should conduct self-screening for COVID-19 symptoms before attending an outdoor event.

- The free [MI Symptoms tool](#) can be used to complete self-screening for COVID-19 symptoms.

Individuals, including employees, should not attend any types of gatherings while [symptomatic](#) (even with a negative COVID-19 test or fully-vaccinated against COVID-19).

7. Contact Tracing Capabilities

Outdoor event organizers should collect and maintain contact information from all those in attendance to help inform contact tracing efforts.

- To expedite this process, MDHHS recommends prohibiting same-day ticket sales.
- Ticket re-sale and forwarding should be prohibited to maintain accurate contact tracing records.

Venues should help local health departments with contact tracing and quarantine and isolation requirements, that result from attendance of a large outdoor event.

8. Comprehensive Communications Strategy

Large event organizers should communicate public health guidance clearly and effectively to attendees and employees:

- Post information about the symptoms of COVID-19 in order to help attendees and employees to self-assess whether they have any symptoms.
- Display signs regarding COVID-19 mitigation measures throughout the venue.
- Make regular PA announcements regarding COVID-19 mitigation measures and other event rules.
- Provide a list of all nearby sites to receive a COVID-19 test to all individuals who attend large outdoor events.
 - o Please find a list of MDHHS COVID-19 testing sites [here](#).

9. Event Hygiene Procedures

Venues should establish a schedule for increased, routine cleaning to disinfect common spaces.

- Venues should use FDA-approved cleaning supplies that are listed [here](#).

Public event spaces should establish numerous hand sanitizing stations with hand sanitizers that are at least 60% alcohol.

MDHHS recommends utilizing contactless/no-touch practices whenever possible, including:

- Ticketed entry
- Concessions and other purchases
- Waste/recycling disposal

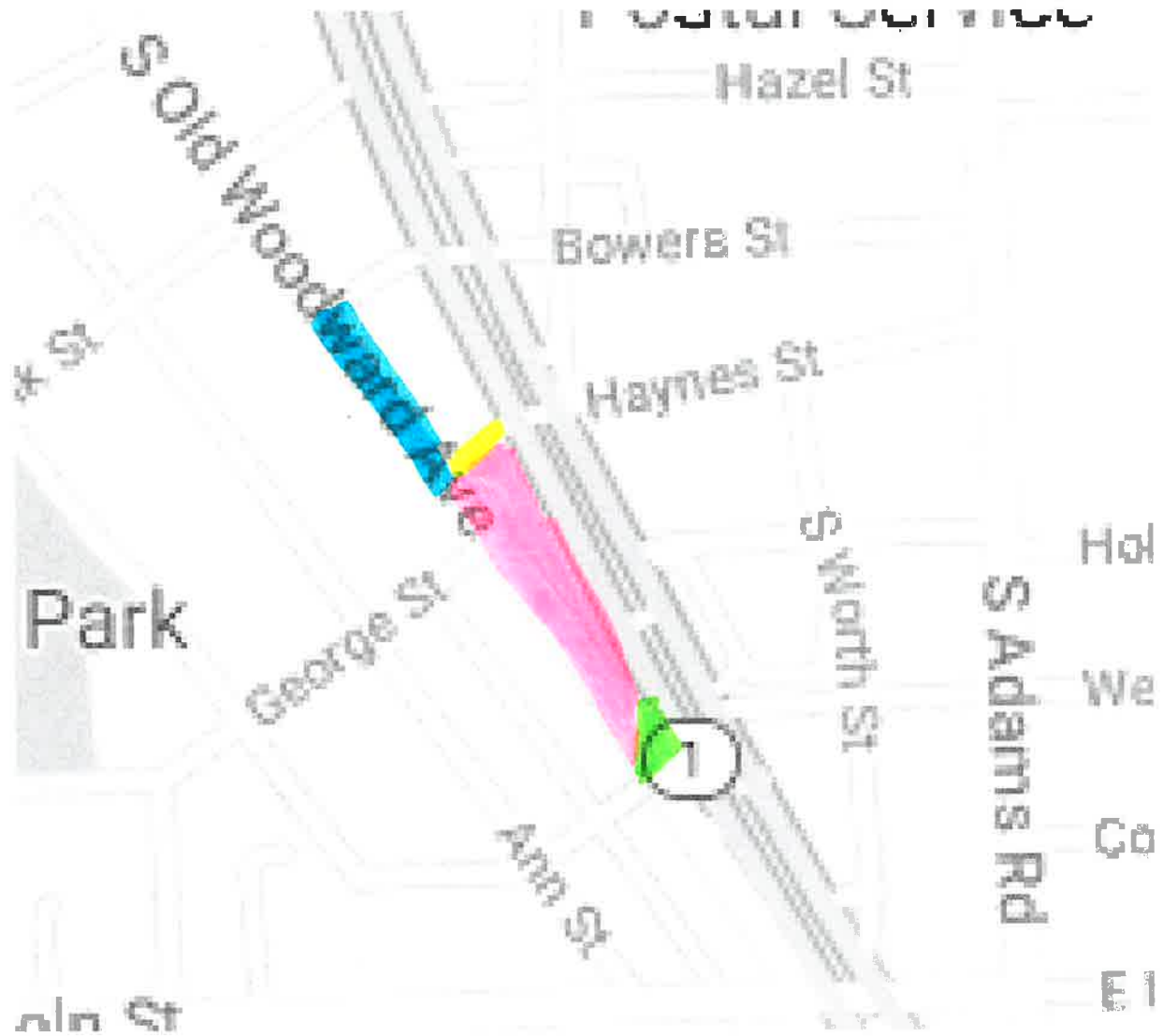
10. Testing

Encourage all individuals who attend large gatherings who are not fully vaccinated against COVID-19 to seek a COVID-19 test 1-3 days before the event.

For further information:

- [CDC Readiness and Planning Tool to Prevent the Spread of COVID-19 Events and Gatherings](#)
- [Considerations for Events and Gatherings | CDC](#)
- [Large Gatherings | CDC](#)

For the latest information on Michigan's response to COVID-19, please visit [Michigan.gov/Coronavirus](https://michigan.gov/Coronavirus). You may also call the COVID-19 Hotline at 888-535-6136 or email COVID19@michigan.gov.



- car clubs + vendors
- WXYZ staging area
- Chevy
- Woma tower



MEMORANDUM

Planning Division

DATE: June 7, 2021

TO: Thomas M. Markus, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Public Hearing for a Rezoning Request for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street from D3 to D4

INTRODUCTION:

The owner of the property known as 300 S. Old Woodward is seeking a lot split/rearrangement to allow for 3,104.39 sq.ft. on the western edge of 300 S. Old Woodward to be split from the existing parcel, and added to the parcel known as 294 E. Brown Street. In addition, the owner of 294 E. Brown Street is seeking a lot split/rearrangement to divide the existing parcel into two parcels, to allow for 1,962.79 sq.ft. on the southeastern edge of the parcel to be split and added to the parcel at 394 S. Old Woodward. Both lot splits/rearrangements, if approved, will allow for a swap of land between property owners that will create a rectangular lot at 294 E. Brown, as well as new parcels at 300 and 394 S. Old Woodward. The owner of the amended parcels at 300 and 394 S. Old Woodward is then seeking a lot combination to create a larger rectangular parcel on S. Old Woodward running south of E. Brown Street to Daines Street to allow the development of a four story mixed use building on the site.

The existing buildings (currently 300 and 394 S. Old Woodward) on the lot to be newly created are proposed to be demolished to construct a new 4 story mixed use building with retail and design uses on the first three floors, and a restaurant on the fourth floor. In order to permit the use of a restaurant on the fourth floor, the applicant is proposing a rezoning of the new parcel encompassing 300 - 394 S. Old Woodward and portions of 294 E. Brown from B-2 (General Business) and D-3 (Downtown Overlay) to B-2 (General Business) and D-4 (Downtown Overlay). The maximum height allowed in the D-4 zoning district is 4 stories with a bonus fifth story for residential. The applicant has stated they plan to limit a building to four stories.

In addition, the applicant will be proposing zoning amendments to Chapter 126, Zoning, of the City Code to allow the use of economic development liquor licenses with a Special Land Use Permit on this site, which will include an application for an amendment to Exhibit 1, Appendix C, to add the properties at 300 – 394 S. Old Woodward to this map. This request is discussed under separate cover.

LEGAL REVIEW:

The City Attorney has reviewed the application and has no concerns as to the form of the application.

FISCAL IMPACT:

Not applicable.

PUBLIC COMMUNICATIONS:

Prior to the application being considered by the City Commission, the City Clerk's office sent out notices to all property owners and tenants within 300 feet of 300 and 394 S. Old Woodward and 294 E. Brown Street seeking public comment on the proposal.

SUMMARY:

The Planning Division recommends that the City Commission conduct a public hearing to consider the rezoning of the new parcel encompassing 300 - 394 S. Old Woodward and portions of 294 E. Brown from B-2 (General Business) and D-3 (Downtown Overlay) to B-2 (General Business) and D-4 (Downtown Overlay).

ATTACHMENTS:

- Application for Rezoning
- Planning Board report dated April 23, 2021
- Relevant meeting minutes
- Plans for proposed development at 300 -394 S. Old Woodward as submitted to the Planning Board for the meeting of April 28, 2021.

SUGGESTED ACTION:

To APPROVE the rezoning of the new parcel encompassing 300 - 394 S. Old Woodward and portions of 294 E. Brown from B-2 (General Business) and D-3 (Downtown Overlay) to B-2 (General Business) and D-4 (Downtown Overlay);

OR

To DENY the rezoning of the new parcel encompassing 300 - 394 S. Old Woodward and portions of 294 E. Brown from B-2 (General Business) and D-3 (Downtown Overlay) to B-2 (General Business) and D-4 (Downtown Overlay);

OR

To POSTPONE the public hearing on the rezoning of the new parcel encompassing 300 - 394 S. Old Woodward and portions of 294 E. Brown from B-2 (General Business) and D-3 (Downtown Overlay) to B-2 (General Business) and D-4 (Downtown Overlay) to _____.



CONSENT OF PROPERTY OWNER

Frank T. Konjarevich or Lois H. Konjarevich, as Trustees for the Frank T. Konjarevich Rev. Liv. Trust dated 5/22/95
I, _____, OF THE STATE OF Michigan AND
(Name of Property Owner)
COUNTY OF Oakland STATE THE FOLLOWING:

1. That I am the owner of real estate located at 394 S. Old Woodward;
(Address of Affected Property)
2. That I have read and examined the Application for **ZONING MAP CHANGE** made to the City of
Birmingham by: RH, Inc.;
(Name of Applicant)
3. That I have no objections to, and consent to the request(s) described in the Application made to the City of
Birmingham.

Frank T. Konjarevich or Lois H. Konjarevich, as Trustees for the Frank T. Konjarevich Rev. Liv. Trust dated 5/22/95
Name of Owner (Printed): _____

Signature of Owner: Frank Konjarevich Date: 2/24/21

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

A letter of authority, or power of attorney, shall be attached in case the appeal is made by a person other than the actual owner of the property.

PRZ21-0001

Date Received: 3/4/21 Received By: _____

Resolution No. _____ Approved/Denied _____

Application Fee: \$1,500.00

Receipt Number _____

The petitioner shall be responsible for any costs incurred by consultant, including but not limited to traffic and environmental, contracted by the city to review the proposed site plan and/or community impact study as determined by the city planner.

LEGAL DESCRIPTION – PARCELS I & II

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

PARCEL I:

THE EAST 1/2 OF LOT(S) 11 OF BROWN'S ADDITION TO THE CITY OF BIRMINGHAM AND THE EAST 1/2 OF LOT 16 OF BROWN'S ADDITION NO. 1, IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING THE VACATED WEST 20 FEET OF ANN STREET ADJOINING LOT 11 AND THE VACATED WEST 19 FEET OF ANN STREET ADJOINING LOT 16.

PARCEL II:

THE WEST 1/2 OF LOT(S) 12 OF BROWN'S ADDITION TO THE VILLAGE (NOW CITY) OF BIRMINGHAM, OF PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, TOWNSHIP OF BLOOMFIELD (NOW CITY OF BIRMINGHAM), OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, ALSO LOT 15, ADDITION TO WILLIAM BROWN'S ADDITION NO. 1, BEING A PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING VACATED 20 FEET OF ANN STREET, ADJOINING THE WESTERLY SIDE OF LOT 12 AND VACATED 21 FEET OF ANN STREET ADJOINING THE WESTERLY SIDE OF LOT 15.

ADDRESS: 294 E. BROWN STREET, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-021

LEGAL DESCRIPTION – PARCEL 2

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

THE EASTERLY 50 FEET OF LOT 12, AND THE WESTERLY PART OF LOT 13, MEASURING 82.45 FEET ON THE NORTH LOT LINE AND 82.48 FEET ON THE SOUTH LOT LINE OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 300 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-006

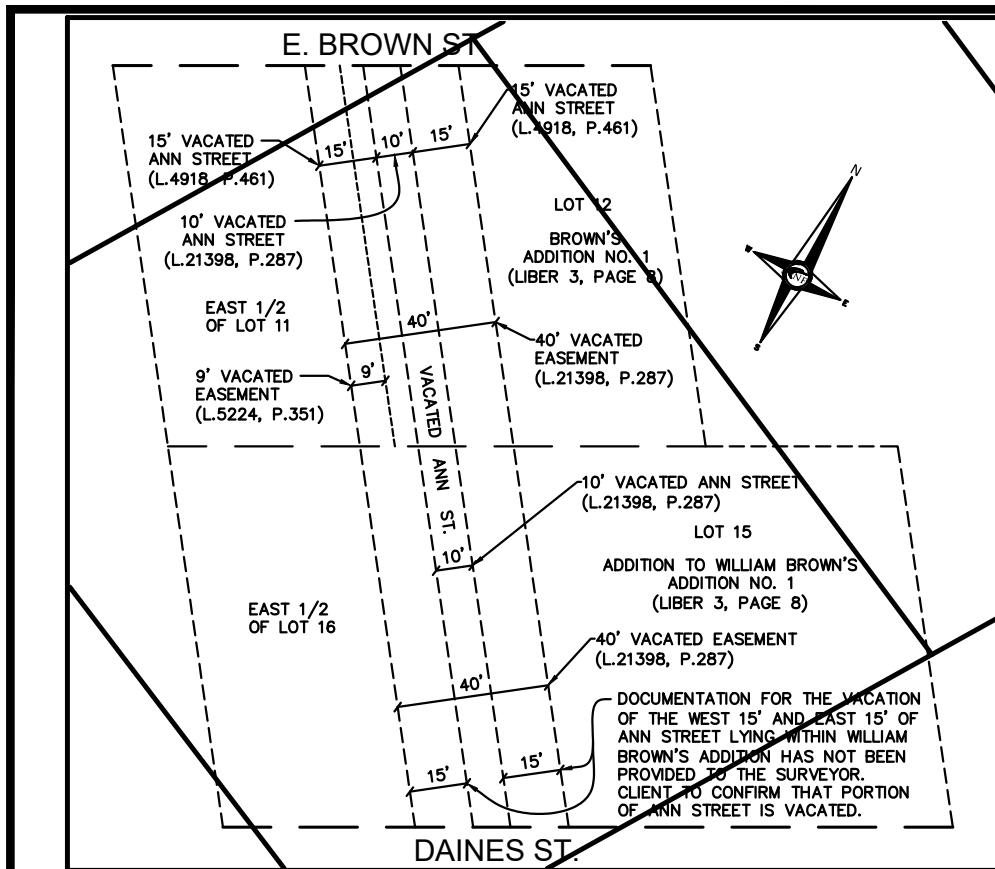
LEGAL DESCRIPTION – PARCEL 3

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

LOT(S) 14, EXCEPT THAT PART TAKEN FOR WIDENING WOODWARD AVENUE OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 394 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-014



FLOOD HAZARD NOTE

THE PROPERTY DESCRIBED ON THIS SURVEY DOES NOT LIE WITHIN A SPECIAL FLOOD HAZARD AREA AS DEFINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY. THE PROPERTY LIES WITHIN ZONE X OF THE FLOOD INSURANCE RATE MAP IDENTIFIED AS MAP NO. 28125C05377 BEARING AN EFFECTIVE DATE OF 09-29-2006.

MISS DIG / UTILITY DISCLAIMER NOTE

A MISS DIG TICKET NUMBER A033240501, PURSUANT TO MICHIGAN PUBLIC ACT 174 WAS ENTERED FOR THE SURVEYED PROPERTY. DUE TO THE EXTENDED REPORTING PERIOD FOR UNDERGROUND FACILITY OWNERS TO PROVIDE THEIR RECORDS, THE SURVEY MAY NOT REFLECT ALL THE UTILITIES AT THE TIME THE SURVEY WAS ISSUED ON DECEMBER 29, 2020. THE SURVEY ONLY REFLECTS THOSE UTILITIES WHICH COULD BE OBSERVED BY THE SURVEYOR IN THE FIELD OR AS DEPICTED BY THE UTILITY COMPANY RECORDS FURNISH PRIOR TO THE DATE THIS SURVEY WAS ISSUED. THE CLIENT AND/OR THEIR AUTHORIZED AGENT SHALL VERIFY WITH THE FACILITY OWNERS AND/OR THEIR AUTHORIZED AGENTS, THE COMPLETENESS AND EXACTNESS OF THE UTILITIES LOCATION.

TOPOGRAPHIC SURVEY NOTES

ALL ELEVATIONS ARE EXISTING ELEVATIONS, UNLESS OTHERWISE NOTED.

UTILITY LOCATIONS WERE OBTAINED FROM MUNICIPAL OFFICIALS AND RECORDS OF UTILITY COMPANIES, AND NO GUARANTEE CAN BE MADE TO THE COMPLETENESS, OR EXACTNESS OF LOCATION.

ALTA SURVEY NOTES

THERE IS NO VISIBLE EVIDENCE OF CURRENT EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADJUSTMENTS.

THERE IS NO PROPOSED CHANGES IN STREET RIGHT OF WAY LINES AND THERE IS NO EVIDENCE OF RECENT STREET OR SIDEWALK CONSTRUCTION OR REPAIR.

THERE IS NO VISIBLE EVIDENCE OF SITE USE AS A SOLID WASTE DUMP, SUMP OR SANITARY LANDFILL.

THERE IS NO VISIBLE EVIDENCE OF ANY WETLAND AREAS.

LOCATION OF UTILITIES EXISTING ON OR SERVING THE PROPERTY AS DETERMINED BY OBSERVED EVIDENCE OR EVIDENCE FROM PLANS REQUESTED BY THE SURVEYOR AND OBTAINED FROM UTILITY COMPANIES.

THE SUBJECT PROPERTY HAS ACCESS TO S. OLD WOODWARD AVENUE, E. BROWN STREET AND DAINES STREET, ALL BEING A PUBLICLY DEDICATED ROAD.

BASIS OF BEARING NOTE

ALL BEARINGS ARE IN RELATION TO THE PREVIOUSLY ESTABLISHED SOUTH RIGHT-OF-WAY LINE OF STREET (60' WIDE) (NOW KNOWN AS BROWN STREET) OF BROWN'S ADDITION AS RECORDED IN LIBER 3 OF PLATS, PAGE 8, OAKLAND COUNTY RECORDS. (N.62.1°)

DATUM NOTE

ALL ELEVATIONS SHOWN HEREON ARE ON THE CITY OF BIRMINGHAM'S VERTICAL DATUM, REFERENCED HEREON, IS ONE (1.00) FOOT HIGHER THAN THE NORTH AMERICAN VERTICAL DATUM OF 1988 (N.A.V.D. 88).

SURVEY DATA

SITE AREA:
PARCEL I: 13,818.22 SQUARE FEET OR 0.317 ACRES
PARCEL II: 18,892.08 SQUARE FEET OR 0.433 ACRES
PARCEL 2: 13,204.93 SQUARE FEET OR 0.303 ACRES
PARCEL 3: 8,157.75 SQUARE FEET OR 0.187 ACRES
TOTAL: 54,052.96 SQUARE FEET OR 1.24 ACRES

ZONED:
B2, GENERAL BUSINESS DISTRICT

PARKING SPACES:

PARCEL I: 9 REGULAR SPACES
PARCEL II: 46 REGULAR SPACES AND 3 BARRIER-FREE SPACES
PARCEL 2: 20 REGULAR SPACES AND 1 BARRIER-FREE SPACE
PARCEL 3: NO ON-SITE PARKING SPACES

A SURVEYOR CANNOT MAKE A CERTIFICATION ON THE BASIS OF AN INTERPRETATION OR OPINION OF ANOTHER PARTY. A ZONING ENDORSEMENT LETTER SHOULD BE OBTAINED FROM THE CITY OF BIRMINGHAM TO INSURE CONFORMITY AS WELL AS MAKE A FINAL DETERMINATION OF THE REQUIRED BUILDING SETBACK REQUIREMENTS.

DTE DISCLAIMER NOTE

PLEASE NOTE THAT DTE HAS NEW REGULATIONS THAT MAY IMPACT DEVELOPMENT OUTSIDE THEIR EASEMENT OR THE PUBLIC RIGHT OF WAY. CLIENT SHALL CONTACT DTE TO DETERMINE THE "NEW STRUCTURES AND POWER LINE" REQUIREMENTS AS THEY MAY APPLY TO ANY FUTURE BUILDING OR RENOVATION OF A STRUCTURE. DTE ENERGY CAN BE CONTACTED AT 800-477-4747

LEGAL DESCRIPTION - PARCEL 2 (PER TITLE COMMITMENT)

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

THE EASTERLY 50 FEET OF LOT 12, AND THE WESTERLY PART OF LOT 13, MEASURING 82.45 FEET ON THE NORTH LOT LINE AND 82.48 FEET ON THE SOUTH LOT LINE OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 300 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-006

TITLE REPORT NOTES - PARCEL 2

REFERENCE FIRST AMERICAN TITLE INSURANCE COMPANY FILE NUMBER: 910055, COMMITMENT DATE: DECEMBER 21, 2020, REVISION B.

SCHEDULE B, PART II, EXCEPTIONS:

- EXCEPTIONS: 1, 4, 5, 6, 7, 8, 10, 11, 14 AND 15 REFER TO THE OWNERSHIP OF THE PROPERTY AND/OR ARE NOT PLOTTABLE.
- ANY FACTS, RIGHTS, INTERESTS OR CLAIMS NOT SHOWN BY THE PUBLIC RECORDS BUT THAT COULD BE ASCERTAINED BY MAKING INQUIRY OF PERSONS IN POSSESSION THEREOF OF THE LAND.
- EASEMENTS, ENCUMBRANCES, OR CLAIMS THEREOF, NOT SHOWN BY THE PUBLIC RECORDS.
- TERMS AND CONDITIONS CONTAINED IN RESOLUTION AS DISCLOSED BY INSTRUMENT RECORDED IN LIBER 8715, PAGE 137, (NO EASEMENTS OR RESTRICTIONS WITHIN SAID DOCUMENT, NOT PLOTTED).
- INTEREST, IF ANY, OF THE UNITED STATES, STATE OF MICHIGAN, OR ANY POLITICAL SUBDIVISION THEREOF, IN THE OIL, GAS AND MINERALS IN AND UNDER THAT MAY BE PRODUCED FROM THE CAPTIONED LAND.
- RIGHTS OF TENANTS, IF ANY, UNDER ANY UNRECORDED LEASES.

LEGAL DESCRIPTION - PARCEL 3 (PER TITLE COMMITMENT)

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

LOT(S) 14, EXCEPT THAT PART TAKEN FOR WIDENING WOODWARD AVENUE OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1, ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 394 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-014

TITLE REPORT NOTES - PARCEL 3

REFERENCE FIRST AMERICAN TITLE INSURANCE COMPANY FILE NUMBER: 910145, COMMITMENT DATE: DECEMBER 21, 2020, REVISION: A.

SCHEDULE B, PART II, EXCEPTIONS:

- EXCEPTIONS: 1, 4, 5, 6, 7, 8, 10, 13 AND 14 REFER TO THE OWNERSHIP OF THE PROPERTY AND/OR ARE NOT PLOTTABLE.
- ANY FACTS, RIGHTS, INTERESTS OR CLAIMS NOT SHOWN BY THE PUBLIC RECORDS BUT THAT COULD BE ASCERTAINED BY MAKING INQUIRY OF PERSONS IN POSSESSION THEREOF OF THE LAND.
- EASEMENTS, ENCUMBRANCES, OR CLAIMS THEREOF, NOT SHOWN BY THE PUBLIC RECORDS.
- TERMS AND CONDITIONS CONTAINED IN RESOLUTION AS DISCLOSED BY INSTRUMENT RECORDED IN LIBER 8715, PAGE 137, (NO EASEMENTS OR RESTRICTIONS WITHIN SAID DOCUMENT, NOT PLOTTED).
- INTEREST, IF ANY, OF THE UNITED STATES, STATE OF MICHIGAN, OR ANY POLITICAL SUBDIVISION THEREOF, IN THE OIL, GAS AND MINERALS IN AND UNDER THAT MAY BE PRODUCED FROM THE CAPTIONED LAND.
- RIGHTS OF TENANTS, IF ANY, UNDER ANY UNRECORDED LEASES.

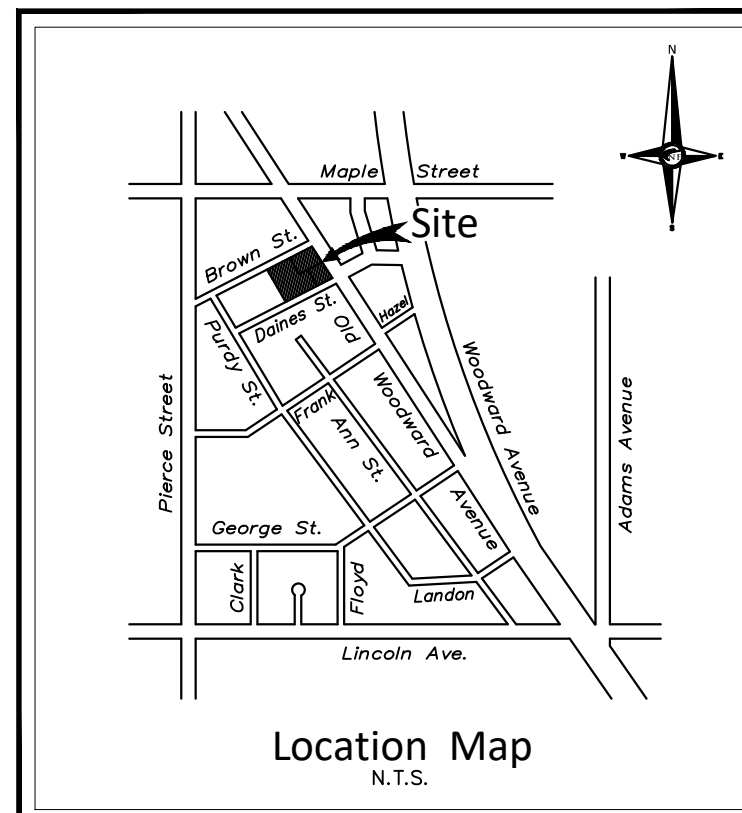
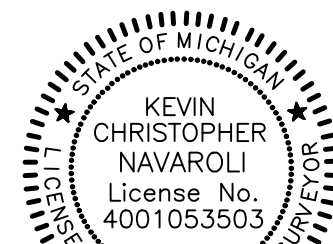
CERTIFICATE OF SURVEY

CERTIFIED TO:

-PURCHASER'S ASSIGNEE
-TROTTER PROPERTIES 294, LLC, A MICHIGAN LIMITED LIABILITY COMPANY, AS TO PARCEL 1
-BRB EQUITABLE, L.L.C., AS TO PARCEL 2
-FRANK T. KONJAREVICH OR LOS H. KONJAREVICH (OR SUCCESSOR TRUSTEES) AS THE TRUSTEE FOR THE FRANK T. KONJAREVICH REVOCABLE LIVING TRUST DATED MAY 22, 1995, AS TO PARCEL 3
-FIRST AMERICAN TITLE INSURANCE COMPANY AND EACH OF THEIR RESPECTIVE SUCCESSORS AND/OR ASSIGNS AS THEIR INTERESTS MAY APPEAR

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDE ITEMS 1, 2, 3, 4, 6(a), 7(a), 7(b)(1), 7(c), 8, 9, 11, 13, 14, 16, 17, 18 AND 20 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON DECEMBER 16, 2020.

Kevin Navaroli
KEVIN NAVAROLI, P.S. NO. 4001053503 DATE 1-24-2021



LEGAL DESCRIPTION - PARCELS I & II (PER TITLE COMMITMENT)

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

PARCEL I: THE EAST 1/2 OF LOT(S) 11 OF BROWN'S ADDITION TO THE CITY OF BIRMINGHAM AND THE EAST 1/2 OF LOT 16 OF BROWN'S ADDITION NO. 1, IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING THE VACATED WEST 20 FEET OF ANN STREET ADJOINING LOT 11 AND THE VACATED WEST 19 FEET OF ANN STREET ADJOINING LOT 16.

PARCEL II: THE WEST 1/2 OF LOT(S) 12 OF BROWN'S ADDITION TO THE VILLAGE (NOW CITY) OF BIRMINGHAM, OF PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, TOWNSHIP OF BLOOMFIELD (NOW CITY OF BIRMINGHAM), OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, ALSO LOT 15, ADDITION TO WILLIAM BROWN'S ADDITION NO. 1, BEING A PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST ACCORDING TO PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING VACATED 20 FEET OF ANN STREET, ADJOINING THE WESTERLY SIDE OF LOT 12 AND VACATED 21 FEET OF ANN STREET ADJOINING THE WESTERLY SIDE OF LOT 15.

ADDRESS: 294 E. BROWN STREET, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-021

TITLE REPORT NOTES - PARCELS I & II

REFERENCE FIRST AMERICAN TITLE INSURANCE COMPANY FILE NUMBER: 915853, COMMITMENT DATE: DECEMBER 8, 2020.

SCHEDULE B, PART II, EXCEPTIONS:

- EXCEPTIONS: 1, 4, 5, 6, 7, 8 AND 16 REFER TO THE OWNERSHIP OF THE PROPERTY AND/OR ARE NOT PLOTTABLE.
- ANY FACTS, RIGHTS, INTERESTS OR CLAIMS NOT SHOWN BY THE PUBLIC RECORDS BUT THAT COULD BE ASCERTAINED BY MAKING INQUIRY OF PERSONS IN POSSESSION THEREOF OF THE LAND.
- EASEMENTS, ENCUMBRANCES, OR CLAIMS THEREOF, NOT SHOWN BY THE PUBLIC RECORDS.
- TERMS AND CONDITIONS CONTAINED IN RESOLUTION AS DISCLOSED BY INSTRUMENT RECORDED IN LIBER 8715, PAGE 137, (NO EASEMENTS OR RESTRICTIONS WITHIN SAID DOCUMENT, NOT PLOTTED).
- INTEREST, IF ANY, OF THE UNITED STATES, STATE OF MICHIGAN, OR ANY POLITICAL SUBDIVISION THEREOF, IN THE OIL, GAS AND MINERALS IN AND UNDER THAT MAY BE PRODUCED FROM THE CAPTIONED LAND.
- RIGHTS OF TENANTS, IF ANY, UNDER ANY UNRECORDED LEASES.

NOTE: DOCUMENTATION FOR THE VACATION OF THE WEST 15 FEET AND EAST 15 FEET OF ANN STREET Lying WITHIN WILLIAMS BROWN'S ADDITION HAS NOT BEEN PROVIDED TO THE SURVEYOR. CLIENT TO CONFIRM THAT PORTION OF ANN STREET IS VACATED.

LEGEND

MANHOLE(MH)	EXISTING SANITARY SEWER
CO	EXISTING SAN. CLEAN OUT
HYDRANT(HYD)	EXISTING WATER MAIN
GATE VALVE(GVW)	EXISTING STORM SEWER
MANHOLE(MH)	CATCH BASIN(CB)
CB	EX. BEEHIVE CATCH BASIN
UTILITY POLE	EX. UNDERGROUND (UG) CABLE
GUY WIRE	OVERHEAD (OH) LINES
LP	LIGHT POLE
↑	SIGN
ASPH.	EXISTING GAS MAIN
CONC.	ASPHALT
FD. / FND.	CONCRETE
RET. WALL	FOUND
R.O.W.	RETAINING WALL
SPK	RIGHT-OF-WAY
(TYP)	SET PK NAIL
(R)	TYPICAL
(M)	RECORD
C/L	MEASURED
PROPERTY LINE	CENTERLINE
GAS METER	PROPERTY LINE
ELECTRIC METER	LANDSCAPE
PARKING METER	
AIR CONDITIONING UNIT	
LANDSCAPE	



NOWAK & FRAUS ENGINEERS

CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL (248) 332-7931
FAX (248) 332-8257
WWW.NOWAKFRAUS.COM

SEAL

PROJECT

294 E. Brown St. and
300 & 394
S. Old Woodward Ave.
Birmingham, MI 48009

CLIENT

Saroki Architecture
430 N. Old Woodward Ave.
Birmingham, MI 48009

Contact: Victor Saroki
Phone: 248.258.5707

PROJECT LOCATION

Part of the NE 1/4
of Section 36,
T.2N., R.10E.,
City of Birmingham,
Oakland County, Michigan

SHEET

ALTA/NSPS Land Title /
Topographic Survey



Know what's below
Call before you dig.

DATE ISSUED/REVISED

00-00-00

DRAWN BY:

M. Carnaghi

DESIGNED BY:

APPROVED BY:

K. Navaroli

DATE:

February 24, 2021

SCALE: 1" = 20'

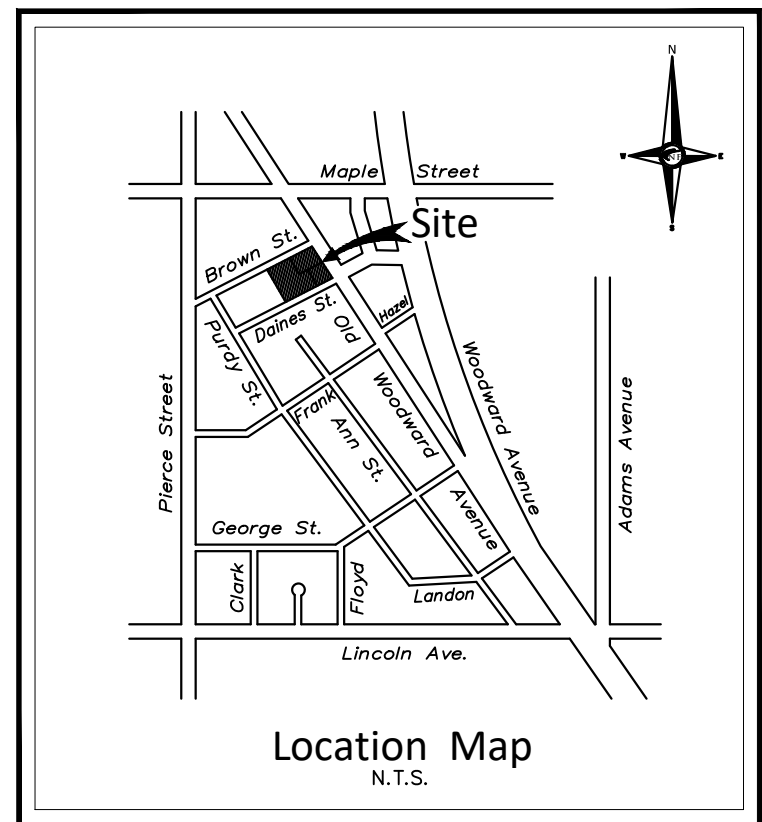
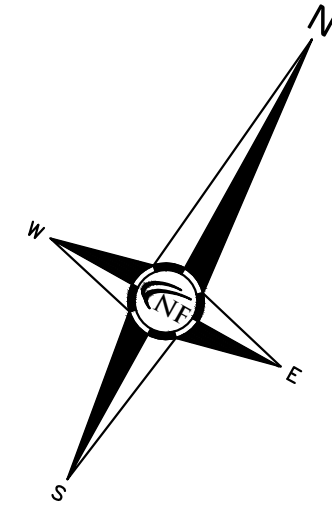
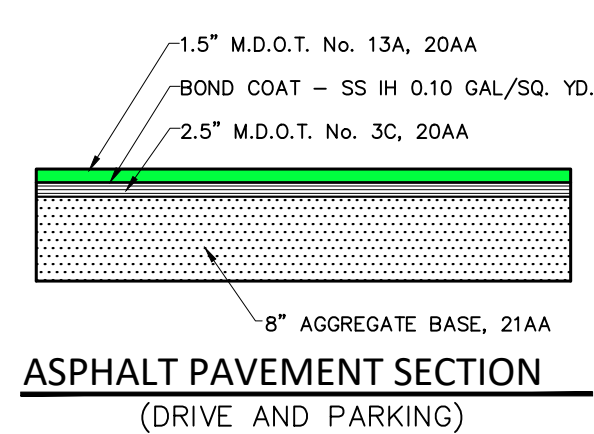
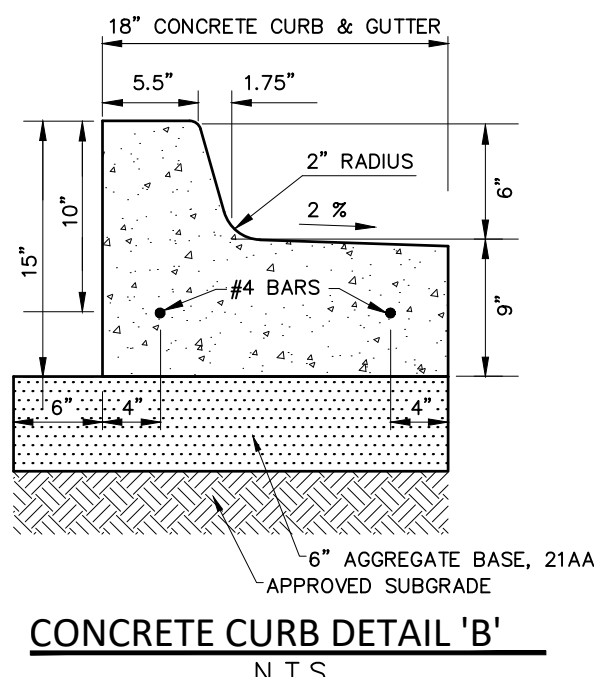
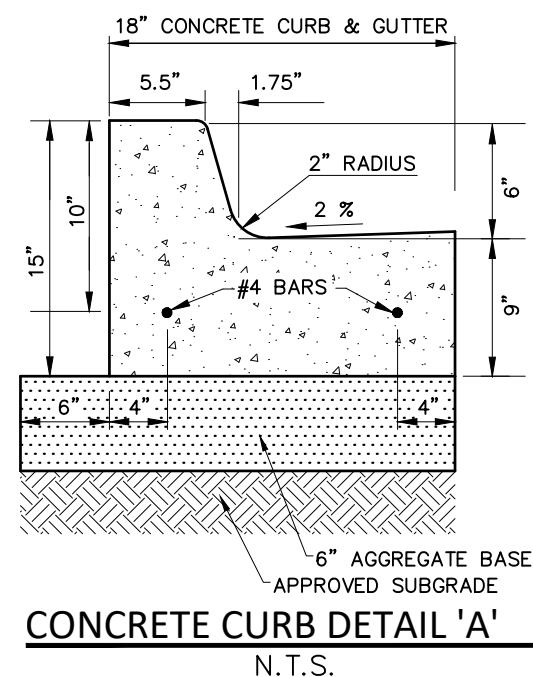
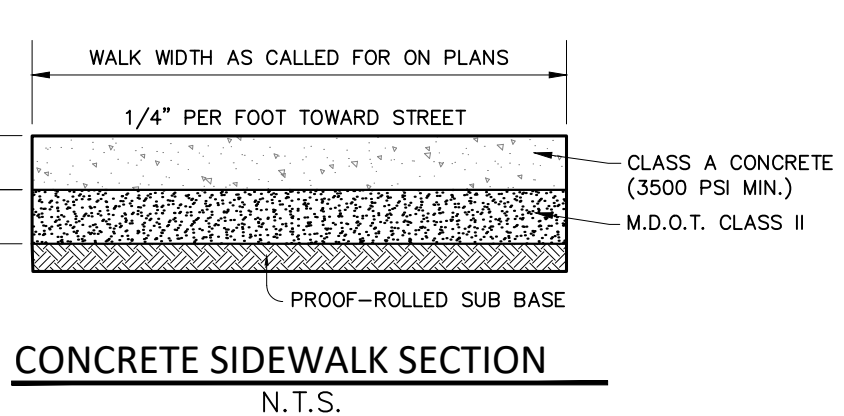
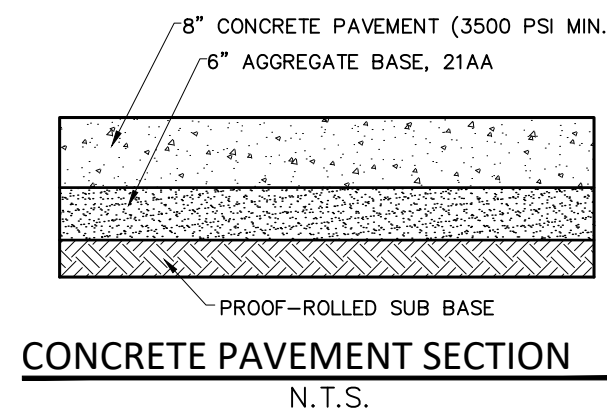
20 10 0 10 20 30

NFE JOB NO.

M106

SHEET NO.

SP-1



NOWAK & FRAUS ENGINEERS
CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

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46777 WOODWARD AVE.
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TEL. (248) 332-7931
FAX. (248) 332-8257
WWW.NOWAKFRAUS.COM

GENERAL PAVING NOTES

PAVEMENT SHALL BE OF THE TYPE, THICKNESS AND CROSS SECTION AS INDICATED ON THE PLANS AND AS FOLLOWS:

- CONCRETE:** PORTLAND CEMENT TYPE IA (AIR-ENTRAINED) WITH A MINIMUM CEMENT CONTENT OF SIX SACKS PER CUBIC YARD, MINIMUM 28 DAY COMPRESSIVE STRENGTH OF 3,500 PSI AND A SLUMP OF 1 1/2 TO 3 INCHES.
- ASPHALT:** BASE COURSE - MDOT BITUMINOUS MIXTURE NO. 1100L, 20AA; SURFACE COURSE - MDOT BITUMINOUS MIXTURE NO. 1100T, 20AA; ASPHALT CEMENT PENETRATION GRADE 85-100, BOND COAT - MDOT SS-1H EMULSION AT 0.10 GALLON PER SQUARE YARD, MAXIMUM 2 INCH LIFT.

PAVEMENT BASE SHALL BE COMPACTED TO 95% OF THE MAXIMUM DENSITY (MODIFIED PROCTOR) PRIOR TO PLACEMENT OF PROPOSED PAVEMENT. EXISTING SUB-BASE SHALL BE PROOF-ROLLED IN THE PRESENCE OF THE ENGINEER TO DETERMINE STABILITY.

ALL CONCRETE PAVEMENT, DRIVEWAYS, CURB & GUTTER, ETC., SHALL BE SPRAY CURED WITH WHITE MEMBRANE CURING COMPOUND IMMEDIATELY FOLLOWING FINISHING OPERATION.

ALL CONCRETE PAVEMENT JOINTS SHALL BE FILLED WITH HOT POURED RUBBERIZED ASPHALT JOINT SEALING COMPOUND IMMEDIATELY AFTER SAWCUT OPERATION. FEDERAL SPECIFICATION SS-5184.

ALL WORKMANSHIP AND MATERIALS SHALL BE IN ACCORDANCE WITH THE CURRENT STANDARDS AND SPECIFICATIONS OF THE MUNICIPALITY AND THE MICHIGAN DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR CONSTRUCTION, CURRENT EDITION.

ALL TOP OF CURB ELEVATIONS, AS SHOWN ON THE PLANS, ARE CALCULATED FOR A 6" CONCRETE CURB UNLESS OTHERWISE NOTED.

ALL SIDEWALK RAMPS, CONFORMING TO PUBLIC ACT NO. 8, 1993, SHALL BE INSTALLED AS INDICATED ON THE PLANS.

CONSTRUCTION OF A NEW OR RECONSTRUCTED DRIVE APPROACH CONNECTING TO AN EXISTING STATE OR COUNTY ROADWAY SHALL BE ALLOWED ONLY AFTER AN APPROVED PERMIT HAS BEEN SECURED FROM THE AGENCY HAVING JURISDICTION OVER SAID ROADWAY.

FOR ANY WORK WITHIN THE PUBLIC RIGHT-OF-WAY, THE CONTRACTOR SHALL PAY FOR AND SECURE ALL NECESSARY PERMITS AND LIKewise ARRANGE FOR ALL INSPECTION.

EXISTING TOPSOIL, VEGETATION AND ORGANIC MATERIALS SHALL BE STRIPPED AND REMOVED FROM PROPOSED PAVEMENT AREA PRIOR TO PLACEMENT OF BASE MATERIALS.

EXPANSION JOINTS SHOULD BE INSTALLED AT THE END OF ALL INTERSECTION RADI.

SIDEWALK RAMPS, CONFORMING TO PUBLIC ACT NO. 8, 1973, SHALL BE INSTALLED AS SHOWN AT ALL STREET INTERSECTIONS AND AT ALL BARRIER FREE PARKING AREAS AS INDICATED ON THE PLANS.

ALL PAVEMENT AREAS SHALL BE PROOF-ROLLED UNDER THE SUPERVISION OF A GEOTECHNICAL ENGINEER PRIOR TO THE PLACEMENT OF BASE MATERIALS AND PAVING MATERIALS.

FILL AREAS SHALL BE MACHINE COMPACTED IN UNIFORM LIFTS NOT EXCEEDING 9 INCHES THICK TO 98% OF THE MAXIMUM DENSITY (MODIFIED PROCTOR) PRIOR TO PLACEMENT OF PROPOSED PAVEMENT.

COVID-19 PANDEMIC CONDITION

DUE TO THE UNPRECEDENTED COVID-19 PANDEMIC CONDITION AND RESTRICTIONS THE STANDARD DATA WHICH IS OBTAINED FROM MISS DIG / CALL 811 HAS BEEN RESTRICTED TO CRITICAL INFRASTRUCTURE ONLY. NFE WILL MAKE EVERY EFFORT TO OBTAIN CURRENT REFERENCE DATA FROM THE GOVERNING AGENCIES. HOWEVER, THIS DATA MAY BE PARTIAL OR INCOMPLETE. NFE WILL ISSUE THIS SURVEY WITH THE BEST AVAILABLE INFORMATION FROM OUR FIELD SURVEY AND OTHER AVAILABLE REFERENCE DATA. NFE WILL NOT BE RESPONSIBLE FOR INCOMPLETE OR PARTIAL DATA PROVIDED BY THIRD PARTY FACILITY OWNERS. NFE IS NOT RESPONSIBLE FOR BURIED UTILITIES FOR WHICH PLANS WERE NOT FURNISHED OR CANNOT BE OBSERVED IN THE FIELD.

ALL CONSTRUCTION DOCUMENTS WILL BE UPDATED WHEN THE UTILITY INFORMATION IS PROVIDED BY THE FACILITY OWNER UP UNTIL THE TIME OF SUBMITTAL ONCE THE PLANS HAVE BEEN SUBMITTED AND APPROVED IT IS THE CONTRACTORS RESPONSIBILITY TO OBTAIN A MISS DIG TICKET PRIOR TO COMMENCING ANY CONSTRUCTION REQUIRING EXCAVATION. CONTRACTOR SHALL IMMEDIATELY NOTIFY NFE OF ANY UTILITIES FLAGGED BY MISS DIG THAT WERE NOT SHOWN ON THE PLANS OR UTILITIES UNCOVERED DURING THEIR WORK.

PAVING LEGEND

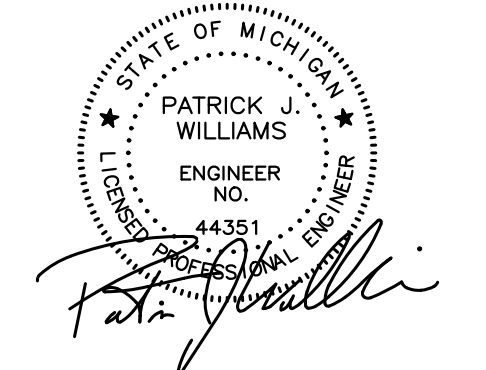
- PROPOSED CONCRETE PAVEMENT
- PROPOSED ASPHALT PAVEMENT

LEGEND

- MANHOLE
- HYDRANT
- MANHOLE CATCH BASIN
- UTILITY POLE
- GUY POLE
- GUY WIRE
- EXISTING SANITARY SEWER
- SAN. CLEAN OUT
- EXISTING WATERMAIN
- EXISTING STORM SEWER
- EX. R. Y. CATCH BASIN
- EXISTING BURIED CABLES
- OVERHEAD LINES
- LIGHT POLE
- SIGN
- EXISTING GAS MAIN
- PR. SANITARY SEWER
- PR. WATER MAIN
- PR. STORM SEWER
- PR. R. Y. CATCH BASIN
- PROPOSED LIGHT POLE



SEAL



PROJECT

294 E. Brown St. and
300 & 394
S. Old Woodward Ave.
Birmingham, MI 48009

CLIENT

Saroki Architecture
430 N. Old Woodward Ave.
Birmingham, MI 48009

Contact: Victor Saroki
Phone: 248.258.5707

PROJECT LOCATION

Part of the NE 1/4
of Section 36
T.2N., R.10E.,
City of Birmingham,
Oakland County, Michigan

SHEET

Dimensional Site Plan



DATE ISSUED/REVISED

00-00-00

DRAWN BY:

A. Eizember

DESIGNED BY:

A. Eizember

APPROVED BY:

P. Williams

DATE:

February 24, 2021

SCALE: 1" = 20'

20 10 0 10 20 30

NFE JOB NO.

M106

SHEET NO.

SP-2

DATE: April 23, 2021

TO: Planning Board

FROM: Jana Ecker, Planning Director

SUBJECT: Rezoning Request for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street

The subject site includes the properties known as 300 – 394 S. Old Woodward, and portions of the property located at 294 E. Brown. These properties are currently occupied by Capital Title/Lutz, Roche Bobois/Frank's Shoe Service and Coldwell Banker Weir Manual. The entire property has a total land area of 54,052.96 sq.ft. or 1.24 acres. It is located on the west side of S. Old Woodward, including the entire block of S. Old Woodward from Brown Street south to Daines Street. All parcels are zoned B2 General Business and D-3 in the Downtown Birmingham Overlay District.

The applicant is proposing to rearrange the parcel lines for the above three properties to create two new parcels through the lot split and combination process. The applicant is proposing to split off the westernmost portion of the 300 S. Old Woodward (currently parking lot) and combine this portion with the parcel at 294 E. Brown Street. In addition, the applicant is proposing to split off the easternmost portion of the L-shaped parcel at 294 E. Brown and combine this with the parcel at 394 S. Old Woodward. Finally, the applicant proposes to combine the new parcels at 300 and 394 S. Old Woodward to create one large new parcel that will run from Brown south to Daines. **The applicant is required to obtain approval of the City Commission for the proposed lot splits and lot combination to create the new lot that is the subject of this application and shown on the site plan.** The applicant has submitted applications to the City Commission for their review. On April 12, 2021, the City Commission set a public hearing date of May 10, 2021 to consider the requests for lot split/rearrangements and lot combination for the subject properties.

The existing buildings (currently 300 and 394 S. Old Woodward) on the lot to be newly created are proposed to be demolished to construct a new 4 story mixed use building with retail and design uses on the first three floors, and a restaurant on the fourth floor. One level of underground parking is proposed to house 24 cars. As the building is located within the Parking Assessment District, no on-site parking is required for the proposed commercial uses. The applicant is required to obtain site plan approval for the proposed building, as well as acceptance of a Community Impact Study, as the building is larger than 20,000 sq.ft. in size. The Planning Board reviewed the Community Impact Study and Preliminary Site Plan on March 26, 2021. After much discussion, the Planning Board postponed both matters to the April 28, 2021 meeting to allow the applicant to address concerns about the traffic study methodology with the City's transportation consultants.

In order to permit the use of a restaurant on the fourth floor, the applicant is proposing a rezoning of the new parcel encompassing 300 - 394 S. Old Woodward and portions of 294 E. Brown. Thus, the applicant has requested that the Planning Board hold a public hearing to consider the rezoning of the property from B-2 (General Business) and D-3 (Downtown Overlay) to B-2 (General Business) and D-4 (Downtown Overlay). The maximum height allowed in the D-4 zoning district is 4 stories with a bonus fifth story for residential. The applicant has stated they plan to limit a building to four

stories.

In addition, the applicant will be proposing zoning amendments to Chapter 126, Zoning, of the City Code to allow the use of economic development liquor licenses with a Special Land Use Permit on this site, which will include an application for an amendment to Exhibit 1, Appendix C, to add the properties at 300 – 394 S. Old Woodward to this map. This request is discussed under separate cover.

History of Property

Information gathered by PM Environmental for a Phase 1 Environmental Site Assessment on the property history revealed that the subject property was previously used for automotive service and sales, a dry cleaning facility, a fur retailer with possible repair or cleaning operations, and a gasoline dispensing station with underground storage tanks.

300 S. Old Woodward

The northern portion of the subject property was developed prior to 1921 with a residential dwelling and a garage structure. A small storefront building was also constructed between 1926 and 1931, and may have been used to support a used car sales operation on the surface lot that existed at the time. Both structures were demolished in 1949, and the current building at 300 S. Old Woodward was completed in 1954, with an addition in 1994. Historical records demonstrate that existing building on the site has been used as professional offices since at least 1951.

360 – 394 S. Old Woodward

The southern portion of the subject property was also developed prior to 1921 with a residential dwelling and shed structure. The residential dwelling was converted to a storefront by 1926. In approximately 1929, both structures were demolished and a majority of the existing building was constructed to house an automotive service operation and gasoline dispensing station. An addition to the original service building was completed in the late 1960's, and the building continued to be used for automotive service operations until at least 1967. A portion of the existing building was occupied by a theater between 1966 and 1986, a portion of the building remained in use for automotive sales and service until 1988, and a portion was used for drycleaning services between 1969 and 1976. Frank's Shoe Service and other retail sales operations have also been located in the existing building since at least 1969.

Requirements for Rezoning

The requirements for a request for the rezoning of a property are set forth in Article 07, section 7.02 of the Zoning Ordinance as follows:

Each application for an amendment to change the zoning classification of a particular property shall include statements addressing the following:

- 1. An explanation of why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership.**

Applicant response:

- The rezoning of the subject property to B2/D4 would result in the preservation and enjoyment of the rights of usage commonly associated with property ownership for the applicant. This property is unique in that it sits across

Brown Street from the five story Daxton Hotel and kitty-corner from the ten story Birmingham Place. However, this property is currently zoned B2/D3. While a four story building may be constructed in the D3 zone, the ordinance mandate the fourth floor to be residential. This area of S. Old Woodward has more apartments and condominiums than any other area of Downtown Birmingham. There are residential units in Birmingham Place, the 555 Building, and the Forefront. The applicant is a retailer seeking four stories of retail operations with food and beverage services on the fourth floor. The rezoning is necessary to preserve the applicant's enjoyment of its permitted uses of retail and restaurant in the Downtown Overlay District. Both uses are permitted in the Downtown Overlay; note that all restaurants serving alcoholic beverages are subject to a Special Land Use Permit.

- Other property owners in the S. Old Woodward corridor, including most of those across S. Old Woodward south of Brown Street, enjoy the designation of the Economic Development License zone, including those of principally residential buildings and whether the properties face S. Old Woodward or Woodward Avenue. Further, the iconic Phoenicia restaurant serves alcoholic beverages in the subject property's current D3 zone on the west side of S. Old Woodward. Placing the subject property in the Economic Development License zone would allow the applicant to enjoy the same restaurant use with alcoholic beverage service as is enjoyed by many of the neighboring property owners.

2. An explanation of why the existing zoning classification is no longer appropriate

Applicant response:

- After reviewing the 2016 Plan, the existing zoning for the subject property should be updated so it is possible to allow a four story retail development. The RH experience is one of stand-alone buildings in walkable neighborhoods. Destination stores with restaurant amenities are one of the ways retailers like RH continue to thrive. RH offers customers the cultural experience of visiting a gallery. This is good news for cities like Birmingham. Malls draw pedestrian shoppers away from downtown areas while the applicant's project will bring shoppers into Downtown Birmingham. Additionally, with Birmingham Place and the 555 Building just south of the subject property, the streetscape of S. Old Woodward in this area of the City is architecturally balanced by the addition of the applicant's proposed, classically designed four story building with a top floor restaurant, drawing pedestrians off the street to shop and relax in a restaurant setting.
- Similarly, the new or returning concept of stand-alone destination retail supports placing the subject property in the Economic Development License zone. Current zoning of the subject property does not support the RH concept of a destination retail that is a dramatic, economic improvement to the property, and that offers a first-class dining experience. The RH concept complements the goals of the Birmingham Master Plan and is a benefit to the City. The changes in the zoning requested here will allow this concept to be developed in our City. Hence, the current zoning is no longer appropriate.

3. An explanation of why the proposed rezoning will not be detrimental to the surrounding properties.

Applicant response:

- The rezoning of this property to B2/D4 is complimentary to the surrounding properties, rather than detrimental. First, the uses proposed for the building and the D4 zone will allow the property to accommodate a large, stand-alone, destination retailer. Second, it will bring a unique strolling shopping experience to the nearby residents of Birmingham Place, the 555 Building, and residential neighborhoods, as well as permit a handsome, four story building with underground garage designed to the standards of the D4 zone. Third, it will give new life to the S. Old Woodward streetscape between Brown and Daines, while at the same time it will comply with the spirit and intent of the 2016 Plan and the Birmingham Zoning Ordinances.

Article 7, section 7.02 of the Zoning Ordinance further states:

Applications for amendments that are intended to change the zoning classification of a particular property shall be accompanied by a plot plan. Information required on plot plans shall be as follows:

1. Applicant's name, address and telephone number.
2. Scale, north point, and dates of submission and revisions.
3. Zoning classification of petitioner's parcel and all abutting parcels.
4. Existing lot lines, building lines, structures, parking areas, driveways, and other improvements on the site and within 100 feet of the site.
5. Existing use of the property.
6. Dimensions, centerlines and right-of-way widths of all abutting streets and alleys.
7. Location of existing drainage courses, floodplains, lakes, streams, and wood lots.
8. All existing easements.
9. Location of existing sanitary systems and or septic systems.
10. Location and size of existing water mains, well sites and building service.
11. Identification and seal of architect, engineer, land surveyor, or landscape architect who prepared the plans. If any of the items listed above are not applicable to a particular plot plan, the applicant must specify in the plot plan which items do not apply and, furthermore, why the items are not applicable.

A land survey was provided by the applicant with the required details and is attached to this report.

Planning Division Analysis & Findings

In accordance with Article 7 of the Zoning Ordinance, the Planning Board is required to conduct a public hearing on an application for rezoning, and to make a recommendation on the rezoning to the City Commission. Article 7, section 7.02(B)(5) of the Zoning Ordinance states:

The Planning Board shall make written findings of fact and transmit same, together with its recommendation, to the City Commission. The City Commission may hold additional hearings if the City Commission considers it necessary. The Planning Board shall make findings based on the evidence presented to it with respect to the following matters:

- a. The objectives of the City's then current master plan and the City's 2016 Plan.
- b. Existing uses of property within the general area of the property in question.
- c. Zoning classification of property within the general area of the property in question.

- d. The suitability of the property in question to the uses permitted under the existing zoning classification.
- e. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

Accordingly, the Planning Division has reviewed the evidence presented with respect to the matters listed in Article 7, section 7.02(B)(5) of the Zoning Ordinance as noted below.

A. The objectives of the City's then current master plan and the City's 2016 Plan

The Birmingham Plan (1980) is the master plan currently in effect for the entire city, although a first draft of an updated 2040 Master Plan has been completed, but not yet adopted by the City Commission. The 1980 plan shows the subject properties with commercial use, similar to the surrounding Central Business District, and a maximum height limit at the time of four stories.

The Future Land Use Plan ("FLUP") contained in the 1980 shows the subject property designated for office and low-intensity commercial development. The 1980 Plan states that art galleries, boutiques, and home furnishings stores are recommended for such low-intensity commercial areas. In addition, the FLUP also recommends that quality restaurant and entertainment facilities be encouraged to expand in the downtown area (with the exception of fast food establishments), as "restaurants are magnets which bring potential shoppers into the Downtown".

The Birmingham Plan also noted the presence of several sensitive residential neighborhoods surrounding Downtown, including the Woodward-Lincoln-Pierce area. The subject property requesting rezoning at this time does not abut any portion of this sensitive residential area. The entire area east of Purdy between Brown and Daines was considered the commercial area of downtown, thus there are no residential properties contained within the entire block on which the subject site is located. There are residential properties located on the southwest corner of the block located south of Daines Street.

The Downtown Birmingham 2016 Plan ("2016 Plan") was adopted in 1996 to specifically improve the downtown area. The 2016 Plan was formally integrated into the requirements of the Zoning Ordinance shortly thereafter through the creation of the Downtown Birmingham Overlay District which defined the area to be governed by the recommendations in the 2016 Plan. The subject property to be considered for rezoning is located in the Downtown Birmingham Overlay District. The current D-3 Overlay Zoning already permits the development of four story buildings, if the fourth floor is used as residential. The requested rezoning to D-4 Overlay Zoning would allow the applicant to construct a four story building with a fourth floor restaurant use.

The 2016 Plan encourages D-3 flexible use buildings in this area (which are permitted to be 4 stories in height), to provide a connection between Downtown and the south end of S. Old Woodward, and encourages anchor retail development. The rezoning request made by the applicant is to allow the construction of a four story mixed use building to house Restoration Hardware. The proposed retail, gallery, design services and restaurant uses all work together to provide a significant retail anchor as recommended by the 2016 Plan to activate this area and support an active live, work and play environment for downtown.

The 2016 Plan also states that "Traditional American cities, except the very largest, rarely

exceed five stories in building height and most commonly range from two to four stories. Downtown Birmingham adheres to this rule, with the most memorable streets tending to be at least two stories and the least memorable being mostly one story”, and encourages proper building mass and scale to create an environment that is more comfortable to pedestrians, thus creating a walkable downtown. While the proposed rezoning to D-4 would also permit five story buildings, the applicant has indicated that they wish to limit development on the subject property to four stories. Both four or five story buildings would provide for significant massing at this important corner of Brown and S. Old Woodward. The height limit of four stories proposed by the applicant will also provide a transition from the five story Daxton Hotel to the north and the three story Forefront building to the south, ensuring that any new building will be harmonious with existing buildings.

B. Existing uses of property within the general area of the property in question

The property to the north of the subject site houses a recently constructed five story hotel, with a mix of retail and restaurant uses on the first floor, and residential uses on the top floor. The properties to the east of the site across S. Old Woodward include a mix of retail, restaurant and office use, as well as residential uses in the Birmingham Place building. The property located to the west of the subject site is a commercial office building with surface parking. The property across Daines Street to the south contains a mix of retail and commercial uses on the first floor, and residential uses on the upper floors.

The following chart summarizes the land uses and zoning districts adjacent to and in the vicinity of the subject site.

	North	South	East	West
Existing Land Use	Retail/ Commercial / Hotel	Retail/ Commercial / Residential	Retail / Commercial/ Residential	Commercial/ Parking
Existing Zoning	B-4, Business Residential	B-2, General Business	B-2, General Business & B-3, Office Residential	B-2, General Business
Overlay Zoning	D-4	D-2	D-3 & D-4	D-3

C. Zoning classification of property within the general area of the property in question.

The properties immediately north of the subject site are zoned B4 and D4, which allow a mix of residential, retail and commercial uses, and buildings up to 5 stories in height up to a maximum height of 80'. The property to the west of the subject site is zoned B2 and D3, which also allow a mix of residential, retail and commercial uses, and buildings up to 4 stories in height up to a maximum height of 68'. Across S. Old Woodward to the east, adjacent properties are zoned B2 and D3 (Peabody Mansion and Powerhouse Gym Building), which allow a mix of residential, retail and commercial uses, and a maximum height of 4 stories and 68'. In addition, also across S. Old Woodward to the east adjacent to the subject site is the Birmingham Place building which is zoned B3 and D5, which also allows a mix of residential, retail and commercial uses, allows more than 5 stories, up to a maximum height

of 180'. The property to the south across Daines is zoned B2-B and D2, also allowing a mix of residential, retail and commercial uses and buildings up to 3 stories and 56' in height.

D. The suitability of the property in question to the uses permitted under the existing zoning classification.

Under the current zoning, all of the same uses are permitted as those under the proposed D4 zoning classification. However, while the existing D3 zoning does permit a fourth floor as proposed by the applicant, it is only permitted if it is used solely for residential use. Thus, the applicant is proposing the rezoning from D3 to D4 to permit a fourth floor for restaurant use. Restaurant uses are permitted in both D3 and D4 of the Downtown Overlay District. The applicant has stated that the proposed restaurant use on the fourth floor is necessary for the proposed development to allow Restoration Hardware to create a unique, experience-based retail destination for Downtown Birmingham.

E. The trend of development in the general area of the property in question, including any changes which have taken place in the zoning classification.

The Daxton Hotel immediately north of the subject site was recently completed, and opened for business this spring. The Daxton Hotel is a 5 story, mixed use building that contains hotel, residential, retail and restaurant uses. In addition, to the south, the Forefront Building was completed several years ago with retail/commercial space on the first floor and residential units on the upper floors. The Forefront was purchased, and the new owners recently applied for approval to increase the number of residential units on the upper floors (within the original building envelope). In 2017, the Birmingham Place building adjacent to the east was also rezoned to D5 under the Downtown Overlay. While no changes were made to Birmingham Place at the time, the new zoning now permits buildings over 5 stories in height (up to 180') so long as they are compatible with adjacent buildings, thus correcting the previous legal, non-conforming status of that building with regards to height.

Based on a review of the rezoning application and supporting documentation submitted by the applicant, a review of the applicable master plan documents, current zoning and recent development trends in the area, the Planning Department finds that the applicant meets the established Zoning Ordinance requirements in Article 7, section 7.02(B)(5) to qualify for a rezoning of the property from D-3 to D-4 in the Downtown Overlay district for the purpose of permitting a fourth floor to be used as a restaurant. Given the recommendations of the 2016 Plan, the existing mix of uses in the immediate area and given the size and quality of the building, the proposal to rezone to D4 is appropriate and compatible with both the zoning and height of properties within the general area.

Departmental Reports

1. Engineering Division – The Engineering Department will provide any comments prior to the April 28, 2021 Planning Board meeting.
2. Department of Public Services –The Department of Public Services will provide any comments prior to the April 28, 2021 Planning Board meeting.
3. Fire Department – The Fire Department has no concerns with the rezoning at this time.
4. Police Department – The Police Department has no concerns with the rezoning application.

5. Building Department – The Building Department has no concerns with the rezoning application at this time.

Sample motions with attached conditions have been provided in the event that the Planning Board deems it appropriate to send a recommendation of approval forward to the City Commission.

Suggested Action:

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board adopts the findings of fact contained in the staff report dated April 17, 2020 and recommends **APPROVAL** to the City Commission for the rezoning of 300 -394 S. Old Woodward and a portion of 294 E. Brown Street from D-3 to D-4 in the Downtown Overlay.

OR

Based on a review of the rezoning request and supporting documentation submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board recommends **DENIAL** to the City Commission of the applicant's request for the rezoning of the property at 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street from D-3 to D-4 in the Downtown Overlay for the following reasons:

1. _____
2. _____
3. _____

OR

Motion to recommend **POSTPONEMENT** of the applicant's request for the rezoning of the property at 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street from D-3 to D-4 in the Downtown Overlay, pending receipt and review of the following information:

1. _____
2. _____
3. _____

Planning Board Minutes
March 26, 2021

F. Community Impact Study Review

- 1. 300 & 394 S. Old Woodward, and portions of 294 E. Brown** – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot), Community Impact Study to consider approval of a new 4 story building, including a request to operate a restaurant using an Economic Development Liquor License.

Chair Klein said he would be recusing himself from the Board's considerations regarding 300 & 394 S. Old Woodward and portions of 294 E. Brown. While he said he and the City Attorney determined he had no conflict-of-interest, he was concerned that existing business relationships between his company and parties affiliated with the applicants could lead to the public impression of a conflict-of-interest. The Chair said that if it became clear in the future that his participation in these discussions would not result in the public impression of a conflict-of-interest, he would rejoin deliberations regarding 300 & 394 S. Old Woodward and portions of 294 E. Brown at that time.

The Chair recused himself and left the meeting at 8:06 p.m.

Mr. Emerine filled the Board vacancy stemming from the Chair's recusal and Vice-Chair Williams commenced facilitation of the meeting.

PD Ecker presented the CIS.

Victor Saroki, architect, Richard Rattner, attorney, Dave Stanchak, President of RH, Paul O'Meara, engineer, and Mike Kulka, **Environmental Engineer**, were present on behalf of the application.

Ms. Kroll reported she had met with the applicant team and they confirmed they would get her the additional traffic information she had requested.

In reply to Mr. Share, Ms. Kroll explained that the Multi-Modal Transportation Board had recently updated the transportation impact study requirements for the City, and that adding crash analyses was one of the updates. She said that there were no accident mitigation measures beyond signage recommended for the intersection of S. Old Woodward and Brown since the majority of the accidents resulted from parking issues and inattentive drivers. She confirmed some of the parking in front of the building may be eliminated to make room for the valet, and that if that were to occur it may reduce some of the parking accidents.

In reply to a request from Vice-Chair Williams, Mr. Emerine said he could work as the Board's representative with Ms. Kroll and Mr. O'Meara regarding the site's traffic impact.

In reply to Mr. Emerine, Ms. Kroll explained she wanted to produce a conservative traffic analysis to make sure that the site could handle the peak amount of likely traffic. She said that would better ensure that severe issues with traffic around the site do not ensue from the proposed uses.

The Board was advised by the applicant team that furniture loading and unloading would occur infrequently since RH is a showroom only and furniture purchases would be coming from off-site. Vice-Chair Williams and Mr. Boyle asked that furniture delivery trucks still be addressed in upcoming

discussions of this item since the pieces in the showroom would likely be refreshed from time to time.

Mr. Saroki stated that the applicant team would resolve all issues raised by City departments and by Ms. Kroll's comments on the traffic study.

Mr. Kulka stated that the site had no more significant environmental issues than similar urban sites. He said any issues found in the environmental study would be remediated.

In reply to Mr. Share, Mr. Kulka committed the applicant team to environmentally remediating the site to residential criteria.

Public Comment

Mr. Reagan said he was concerned about there being insufficient parking proposed and in the area to support the site. He said he was also concerned about the impact of the project on nearby residences.

In reply to a question from David Bloom, Mr. Saroki said one area of the site would gain three parking spaces and another area would lose 11, leading to a net loss of eight parking spaces from the current number available. He also stated that RH paid for the CIS.

Mr. Share complimented the applicant team on their work thus far.

Motion by Mr. Share

Seconded by Mr. Emerine to postpone action on the Community Impact Study as provided by the applicant to April 28, 2021 for the proposed development at 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street, allowing the applicant the opportunity to address the issues raised by the Planning Department in its review of the CIS.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Share, Emerine, Williams, Whipple-Boyce, Koseck, Boyle, Ramin

Nays: None

03-045-21

G. Preliminary Site Plan Review

- 1. 300 & 394 S. Old Woodward, and portions of 294 E. Brown** – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot), Preliminary Site Plan Review to consider approval of a new 4 story building, including a request to operate a restaurant using an Economic Development Liquor License.

PD Ecker reviewed the item.

In reply to Mr. Share, PD Ecker said she would speak with the Engineering Department regarding possible options for additional sidewalk lighting on Daines.

Mr. Saroki explained that the landscaping off of Daines would be on the Coldwell Banker site with the consent of the property's owner. He stated that RH would be paying for the landscaping.

Mr. Stanchak provided a brief overview of the design inspiration for the Birmingham site and showed a rendering of RH Birmingham.

Jim Arpin, President of the Condo Association at Birmingham Place, said he appreciated what he had seen of the plans so far. Mr. Arpin invited the applicants to meet with the Condo Association.

Vice-Chair Williams encouraged the applicants to take Mr. Arpin up on his invitation.

Mr. Share asked if the applicant team had considered doing a three-story building without the need for a liquor license, since pursuing a four-story building with a liquor license adds complexity.

Mr. Stanchak said the restaurant and alcohol service were integral to creating the hospitable, appealing atmosphere of RH.

Mr. Koseck said he thought the applicant team had gone above and beyond to address site issues. He commended them on designing the building in context, on the attention paid to the aesthetics of all sides of the building, and on the landscaping and hardscaping. He said he thought the designs for the building and grounds would fit well in the neighborhood's context.

There was Board consensus to postpone voting on the item until April 28, 2021 in order to consider the CIS, Preliminary Site Plan, Rezoning Request and Economic Development License for 300 & 394 S. Old Woodward and portions of 294 E. Brown during the same meeting.

Motion by Mr. Boyle

Seconded by Mr. Koseck to postpone the Preliminary Site Plan for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street pending receipt of an updated CIS addressing all issues noted in the CIS review above and setting the date for reconsideration to be April 28, 2021.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Boyle, Koseck, Ramin, Share, Emerine, Whipple-Boyce, Williams

Nays: None

City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, April 28, 2021
Held Remotely Via Zoom And Telephone Access

E. Rezoning Request

1. 300 & 394 S. Old Woodward, and portions of 294 E. Brown (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot), Request for rezoning from B2/D3 to B2/D4 in the Downtown Overlay District.

PD Ecker and Gayle McGregor, attorney for the applicant, reviewed the item.

Victor Saroki, applicant, and Kelly Allen, attorney for the applicant, were also present on behalf of the item.

Ms. McGregor affirmed the applicant was offering to voluntarily limit the height of the building to four stories as part of rezoning the proposed parcel to D4. She said she believed she had submitted that offer in writing to the City. She said that if she had not yet submitted the offer in writing she would.

Mr. Share noted that the use and development of the land as a condition of the rezoning could be voluntarily limited by the applicant if submitted in writing, and could then be accepted by the City, per MCL 125.3405(1).

Board discussion noted that the City had used the same mechanism to include rezoning restrictions when the Whole Foods Market parcel was rezoned.

Vice-Chair Williams said the applicant's offer to limit the height of the building was positive since he did not believe that a five-story building should be built on the proposed parcel.

Mr. Share agreed.

Public Comment

Jeff Hockman, Chair of the BSD Board, spoke in favor of the rezoning. He said rezoning this proposed parcel was in line with the goals of the 2016 Plan and would benefit the broader Birmingham business community.

Marko Berishaj spoke in favor of the project.

After further discussion, the Board asked the applicant to clarify whether their voluntary limitation was to four floors, or to the specific design being put forth.

Mr. Saroki said he would voluntarily limit the rezoning request to the design as proposed in the site plan.

In reply to Ms. Whipple-Boyce, Vice-Chair Williams said the City Attorney would have to determine what would happen to the rezoning if the building is not developed.

Motion by Mr. Share

Seconded by Mr. Emerine based on a review of the rezoning request and supporting documentation submitted by the applicant, the voluntary offer conditions submitted by the applicant, a review of the applicable master plan documents and the development trends in the area, the Planning Board 1. Adopts the findings of fact contained in the staff report dated April 23, 2020 and 2. Recommends approval to the City Commission for the rezoning of 300-394 S. Old Woodward and a portion of 294 E. Brown Street as delineated in the application from D-3 to D-4 in the Downtown Overlay, conditioned on the City Commission's acceptance of the applicant's voluntary offer to limit the height of the building on this parcel to four stories in accordance with the building's form and mass contained in the proposed site plan submitted by the applicant.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Share, Emerine, Boyle, Jeffares, Koseck, Whipple-Boyce, Williams

Nays: None

04-060-21

F. Zoning Ordinance Amendment Request

1. Request for an amendment to Chapter 126, Zoning, Appendix 1, Exhibit A, to amend the Economic Development License map to include the properties at 300 & 394 S. Old Woodward, and portions of 294 E. Brown – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot) on the map contained in Exhibit A to allow the use of economic development liquor licenses (EDL) on these properties.

CP Brooks and Ms. McGregor presented the item.

In reply to Vice-Chair Williams, Mr. Saroki confirmed the granting of an EDL is critical to the development of this project.

Mr. Share said that irrespective of the current proposal from RH the City should consider allowing this parcel to be eligible for an EDL since the 2016 Plan set it out as an ideal location for an anchor tenant.

Motion by Mr. Share

Seconded by Ms. Whipple-Boyce to recommend approval to the City Commission of the ordinance amendment to allow the use of an Economic Development Liquor License in the expanded area as shown on the attached map for Appendix C, Exhibit 1, Economic Development Licenses.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Share, Whipple-Boyce, Emerine, Boyle, Jeffares, Koseck, Williams

Nays: None

04-061-21

G. Special Land Use Permit Reviews

1. 300 & 394 S. Old Woodward, and portions of 294 E. Brown – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot), Request for a Special Land Use Permit to consider approval of a new 4 story building, including a request to operate a restaurant using an Economic Development Liquor License.

No discussion occurred regarding this item per PD Ecker's comments under Item D, Review of the Agenda.

04-062-21

H. Community Impact Study Review

1. 300 & 394 S. Old Woodward, and portions of 294 E. Brown – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot), Community Impact Study to consider approval of a new 4 story building, including a request to operate a restaurant using an Economic Development Liquor License (Continued from March 26, 2021).

PD Ecker introduced the item. She noted that the only outstanding comment from Ms. Kroll was that the applicant consider adding more bicycle parking onsite.

Mr. Emerine was the Board liaison to the meeting between the City, Ms. Kroll and the applicant's traffic consultants regarding the transportation impact study. Mr. Emerine reported that the applicant addressed every issue raised by Ms. Kroll in her March 17, 2021 letter, with the exception of some possible additional bicycle parking, to Ms. Kroll's satisfaction. He stated that the applicant also shifted the proposed valet south in response to a request from the Police Department.

Ms. Kroll concurred with Mr. Emerine's summary.

Mr. Saroki said he would be happy to add additional bicycle racks, noting that there would be a bicycle rack provided for employees as well. He continued that while peak demand on the City's parking system is weekdays during business hours, the demand for parking from visitors to RH would be Saturdays and Sundays. He said, consequently, that RH would add little strain to the City's parking system. He said that during any shift there would be approximately 50 employees working and that they would park in the City's parking decks.

Motion by Mr. Emerine

Seconded by Ms. Whipple-Boyce to accept the Community Impact Study as provided by the applicant for the proposed development at 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street with the following conditions:

- 1. The applicant is required to provide information on all life safety issues and Fire Dept. approval;**
- 2. The applicant is required to provide information on the proposed security system for approval by the Police Department; and,**
- 3. The applicant shall add the bicycle racks in accordance with the Fleis and Vandenbrink letter dated April 26, 2021.**

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Emerine, Whipple-Boyce, Share, Boyle, Jeffares, Koseck, Williams

Nays: None

04-063-21

I. Preliminary Site Plan Review

1. 300 & 394 S. Old Woodward, and portions of 294 E. Brown – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot), Preliminary Site Plan Review to consider approval of a new 4 story building, including a request to operate a restaurant using an Economic Development Liquor License (Continued from March 26, 2021).

PD Ecker summarized the item.

Vice-Chair Williams said that the applicant's offer to have a zoning with limitations consistent with the preliminary site plan would need the review of the City Attorney to make sure the rezoning, if authorized by the Commission, occurs in a way that is consistent with Michigan law.

In reply to Mr. Boyle, Mr. Saroki stated the building would be very adaptable for other uses in the future should the need arise.

Mr. Koseck concurred with Mr. Saroki. He expressed his support for the plans thus far, and recommended that the applicant consider an exterior building color that would contrast with the grey exterior of the Daxton instead of looking like an extension of it.

Messrs. Koseck and Emerine noted that RH would be a regional attraction.

Mr. Emerine spoke positively about previously living two blocks from the RH in Chicago. He also spoke about the positive impact the proposed development would have on the retail community in Birmingham. He said he was in support of the plan.

Motion by Ms. Whipple-Boyce

Seconded by Mr. Jeffares to approve the Preliminary Site Plan for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street subject to the following conditions:

- 1. The applicant is required to obtain approval of the City Commission for the proposed lot splits and lot combination to create the new lot that is the subject of this application and shown on the site plan;**
- 2. The applicant obtain a variance for the use of the fourth floor as a restaurant, or obtain approval of a rezoning of the property to D-4 in the Downtown Overlay;**
- 3. The applicant obtain a variance for the use of an Economic Development license on the site, or obtain approval of a zoning amendment to alter the map contained in Appendix C, Exhibit 1 of the Zoning Ordinance to include the subject property;**
- 4. The applicant reduce the height of the proposed building to 68' and 3 stories and the eave height to 34' maximum, or obtain the requested rezoning of the site from D-3 to D-4 in the Downtown Overlay District, or obtain a variance from the Board of Zoning Appeals;**
- 5. The applicant update the landscape plan to provide species and size details on all proposed plantings, and provide material specifications on hardscape items at the time of Final Site Plan Review;**
- 6. The applicant is required to receive separate Planning approval for all landscaping changes proposed for the adjacent site, as they are not included in this site plan review approval;**
- 7. The applicant must submit a complete streetscape plan, including detail on hanging planters, at the time of Final Site Plan review;**
- 8. All streetscape elements on S. Old Woodward will be required to be consistent with the enhanced streetscape design planned by the City for future construction;**
- 9. The applicant must obtain approval of the Police Department and/or City Commission for any valet operation proposed;**
- 10. The applicant must submit all light fixture specification sheets and material and color samples at Final Site Plan Review;**
- 11. Compliance with the requirements of all departments; and,**
- 12. The applicant provide all material samples, specifications and colors at the time of Final Site Plan Review.**

Vice-Chair Williams said he was in favor of the plan, especially since all outstanding issues from the transportation impact study had been resolved and since the applicant voluntarily offered to accept a rezoning with conditions.

Public Comment

Richard Astrein, who has been a merchant in Birmingham for 50 years, spoke of the positive impact RH would have on the Birmingham retail business community.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Whipple-Boyce, Jeffares, Emerine, Share, Boyle, Koseck, Williams

Nays: None

Vice-Chair Williams thanked the applicant team and Ms. Kroll for their work.

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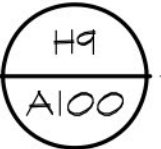
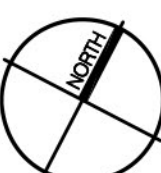
1 2 3 4 5 6 7 8 9 10

BROWN STREET

OLD WOODWARD AVENUE

DAINES STREET

LINE OF (2) 12' WIDE, 40'
LONG LOADING SPACE



Parking Level Floor Plan

SCALE: 3/32" = 1'-0"

SAROKI
ARCHITECTURE

430 N. OLD WOODWARD
BIRMINGHAM, MI 48009

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SarokiArchitecture.com

Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:

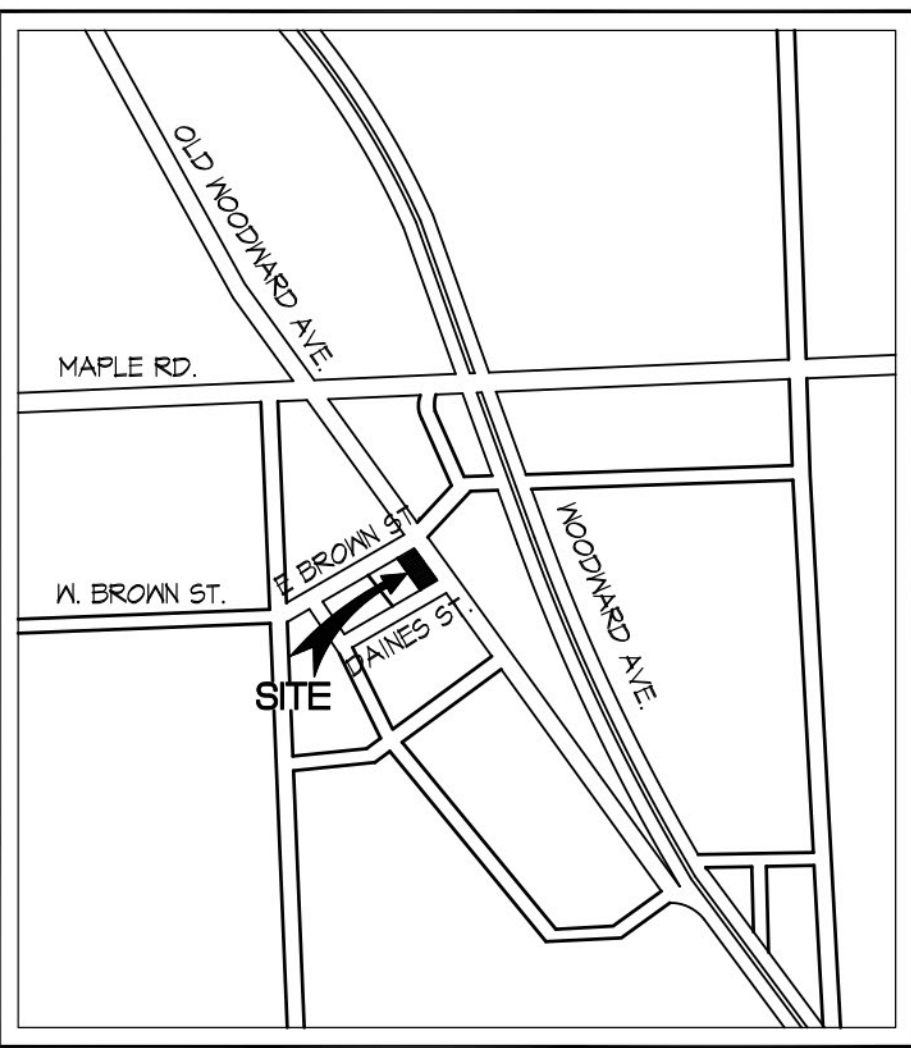
03-16-2021 Preliminary Site Plan App.

04-28-2021 Preliminary Site Plan App.

Sheet No.:

A100

Lower Parking Level Floor Plan



site location map:



LEGAL DESCRIPTION - SWAP PARCEL 1
LAND SITUATED IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:
PART OF LOT 12 OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; BEING DESCRIBED AS: BEGINNING AT A POINT DISTANT 5.62°00'00"W. 119.37 FEET FROM THE NORTHEAST CORNER OF LOT 13 OF SAID BROWN'S ADDITION SUBDIVISION; THENCE S.35°35'52"E. 100.00 FEET; THENCE S.62°00'00"W. 30.76 FEET; THENCE N.36°14'00"W. 100.15 FEET; THENCE N.62°00'00"E. 31.88 FEET TO THE POINT OF BEGINNING. CONTAINING: 3,104 SQUARE FEET OR 0.07 ACRES OF LAND

LEGAL DESCRIPTION - SWAP PARCEL 2
LAND SITUATED IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:
PART OF LOT 15 OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; BEING DESCRIBED AS: BEGINNING AT A POINT DISTANT 5.62°00'00"W. 119.37 FEET AND 5.35°35'52"E. 100.00 FEET FROM THE NORTHEAST CORNER OF LOT 13 OF BROWN'S ADDITION SUBDIVISION AS RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS; THENCE N.62°00'00"E. 19.24 FEET; THENCE S.35°14'00"E. 100.15 FEET; THENCE S.62°00'00"W. 20.36 FEET; THENCE N.35°35'52"W. 100.00 FEET TO THE POINT OF BEGINNING. CONTAINING: 1,963 SQUARE FEET OR 0.04 ACRES OF LAND

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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: **Issued For:**

03-16-2021 Preliminary Site Plan App.

04-26-2021 Preliminary Site Plan App.

BUILDING SQUARE FOOTAGE TOTALS	
FIRST LEVEL:	13,451 SF
SECOND LEVEL:	13,958 SF
THIRD LEVEL:	13,679 SF
FOURTH LEVEL:	8,536 SF
TOTAL:	49,624 SF
LOWER PARKING LEVEL: 15,092 SF (24 PARKING SPACES)	

Sheet No.:

SP01
Architectural Site Plan



Architectural Site Plan

SCALE: 3/32" = 1'-0"

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C
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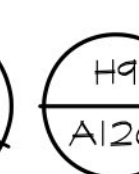
BROWN STREET

OLD WOODWARD AVENUE

DAINES STREET

90' x 166'
13,958 sf / floor

90'



Second Level Floor Plan

SCALE: 3/32" = 1'-0"

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RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:

03-16-2021 Preliminary Site Plan App.

04-28-2021 Preliminary Site Plan App.

Sheet No.:

A120

Second Level Floor Plan

A
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C
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BROWN STREET

OLD WOODWARD AVENUE

DAINES STREET

8,536 sf / floor



Fourth Level Floor Plan

SCALE: 3/32" = 1'-0"

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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:

03-16-2021 Preliminary Site Plan App.

04-28-2021 Preliminary Site Plan App.

Sheet No.:

A140

Fourth Level Floor Plan

A
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D
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BROWN STREET

OLD WOODWARD AVENUE

DAINES STREET

SAROKI
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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:

03-16-2021 Preliminary Site Plan App.

04-26-2021 Preliminary Site Plan App.

Sheet No.:

A150

Roof Plan



A

B

C

D

E

F

G

H

Top of Mech Screen
+2'-0" (60'-0" Overall)

Top of Greenhouse
+18'-0" (67'-0" Overall)

4th FL. FF.
+18'-0" (67'-0" Overall)

3rd FL. FF.
+18'-0" (67'-0" Overall)

2nd FL. FF.
+18'-0"

1st FL. FF.
(Proposed)



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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:

03-09-2021 CONCEPT REVIEW

04-28-2021 Preliminary Site Plan App.

Sheet No.:

A210
EXTERIOR ELEVATION

H9
A210
East Exterior Elevation
SCALE: 1/8" = 1'-0"

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A

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C

D

E

F

G

H

Top of Mech Screen
+2'-0" (60'-0" Overall)

Top of Greenhouse
+18'-0" (67'-0" Overall)

4th FL. FF.
+18'-0" (67'-0" Overall)

3rd FL. FF.
+18'-0" (67'-0" Overall)

2nd FL. FF.
+18'-0"

1st FL. FF.
(Proposed)



SAROKI
ARCHITECTURE
430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
P. 248.258.5707
F. 248.258.5515
SarokiArchitecture.com

Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:

03-09-2021 CONCEPT REVIEW

04-28-2021 Preliminary Site Plan App.

Sheet No.:

A212
EXTERIOR ELEVATION

H9
A212
West Exterior Elevation
SCALE: 1/8" = 1'-0"

1

2

3

4

5

6

7

8

9

10

A

B

C

D

E

F

G

H

1

2

3

4

5

6

7

8

9

10



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Project:
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Birmingham, MI 48009

Date: Issued For:
03-09-2021 CONCEPT REVIEW
04-28-2021 Preliminary Site Plan App.

Sheet No.:
A214
EXTERIOR ELEVATION

H9
A214
North Exterior Elevation
SCALE: 1/8" = 1'-0"

A

B

C

D

E

F

G

H

1

2

3

4

5

6

7

8

9

10



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300 S Old Woodward
Birmingham, MI 48009

Date: **Issued For:**

03-09-2021 CONCEPT REVIEW

04-28-2021 Preliminary Site Plan App.

Sheet No.:

A216
EXTERIOR ELEVATION

H9
A216
South Exterior Elevation
SCALE: 1/8"= 1'-0"



H9
A218 StreetView Elevation
SCALE: 1/16" = 1'-0"

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430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: 03-09-2021
Issued For: CONCEPT REVIEW
04-26-2021 Preliminary Site Plan App.

Sheet No.:
A218
EXTERIOR ELEVATION

A

B

C

D

E

F

G

H



Architectural Brick
Slate Grey Velour
Norman Brick Type (3" x 12")



Basaltina
Basalt Stone



Hope's Steel Windows & Doors



Exterior Light Fixtures & Steel Canopies



Steel and Glass Rooftop Restaurant

SAROKI
ARCHITECTURE
430 N. OLD WOODWARD
BIRMINGHAM, MI 48009
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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: Issued For:
03-16-2021 Preliminary Site Plan App.
04-26-2021 Preliminary Site Plan App.

Sheet No.:
A900
Exterior Material Board

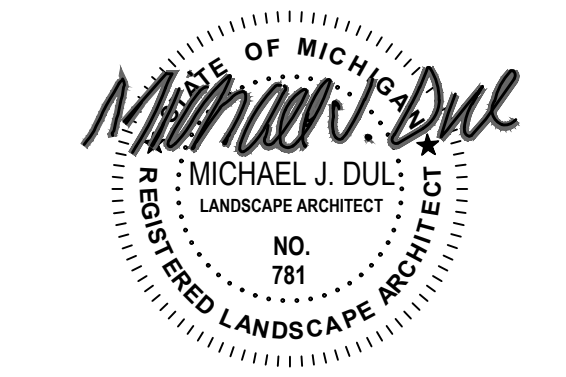


LANDSCAPE
ARCHITECTURE

MICHAEL J. DUL
& ASSOCIATES, INC.

212 DAINES STREET
BIRMINGHAM
MICHIGAN 48009

P 248 644 3410
F 248 644 0819



SAROKI
ARCHITECTURE

430 N. OLD WOODWARD
BIRMINGHAM, MI 48009

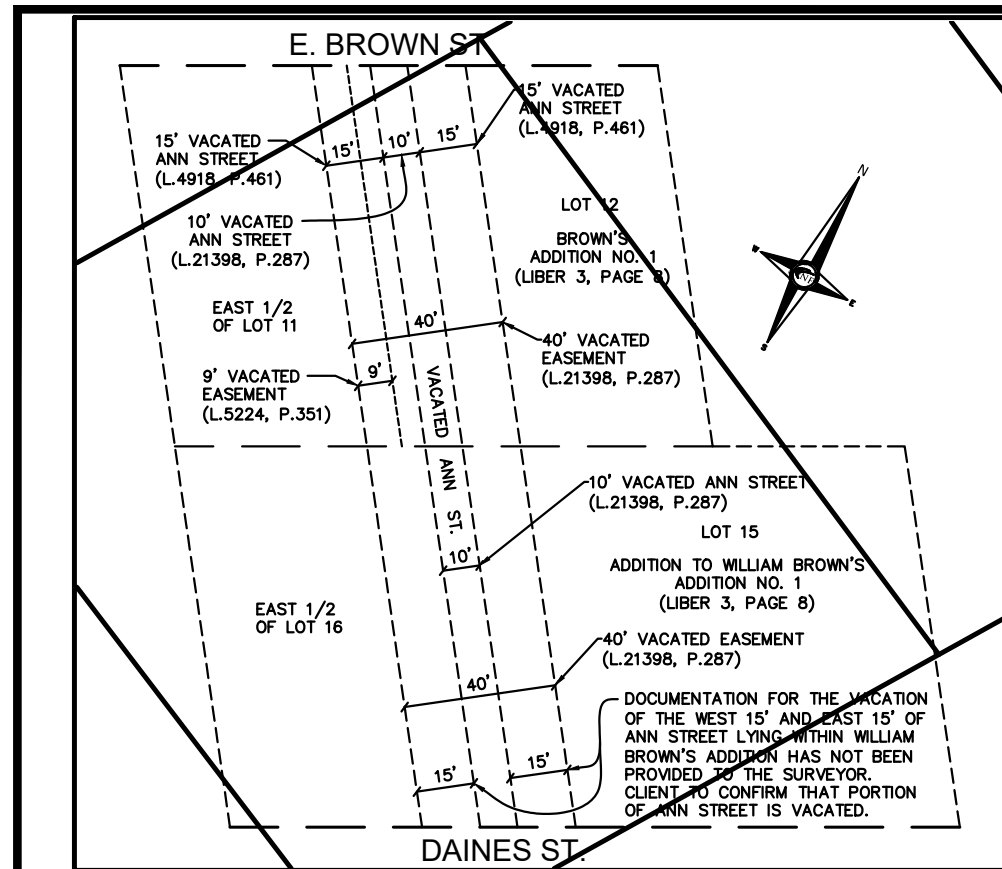
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Project:
RH / Mixed-Use
300 S Old Woodward
Birmingham, MI 48009

Date: 02-24-2021 Issued For:
Preliminary Site Plan App.

Sheet No.:
L1.1
Landscape Plan



ANN STREET SKETCH
1" = 50'

FLOOD HAZARD NOTE

THE PROPERTY DESCRIBED ON THIS SURVEY DOES NOT LIE WITHIN A SPECIAL FLOOD HAZARD AREA AS DEFINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY. THE PROPERTY LIES WITHIN ZONE X OF THE FLOOD INSURANCE RATE MAP IDENTIFIED AS MAP NO. 26125C0537T BEARING AN EFFECTIVE DATE OF 09-29-2006.

MISS DIG / UTILITY DISCLAIMER NOTE

A MISS DIG TICKET NUMBER A033240501, PURSUANT TO MICHIGAN PUBLIC ACT 174 WAS ENTERED FOR THE SURVEYED PROPERTY, DUE TO THE EXTENDED REPORTING PERIOD FOR UNDERGROUND FACILITY OWNERS TO PROVIDE THEIR RECORDS, THE SURVEY MAY NOT REFLECT ALL THE UTILITIES AT THE TIME THE SURVEY WAS ISSUED ON DECEMBER 29, 2020. THE SURVEY ONLY REFLECTS THOSE UTILITIES WHICH COULD BE OBSERVED BY THE SURVEYOR IN THE FIELD OR AS DEPICTED BY THE UTILITY COMPANY RECORDS FURNISH PRIOR TO THE DATE THIS SURVEY WAS ISSUED. THE CLIENT AND/OR THEIR AUTHORIZED AGENT SHALL VERIFY WITH THE UTILITY COMPANIES AND/OR THEIR AUTHORIZED AGENTS, THE COMPLETENESS AND EXACTNESS OF THE UTILITIES LOCATION.

TOPOGRAPHIC SURVEY NOTES

ALL ELEVATIONS ARE EXISTING ELEVATIONS, UNLESS OTHERWISE NOTED.

UTILITY LOCATIONS WERE OBTAINED FROM MUNICIPAL OFFICIALS AND RECORDS OF UTILITY COMPANIES, AND NO GUARANTEE CAN BE MADE TO THE COMPLETENESS, OR EXACTNESS OF LOCATION.

ALTA SURVEY NOTES

THERE IS NO VISIBLE EVIDENCE OF CURRENT EARTH MOVING WORK, BUILDING CONSTRUCTION OR BUILDING ADJUSTMENTS.

THERE IS NO PROPOSED CHANGES IN STREET RIGHT OF WAY LINES AND THERE IS NO EVIDENCE OF RECENT STREET OR SIDEWALK CONSTRUCTION OR REPAIR.

THERE IS NO VISIBLE EVIDENCE OF SITE USE AS A SOLID WASTE DUMP, SUMP OR SANITARY LANDFILL.

THERE IS NO VISIBLE EVIDENCE OF ANY WETLAND AREAS.

LOCATION OF UTILITIES EXISTING ON OR SERVING THE PROPERTY AS DETERMINED BY OBSERVED EVIDENCE OR EVIDENCE FROM PLANS REQUESTED BY THE SURVEYOR AND OBTAINED FROM UTILITY COMPANIES.

THE SUBJECT PROPERTY HAS ACCESS TO S. OLD WOODWARD AVENUE, E. BROWN STREET AND DAINES STREET, ALL BEING A PUBLICLY DEDICATED ROAD.

BASIS OF BEARING NOTE

ALL BEARINGS ARE IN RELATION TO THE PREVIOUSLY ESTABLISHED SOUTH RIGHT-OF-WAY LINE OF STREET (60' WIDE) (NOW KNOWN AS BROWN STREET) OF BROWN'S ADDITION AS RECORDED IN LIBER 3 OF PLATS, PAGE 8, OAKLAND COUNTY RECORDS. (N.62.1°)

DATUM NOTE

ALL ELEVATIONS SHOWN HEREON ARE ON THE CITY OF BIRMINGHAM'S VERTICAL DATUM, REFERENCED HEREON, IS ONE (1.00) FOOT HIGHER THAN THE NORTH AMERICAN VERTICAL DATUM OF 1988 (N.A.V.D. 88).

SURVEY DATA

SITE AREA:
PARCEL I: 13,818.22 SQUARE FEET OR 0.317 ACRES
PARCEL II: 18,892.08 SQUARE FEET OR 0.433 ACRES
PARCEL 2: 13,204.93 SQUARE FEET OR 0.303 ACRES
PARCEL 3: 8,157.75 SQUARE FEET OR 0.187 ACRES
TOTAL: 54,052.96 SQUARE FEET OR 1.24 ACRES

ZONED:
B2, GENERAL BUSINESS DISTRICT

PARKING SPACES:

PARCEL I: 9 REGULAR SPACES
PARCEL II: 46 REGULAR SPACES AND 3 BARRIER-FREE SPACES
PARCEL 2: 20 REGULAR SPACES AND 1 BARRIER-FREE SPACE
PARCEL 3: NO ON-SITE PARKING SPACES

A SURVEYOR CANNOT MAKE A CERTIFICATION ON THE BASIS OF AN INTERPRETATION OR OPINION OF ANOTHER PARTY. A ZONING ENDORSEMENT LETTER SHOULD BE OBTAINED FROM THE CITY OF BIRMINGHAM TO INSURE CONFORMITY AS WELL AS MAKE A FINAL DETERMINATION OF THE REQUIRED BUILDING SETBACK REQUIREMENTS.

DTE DISCLAIMER NOTE

PLEASE NOTE THAT DTE HAS NEW REGULATIONS THAT MAY IMPACT DEVELOPMENT OUTSIDE THEIR EASEMENT OR THE PUBLIC RIGHT OF WAY. CLIENT SHALL CONTACT DTE TO DETERMINE THE "NEW STRUCTURES AND POWER LINE" REQUIREMENTS AS THEY MAY APPLY TO ANY FUTURE BUILDING OR RENOVATION OF A STRUCTURE. DTE ENERGY CAN BE CONTACTED AT 800-477-4747

LEGAL DESCRIPTION - PARCEL 2 (PER TITLE COMMITMENT)

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

THE EASTERLY 50 FEET OF LOT 12, AND THE WESTERLY PART OF LOT 13, MEASURING 82.45 FEET ON THE NORTH LOT LINE AND 82.48 FEET ON THE SOUTH LOT LINE OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 300 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-006

TITLE REPORT NOTES - PARCEL 2

REFERENCE FIRST AMERICAN TITLE INSURANCE COMPANY FILE NUMBER: 910055, COMMITMENT DATE: DECEMBER 21, 2020, REVISION B.

SCHEDULE B, PART II, EXCEPTIONS:

- EXCEPTIONS: 1, 4, 5, 6, 7, 8, 10, 11, 14 AND 15 REFER TO THE OWNERSHIP OF THE PROPERTY AND/OR ARE NOT PLOTTABLE.
2. ANY FACTS, RIGHTS, INTERESTS OR CLAIMS NOT SHOWN BY THE PUBLIC RECORDS BUT THAT COULD BE ASCERTAINED BY MAKING INQUIRY OF PERSONS IN POSSESSION THEREOF OF THE LAND.
3. EASEMENTS, ENCUMBRANCES, OR CLAIMS THEREOF, NOT SHOWN BY THE PUBLIC RECORDS.
9. TERMS AND CONDITIONS CONTAINED IN RESOLUTION AS DISCLOSED BY INSTRUMENT RECORDED IN LIBER 8715, PAGE 137, (NO EASEMENTS OR RESTRICTIONS WITHIN SAID DOCUMENT, NOT PLOTTED).
12. INTEREST, IF ANY, OF THE UNITED STATES, STATE OF MICHIGAN, OR ANY POLITICAL SUBDIVISION THEREOF, IN THE OIL, GAS AND MINERALS IN AND UNDER AND THAT MAY BE PRODUCED FROM THE CAPTIONED LAND.
13. RIGHTS OF TENANTS, IF ANY, UNDER ANY UNRECORDED LEASES.

LEGAL DESCRIPTION - PARCEL 3 (PER TITLE COMMITMENT)

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

LOT(S) 14, EXCEPT THAT PART TAKEN FOR WIDENING WOODWARD AVENUE OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1, ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 394 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-014

TITLE REPORT NOTES - PARCEL 3

REFERENCE FIRST AMERICAN TITLE INSURANCE COMPANY FILE NUMBER: 910145, COMMITMENT DATE: DECEMBER 21, 2020, REVISION: A.

SCHEDULE B, PART II, EXCEPTIONS:

- EXCEPTIONS: 1, 4, 5, 6, 7, 8, 10, 13 AND 14 REFER TO THE OWNERSHIP OF THE PROPERTY AND/OR ARE NOT PLOTTABLE.
2. ANY FACTS, RIGHTS, INTERESTS OR CLAIMS NOT SHOWN BY THE PUBLIC RECORDS BUT THAT COULD BE ASCERTAINED BY MAKING INQUIRY OF PERSONS IN POSSESSION THEREOF OF THE LAND.
3. EASEMENTS, ENCUMBRANCES, OR CLAIMS THEREOF, NOT SHOWN BY THE PUBLIC RECORDS.
8. TERMS AND CONDITIONS CONTAINED IN RESOLUTION AS DISCLOSED BY INSTRUMENT RECORDED IN LIBER 8715, PAGE 137, (NO EASEMENTS OR RESTRICTIONS WITHIN SAID DOCUMENT, NOT PLOTTED).
11. INTEREST, IF ANY, OF THE UNITED STATES, STATE OF MICHIGAN, OR ANY POLITICAL SUBDIVISION THEREOF, IN THE OIL, GAS AND MINERALS IN AND UNDER AND THAT MAY BE PRODUCED FROM THE CAPTIONED LAND.
12. RIGHTS OF TENANTS, IF ANY, UNDER ANY UNRECORDED LEASES.

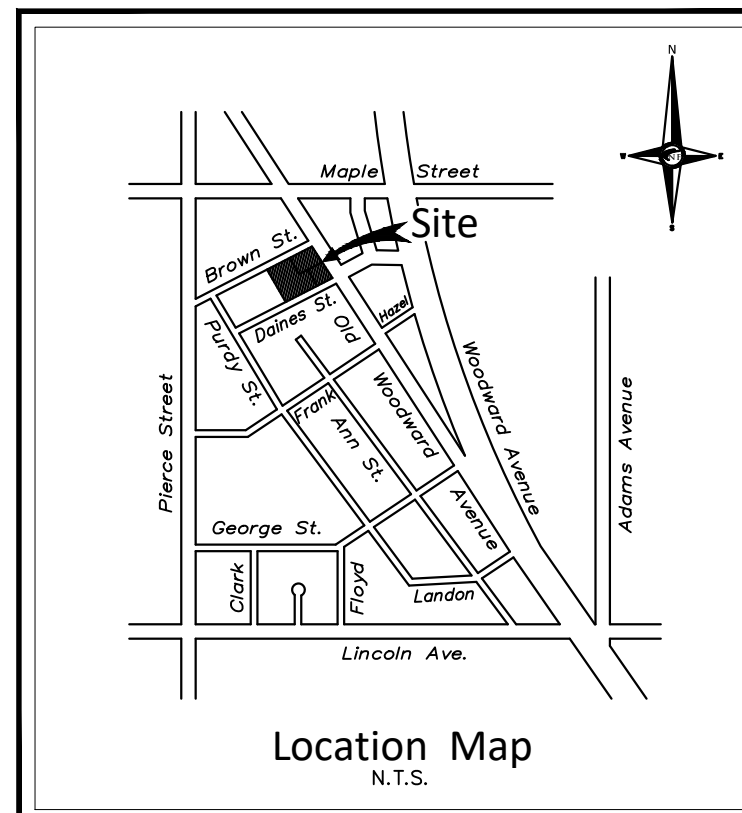
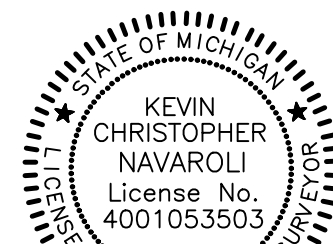
CERTIFICATE OF SURVEY

CERTIFIED TO:

-PURCHASER'S ASSIGNEE
-TROTTER PROPERTIES 294, LLC, A MICHIGAN LIMITED LIABILITY COMPANY, AS TO PARCEL 1
-BRB EQUITABLE, L.L.C., AS TO PARCEL 2
-FRANK T. KONJAREVICH OR LOS H. KONJAREVICH (OR SUCCESSOR TRUSTEES) AS THE TRUSTEE FOR THE FRANK T. KONJAREVICH REVOCABLE LIVING TRUST DATED MAY 22, 1995, AS TO PARCEL 3
-FIRST AMERICAN TITLE INSURANCE COMPANY AND EACH OF THEIR RESPECTIVE SUCCESSORS AND/OR ASSIGNS AS THEIR INTERESTS MAY APPEAR

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2016 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDE ITEMS 1, 2, 3, 4, 6(a), 7(a), 7(b)(1), 7(c), 8, 9, 11, 13, 14, 16, 17, 18 AND 20 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED ON DECEMBER 16, 2020.

Kevin Navaroli
KEVIN NAVAROLI, P.S. NO. 4001053503 DATE 1-24-2021



NOWAK & FRAUS ENGINEERS

CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL (248) 332-7931
FAX (248) 332-8257
WWW.NOWAKFRAUS.COM

LEGAL DESCRIPTION - PARCELS I & II (PER TITLE COMMITMENT)

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

PARCEL I:
THE EAST 1/2 OF LOT(S) 11 OF BROWN'S ADDITION TO THE CITY OF BIRMINGHAM AND THE EAST 1/2 OF LOT 16 OF BROWN'S ADDITION NO. 1, IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING THE VACATED WEST 20 FEET OF ANN STREET ADJOINING LOT 11 AND THE VACATED WEST 19 FEET OF ANN STREET ADJOINING LOT 16.

PARCEL II:
THE WEST 1/2 OF LOT(S) 12 OF BROWN'S ADDITION TO THE VILLAGE (NOW CITY) OF BIRMINGHAM, OF PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, TOWNSHIP OF BLOOMFIELD (NOW CITY OF BIRMINGHAM), OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, ALSO LOT 15, ADDITION TO WILLIAM BROWN'S ADDITION NO. 1, BEING A PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST ACCORDING TO PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING VACATED 20 FEET OF ANN STREET, ADJOINING THE WESTERLY SIDE OF LOT 12 AND VACATED 21 FEET OF ANN STREET ADJOINING THE WESTERLY SIDE OF LOT 15.

ADDRESS: 294 E. BROWN STREET, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-021

TITLE REPORT NOTES - PARCELS I & II

REFERENCE FIRST AMERICAN TITLE INSURANCE COMPANY FILE NUMBER: 915853, COMMITMENT DATE: DECEMBER 8, 2020.

SCHEDULE B, PART II, EXCEPTIONS:

- EXCEPTIONS: 1, 4, 5, 6, 7, 8, 10, 13 AND 16 REFER TO THE OWNERSHIP OF THE PROPERTY AND/OR ARE NOT PLOTTABLE.
2. ANY FACTS, RIGHTS, INTERESTS OR CLAIMS NOT SHOWN BY THE PUBLIC RECORDS BUT THAT COULD BE ASCERTAINED BY MAKING INQUIRY OF PERSONS IN POSSESSION THEREOF OF THE LAND.
3. EASEMENTS, ENCUMBRANCES, OR CLAIMS THEREOF, NOT SHOWN BY THE PUBLIC RECORDS.
9. TERMS AND CONDITIONS CONTAINED IN RESOLUTION AS DISCLOSED BY INSTRUMENT RECORDED IN LIBER 8715, PAGE 137, (NO EASEMENTS OR RESTRICTIONS WITHIN SAID DOCUMENT, NOT PLOTTED).
10. TERMS AND CONDITIONS CONTAINED IN RESOLUTION AS DISCLOSED BY INSTRUMENT RECORDED IN LIBER 5224, PAGE 351, (SAID VACATED EASEMENT IS PLOTTED HEREON).
11. EASEMENT FOR UTILITIES OVER THAT PORTION OF LAND INCLUDED IN THE VACATED ANN STREET AS EVIDENCED BY INSTRUMENT RECORDED IN LIBER 4918, PAGE 461 (SAID VACATED ANN STREET & RETAINED EASEMENT ARE PLOTTED HEREON) AND LIBER 21598, PAGE 287 (SIZE AND LOCATION OF DETROIT EDISON EASEMENT IS UNKNOWN, NOT PLOTTED).
12. EASEMENT(S), RESTRICTIONS AND/OR SETBACK LINES, IF ANY, AS DISCLOSED BY THE RECORDED PLAT.
13. INTEREST OF OTHERS IN OIL, GAS AND MINERAL RIGHTS, IF ANY, WHETHER OR NOT RECORDED IN THE PUBLIC RECORDS.
14. INTEREST, IF ANY, OF THE UNITED STATES, STATE OF MICHIGAN, OR ANY POLITICAL SUBDIVISION THEREOF, IN THE OIL, GAS AND MINERALS IN AND UNDER AND THAT MAY BE PRODUCED FROM THE CAPTIONED LAND.
15. RIGHTS OF TENANTS, IF ANY, UNDER ANY UNRECORDED LEASES.

NOTE: DOCUMENTATION FOR THE VACATION OF THE WEST 15 FEET AND EAST 15 FEET OF ANN STREET Lying WITHIN WILLIAMS BROWN'S ADDITION HAS NOT BEEN PROVIDED TO THE SURVEYOR. CLIENT TO CONFIRM THAT PORTION OF ANN STREET IS VACATED.

LEGEND

MANHOLE(MH)	EXISTING SANITARY SEWER
CO	EXISTING SAN. CLEAN OUT
HYDRANT(HYD)	EXISTING WATER MAIN
GATE VALVE(GVW)	EXISTING STORM SEWER
MANHOLE(MH)	CATCH BASIN(CB)
CB	EX. BEEHIVE CATCH BASIN
UTILITY POLE	EX. UNDERGROUND (UG) CABLE
GUY WIRE	OVERHEAD (OH) LINES
LP	LIGHT POLE
↑	SIGN
ASPH.	EXISTING GAS MAIN
CONC.	ASPHALT
FD. / FND.	CONCRETE
RET. WALL	FOUND
R.O.W.	RETAINING WALL
SPK	RIGHT-OF-WAY
(TYP)	SET PK NAIL
(R)	TYPICAL
(M)	RECORD
C/L	MEASURED
PROPERTY LINE	CENTERLINE
GAS METER	PROPERTY LINE
OH	GAS METER
PM	ELECTRIC METER
LC	PARKING METER
AC	AIR CONDITIONING UNIT
LANDSCAPE	LANDSCAPE

DRAWN BY:

M. Carnaghi

DESIGNED BY:

APPROVED BY:

K. Navaroli

DATE:

February 24, 2021

SCALE: 1" = 20'

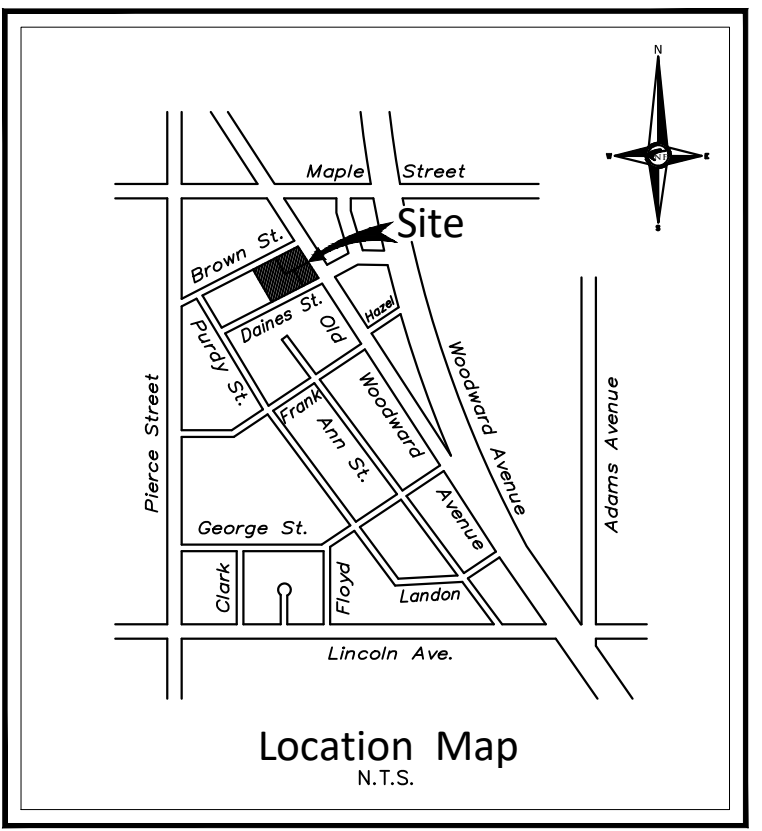
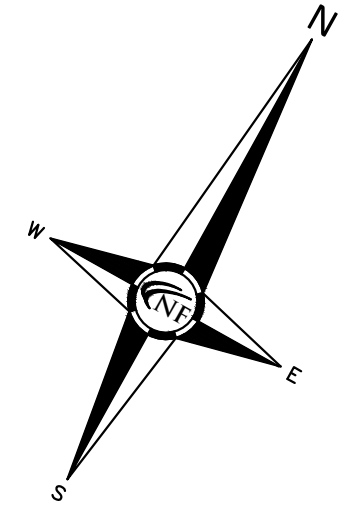
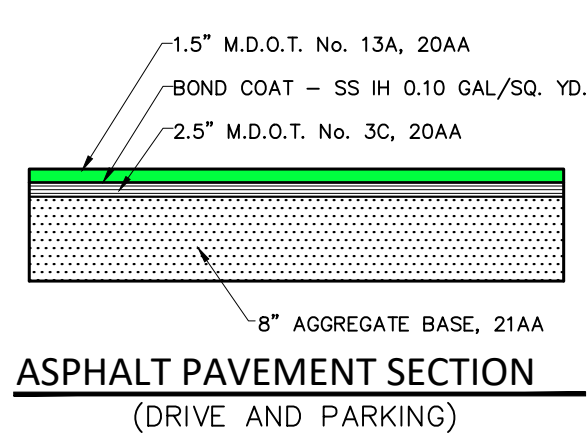
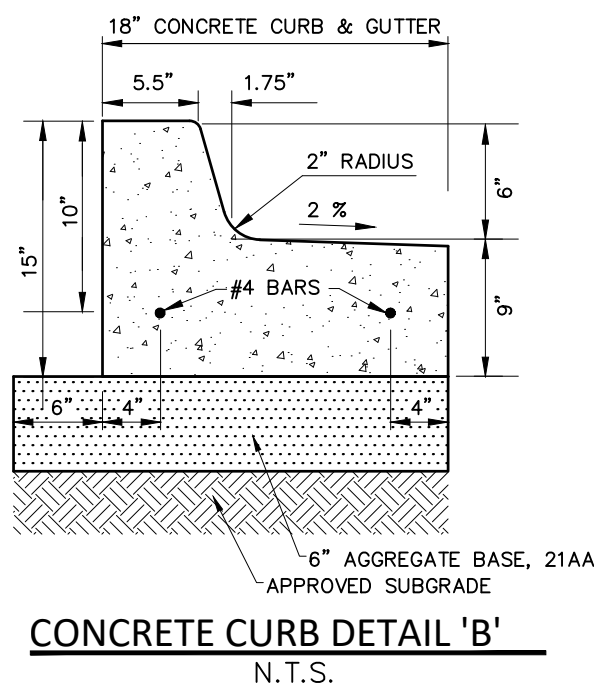
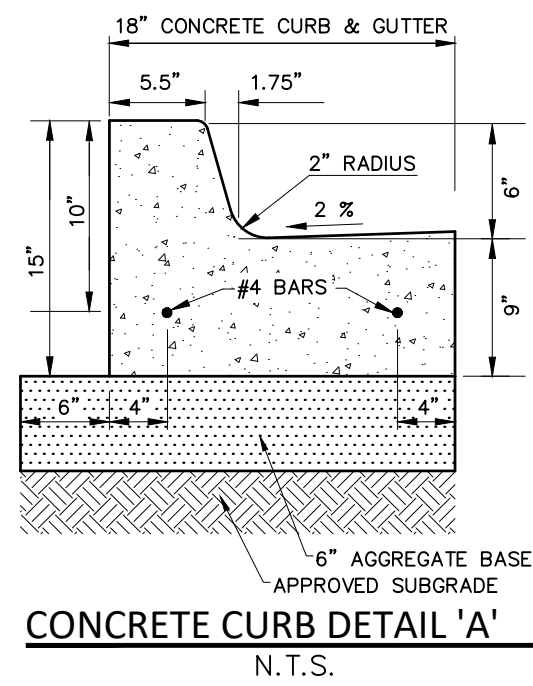
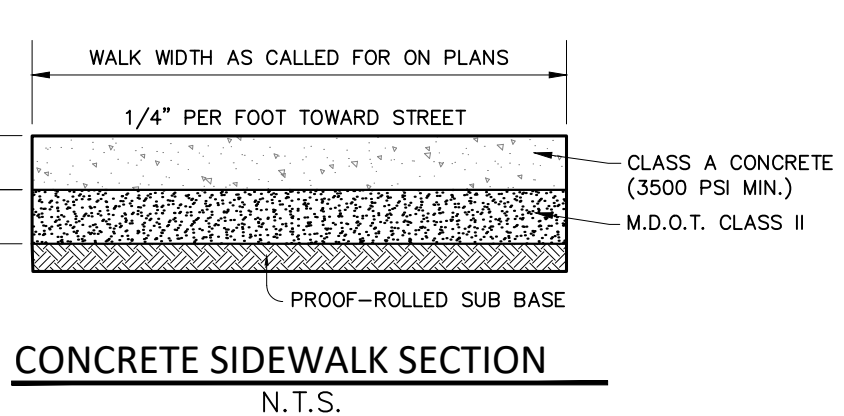
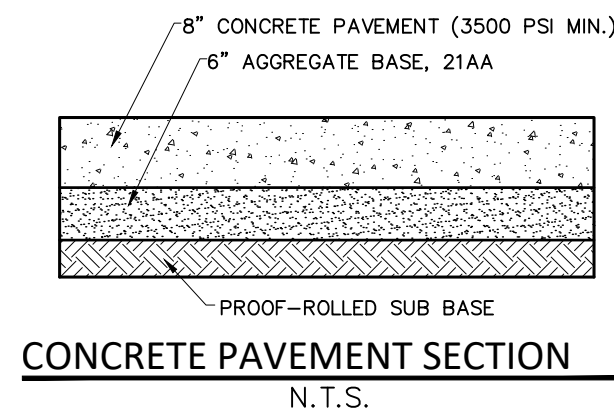
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NFE JOB NO.

M106

SHEET NO.

SP-1



50 NF ENGINEERS
1969 - 2019

NOWAK & FRAUS ENGINEERS

CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVE.
PONTIAC, MI 48342-5032
TEL. (248) 332-7931
FAX. (248) 332-8257
WWW.NOWAKFRAUS.COM

GENERAL PAVING NOTES

PAVEMENT SHALL BE OF THE TYPE, THICKNESS AND CROSS SECTION AS INDICATED ON THE PLANS AND AS FOLLOWS:

- CONCRETE:** PORTLAND CEMENT TYPE 1A (AIR-ENTRAINED) WITH A MINIMUM CEMENT CONTENT OF SIX SACKS PER CUBIC YARD, MINIMUM 28 DAY COMPRESSIVE STRENGTH OF 3,500 PSI AND A SLUMP OF 1 1/2 TO 3 INCHES.
- ASPHALT:** BASE COURSE - MDOT BITUMINOUS MIXTURE NO. 1100L, 20AA; SURFACE COURSE - MDOT BITUMINOUS MIXTURE NO. 1100T, 20AA; ASPHALT CEMENT PENETRATION GRADE 85-100, BOND COAT - MDOT SS-1H EMULSION AT 0.10 GALLON PER SQUARE YARD, MAXIMUM 2 INCH LIFT.

PAVEMENT BASE SHALL BE COMPACTED TO 95% OF THE MAXIMUM DENSITY (MODIFIED PROCTOR) PRIOR TO PLACEMENT OF PROPOSED PAVEMENT. EXISTING SUB-BASE SHALL BE PROOF-ROLLED IN THE PRESENCE OF THE ENGINEER TO DETERMINE STABILITY.

ALL CONCRETE PAVEMENT, DRIVEWAYS, CURB & GUTTER, ETC., SHALL BE SPRAY CURED WITH WHITE MEMBRANE CURING COMPOUND IMMEDIATELY FOLLOWING FINISHING OPERATION.

ALL CONCRETE PAVEMENT JOINTS SHALL BE FILLED WITH HOT POURED RUBBERIZED ASPHALT JOINT SEALING COMPOUND IMMEDIATELY AFTER SAWCUT OPERATION. FEDERAL SPECIFICATION SS-5184.

ALL WORKMANSHIP AND MATERIALS SHALL BE IN ACCORDANCE WITH THE CURRENT STANDARDS AND SPECIFICATIONS OF THE MUNICIPALITY AND THE MICHIGAN DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR CONSTRUCTION, CURRENT EDITION.

ALL TOP OF CURB ELEVATIONS, AS SHOWN ON THE PLANS, ARE CALCULATED FOR A 6" CONCRETE CURB UNLESS OTHERWISE NOTED.

ALL SIDEWALK RAMPS, CONFORMING TO PUBLIC ACT NO. 8, 1993, SHALL BE INSTALLED AS INDICATED ON THE PLANS.

CONSTRUCTION OF A NEW OR RECONSTRUCTED DRIVE APPROACH CONNECTING TO AN EXISTING STATE OR COUNTY ROADWAY SHALL BE ALLOWED ONLY AFTER AN APPROVED PERMIT HAS BEEN SECURED FROM THE AGENCY HAVING JURISDICTION OVER SAID ROADWAY.

FOR ANY WORK WITHIN THE PUBLIC RIGHT-OF-WAY, THE CONTRACTOR SHALL PAY FOR AND SECURE ALL NECESSARY PERMITS AND LIKewise ARRANGE FOR ALL INSPECTION.

EXISTING TOPSOIL, VEGETATION AND ORGANIC MATERIALS SHALL BE STRIPPED AND REMOVED FROM PROPOSED PAVEMENT AREA PRIOR TO PLACEMENT OF BASE MATERIALS.

EXPANSION JOINTS SHOULD BE INSTALLED AT THE END OF ALL INTERSECTION RADI.

SIDEWALK RAMPS, CONFORMING TO PUBLIC ACT NO. 8, 1973, SHALL BE INSTALLED AS SHOWN AT ALL STREET INTERSECTIONS AND AT ALL BARRIER FREE PARKING AREAS AS INDICATED ON THE PLANS.

ALL PAVEMENT AREAS SHALL BE PROOF-ROLLED UNDER THE SUPERVISION OF A GEOTECHNICAL ENGINEER PRIOR TO THE PLACEMENT OF BASE MATERIALS AND PAVING MATERIALS.

FILL AREAS SHALL BE MACHINE COMPACTED IN UNIFORM LIFTS NOT EXCEEDING 9 INCHES THICK TO 98% OF THE MAXIMUM DENSITY (MODIFIED PROCTOR) PRIOR TO PLACEMENT OF PROPOSED PAVEMENT.

COVID-19 PANDEMIC CONDITION

DUE TO THE UNPRECEDENTED COVID-19 PANDEMIC CONDITION AND RESTRICTIONS THE STANDARD DATA WHICH IS OBTAINED FROM MISS DIG / CALL 811 HAS BEEN RESTRICTED TO CRITICAL INFRASTRUCTURE ONLY. NFE WILL MAKE EVERY EFFORT TO OBTAIN CURRENT REFERENCE DATA FROM THE GOVERNING AGENCIES. HOWEVER, THIS DATA MAY BE PARTIAL OR INCOMPLETE. NFE WILL ISSUE THIS SURVEY WITH THE BEST AVAILABLE INFORMATION FROM OUR FIELD SURVEY AND OTHER AVAILABLE REFERENCE DATA. NFE WILL NOT BE RESPONSIBLE FOR INCOMPLETE OR PARTIAL DATA PROVIDED BY THIRD PARTY FACILITY OWNERS. NFE IS NOT RESPONSIBLE FOR BURIED UTILITIES FOR WHICH PLANS WERE NOT FURNISHED OR CANNOT BE OBSERVED IN THE FIELD.

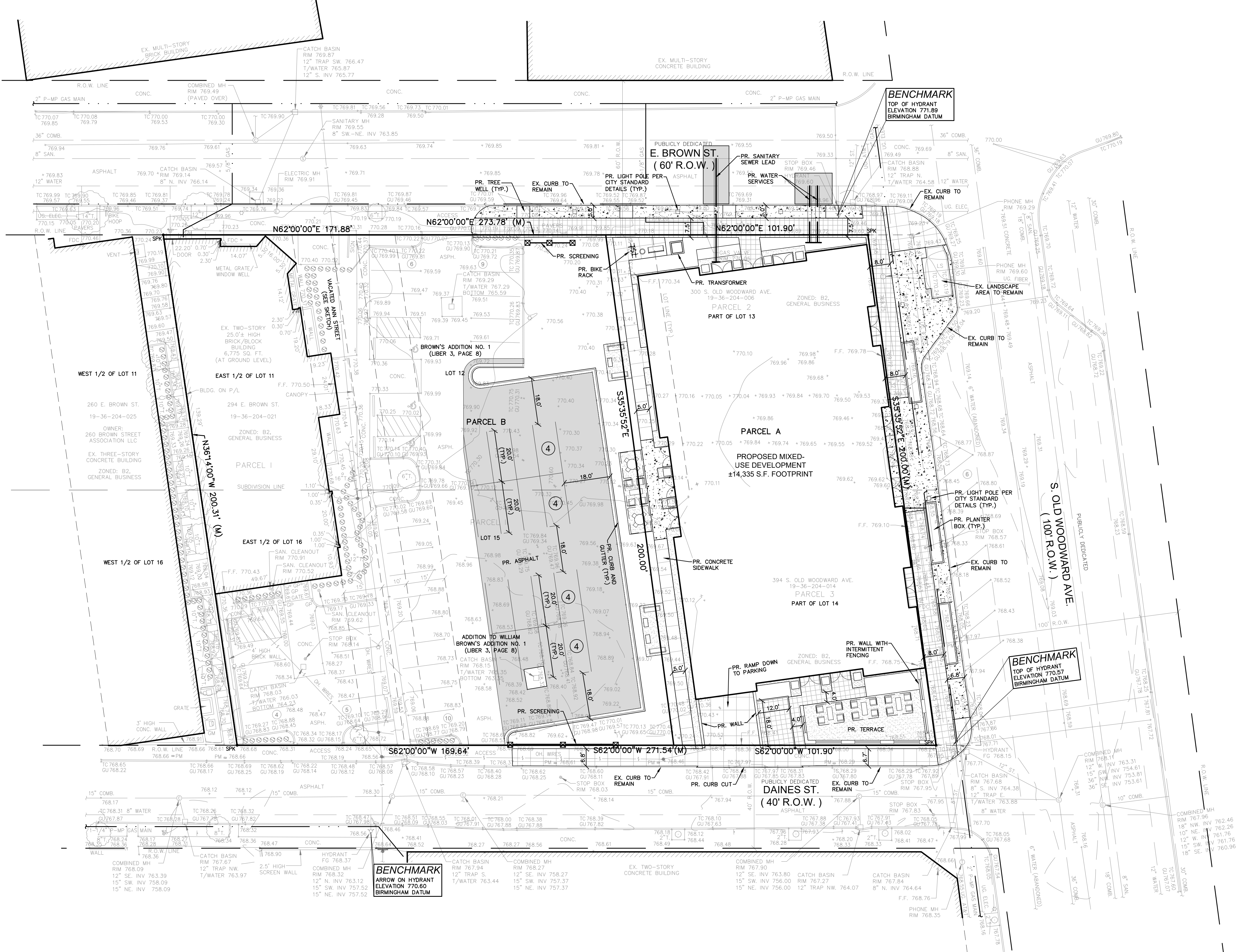
ALL CONSTRUCTION DOCUMENTS WILL BE UPDATED WHEN THE UTILITY INFORMATION IS PROVIDED BY THE FACILITY OWNER UP UNTIL THE TIME OF SUBMITTAL ONCE THE PLANS HAVE BEEN SUBMITTED AND APPROVED IT IS THE CONTRACTORS RESPONSIBILITY TO OBTAIN A MISS DIG TICKET PRIOR TO COMMENCING ANY CONSTRUCTION REQUIRING EXCAVATION. CONTRACTOR SHALL IMMEDIATELY NOTIFY NFE OF ANY UTILITIES FLAGGED BY MISS DIG THAT WERE NOT SHOWN ON THE PLANS OR UTILITIES UNCOVERED DURING THEIR WORK.

PAVING LEGEND

- PROPOSED CONCRETE PAVEMENT
- PROPOSED ASPHALT PAVEMENT

LEGEND

- MANHOLE
- HYDRANT
- MANHOLE CATCH BASIN
- UTILITY POLE
- GUY POLE
- GUY WIRE
- C.O.
- HYDRANT
- INLET
- EXISTING SANITARY SEWER
- SAN. CLEAN OUT
- EXISTING WATERMAIN
- EXISTING STORM SEWER
- EX. R. Y. CATCH BASIN
- EXISTING BURIED CABLES
- OVERHEAD LINES
- LIGHT POLE
- SIGN
- EXISTING GAS MAIN
- PR. SANITARY SEWER
- PR. WATER MAIN
- PR. STORM SEWER
- PR. R. Y. CATCH BASIN
- PROPOSED LIGHT POLE



SEAL



PROJECT
294 E. Brown St. and
300 & 394
S. Old Woodward Ave.
Birmingham, MI 48009

CLIENT
Sarako Architecture
430 N. Old Woodward Ave.
Birmingham, MI 48009

Contact: Victor Saroki
Phone: 248.258.5707

PROJECT LOCATION
Part of the NE 1/4
of Section 36
T.2N., R.10E.,
City of Birmingham,
Oakland County, Michigan

SHEET
Dimensional Site Plan



DATE ISSUED/REVISED
00-00-00

DRAWN BY:
A. Eizember
DESIGNED BY:
A. Eizember
APPROVED BY:
P. Williams

DATE:
February 24, 2021

SCALE: 1" = 20'

NFE JOB NO. M106 **SHEET NO.** SP-2

Drive-over LED in-grade floodlights

Enclosures: Outer housing of high tensile strength stainless steel; inner housing is factory sealed and fabricated of heavy gauge stainless steel. Reflector made of pure anodized aluminum.

Trim Ring: Heavy gauge, machined stainless steel secured to inner housing by five (5) stainless steel hex head fasteners. Trim is sealed in place using molded, one piece high temperature silicone gasket. Glass is clear tempered, 1/2" thick, machined flush to trim ring.

Electrical: 13.9W LED luminaire, 17 total system watts, -20° C start temperature, integral 120V through 277V electronic LED driver, 0-10V, TRIAC, and ELV dimmable. The LED module and driver are mounted on a removable inner assembly for easy replacement. Standard LED color temperature is 4000K with an 85 CRI. Available in 3000K (85 CRI); add suffix K3 to order.

Note: Due to the dynamic nature of LED technology, LED luminaire data on this sheet is subject to change at the discretion of BEGA-US. For the most current technical data, please refer to www.bega-us.com.

Finish: Machined #4 brushed stainless steel. Custom colors not available.

CSA: certified to U.S. and Canadian standards for wet locations. Protection class IP68.

Temperature caution: The column "T" in this chart indicates the temperature in degrees Celsius which is reached on the center of the glass surface during operation. Surface temperatures are for exterior applications. For interior applications add 10° C to temperatures shown.

Note: A foundation and proper drainage must be supplied by the customer. These luminaires are designed to bear pressure loads up to 4,400 lbs. from vehicles with pneumatic tires. The luminaires must not be used for traffic lanes where they are subject to horizontal pressure from vehicles braking, accelerating and changing direction.

Weight: 9.5 lbs.

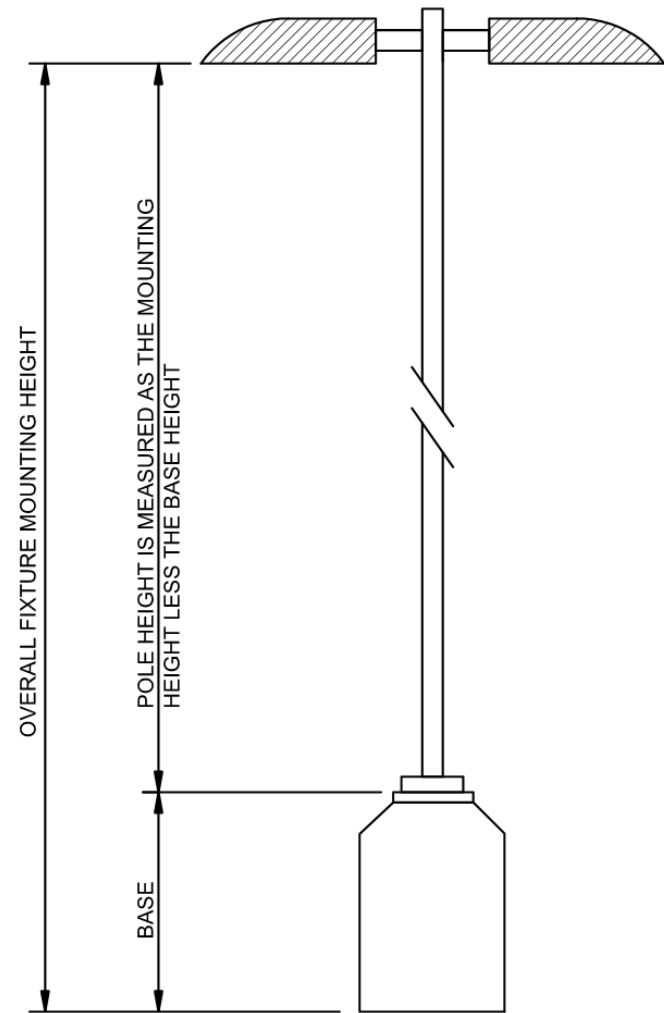
Luminaire Lumens: 970



1000 BEGA Way, Carpinteria, CA 93013 (805) 684-0533 FAX (805) 566-9474 www.bega-us.com
Copyright BEGA 2017 Updated 1/18



Type:
BEGA Product:
Project:
Voltage:
Color:
Options:
Modified:



Mounting Height Note

MOUNTING HEIGHT IS MEASURED FROM GRADE TO FACE OF FIXTURE. POLE HEIGHT SHOULD BE CALCULATED AS THE MOUNTING HEIGHT LESS BASE HEIGHT.

Drawing Note

THIS DRAWING WAS GENERATED FROM AN ELECTRONIC IMAGE FOR ESTIMATION PURPOSE ONLY. LAYOUT TO BE VERIFIED IN FIELD BY OTHERS.

General Note

- SEE SCHEDULE FOR LUMINAIRE MOUNTING HEIGHT.
- CALCULATIONS ARE SHOWN IN FOOTCANDLES AT: 0' - 0"

THE ENGINEER AND/OR ARCHITECT MUST DETERMINE APPLICABILITY OF THE LAYOUT TO EXISTING / FUTURE FIELD CONDITIONS. THIS LIGHTING LAYOUT REPRESENTS ILLUMINATION LEVELS CALCULATED FROM LABORATORY DATA TAKEN UNDER CONTROLLED CONDITIONS IN ACCORDANCE WITH ILLUMINATING ENGINEERING SOCIETY APPROVED METHODS. ACTUAL PERFORMANCE OF ANY MANUFACTURER'S LUMINAIRE MAY VARY DUE TO VARIATION IN ELECTRICAL VOLTAGE, TOLERANCE IN LAMPS, AND OTHER VARIABLE FIELD CONDITIONS. MOUNTING HEIGHTS INDICATED ARE FROM GRADE AND/OR FLOOR UP.

THESE LIGHTING CALCULATIONS ARE NOT A SUBSTITUTE FOR INDEPENDENT ENGINEERING ANALYSIS OF LIGHTING SYSTEM SUITABILITY AND SAFETY. THE ENGINEER AND/OR ARCHITECT IS RESPONSIBLE TO REVIEW FOR MICHIGAN ENERGY CODE AND LIGHTING QUALITY COMPLIANCE.

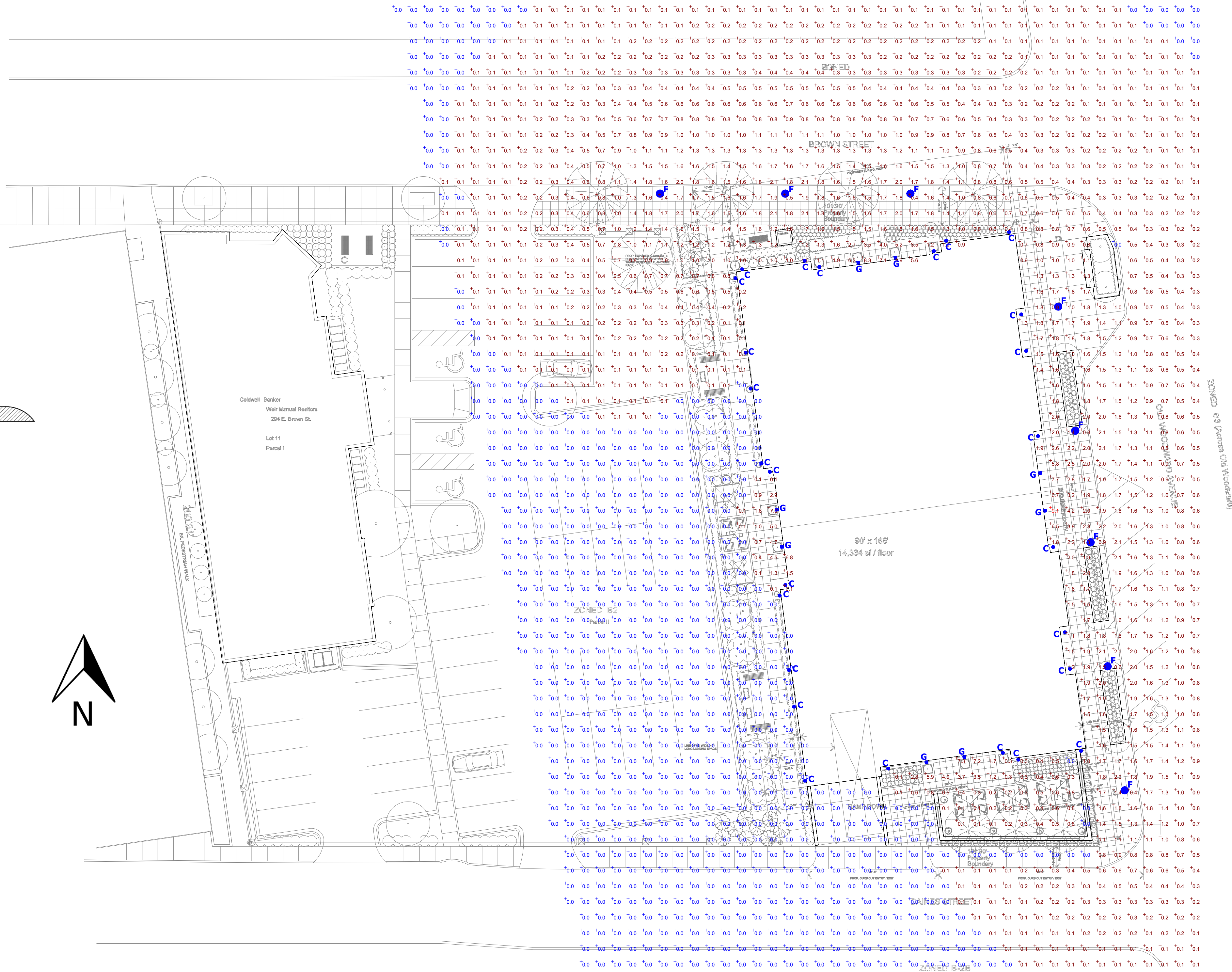
UNLESS EXEMPT, PROJECT MUST COMPLY WITH LIGHTING CONTROLS REQUIRMENTS DEFINED IN ASHRAE 90.1 2013. FOR SPECIFIC INFORMATION CONTACT GBA CONTROLS GROUP AT ASG@GASSERBUSH.COM OR 734-266-6705.

Ordering Note

FOR INQUIRIES CONTACT GASSER BUSH AT QUOTES@GASSERBUSH.COM OR 734-266-6705.

Alternates Note

THE USE OF FIXTURE ALTERNATES MUST BE RESUBMITTED TO THE CITY FOR APPROVAL.













DATE: May 26th, 2021

TO: Thomas Markus, City Manager

FROM: Brooks Cowan, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: Public hearing for the application to amend the Economic Development License Map in Appendix C; Exhibit 1 of the Zoning Ordinance to include 300-394 S. Old Woodward and a portion of 294 E. Brown Street.

INTRODUCTION:

The owners of 300-394 S. Old Woodward and a portion of 294 E. Brown Street have requested a zoning amendment to have the properties located at 300-394 S. Old Woodward and a portion of 294 E. Brown Street included with the properties eligible for an Economic Development License as identified on the map in Appendix C; Exhibit 1 of the Zoning Ordinance.

BACKGROUND:

Properties with an Economic Development License may operate an establishment with on premise sales and consumption of liquor if they obtain a Special Land Use Permit and meet the criteria of Chapter 10, Article II, Division 3 of the Municipal Code. A liquor license associated with an Economic Development License does not have a limit on the number of seats inside or outside of the establishment. The applicant is applying to make this property eligible for an Economic Development License so they may pursue a SLUP for their RH concept store to allow patrons to purchase wine while dining at their restaurant and shopping the design galleries.

The City uses Economic Development Licenses to incentivize growth in certain areas and permit the use of a liquor license if the request is deemed to constitute a substantial economic development and benefit to the City.

On April 28th, 2021, the applicant appeared before the Planning Board to amend the Zoning Ordinance and have the subject property included within the area eligible for an Economic Development license. The Planning Board reviewed recommendations from the Downtown 2016 Plan, development trends in the surrounding area, and trends in retail while considering the zoning amendment. The Planning Board recommended approval of the amendment citing the 2016 Plan's recommendation for an anchor tenant in this location, and how enabling an Economic Development License in this location could help attract a retail anchor that activated the subject area.

LEGAL REVIEW:

The City Attorney has reviewed the documentation and has no concerns.

FISCAL IMPACT:

Expanding the boundary for properties eligible for an Economic Development License has the potential to increase the tax revenue for the City due to approval criteria requiring a 500% increase in assessed value and/or an investment of ten million dollars.

PUBLIC NOTIFICATION:

Prior to the application being considered by the City Commission, the City Clerk's office will send out notices to all property owners and tenants within 300 feet of 300-394 S. Old Woodward and 294 E. Brown Street seeking public comment on the proposal.

SUMMARY:

The Planning Division recommends the City Commission approve the ordinance amendment to Chapter 126, Zoning Ordinance, Appendix C, Exhibit 1, Licenses for Economic Development to include 300-394 S. Old Woodward and a portion of 294 E. Brown Street to be eligible for an Economic Development License.

ATTACHMENTS:

Draft Ordinance Amendment Map
Application
Planning Board Memo
Planning Board Minutes

SUGGESTED RESOLUTION:

To approve an amendment to Chapter 126, Zoning Ordinance, Appendix C, Exhibit 1, Licenses for Economic Development to include 300-394 S. Old Woodward and a portion of 294 E. Brown Street to be eligible for an Economic Development License.

OR

To deny an amendment to Chapter 126, Zoning Ordinance, Appendix C, Exhibit 1, Licenses for Economic Development to include 300-394 S. Old Woodward and a portion of 294 E. Brown Street to be eligible for an Economic Development License.

Appendix C; Exhibit 1 Economic Development Licenses (Proposed Amendment)



City of Birmingham Economic Development Licensing





CONSENT OF PROPERTY OWNER

Frank T. Konjarevich or Lois H. Konjarevich, as Trustees for the Frank T. Konjarevich Rev. Liv. Trust dated 5/22/95
I, _____, OF THE STATE OF Michigan AND
(Name of Property Owner)
COUNTY OF Oakland STATE THE FOLLOWING:

1. That I am the owner of real estate located at 394 S. Old Woodward;
(Address of Affected Property)
2. That I have read and examined the Application for **ZONING MAP CHANGE** made to the City of
Birmingham by: RH, Inc.;
(Name of Applicant)
3. That I have no objections to, and consent to the request(s) described in the Application made to the City of
Birmingham.

Frank T. Konjarevich or Lois H. Konjarevich, as Trustees for the Frank T. Konjarevich Rev. Liv. Trust dated 5/22/95
Name of Owner (Printed): _____

Signature of Owner: Frank Konjarevich Date: 2/24/21

APPLICATION FOR ZONING MAP OR ORDINANCE CHANGE
Birmingham, Michigan

A letter of authority, or power of attorney, shall be attached in case the appeal is made by a person other than the actual owner of the property.

PRZ21-0001

Date Received: 3/4/21 Received By: _____

Resolution No. _____ Approved/Denied _____

Application Fee: \$1,500.00

Receipt Number _____

The petitioner shall be responsible for any costs incurred by consultant, including but not limited to traffic and environmental, contracted by the city to review the proposed site plan and/or community impact study as determined by the city planner.

LEGAL DESCRIPTION – PARCELS I & II

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

PARCEL I:

THE EAST 1/2 OF LOT(S) 11 OF BROWN'S ADDITION TO THE CITY OF BIRMINGHAM AND THE EAST 1/2 OF LOT 16 OF BROWN'S ADDITION NO. 1, IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING THE VACATED WEST 20 FEET OF ANN STREET ADJOINING LOT 11 AND THE VACATED WEST 19 FEET OF ANN STREET ADJOINING LOT 16.

PARCEL II:

THE WEST 1/2 OF LOT(S) 12 OF BROWN'S ADDITION TO THE VILLAGE (NOW CITY) OF BIRMINGHAM, OF PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST, TOWNSHIP OF BLOOMFIELD (NOW CITY OF BIRMINGHAM), OAKLAND COUNTY, MICHIGAN ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, ALSO LOT 15, ADDITION TO WILLIAM BROWN'S ADDITION NO. 1, BEING A PART OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36, TOWN 2 NORTH, RANGE 10 EAST ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS, INCLUDING VACATED 20 FEET OF ANN STREET, ADJOINING THE WESTERLY SIDE OF LOT 12 AND VACATED 21 FEET OF ANN STREET ADJOINING THE WESTERLY SIDE OF LOT 15.

ADDRESS: 294 E. BROWN STREET, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-021

LEGAL DESCRIPTION – PARCEL 2

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

THE EASTERLY 50 FEET OF LOT 12, AND THE WESTERLY PART OF LOT 13, MEASURING 82.45 FEET ON THE NORTH LOT LINE AND 82.48 FEET ON THE SOUTH LOT LINE OF BROWN'S ADDITION SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 300 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-006

LEGAL DESCRIPTION – PARCEL 3

LAND IN THE CITY OF BIRMINGHAM, OAKLAND COUNTY, MI, DESCRIBED AS FOLLOWS:

LOT(S) 14, EXCEPT THAT PART TAKEN FOR WIDENING WOODWARD AVENUE OF ADDITION TO WILLIAM BROWN'S ADDITION NO. 1 ACCORDING TO THE PLAT THEREOF RECORDED IN LIBER 3 OF PLATS, PAGE 8 OF OAKLAND COUNTY RECORDS.

ADDRESS: 394 S. OLD WOODWARD AVENUE, BIRMINGHAM, MI 48009

TAX ID NUMBER: 19-36-204-014

DATE: April 23rd, 2021

TO: Planning Board

FROM: Brooks Cowan, City Planner

APPROVED: Jana Ecker, Planning Director

SUBJECT: Public Hearing for a Zoning Amendment to Chapter 126, Zoning Ordinance Appendix C, Exhibit 1 Economic Development Licenses Map to allow the use of an Economic Development License for the property located at the southwest corner of Brown Street and S. Old Woodward.

Introduction:

The owners of 300-394 S. Old Woodward and a portion of 294 E. Brown Street have requested a zoning amendment to have the properties located at 300-394 S. Old Woodward and a portion of 294 E. Brown Street be included with the properties eligible for an Economic Development License as identified on the map in Appendix C; Exhibit 1 of the Zoning Ordinance. Properties with an Economic Development License may operate an establishment with on premise sales and consumption of liquor if they obtain a Special Land Use Permit and meet the criteria of Chapter 10, Article II, Division 3 of the Municipal Code. A liquor license associated with an Economic Development License does not have a limit on the number of seats inside or outside of the establishment. The applicant is applying to make this property eligible for an Economic Development License which they intend to pursue for their RH concept store to allow patrons to purchase wine while browsing and shopping the design galleries.

Background:

The subject site is zoned B2 and D3 Overlay. The B2 (General Business) zoning classification permits businesses to operate with an Economic Development License as long as they obtain a Special Land Use Permit and are within the parcels eligible for an Economic Development License identified on the map in Exhibit 1; Appendix C of the Zoning Ordinance. The majority of the parcels currently eligible for an Economic Development License are located along Woodward Avenue between Oakland and Lincoln Avenue in the commercial areas of the Downtown Overlay and Triangle District. The southern portion of the Rail District is also eligible for an Economic Development License. Establishments currently operating with an Economic Development license in Birmingham include the All Seasons, Hazel Ravines & Downtown, and Birmingham Pub. Lincoln Yard was approved for an Economic Development License in the fall of 2019, however it has yet to open.

In regards to the purpose of an Economic Development License, the Municipal Code Chapter 10, Article II, Division 3, Section 10-60 states the following:

The purpose of this division is to establish a policy and conditions to allow the City Commission the ability to approve a request to transfer a liquor license into the city in excess of the city's quota licenses if the request is deemed to constitute a substantial economic development and benefit to the city, to establish criteria for selecting applicants, and to provide limitations on the influx of new liquor licenses and to insure controlled growth and development regarding liquor licenses and to evaluate the impact of increased liquor licenses on the city.

The applicant is requesting this zoning amendment to be eligible for the sale of wine at their proposed retail and restaurant development for RH. The applicant believes the combination of wine, food, and furniture design galleries will create a socially engaging retail experience that will serve as a destination based anchor tenant for the City. The eligibility of an Economic Development License may incentivize the applicant to pursue a development that meets the intent of the license which is *"to constitute a substantial economic development and benefit to the city."*

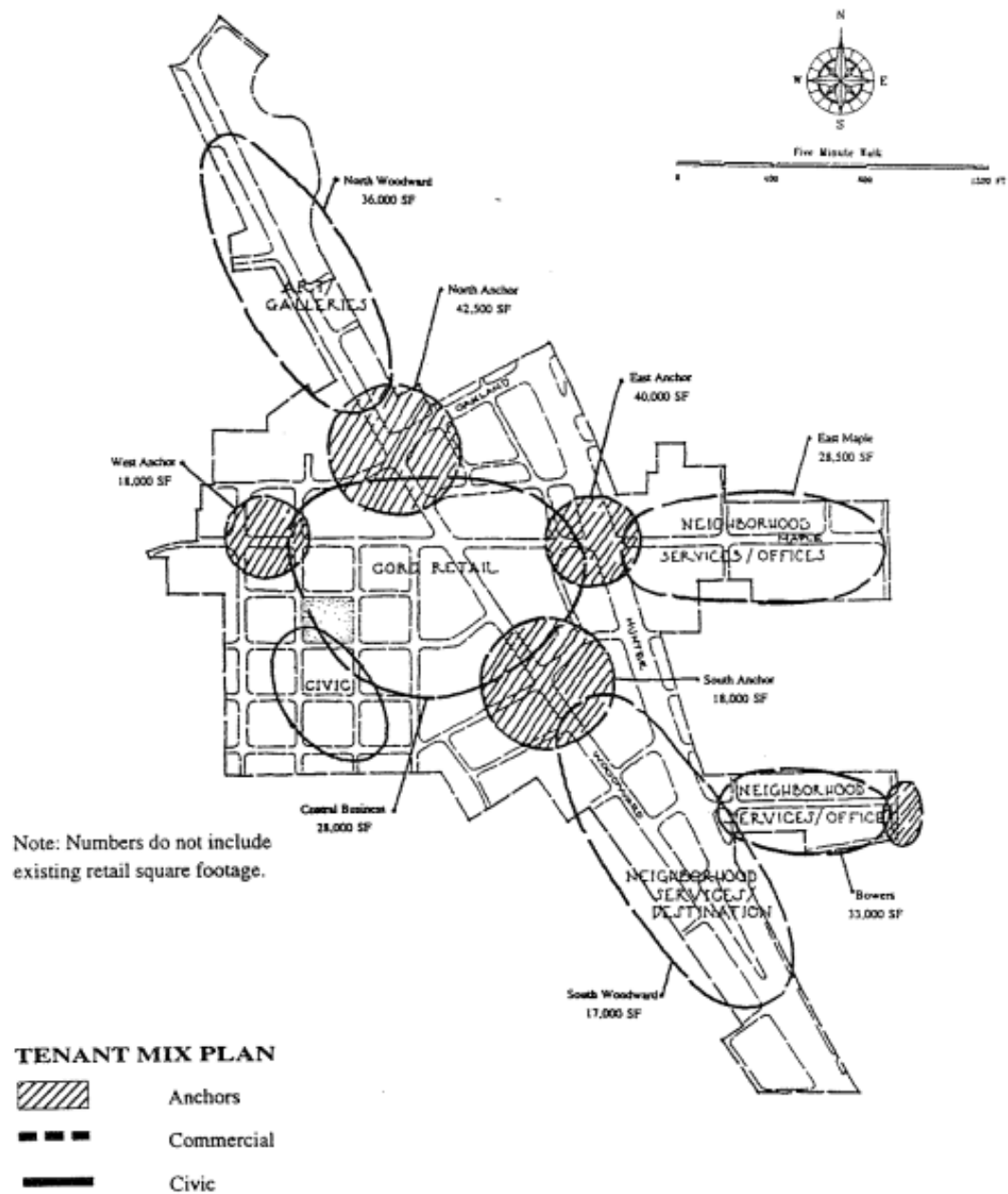
Master Plan:

In regards to the Downtown Birmingham 2016 Plan, it is recommended that the City encourage destination restaurants and retailers which serve as anchor tenants that compliment rather than compete with neighboring commercial uses. These anchor tenants should attract customers from outside the primary trade area, and not have negative impacts on surrounding neighborhoods or the CBD (p. 29-30).

The plan also states that Birmingham has five primary shopping areas in its Downtown which are isolated from each other. The distance between the primary shopping areas significantly limits cross-shopping between them. The plan states that the S. Old Woodward commercial area is separated from the CBD by the ring road traffic of Brown Street, and the plan identifies the intersection of Brown and S. Old Woodward as a location where an anchor tenant development will help spread out retail and encourage pedestrian movement between shopping districts. The illustration of this concept is provided below from Appendix D-1 of the Downtown 2016 Plan.

The plan recommends infill development with 0 foot setback and calls for the elimination of exposed surface parking. Breaks in the street wall for surface parking leads to isolation of retail sections and discourages pedestrian cross shopping from one area of town to the next. The plan also recommends a retail requirement for first floor buildings with frontage along main streets. A retail requirement would provide first floor uses that activate the street at a pedestrian level and provide a continuous engaging experience of items and activities to see in businesses as visitors pass through Birmingham's downtown.

An economic development license for the subject area could incentivize an anchor tenant that provides infill for the space and helps connect the downtown to the S. Old Woodward corridor which the 2016 Plan calls for. This anchor tenant could help continue the street wall from downtown and enhance the pedestrian experience with more retail activity. By attracting an anchor tenant for this location, an Economic Development License for this location could constitute a substantial economic development and benefit to the City and also help achieve the goals of the 2016 Master Plan.



Surrounding Area:

In regards to existing uses within the general area of the property, the subject property currently consists of a one story building and a two story building with a surface parking lot between them. The buildings are along the retail frontage line and consist of businesses offering financial services, shoe repair, and furniture.

The properties to the east and southeast from 355 to 555 S. Old Woodward are all eligible for an Economic Development license. Birmingham Pub at 555 S. Old Woodward currently operates with an Economic Development Liquor License. The area to the southeast is not within the Parking Assessment District, however it does include a parking deck in the 555 building that is available for public use, and a new 5-story mixed-use building has been approved at 469-479 S. Old Woodward. Adachi Sushi is located directly to the east at 325 S. Old Woodward and operates with a Bistro Liquor License in the historical Peabody Mansion. The Peabody Mansion is the only property south of Brown Street between Woodward and S. Old Woodward that is not eligible for an Economic Development license due to its historical designation.

To the north of the subject property is the newly developed Daxton Hotel which has replaced a former single story building and a large surface parking lot. The Daxton Hotel operates with a Hotel Liquor License which enables them to serve alcohol at the restaurant, banquet hall, and for room service. There are two public parking structures to the northeast and northwest of the subject property which are the Pierce Structure and Peabody Structure. Both public parking structures are within 200 feet of the subject property. Birmingham's core commercial area is currently located just north of the subject property, which is zoned as B4 and D4 Overlay.

Directly to the south is the newly developed Forefront property. The Forefront is a mixed-use 3-story building with a 1st floor commercial use and a mix of condos and apartments on floors two and three. There is an eclectic mix of uses continuing further south along Old Woodward which includes a pharmacy, an outdoor sporting goods store, and the restaurant "Phoenicia" which operates with a Class C Quota Liquor License.

Directly to the west along Brown Street is a 2-story office building for Coldwell Banker followed by a 3-story office building with Broder & Sachse amongst other tenants. The southwest portion of the property faces Daines Street which has a mix of office uses in the B2-B zone.

At this time, there are no properties on the west side of S. Old Woodward that are eligible for an Economic Development License.

Current Trends:

Brick and mortar retail has been shifting towards experience-based retail to compete with online shopping. This past decade, the retail industry has seen a number of businesses close their doors due to an inability to compete with online shopping. Successful brick and mortar stores have been able to combat online shopping by providing a positive experience that coincides with quality goods being sold. Doing so creates a destination-based experience that gets patrons walking into their doors and exploring the surrounding area.

The applicant wishes to become eligible for an Economic Development License to provide a luxury shopping experience that includes wine sales to go along with the furniture sales concept. Patrons of the restaurant would be able to bring their wine into various sections of the store while browsing the various design galleries with items for sale. This luxury shopping experience adds a social element to their shopping experience and encourages social interaction while visiting their store.

In regards to development and business trends in the area, The City has begun to see more activity near S. Old Woodward and Brown. The Forefront completed construction in 2018 however it did not occupy its first floor space with a tenant that quite meets the intent of the retail requirement. Attracting an anchor tenant on this side of town could help compliment and activate the surrounding retail spaces as spill-over shopping becomes a possibility. The Daxton Hotel recently completed construction across the street from the subject site and intends to activate the area with its hotel rooms for rent, its restaurant, and its banquet hall for various events. A 5-Story mixed use building was recently approved for 469-479 S. Old Woodward which also intends to bring more 1st floor retail and residents to this side of town. Attracting an anchor tenant could help compliment the surrounding development activity for this area.

An item for consideration and discussion is the impact of Covid-19 on downtowns such as Birmingham where restaurants and shops depend on business from surrounding office workers. There is a wide range of future projections for in-office work, many of them reducing the number of office workers and allowing more opportunities to work at home. If this occurs, Birmingham's businesses could experience a drastic reduction in revenue (or continue to...) An Economic Development License could help attract a destination anchor tenant that brings more people into downtown. Doing so could also provide an interesting destination for people working at home and looking to get out for social activity.

Amending the Ordinance to make the subject property eligible for an Economic Development License could incentivize development at this site that incorporates more experience-based retail that attracts patrons to the area and compliments the surrounding uses.

Summary:

The Planning Division finds that a zoning amendment to make the subject property eligible for an Economic Development License could help incentivize an anchor tenant that serves as an experience-based retail destination. Attracting such an anchor tenant would satisfy the recommendations of the Downtown 2016 Plan for the subject area of S. Old Woodward and Brown. Incentivizing an anchor tenant could also help connect retail from the CBD into the S. Old Woodward area and serve as a catalyst for surrounding businesses.

Suggested Action:

To recommend approval to the City Commission of the ordinance amendment to allow the use of an Economic Development Liquor License in the expanded area as shown on the attached map for Appendix C, Exhibit 1, Economic Development Licenses.

OR

To postpone the ordinance amendment to allow the use of an Economic Development Liquor License in the expanded area as shown on the attached map for Appendix C, Exhibit 1, Economic Development Licenses given the following reasons:

- 1.) _____
- 2.) _____
- 3.) _____

OR

To recommend denial to the City Commission of the ordinance amendment to allow the use of an Economic Development Liquor License in the expanded area as shown on the attached map for Appendix C, Exhibit 1, Economic Development Licenses.

City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, April 28, 2021

Held Remotely Via Zoom And Telephone Access

Minutes of the regular meeting of the City of Birmingham Planning Board held on April 28, 2021.
Vice-Chair Bryan Williams convened the meeting at 7:35 p.m.

A. Roll Call

Present: Vice-Chair Bryan Williams; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce; Alternate Board Member Jason Emerine (all located in Birmingham, MI, with the exception of Stuart Jeffares who was in Traverse City, MI.)

Absent: Chair Scott Clein; Alternate Board Member Nasseem Ramin; Student Representatives Daniel Murphy, Jane Wineman

Administration: Jana Ecker, Planning Director ("PD")
Brooks Cowan, City Planner ("CP")
Laura Eichenhorn, City Transcriptionist

Fleis and Vandenbrink:
Julie Kroll

F. Zoning Ordinance Amendment Request

1. Request for an amendment to Chapter 126, Zoning, Appendix 1, Exhibit A, to amend the Economic Development License map to include the properties at **300 & 394 S. Old Woodward, and portions of 294 E. Brown** – New Construction (Capital Title/Lutz & Frank's Shoe Service, portions of Coldwell Banker Weir Manual parking lot) on the map contained in Exhibit A to allow the use of economic development liquor licenses (EDL) on these properties.

CP Brooks and Ms. McGregor presented the item.

In reply to Vice-Chair Williams, Mr. Saroki confirmed the granting of an EDL is critical to the development of this project.

Mr. Share said that irrespective of the current proposal from RH the City should consider allowing this parcel to be eligible for an EDL since the 2016 Plan set it out as an ideal location for an anchor tenant.

Motion by Mr. Share

Seconded by Ms. Whipple-Boyce to recommend approval to the City Commission of the ordinance amendment to allow the use of an Economic Development Liquor License in the expanded area as shown on the attached map for Appendix C, Exhibit 1, Economic Development Licenses.

Motion carried, 7-0.

ROLL CALL VOTE

Yeas: Share, Whipple-Boyce, Emerine, Boyle, Jeffares, Koseck, Williams

Nays: None



MEMORANDUM

Police Department

DATE: May 26, 2021

TO: Thomas M. Markus, City Manager

FROM: Mark H. Clemence, Chief of Police
Paul A. Wells, Fire Chief

SUBJECT: Temporary COVID-19 Off-Season Outdoor Dining Standards Expiration Date

INTRODUCTION:

As part of the City's economic relief efforts to assist the residential and business community through the COVID-19 pandemic, the City Commission approved "Temporary COVID-19 Off-Season Outdoor Dining Standards" that allowed businesses to erect dining platforms on City property without charge and without following standardized dining platform rules. The current resolution is set to expire on June 30, 2021 (see-attached resolution). On May 10, 2021, a "draft report" was included under the reports section for the City Commission and the public (see attached). This draft detailed the status of the "Temporary COVID-19 Off-Season Dining Standards" as it stood relative to the date and current state of Michigan Department of Health and Human Services (MDHHS) orders at that time.

On May 20, 2021, the Center for Disease Control (CDC) released new guidance on masks, based on the strength of vaccines preventing infections and spread among vaccinated people. The guidance says vaccinated people no longer need to wear masks or socially distance indoors or outdoors, with exceptions for certain medical spaces. The State of Michigan has adjusted the State's mask policy to match the CDC recommendation. Currently, fully vaccinated people no longer need to wear a mask outdoors or indoors unless required by their work or business. The State of Michigan has also announced that as of June 1, 2021, all outdoor capacity limits will be lifted while all indoor establishments will continue at a 50% capacity limit. Finally, it is anticipated that on July 1, 2021, the State of Michigan will take its final step in reopening the state by lifting the remaining mask and gatherings orders and will no longer impose broad mitigation measures related to COVID-19. All businesses and workplaces will have the right to require masks beyond that date.

BACKGROUND:

The City Commission originally approved the installation of temporary COVID-19 off-season outdoor dining standards on May 11, 2020 through September 8, 2020 (see attached minutes). On August 24, 2020, the City Commission approved an extension of the COVID-19 off-season outdoor dining standards until March 31, 2021 (see attached minutes). Finally, on March 8, 2021, the City Commission approved a resolution to extend the temporary COVID-19 off-season outdoor dining standards until June 30, 2021 (see attached minutes).

In addition to the economic relief efforts, the City has also been engaged in helping the restaurant and retail operations with other COVID-19 assistance, including the following:

1. The City applied for and was awarded a total of \$106,970.00 from Oakland County to help support the local needs of restaurants, bars and cafes.
2. Through the Oakland County Restaurant Relief Grant, the City was able to procure a number of eligible items valued at \$48,192.00 that included:
 - a. (60) outdoor propane heaters
 - b. (1,400) 20lb. propane tank exchanges (program still ongoing)
 - c. (25) electrostatic sprayers
 - d. (50) gallons of disinfectant
 - e. (3) greenhouses
 - f. (1) igloo

The remaining balance of \$58,778.00 was used for reimbursing restaurants, bars and cafes for COVID-19 related expenses accrued through June 30, 2021. Eligible purchases through the grant were personal protective equipment (PPE), outdoor propane heaters, electrostatic sprayers, propane, electric heaters, greenhouses, igloos and supplies for building temporary outdoor shelters (lumber, tables, chairs, etc.). In April, twelve restaurants, bars and cafes also received approximately \$5,000.00 each in reimbursements.

The Birmingham Shopping District (BSD) has held multiple PPE drive-up donation days to help support all local businesses. The PPE drives were funded by the BSD with a donation from Oakland County.

The basic premise for the temporary COVID-19 off-season outdoor dining standards was to allow for on-site, outdoor dining to make-up for indoor dining that was either eliminated or limited by compliance with the Executive Orders from the Governor of the

State of Michigan or the Michigan Department of Health and Human Services. The number of dining seats removed from the interior of the restaurant due to health guidelines was the maximum number that each establishment was permitted to add outdoors in the public right-of-way on the sidewalk, in the on-street parking zone , in a via and/or on private property.

Throughout the course of the past year, the State of Michigan has experienced peaks and valleys as it relates to the prevalence of COVID-19. Currently, COVID-19 numbers in Michigan have been consistently high. The current MDHHS orders include:

1. Consumption of food or beverages only in designated dining area where patrons are seated, separated by 6 feet in distance and no more than 6 patrons are seated together
2. No gathering of patrons in common areas
3. No more than 50% of normal seating capacity
4. Close by 11:00 pm
5. All dine-in food service establishments must maintain accurate records of the names and phone numbers of patrons who consume food or beverages on the premises, and the date and time of entry

According to a recent press release from Governor Gretchen Whitmer on May 24, 2021, it is the intention of the MDHHS to have only the following restrictions in place on June 1, 2021:

1. No more than 50% of the limits established by the State of Michigan Fire Marshal or a local fire marshal (or 30 persons per 1,000 square feet if no applicable fire marshal limit exists) or 25 persons.
2. All dine-in food service establishments must maintain accurate records of the names and phone numbers of patrons who consume food or beverages on the premises, and the date and time of entry

It is also anticipated that barring any unforeseen uptick in COVID-19 cases, that the MDHHS will remove all restrictions on July 1, 2021.

It should be noted that in recent visits to many of the City's restaurants by staff, including police and fire, prior to June 1, 2021, numerous violations of MDHHS indoor dining orders were observed (see attached), including:

1. Over 50% capacity indoors
2. Not observing 6 foot social distancing between dining groups
3. More than 6 patrons sitting at one table

4. Patrons allowed to stand and gather in common areas (bar area)

Additional areas of concern have been the encroachment of outdoor decks and dining operations into public walkways (planter stands, hostess/host stands, employees) causing obstructions and the over occupancy in outdoor dining areas.

The current City resolution is set to expire on June 30, 2021. Alternate options for temporary COVID-19 outdoor dining standards for consideration by the Commission include the following:

1. Continue with expiration date of June 30, 2021
2. Modify with expiration date of Friday, September 10, 2021, the first Friday after the Labor Day weekend subject to the following conditions:
 - a. Any temporary dining platform with walls and/or roofs must have those walls and/or roofs removed by July 9, 2021. Walls and/or roofs will not be permitted on any future temporary platforms. Proper temporary barriers will be required to denote the dining areas.
 - b. Heaters will be allowed pursuant to fire department rules and regulations, but storage of propane containers near the dining area will no longer be permitted.

The City will continue to monitor all restaurants to ensure that compliance with current MDHHS orders. Any restaurant not in compliance may have their temporary outdoor dining revoked by the City. The City will investigate violations of MDHHS orders, document violations of MDHHS orders and report violations of MDHHS orders to that agency.

LEGAL REVIEW:

The City Attorney has reviewed this report and has no objections to the suggested resolutions.

FISCAL IMPACT:

The fiscal impact will be determined by the course of action selected by the Commission. If the Commission chooses to extend the period of time that temporary COVID-19 outdoor dining platforms can remain in place, those platforms utilizing on-street parking spaces would represent lost revenue commensurate with parking meter fees.

SUMMARY:

The current resolution allowing for temporary COVID-19 outdoor dining standards is set to expire per resolution on June 30, 2021. The City has gone to great lengths to assist

the business community to weather the COVID-19 pandemic, both financially and with the time and efforts of City staff. The City Commission has two options:

1. Take no action. The current City resolution allowing for temporary COVID-19 outdoor dining standards would expire on June 30, 2021.
2. Extend the current resolution allowing the temporary COVID-19 dining standards to Friday, September 10, 2021 subject to the following conditions:
 - c. Any temporary dining platform with walls and/or roofs must have those walls and/or roofs removed by July 9, 2021. Walls and/or roofs will not be permitted on any future temporary platforms. Proper temporary barriers will be required to denote the dining areas.
 - b. Heaters will be allowed pursuant to fire department rules and regulations, but storage of propane containers near the dining area will no longer be permitted.

ATTACHMENTS:

1. City Resolution # 05-073-20
2. Draft Report: Temporary COVID-19 Off Season Outdoor Dining Standards Expiration Date
3. City Commission Minutes of May, 11, 2020
4. City Resolution # 08-160-20
5. City Commission Minutes of August 24, 2020
6. City Resolution # 03-062-21
7. City Commission Minutes of March 8, 2021
8. Police and Fire Restaurant Observation Reports (04/30, 05/01)

SUGGESTED RESOLUTIONS:

Take no action. The current City resolution allowing Temporary COVID-19 Off-Season Outdoor Dining Standards would expire on June 30, 2021.

OR

Extend the current City resolution allowing Temporary COVID-19 Off-Season Outdoor Dining Standards to Friday, September 10, 2021 subject to the following conditions:

- a. Any temporary dining platform with walls and/or roofs must have those walls and/or roofs removed by July 9, 2021. Walls and/or roofs will not be permitted on any future temporary platforms. Proper temporary barriers will be required to denote the dining areas.
- b. Heaters will be allowed pursuant to fire department rules and regulations, but storage of propane containers near the dining area will no longer be permitted.

RESOLUTION # 05-073-20

TEMPORARY COVID-19 OUTDOOR DINING STANDARDS

WHEREAS the novel coronavirus (COVID-19) is a respiratory disease that is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person;

WHEREAS the spread of COVID-19 has resulted in the State of Michigan declaring a State of Emergency under Section 1 of Article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, and the Emergency Powers of the Governor Act, 1945 PA 302, as amended, as evidenced in Executive Order 2020-4;

WHEREAS the City of Birmingham has activated their Emergency Operation Center to respond to the COVID-19 pandemic;

WHEREAS the City of Birmingham is committed to encouraging economic activity and assisting local businesses impacted by the COVID-19 pandemic to ease back into operation while containing the spread of COVID-19;

WHEREAS the City of Birmingham wishes to ensure that establishments permitted to open to the public have the ability to accommodate social distancing guidelines currently in force within the State of Michigan;

NOW THEREFORE BE IT RESOLVED, all food and drink establishments in existence as of the date of this resolution that hold a valid Outdoor Dining Permit and a License for Use of Public Property for outdoor dining, will be permitted to operate outdoor dining areas in accordance with the following Temporary COVID-19 standards through September 8, 2020:

1. Establishments may expand their outdoor dining area up to, but not exceeding, 200% of the previously approved area, if space permits;
2. Establishments with outdoor dining areas between buildings and the curblane may expand their outdoor dining area to extend across no more than 50% of neighboring storefronts that are not currently in use as food and/or drink establishments;
3. Establishments located on streets with speed limits of 25 mph or less and traffic volumes of less than 5000 cars per day may apply for the use of one or more on-street parking space(s) to expand their outdoor dining into the street without the use of an elevated platform;
4. Establishments located along vias may utilize a portion of the via adjacent to their building for the expansion of outdoor dining areas if there is not

sufficient space to expand along the street / sidewalk side of the restaurant;

5. All establishments seeking temporary changes in accordance with this resolution must submit an Administrative Approval application to the Planning Division, and include the following documents:
 - i) A plan view of the proposed outdoor dining area showing all fixtures and furnishings with all distances clearly marked for pedestrian paths and between seating;
 - ii) Proof of insurance to include coverage of the existing outdoor dining area and the area proposed for expansion; and
 - iii) A revised license agreement to include permission to use the existing and expanded outdoor dining area, if located on public property.

BE IT FURTHER RESOLVED, that all existing and expanded outdoor dining areas on both public and private property are required to alter the design and layout of tables, chairs, fixtures and enclosure systems to meet social distancing guidelines in effect and contain the spread of COVID19 as follows:

1. Reconfigure the layout of the entire outdoor dining area, to the maximum extent practical, to provide a minimum 6' clear pedestrian walking path adjacent to the dining area;
2. Reconfigure tables and chairs to allow seating for patrons only in accordance with social distancing guidelines in effect;
3. Remove all previously approved chairs and other seating that does not meet social distancing guidelines;
4. Install temporary signage to encourage compliance with social distancing guidelines;
5. Provide a temporary hand sanitizing station adjacent to the outdoor dining area; and
6. Provide a temporary service station outdoors that includes a trash receptacle and disinfecting wipes or other supplies for the cleaning of tables and chairs between patrons and of high touch points in the outdoor dining area.

BE IT FURTHER RESOLVED, that the City of Birmingham will waive all application fees, license and rental fees for the expanded portion of the outdoor dining area permitted by this resolution, including the use of both on street and off street right-of-ways and City owned property.

BE IT FURTHER RESOLVED, Except as herein specifically provided, all ordinances of the City of Birmingham in effect at the time of the issuance of this resolution, and as they may be subsequently amended, shall remain in force. Failure to comply with all the ordinances of the City may result in enforcement action and/or termination of an existing Special Land Use Permit.

I, Alexandria Bingham, City Clerk Designee, of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on _____, 2020.

Alexandria Bingham, City Clerk Designee



MEMORANDUM

Police Department

DRAFT REPORT

DATE: May 5, 2021

TO: Thomas M. Markus, City Manager

FROM: Mark H. Clemence, Chief of Police
Paul Wells, Fire Chief

SUBJECT: Temporary COVID-19 Off-Season Outdoor Dining
Standards Expiration Date

INTRODUCTION:

As part of the City's economic relief efforts to assist the residential and business community through the COVID-19 pandemic, the City Commission approved "Temporary COVID-19 Off-Season Outdoor Dining Standards" that allowed businesses to erect dining platforms on City property without charge and without following standardized dining platform rules. The current resolution is set to expire on June 30, 2021 (see-attached resolution).

BACKGROUND:

The City Commission originally approved the installation of temporary COVID-19 off-season outdoor dining standards on May 11, 2020 through September 8, 2020 (see attached minutes). On August 24, 2020, the City Commission approved an extension of the COVID-19 off-season outdoor dining standards until March 31, 2021 (see attached minutes). Finally, on March 8, 2021, the City Commission approved a resolution to extend the temporary COVID-19 off-season outdoor dining standards until June 30, 2021 (see attached minutes).

In addition to the economic relief efforts, the City has also been engaged in helping the restaurant and retail operations with other COVID-19 assistance, including the following:

1. The City applied for and was awarded a total of \$106,970.00 from Oakland County to help support the local needs of restaurants, bars and cafes.
2. Through the Oakland County Restaurant Relief Grant, the City was able to procure a number of eligible items valued at \$48,192.00 that included:
 - a. (60) outdoor propane heaters
 - b. (1,400) 20lb. propane tank exchanges (program still ongoing)
 - c. (25) electrostatic sprayers

- d. (50) gallons of disinfectant
- e. (3) greenhouses
- f. (1) igloo

The remaining balance of \$58,778.00 was used for reimbursing restaurants, bars and cafes for COVID-19 related expenses accrued through June 30, 2021. Eligible purchases through the grant were personal protective equipment (PPE), outdoor propane heaters, electrostatic sprayers, propane, electric heaters, greenhouses, igloos and supplies for building temporary outdoor shelters (lumber, tables, chairs, etc.). In April, twelve restaurants, bars and cafes also received approximately \$5,000.00 each in reimbursements.

The Birmingham Shopping District (BSD) has held multiple PPE drive-up donation days to help support all local businesses. The PPE drives were funded by the BSD with a donation from Oakland County.

The basic premise for the temporary COVID-19 off-season outdoor dining standards was to allow for on-site, outdoor dining to make-up for indoor dining that was either eliminated or limited by compliance with the Executive Orders from the Governor of the State of Michigan or the Michigan Department of Health and Human Services. The number of dining seats removed from the interior of the restaurant due to health guidelines was the maximum number that each establishment was permitted to add outdoors in the public right-of-way on the sidewalk, in the on-street parking zone, in a via and/or on private property.

Throughout the course of the past year, the State of Michigan has experienced peaks and valleys as it relates to the prevalence of COVID-19. Currently, COVID-19 numbers in Michigan have been consistently high. The current Michigan Department of Health and Human Services (MDHHS) orders include:

1. Consumption of food or beverages only in designated dining area where patrons are seated, separated by 6 feet in distance and no more than 6 patrons are seated together
2. No gathering of patrons in common areas
3. No more than 50% of normal seating capacity
4. Close by 11:00 pm
5. All dine-in food service establishments must maintain accurate records of the names and phone numbers of patrons who consume food or beverages on the premises, and the date and time of entry

It should be noted that in recent visits to many of the City's restaurants by staff, including police and fire, numerous violations of MDHHS indoor dining orders were observed, including:

1. Over 50% capacity indoors
2. Not observing 6 foot social distancing between dining groups
3. More than 6 patrons sitting at one table
4. Patrons allowed to stand and gather in common areas (bar area)

With the expiration date of June 30, 2021 approaching, alternate options for temporary COVID-19 outdoor dining standards for consideration by the Commission include the following:

1. Continue with expiration date of June 30, 2021
2. Modify with expiration date of August 31, 2021
3. Modify with a hybrid date (November 15, 2021) based on restaurant compliance with MDHHS orders as determined by City staff

The City will continue to monitor all restaurants to ensure that compliance with current State of Michigan Department of Health and Human Services orders. Any restaurant not in compliance may have their temporary outdoor dining revoked by the City. The City will investigate violations of MDHHS orders, document violations of MDHHS orders and report violations of MDHHS orders to that agency.

LEGAL REVIEW:

None

FISCAL IMPACT:

The fiscal impact will be determined by the course of action selected by the Commission. If the Commission chooses to extend the period of time that temporary COVID-19 outdoor dining platforms can remain in place, those platforms utilizing on-street parking spaces would represent lost revenue commensurate with parking meter fees. Additionally, if extended, those restaurants who have paid for their approved outdoor dining platforms (non COVID-19 dining decks) should have reimbursement consideration based on the amount of time of the extension.

SUMMARY:

The current resolution allowing for temporary COVID-19 outdoor dining standards is set to expire per resolution on June 30, 2021. The City has gone to great lengths to assist the business community to weather the COVID-19 pandemic, both financially and with the time and efforts of City staff. The City Commission has three options:

1. Take no action. The current City resolution allowing for temporary COVID-19 outdoor dining standards would expire on June 30, 2021.
2. Extend the current resolution allowing the temporary COVID-19 dining standards to a future date. It has been suggested that August 31, 2021 be the new proposed expiration date.
3. Modify the current COVID-19 outdoor dining standards resolution with a hybrid date of expiration (November 15, 2021) based upon individual restaurant compliance with MDHHS orders as determined by City staff.

ATTACHMENTS:

1. City Resolution # 05-073-20
2. City Commission Minutes of May, 11, 2020
3. City Resolution # 08-160-20
4. City Commission Minutes of August 24, 2020
5. City Resolution # 03-062-21

6. City Commission Minutes of March 8, 2021

SUGGESTED RESOLUTIONS:

Take no action

OR

To continue "Temporary COVID-19 Off-Season Outdoor Dining Standards" until August 31, 2021.

OR

Modify the current "Temporary COVID-19 Off-Season Outdoor Dining Standards" to include a hybrid date of expiration (November 15, 2021) based upon individual restaurant compliance with current MDHHS orders as determined by City staff.

**BIRMINGHAM CITY COMMISSION
VIRTUAL MEETING MINUTES
MONDAY, MAY 11, 2020
7:30 P.M.**

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Pierre Boutros called the meeting to order at 7:30 P.M. with everyone reciting the Pledge of Allegiance.

II. ROLL CALL

Alexandria Bingham, City Clerk Designee, called the roll.

PRESENT: Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman

ABSENT: None

Administration: City Manager Valentine, Assistant City Manager Gunter, Finance Director Gerber, City Attorney Currier, Attorney Kucharek, Planning Director Ecker, DPS Director Wood, BSD Executive Director Tighe, City Engineer Johnson, Police Chief Clemence, Officer Grewe, IT Manager Brunk, Acting City Clerk Arft, City Clerk Designee Bingham.

III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.

ANNOUNCEMENTS:

- All city offices remain closed to the public. All departments are accessible via phone and email. Payments may be dropped off using the convenient drop box, located behind City Hall and accessible via the Police Department parking lot off Henrietta Street.
- The City has created a hotline to provide residents with information about City and County COVID19 resources. Elderly, quarantined and immuno-compromised individuals are encouraged to use the hotline to request assistance with essential

Mr. Stern commented that he has 35 years in the cemetery business and the report that he gave to Mr. Bloom was a report presented to the GCAB, suggesting that an independent auditor look at the staff analysis for reasonableness and the City Commission should have a neutral party look at the report presented by the City administration. He went on to say that, this is a typical "make or buy" decision.

Commissioner Hoff requested that since the contract would be reviewed for completeness, that the contractor identify as a cemetery services contractor in the agreement.

Commissioner Sherman withdrew the motion contingent on the second being withdrawn. Commissioner Nickita withdrew the second.

No action was taken on the suggested resolution and staff was directed to complete the contract language to move forward at a subsequent meeting.

05-073-20 COVID-19 ECONOMIC AND OPERATIONAL ASSISTANCE INITIATIVES

City Manager Valentine presented recommendations developed by the administration and staff to assist the residential and business community through the COVID-19 crisis.

1. Delaying invoicing and collection of special payments until January 2021
2. Waiving penalties on delinquent water and sewer bills, special assessment, and invoices rolled to taxes.
3. Waiving penalties on delinquent water and sewer bills through the end of the year.
4. Waiving fees for outdoor dining platforms.
5. Waiving fees for outdoor dining meter fees during the 2020 outdoor dining season.
6. Waiving annual fees for valet licenses.
7. Waiving liquor license renewal fees.
8. Waiving fees for temporary signage or eliminating temporary signage permits through the end of summer.
9. Waive e-check fees for online payments to encourage utilization as opposed to in-person visits.
10. Waive the field, park, and shelter rental fees for the current year to incentivize congregating with consideration to social distancing, if permitted.
11. Waive access fees to BS&A records to increase efficiencies and minimize physical contact at the Treasurer's office.
12. Keep on-street parking fees during the day, and eliminate on-street parking fees after 5P.M.
13. Waive parking structure fees for public use through September.
14. Waive parking structure permit fees through September.
15. Waive initial merchant license fee for the remainder of 2020.
16. Waive temporary structure permit fees to encourage businesses to accommodate social distancing.
17. Waiving pet license fees through the end of 2020.

Commissioner Baller asked City Manager Valentine to clarify the economic impact of each recommendation in terms of whether or not the funds would be recoverable over time to the City for each recommendation.

Commissioner Sherman expressed concern about the habitual abuse of rolling delinquent bills onto the tax roll and waiving penalties in those situations.

Commissioner Baller asked if Commissioner Sherman would be amenable to a reduction as opposed to a waiver.

Commissioner Sherman would be amenable to delaying tax roll transfers or roll delinquencies that occurred prior to the date of the Governor's Executive Order and hold the rest until next year.

Commissioner Host asked for the percentage of residential delinquencies compared to commercial delinquencies. Finance Director Gerber did not have that information available.

Commissioner Nickita expressed that if the intent is to address the need of people affected by the current environment, then it would make sense for the City Commission to look at the timing recommended and put dates on the water and tax initiatives, thus eliminating previous offenders.

Mayor Boutros suggested limiting the water and tax recommendations to residents.

Commissioner Host agreed with Mayor Boutros.

Finance Director Gerber expressed that the ordinance did not differentiate between residential and commercial. The Commission would have to make the determination. He further offered that under ordinance, water and sewer bills must be delinquent six months prior to transferring to the tax roll. Therefore, the delinquencies in question did not occur after the emergency was declared.

Commissioner Sherman reminded everyone that the residential and business community are combined in this circumstance. He went on to say the initiatives before the City Commission is to help the people that were harmed by the COVID-19, and not reward the habitual abusers.

City Manager Valentine expressed that based on the abovementioned comments; the administration could come back with recommendations including effective dates that are more in line with the impact if that is the pleasure of the commission.

Commissioner Hoff agreed with City Manager Valentine.

Commissioner Baller affirmed that the community should be assisted, but the focus should be on those that are actually distressed by the situation.

Public Comment:

David Bloom suggested, because bistros are required to have outdoor dining, making it optional for bistros to install platforms for the 2020 dining season.

Mayor Boutros advised to Mr. Bloom that the City Commission have flexibility in dealing with each situation. He went on to advise that bistros are charged extra for the space that is used outside to expand capacity.

Commissioner Baller asked if signage standards would be relaxed. He also asked if anything displayed to date appeared to be egregious.

Planning Director Ecker explained that what is proposed would change the regulations according to the draft resolution included in the agenda packet. In response to the egregiousness of current displays, there are some signs that are larger and have been displayed longer than currently allowed. She assured everyone that permits would be required, to make sure social distancing is considered, but the fees would be waived.

Commissioner Sherman commented that he appreciates the gesture put forth for the park fee waiver; and expressed that he is not sure whom this would benefit.

Mayor Boutros expressed that if it does not hurt anyone; why not put forth the gesture.

Mayor Pro-Tem Longe felt it would benefit the individuals whom rent the Springdale shelter for gatherings.

Commissioner Hoff asked what the acronym BS&A represent. Finance Director Gerber explained that it is not an acronym but the name of the software used by the City for all financial transactions.

Commissioner Host applauded the efforts of the administration and staff to increase customer satisfaction.

In reference to the parking initiatives, Commissioner Hoff asked if mechanisms are in place to determine what effect this would have based on the potential for evening workers to use the metered parking.

Assistant City Manager Gunter expressed that on-street parking used by employees has not been a factor after 5 P.M.

Commissioner Nickita expressed the same concern, but would like to stay focused on the reason that short term metered parking is in place. He suggested that because on-street parking would be free, long-term users would park in short term spaces and could negatively

affect the existing parking concerns. He further stated that with parking along Maple St. eliminated, there are unforeseen consequences in terms of the short-term user.

City Manager Valentine expressed that designated spots are proposed for pick-ups and drop-off outside of retailers to accommodate the short-term visitor and would be discussed later in the presentation.

Mayor Pro-Tem Longe pointed out that item #12 is a two-part proposal.

Commissioner Baller suggested contacting Park Mobile for their input on this initiative. He went on to suggest signage in the parking structures to encourage social distancing.

Mayor Pro-Tem Longe suggested that signage related to social distancing would be appropriately posted on the elevators, which is the risk environment.

Commissioner Hoff suggested monitoring #14 to see how many people would be returning to work and how that would affect occupancy.

Commissioner Host reminded everyone that the current initiatives are mainly to assist the downtown businesses, and approximately 85% of the general fund is from residents; therefore, the next round of initiatives should mainly support residents.

Commissioner Sherman asked if there was information available on cities that use installment plans for property taxes.

City Manager Valentine did not have anything available, but assured the City Commission that it is under review.

Public Comment:

Andrew Haig, resident, expressed that the measures brought by the staff for relief was very impressive; he thanked everyone who worked on the initiatives.

David Bloom, resident, requested to speak about the Hunter House. He was asked to wait until public comment on matters not on the agenda.

City Manager Valentine presented initiatives to resume City operations:

1. Install hand sanitizer stations around the business district.
2. Install hand sanitizer stations in City parks.
3. Cleaning regimen of playground equipment, park furnishings, and bus shelters.
4. Allow curbside pickup in the business district.
5. Allow business to use City parks for classes to support social distancing.
6. Install Plexiglas partitions in municipal building and other City facilities to minimize public contact at counters.
7. Expand on-line service offerings.
8. Modifying outdoor dining area regulations to allow for social distancing.

9. ~~Closing designated streets in the evening to accommodate expanded on-street dining.~~²
10. Provide additional seating along the streets for restaurants to allow patrons to wait outside for carryout.
11. Increasing communications and promoting information about voting in upcoming elections to encourage absent voting for safety and convenience.

Commissioner Hoff asked, in reference to the revised temporary use regulations due to COVID-19, how would it work on Maple Street and allow for social distancing.

Planning Director Ecker expressed that Maple Street along the construction zone was not included in the plan, because there was not a path for it to work.

Commissioner Baller asked for an explanation for providing picnic tables to businesses. He went on to say that, he would prefer to purchase more of the furnishings that are in Shain Park, which are durable, attractive, and could be stored and used forever.

City Manager Valentine offered that in anticipation of a mid-May reopening, the surplus of picnic tables could be used until businesses redesigned their outdoor dining, again, to accommodate social distancing. However, now that there is more time until reopening, he agreed with Commissioner Baller that his solution is appropriate.

Commissioner Nickita added that the comments by City Manager Valentine are very important in considering the ramifications of the action; and while he supports assisting the businesses in reopening in the current environment, he advised the commissioners to proceed carefully.

Public Comment:

Mr. Henke expressed that he has been working with the business district and staff and would appreciate the City Commission giving direction to staff immediately so that everyone can begin mobilizing.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Host:
To approve the COVID-19 Economic Assistance Initiatives numbers 1, 4, 5, 6, 7, 8, 9, 10, 11, 12A, 13, 14, 15, 16, and 17.

And

COVID-19 Operational Initiatives number 1-8, 10, and 11 and adopt the resolutions for Temporary Outdoor Dining Standards, Temporary Signage Regulations, and Temporary Use Regulations.

Commissioner Nickita asked for clarification of the motion. City Manager Valentine clarified the motion and the suggested resolution.

² City Manager Valentine pulled this initiative until more clarity could be attained from the State Liquor Commission and the Michigan Municipal League.

Commissioner Baller asked how flexibility in the parking permit scenario outlined in number 14 of the Economic Assistance Initiatives played out in the resolution. He went further to ask if the City Commission was approving the resolution in concept and allowing the administration to apply flexibility as needed.

City Manager Valentine affirmed and added that if any significant changes arose, it would be brought back to the City Commission. He also anticipates these discussions to be on going as we move forward in the current environment.

Public Comment:

David Bloom, resident, commented on behalf of Paul Reagan that he is supportive of helping residents and business owners impacted by COVID-19, as well as the parking initiatives. He expressed that he is not supportive of spending to benefit wealthier, larger property owners, and developers,

ROLL CALL VOTE:	Ayes,	Commissioner Hoff Commissioner Host Commissioner Sherman Mayor Pro-Tem Longe Commissioner Baller Commissioner Nickita Mayor Boutros
	Nays,	None

BSD COVID-19 BUSINESS RELIEF INITIATIVES

Ingrid Tighe, BSD Executive Director presented this item.

- BSD has been acting as a conduit for information on Federal and State programs designed to help small businesses, such as the Paycheck Protection program.
- Helped facilitate focus groups with Congresswoman and State Representative.
- Active in working with Oakland County for grants and other relief available on a County level.
- Merchant meetings to provide construction updates and expectations for the next 30, 60, and 90 days.
- Identified essential services that the Birmingham Shopping District must continue in the next year.
- Developed relief initiatives for downtown businesses that were not identified as essential.
- BSD committees collaborated to insure relief efforts were successful.
- Identified over \$100,000 in budget to reallocate to COVID-19 relief efforts.
- Identified \$75,000 in budget to put aside for contingencies.
- Identified another \$225,000 that was set aside for construction assistance to help downtown businesses.
- Four committees using a 30, 90, and 180 day plan for business development and retention.

RESOLUTION # 08-160-20
TEMPORARY COVID-19 OFF-SEASON
OUTDOOR DINING STANDARDS

WHEREAS the novel coronavirus (COVID-19) is a respiratory disease that is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person;

WHEREAS the spread of COVID-19 has resulted in the State of Michigan declaring a State of Emergency under Section 1 of Article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, and the Emergency Powers of the Governor Act, 1945 PA 302, as amended, as evidenced in Executive Order 2020-99;

WHEREAS the City of Birmingham has activated their Emergency Operation Center to respond to the COVID-19 pandemic;

WHEREAS the City of Birmingham is committed to encouraging economic activity and assisting local businesses impacted by the COVID-19 pandemic to ease back into operation while containing the spread of COVID-19;

WHEREAS it is the intent of the City of Birmingham to assist establishments permitted to open to the public to expand into outdoor space to allow for the provision of the number of seats previously approved for their operation while also accommodating social distancing guidelines currently in force within the State of Michigan;

WHEREAS it is the intent of the City of Birmingham to continue to provide expanded outdoor dining options to assist food and drink establishments to navigate the challenges of the pandemic throughout the fall and winter months while also accommodating social distancing guidelines;

NOW THEREFORE BE IT RESOLVED, all food and drink establishments in existence as of October 1, 2020 will be permitted to operate off-season outdoor dining areas in accordance with the following Temporary COVID-19 standards from October 1, 2020 through March 31, 2021:

1. Establishments may add new outdoor dining areas or expand previously approved outdoor dining areas in order to add additional seating to compensate for lost interior seating as a result of COVID-19 related restrictions to accommodate social distancing and/or to allow for phased reopening;
2. The number of seats to be removed from the interior of the restaurant due to health guidelines is the maximum number that each establishment shall be permitted to add outdoors in the public right-of-way on the sidewalk, in the on-street parking zone, in a via and / or on private property;

3. Outdoor dining areas must commence adjacent to the establishment in accordance with Michigan Liquor Control Commission standards, and may extend out in front of neighboring establishments, or on abutting private property (with consent of the owner), as space permits;
4. Outdoor dining areas permitted temporarily in the off-season from October 1, 2020 through March 31, 2021 under this resolution may include the use of tents, coverings or other temporary structures with side enclosures to provide protection from the weather for the entire period that this resolution remains in effect;
5. All structures proposed temporarily during the off-season to enclose outdoor dining areas must meet all of the requirements listed in Exhibit A, and must be constructed and inspected under a valid building permit;
6. If a food and drink establishment is unable to provide or expand outdoor dining into the public right-of-way on the sidewalk, in the on-street parking zone, in a via or on private property and / or is unable to meet requirements (1) through (4) above in these locations, the City may permit other options for outdoor dining on a case by case basis if unique or mitigating circumstances exist.
7. All establishments seeking temporary changes in accordance with this resolution must obtain a building permit for all enclosure structures and submit an Administrative Approval application to the Planning Division, and include the following documents:
 - i) A plan view of the proposed outdoor dining area showing all fixtures and furnishings with all distances clearly marked for pedestrian paths and between seating;
 - ii) Proof of insurance to include coverage of the existing outdoor dining area and the area proposed for expansion; and
 - iii) A temporary license agreement, if located on public property.
 - iv) Documentation of any indoor heating equipment.

BE IT FURTHER RESOLVED, that all existing and expanded outdoor dining areas with or without enclosure structures on both public and private property are required to alter the design and layout of tables, chairs, fixtures and enclosure systems to meet social distancing guidelines in effect and contain the spread of COVID19 as follows:

1. Reconfigure the layout of the entire outdoor dining area, to the maximum extent practical, to provide a minimum 6' clear pedestrian walking path adjacent to the dining area;
2. Reconfigure tables and chairs to allow seating for patrons only in accordance with social distancing guidelines in effect;
3. Remove all previously approved chairs and other seating that does not meet social distancing guidelines;
4. Install temporary signage to encourage compliance with social distancing guidelines;
5. Provide a temporary hand sanitizing station adjacent to the outdoor dining area; and

6. Provide a temporary service station outdoors that includes a trash receptacle and disinfecting wipes or other supplies for the cleaning of tables and chairs between patrons and of high touch points in the outdoor dining area.

BE IT FURTHER RESOLVED, that the City of Birmingham will waive all application fees, permit fees, license and rental fees for the expanded portion of the outdoor dining area, any structures used to cover or enclose such outdoor dining areas permitted by this resolution, and any fees relating to the use of both on street and off street right-of-ways and City owned property.

BE IT FURTHER RESOLVED, Except as herein specifically provided, all ordinances of the City of Birmingham in effect at the time of the issuance of this resolution, and as they may be subsequently amended, shall remain in force. Failure to comply with all Federal and State laws and regulations and the ordinances of the City may result in enforcement action and/or termination of an existing Special Land Use Permit.

I, Alexandria Bingham, City Clerk Designee, of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on _____, 2020.

Alexandria Bingham, City Clerk Designee

Exhibit A
Requirements for all Temporary Off-Season
Outdoor Dining Tents and Structures

- Detailed plans and specifications shall be submitted for review and approval by the Fire and Community Development Departments.
- The tent/structure must be inspected and approved prior to use.
- All tents/structures must be flame resistant with certificate on site.
- Tents/structures must be properly anchored for the weather conditions, no stakes allowed.
- Aisles inside of tents/structures shall have a minimum width of 36 inches for up to 10 occupants and 44 inches for over 10 occupants.
- Clear Fire Department access must be maintained around all tents and temporary structures.
- Tents/structures may not obstruct fire hydrants or fire sprinkler connections on buildings.
- No smoking is permitted in any tent/structure. Signs are to be posted.
- No open flame or other devices emitting flame, or fire are permitted in any tents/structures. Cooking devices shall not be permitted within 20 feet of the tents/structures.
- All cords, hoses, etc. shall be matted to eliminate trip hazards.
- All exit openings shall be egress compliant.
 - ✓ Curtains shall be free sliding on a metal support not less than 80 inches above floor level. The curtain shall be arranged so when open, no part of the curtain obstructs the exit. Curtains shall be of color, or colors, that contrasts with the color of the tent/structure.
 - ✓ Doors shall swing in the direction of egress with an opening force not to exceed 15 pounds.
- Exits must be clearly marked within tents/structures.
- Two means of egress shall be provided for an occupant load of 10 to 199 people, with a minimum egress width of 72 inches for tents, 36 inches for membrane structures.
- Exits shall be spaced at approximately equal intervals around the perimeter of the structure.
- The means of egress shall be illuminated at all times.

- Heating equipment must be listed and approved for indoor use, and comply with the International Fire Code, International Fuel Gas Code, the International Mechanical Code, and shall be approved by the Fire Marshal and Mechanical Inspector. Documentation must be submitted for review and approval.
- Heating equipment shall not be located within 10 feet of exits and must be installed per the manufacturer's recommendations including clearance to combustibles.
- LP-Gas cannot be stored inside the tent/structure or adjacent buildings.
- Portable fire extinguishers with a minimum rating of 2A, 10BC shall be installed inside all tent/structures.
- Carbon Monoxide detectors shall be installed in all tents/structures.

BIRMINGHAM CITY COMMISSION VIRTUAL MEETING MINUTES
AUGUST 24, 2020
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

Watch the entire meeting at: vimeo.com/event/3470/videos/448736187

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Pierre Boutros, Mayor called the meeting to order with the Pledge of Allegiance at 7:30 p.m.

II. ROLL CALL

Alexandria Bingham, City Clerk Designee, called the roll:

PRESENT: Mayor Boutros
Mayor Pro-Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman

ABSENT: None

Administration: City Manager Valentine, Planning Director Ecker, Assistant Planning Engineer Cowan, Commander Grewe, IT Manager Brunk, City Clerk Designee Bingham

III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.

ANNOUNCEMENTS:

- All city offices remain closed to the public. All departments are accessible via phone and email. Payments may be dropped off using the convenient drop box, located behind City Hall and accessible via the Police Department parking lot off Henrietta Street.
- 2020 Summer property taxes are due Monday, August 31, 2020 and must be received in the Treasurer's Office by that date to avoid a penalty. Due to COVID, mail delivery service is very slow and unpredictable, therefore, the Treasurer's Office recommends that you either drop off your payment in the drop box located behind City Hall or pay on-line using the Pay My Property Taxes quick link located on the City's website homepage. If you pay on-line, you can use a credit card and pay a 3% convenience fee or use the free e-check option. You can also use this link to check on the status of your payment with the City.
- The Baldwin Library is open to the public. Building capacity is limited, and people are asked to limit their stay to 45 minutes. Public computer use is restricted to 30 minutes. Masks and social distancing are required. The Library is open on its regular schedule, seven days a week, and is also offering Curbside Pickup service to patrons during limited hours, which are listed on the Library's website.
- We encourage everyone to sign up for our email distribution system to receive the latest information from the City. You can do this by going to our website and clicking on the box in the lower right corner of your screen to sign up.
- The Clerk's office would like to remind voters to turn in an absentee ballot applications if they wish to vote by mail for the November 3, 2020 General Election. To review your

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To approve the installation of Dismount Zone signs at the border of the Central Business District
and at the City bike station in Shain Park.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Commissioner Nickita
Commissioner Hoff
Commissioner Host
Mayor Pro-Tem Longe
Commissioner Baller
Mayor Boutros
Nays, None

08-160-20 TEMPORARY COVID-19 OFF-SEASON OUTDOOR DINING STANDARDS

City Manager Valentine presented an overview of the existing conditions and Planning Director Ecker presented the details of this item.

Mayor Boutros iterated that this is essentially an extension of what had been approved early in the outdoor dining season to help the establishments in the face of COVID-19.

Commissioner Baller noted that there have been changes since the initial approval, and expressed concern about an unfair advantage granted to Bistros.

Planning Director Ecker confirmed that the extension allows enclosures to support inclement weather, and the establishments are monitored for compliance. She further clarified that the benefit is extended to all establishments not just Bistros and there are no outdoor bars.

Commissioner Hoff asked the following:

- Restrictions on the material used for enclosures.
- Clarification of an Igloo.
- How would enclosures differ from dining inside in terms of exposure risk to the virus?
- How would the City be impacted if COVID-19 restrictions are lifted sooner than anticipated?
- Would there be a benefit to extending the measure until the end of the year and revisit the issue at that time if needed.

Planning Director Ecker replied:

- All enclosures must meet existing building and fire codes.
- Igloos are freestanding structures typically shaped in a dome. The existing building code does not provide for this type of structure.
- Enclosed expansions provide opportunities for establishments to practice appropriate social distancing and retain capacity.
- The City Commission can rescind resolutions for temporary assistance.

City Manager Valentine added that a time limit would be a barrier for the establishments.

Mayor Pro-Tem Longe asked would the approval process be consistent between enclosures and structures.

Planning Director Ecker affirmed that it would and the existing building and fire codes would prevail.

Commissioner Host asked for clarification of how these measures are being monitored.

Planning Director Ecker explained that it is a collaboration between the building department, code enforcement, and the police department to monitor compliance.

Commissioner Sherman noted that the intent is to provide the downtown businesses opportunities to succeed in the current environment. Enclosures are optional for individual business owners.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita: To adopt the Temporary COVID-19 Off-Season Outdoor Dining Standards, to take effect October 1, 2020 as amended.

Public Comment

Mr. Hencke commented on:

- Economic survival of all of the restaurants.
- Capital outlay for the establishments.
- Oversight provided by the Michigan Liquor Control Commission and the State Health Department.

Commission Nickita expressed that due to the moving parts involved that many would not participate in the measure, but the City must present an opportunity for success.

Mayor Pro-Tem Longe asked the Commission to address Mr. Hencke's concern about adjacent establishments.

City Manager Valentine affirmed that discussions are ongoing with respect to the Michigan Liquor Control Commission to comply with their regulations, and suggested an amendment to the resolution to include MLCC compliance.

City Attorney Carrier confirmed that the City is controlled by the MLCC rules.

ROLL CALL VOTE: Ayes,	Commissioner Sherman
	Commissioner Nickita
	Commissioner Host
	Mayor Pro-Tem Longe
	Commissioner Baller
	Commissioner Hoff
	Mayor Boutros
Nays,	None

08-161-20 PARKING IN THE FIVE MUNICIPAL GARAGES

Assistant City Manager Gunter presented this item.

Commissioner Hoff asked for clarification on total lost revenue due to the pandemic, and the change of fee for permit holders.

RESOLUTION # 03-062-21
**REVISED TEMPORARY COVID-19 OFF-SEASON
OUTDOOR DINING STANDARDS**

WHEREAS the novel coronavirus (COVID-19) is a respiratory disease that is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person;

WHEREAS the spread of COVID-19 has resulted in the State of Michigan declaring a State of Emergency under Section 1 of Article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, and the Emergency Powers of the Governor Act, 1945 PA 302, as amended, as evidenced in Executive Order 2020-99;

WHEREAS the City of Birmingham has activated their Emergency Operation Center to respond to the COVID-19 pandemic;

WHEREAS the City of Birmingham is committed to encouraging economic activity and assisting local businesses impacted by the COVID-19 pandemic to ease back into operation while containing the spread of COVID-19;

WHEREAS it is the intent of the City of Birmingham to assist establishments permitted to open to the public to expand into outdoor space to allow for the provision of the number of seats previously approved for their operation while also accommodating social distancing guidelines currently in force within the State of Michigan;

WHEREAS it is the intent of the City of Birmingham to continue to provide expanded outdoor dining options to assist food and drink establishments to navigate the challenges of the pandemic throughout ~~the fall and winter months~~ **the Spring** while also accommodating social distancing guidelines;

NOW THEREFORE BE IT RESOLVED, all food and drink establishments in existence as of ~~October 1, 2020~~ **March 31, 2021** will be permitted to operate off-season outdoor dining areas in accordance with the following Temporary COVID-19 standards from ~~October 1, 2020 through March 31, 2021~~ **March 31, 2021 through June 30, 2021**:

1. Establishments may add new outdoor dining areas or expand previously approved outdoor dining areas in order to add additional seating to compensate for lost interior seating as a result of COVID-19 related restrictions to accommodate social distancing and/or to allow for phased reopening;
2. The number of seats to be removed from the interior of the restaurant due to health guidelines is the maximum number that each establishment shall be permitted to add outdoors in the public right-of-way on the sidewalk, in the on-street parking zone, in a via and / or on private property;
3. Outdoor dining areas must commence adjacent to the establishment in accordance with Michigan Liquor Control Commission standards, and may extend out in front of neighboring establishments, or on abutting private property

BE IT FURTHER RESOLVED, that the City of Birmingham will waive all application fees, license and/or rental fees for the temporary use of public or private property outdoors permitted by this resolution.

BE IT FURTHER RESOLVED, Except as herein specifically provided, all ordinances of the City of Birmingham in effect at the time of the issuance of this resolution, and as they may be subsequently amended, shall remain in effect. Failure to comply with all the ordinances of the City may result in enforcement action and/or termination of an existing Special Land Use Permit.

I, Alexandria Bingham, City Clerk Designee, of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on March 8, 2021

Alexandria Bingham, City Clerk Designee

Birmingham City Commission Minutes

March 8, 2021

7:30 P.M.

Virtual Meeting

Meeting ID: 655 079 760

Vimeo Link: <https://vimeo.com/event/3470/videos/515580935/>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Pierre Boutros, Mayor, opened the meeting with the Pledge of Allegiance.

II. ROLL CALL

Alexandra Bingham, City Clerk, called the roll.

Present: Mayor Boutros (location: Birmingham, MI)
Mayor Pro Tem Longe (location: Birmingham, MI)
Commissioner Baller (location: Birmingham, MI)
Commissioner Hoff (location: Birmingham, MI)
Commissioner Host (location: Birmingham, MI)
Commissioner Nickita (location: Birmingham, MI)
Commissioner Sherman (location: Birmingham, MI)

Absent: None

Administration: City Manager Markus, City Clerk Bingham, Police Chief Clemence, City Attorney Kucharek, Planning Director Ecker, Finance Director Gerber, Interim HR Director/Assistant City Manager Hock, Building Official Johnson, City Attorney Kucharek, Deputy Treasurer Todd

III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.

Announcements

- Happy Birthday Commissioner Baller

IV. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

Brief updates were provided by County Commissioner Chuck Moss.

V. CONSENT AGENDA

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

To adopt a policy relative to the review and granting of poverty exemption by the City and the updated Hardship Application.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Host
Commissioner Nickita
Commissioner Hoff
Mayor Boutros

Nays, None

03-061-21 Emergency Repair Invoice Authorization for the Chester Street Parking Structure

The Commission had no comment on the item.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Longe: To approve the October 21, 2020 invoice in the amount of \$9,360 and approval of the City Manager authorized emergency repair of the Chester Street Parking structure elevator agreements in the amount of \$11,611.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Host
Commissioner Nickita
Commissioner Hoff
Mayor Boutros

Nays, None

03-062-21 Continuation of COVID-19 Business Relief

Interim HR Director/Assistant City Manager Hock reviewed the item.

Commissioner Host said he would be fine with the proposed motion as long as the gate remained down at the structures so the City could collect more data on the parking structures' use.

Commissioner Sherman said that while he valued the need for data, the revenue report included as part of this item in the agenda packet sufficiently demonstrated the current dearth of use of the City's parking system.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita: To continue the Revised Temporary Signage Regulations due to COVID-19, to continue the Revised Temporary COVID-19 Off-Season Outdoor Dining Standards, and to waive parking fees charged for monthly permit parking holders and all other fees in all parking structures until June 30, 2021. All parking

fees including but not limited to monthly permit parking fees and gate fees shall resume effective July 1, 2021.

PD Ecker confirmed for Mayor Pro Tem Longe that the regular outdoor dining standards would resume on July 1, 2021. PD Ecker confirmed for Commissioner Nickita that the Planning Board would be adding year-round outdoor seating options to their action list.

Commissioner Baller noted that the discussion after the motion was made should pertain specifically to the motion. Regarding the motion, he said he was comfortable with the first two parts but not comfortable with the third. He said it would lead to the City foregoing too much money in parking fees especially when the state might be much more open by July 1, 2021. He also said that allowing the third part of the motion did not sufficiently address the ongoing issue of the lengthy permit parking waiting list.

Public Comment

John Henke spoke as an attorney for a number of Birmingham restaurants. He said that ending the Covid-19 business relief provisions on June 30, 2021 was shortsighted and contrary to what other local municipalities were doing. He recommended that the provisions be extended at least through Fall 2021, if not through the beginning of 2022.

Interim HR Director/Assistant City Manager Hock advised the Commission that they could elect to further extend these provisions at any point if they so choose.

ROLL CALL VOTE: Ayes, Mayor Pro Tem Longe
Commissioner Sherman
Commissioner Nickita
Commissioner Hoff
Mayor Boutros

Nays, Commissioner Baller
Commissioner Host

Commission Discussion on items from prior meetings.

Commission Items for Future Discussion. A motion is required to bring up the item for future discussion at the next reasonable agenda, no discussion on the topic will happen tonight.

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

A. Temporary COVID-19 Outdoor Dining Resolution

Mayor Boutros acknowledged the City's receipt of the February 25, 2021 letter from Edward A. Fuller that was included in the evening's agenda packet.

Commissioner Host said he has been very disappointed to see certain Birmingham restaurants extend their outdoor seating to be in front of adjacent businesses without speaking to the other businesses' owners.

Commissioner Hoff asked if there was a way for the Commission to encourage restaurants to come to agreements regarding outdoor seating in front of their neighbors' businesses.

Police Restaurant/Bar Check

Location	Date	Staff Masked	Over 50%
1. Adachi	4/30/2021	YES	YES
2. 220 Merrill	4/30/2021	YES	YES
3. Bella Piatti	4/30/2021	YES	YES
4. Bistro Joe's	4/30/2021	YES	YES
5. Churchill's Bistro	4/30/2021	YES	YES
6. Dick O'Dow's	4/30/2021	YES	YES
7. Ellie's	4/30/2021	YES	NO
8. Griffin Claw Brewery	4/30/2021	YES	NO
9. Market North End	4/30/2021	YES	YES
10. Pernoi	4/30/2021	YES	YES
11. Phoenecia	4/30/2021	YES	YES
12. Social Kitchen and Bar	4/30/2021	YES	YES
13. Streetside	4/30/2021	YES	YES
14. Tallulah Wine Bar & Bistro	4/30/2021	YES	YES
15. The Morie	4/30/2021	YES	YES
16. Townhouse	4/30/2021	YES	YES
17. Townsend Hotel	4/30/2021	YES	NO

Business Name	Address	Outdoor Capacity	Indoor Capacity	Time	MIDHHS allows only 50% of normal seating capacity to be compliant
May 2nd, 2021		Percent	Percent		
Griffin Claw	575 S. Eton	75%	75%	18:34	Appeared to follow COVID guidelines.
Big Rock	245 S. Eton	25%	40%	18:40	Appeared to follow COVID guidelines. Guests were spaced properly.
Social Kitchen	225 E. Maple	50%	75%	18:46	Crowded inside, appeared all guests were seated. Exceeds capacity.
Casa Per noi	310 E. Maple	75%	75%	18:51	Appeared to follow COVID guidelines. Guests were spaced properly.
Birmingham Sushi	377 Hamilton Row	0%	20%	18:56	No issues. Patrons seated properly. Low turnout.
Commonwealth	300 Hamilton Row	N/A	N/A	18:57	Closed at time of inspection
7 Greens	344 Hamilton Row	N/A	N/A	18:57	Closed at time of inspection
The Morrie	260 N. Old Woodward	75%	75%	19:05	capacity. Door person limiting entry. Reservations only.
Market North End	474 N. Old Woodward	100%	75%	19:12	All tables filled outdoors, spaced properly.
Salvatore Scalopini	505 N. Old Woodward	25%	25%	19:18	Appeared to follow COVID Guidelines.
Luxe	525 N. Old Woodward	75%	100%	19:23	Very crowded, all seats appeared full. Small establishment. Exceeds capacity.
Side Car/Slice/Shift	117 Willits	50%	50%/50%/70%	19:32	music 1 man band playing. Shift exceeds capacity.
Talullah Wine Bar	155 S. Bates	25%	25%	19:39	No issues. Appeared to follow COVID guidelines.
Birmingham House	3801 S. Bates	N/A	N/A	19:44	Closed at time of inspection
Bella Piatti	167 Townsend	75%	75%	19:47	Crowded, all guests seated.
Townsend Hotel	100 Townsend	25%	25%	19:52	Appeared to follow COVID Guidelines.
220 Merrill	220 Merrill	50%	50%	19:56	Appeared to follow COVID Guidelines.
Rose room	220 Merrill B	N/A	10%	19:58	Low occupancy.
Streetside Seafood	273 Pierce	75%	75%	19:43	Appeared to follow COVID guidelines.
Elie's Mediteranean	263 Pierce	75%	75%	19:46	guidelines.
Toast	203 Pierce	N/A	N/A	19:49	Closed at time of inspection
Townhouse	180 Pierce	80%	80%	19:50	Inside crowded (small venue), outdoor separate by greenhouses. Exceed capacity.

Dick O'Dows/The Dow	160 W. Maple	75%/75%	50% Fr./100% Rea	19:55	full, patrons standing, crowded no mask. Exceeds capacity The Dow
Willits Records	237 Willits Alley	N/A	N/A	19:58	Closed at time of inspection
Hazel Ravine	1 Peabody	0%	75%	19:56	COVID guidelines.
Birmingham Roast	525 E. Brown	N/A	N/A	20:05	Closed at time of inspection
Churchills	116 S. Old Woodward	0%	50%	20:07	Appeared to follow COVID guidelines.
Adachi	325 S. Old Woodward	50%	50%	20:11	Appeared to follow COVID guidelines.
Daxton Hotel	298 S. Old Woodward	N/A	50%	20:16	Appeared to follow COVID guidelines.
Phoenecia	588 S. Old Woodward	50%	50%	20:20	Appeared to follow COVID guidelines.
Birmingham Pub	555 S. Old Woodward	0%	50%	20:22	Appeared to follow COVID guidelines. Possibly in need of C of O inspection.
Papa Joe's 1st floor	34244 Woodward	75%	N/A	20:26	Appeared to follow COVID guidelines. Greenhouses separate guest tables.
Bistro Joe's 2nd floor	34244 Woodward	75%	75%	20:26	Appeared to follow COVID guidelines.
Forrest Grill	735 Forest	50%	50%	20:30	Appeared to follow COVID guidelines.
Mad Hatter	185 N. Old Woodward	10%	25%	20:10	Appeared to follow COVID Guidelines. Need Liquor license inspection follow up.
La Strada	Merrill	0%	25%	20:03	Appeared to follow COVID Guidelines.



MEMORANDUM

Planning Division

DATE: June 14th, 2021

TO: Thomas Markus, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Food Trucks (Vendors and Peddlers)

Back in 2011, the City Commission approved amendments to Chapter 26, Businesses, of the City Code to amend Section IV, Vendors and Peddlers, to clarify requirements for approved vendors and peddlers as defined in the ordinance (which did not include food trucks).

At the same time, the City Commission considered permitting the operation of food trucks in the City, potentially at specified locations to activate City parks, vias and other public spaces. Research was conducted on potential ordinance amendments to allow food trucks, possible locations throughout the City, and input was solicited from several City boards. Many residents and brick and mortar business owners spoke in opposition to the proposal to allow food trucks, and ultimately the City Commission did not support amending the Vendors and Peddlers section of Chapter 26, Businesses, to allow food trucks to operate in the City.

Please see attached for reports, minutes and other documentation prepared and considered by the City back in 2011.

MEMORANDUM

DATE: March 15, 2011

TO: Robert J. Bruner, Jr., City Manager

FROM: Jana Ecker, Planning Director

APPROVED: Robert J. Bruner, Jr., City Manager

SUBJECT: Proposed Ordinance Amendment
Commercial Vendors – Moveable & Park Vendors

In accordance with the Planning Board's action list, the Planning Division conducted a study of the alleys and passages in the downtown area. This assessment of the current condition of alleys in the City of Birmingham was done to identify the strengths and weaknesses of the alleys and passages and seek out possibilities for improvement to the urban fabric of the downtown area through the improvement of these areas.

The 2016 plan identified the alleys behind commercial buildings as underutilized assets within the city. The alleys of the downtown area are primarily used to service shops in the manner of deliveries and trash disposal. While the 2016 plan recognizes the service value of the alleys as an essential function of the downtown area, it also identifies certain alleys as pedestrian passages as they are more pedestrian oriented and used only lightly for service functions. The 2016 Plan recommends the enhancement of pedestrian passages to improve routes for pedestrians. The recommendations contained in Circulation 5 of the 2016 Plan state that alleys should be kept clean and well lit, but that their service function should not be compromised. The Plan further states that pedestrian passages should be held to higher standards, similar to sidewalks, given their pedestrian function. The 2016 Plan specifically recommends encouraging outdoor dining areas along pedestrian passages.

The recommendation of the 2016 plan is to make a distinction between the alleys that should be considered primarily as service oriented and alleys that have a pedestrian aspect that classify them as "passages". Appendix C-9 of the 2016 Plan provides a map of all alleys in downtown Birmingham, and classifies each as an alley or a pedestrian passage. Those areas designated as "passages" should be held to a higher standard, similar to sidewalks and streetscapes, which should be maintained and patrolled by the City accordingly.

Since the time that the 2016 plan was written there has been significant development which could alter the way these alleys are classified. Most notably, the Willits building was erected on the former Jacobson's site. During the development process, a great deal of attention was given to this alley and its ability to function as a pedestrian corridor. In addition, many stores have since opened rear entrances to their establishments. Standard streetscape elements such as streetlights and landscaping have been installed. The enhancement of the passages and pedestrian oriented alleys benefit the vitality and walkability of Birmingham, and adds to the ambience of downtown. The pedestrian vias leading from Maple and S. Old Woodward to the plaza space where the passages meet at Café Via's entrance are excellent examples of what can be done to create interesting and lively spaces out of alleys, passages and their connection points. This area can be used as a model for discussion of improvements to the public alleys.

As a result of ongoing discussions at the Planning Board regarding improvements to the alleys and passages downtown, an Alleys and Passages Committee was formed and had their first meeting in May 2009. The Committee discussed burying utility lines underground in alleys and passages, cleaning up the City alleys, adding directional signage to encourage use, adding hanging planters to the pedestrian lighting already existing in some alleys, and allowing vendors to set up kiosks in alleys and passages to create an artisan market or other similar attraction to add life to the alleys and passages. The Committee also recommended contacting the PSD to discuss many of these issues further.

In addition, over the past year the Clerk's Office has received numerous requests from residents to allow ice cream trucks in neighborhoods, and the Planning Division has been approached by multiple vendors seeking to set up kiosks in Birmingham on the streets, sidewalks, alleys, passages, and in the parks.

Current Peddlers and Vendors Regulations

The existing regulations for vendors and peddlers can be found in Chapter 26, Businesses, Article IV, Peddlers and Vendors. Essentially, the City's current policy is to allow peddlers throughout the year, but to be considered a peddler you must move every 20 minutes. The City's policy on vendors (stationary kiosks) has been to allow them only during special events as a part of the approved event. This does not allow for an artisan market in an alley for instance, or a hot dog vendor on the same street corner every day. Under the current vendor ordinance, no peddlers or vendors are permitted in any residential zoned area of the City or public area adjacent to a residentially zoned area.

Vendors

The proposed ordinance amendment included with this memo defines several types of vendors. This includes frozen confection vendors, park vendors, movable vendors, special event vendors, and school vendors/vendors at an athletic event in a city park. No changes are proposed to the existing requirements for special event vendors or school vendors.

Movable Vendors at Designated Locations Downtown

Amendments proposed in the draft ordinance would allow vendors in designated locations within the downtown area. These vendors will be defined as moveable vendors as they will be permitted to occupy a particular location each day, but their cart or stand must be removed every night. The draft ordinance sets out standards for the aesthetics of the cart or stand, regulations on the hours of operation, the size of the public space to be rented, the type of product to be sold, and ensures provision of the required 5' minimum clear pedestrian path at all times. The Planning Division has prepared a map designating two proposed vendor locations that the City Commission may wish to start with for the first year on a trial basis. Numerous other sites throughout the downtown could support the addition of a moveable vendor, including many of the pedestrian passages discussed in the 2016 Plan.

Park Vendors at Designated Locations in Shain and Booth Park

The 2016 Plan states "the reason that parks in some cities are exceedingly popular is that food and beverages are provided, allowing people to stay for extended periods of time." (p. 56). The 2016 Plan goes on to provide the following recommendation to "encourage a new café or pub in Booth Park at the corner of north Woodward and Harmon, possibly as a public-private partnership." (p. 56). The plans for the redesigned Shain Park also included an area for the sale of food and beverages.

Accordingly, the proposed ordinance amendment allows for park vendors at designated locations in both Shain and Booth Parks. Should this ordinance amendment be approved, the City would prepare a Request for Proposals to solicit proposals for a food booth in one or both park(s) and would include seating areas to provide a plaza space for people to gather and enjoy the park(s).

Application Process & Fee Schedule

The draft ordinance details the comprehensive application process that is proposed, and outlines all required information for submittal with an application,

such as photos of proposed operators, cart or stand specifications and personal information to allow the Police Department to conduct background checks on applicants. A comprehensive review of the costs involved to process the applications has also been done by each department and a Fee Schedule will be provided should the Commission choose to move forward with the proposed ordinance amendments.

Input from Principal Shopping District Board

An earlier draft of the proposed ordinance amendment was presented to the Principal Shopping District ("PSD") Board in August 2010, at which time a subcommittee was established to review and provide comment on the proposed ordinance. This early draft proposed approximately 10 vendor locations at designated areas downtown and in the parks. The subcommittee met on two occasions this past fall to review the draft ordinance, and provided a recommendation to the full board of the Principal Shopping District at the October 7, 2010 meeting. After some discussion, the PSD Board passed a motion providing a recommendation that no vendors be added to the streets, alleys or parks downtown. In the event that the City decided to proceed with the vendor ordinance, the board suggested offering vendor locations to existing businesses downtown first (see attached memo dated November 2, 2010).

Moveable Vendor Ordinance Option

Based on the input received from the Principal Shopping District Board, staff has modified the earlier drafts of the revised Vendor Ordinance to limit the number of moveable vendors to two locations for the first year to evaluate the impact of this program on the downtown. Language has also been added to the proposed ordinance amendment to designate one of the two moveable vendor locations and one of the two park vendor locations for existing downtown Birmingham businesses.

On January 22, 2011, the proposed vendor ordinance was discussed at the Long Range Planning meeting. The proposed version at that time combined all required amendments to comply with State and Federal law, and also to permit the addition of moveable and park vendors. Several members of the City Commission were in support of adding moveable and park vendors on a trial basis.

On February 9, 2011 the proposed vendor ordinance was discussed at the Planning Board meeting. Several members expressed support for park vendors, and several others were concerned about allowing vendors in alleys and passages. The Planning Board did not take any action on the proposed ordinance amendment as it was not within their authority to do so. They did ask

that the comments from the entire board be forwarded to the City Commission for their review and consideration.

On February 28, 2011, the City Commission again discussed amendments to the vendor ordinance, and expressed their concern that the moveable and park vendors had been removed from the ordinance. Several City Commissioners again stated their desire to allow moveable and/or park vendors on a trial basis. The City Commission then directed staff to come back with two versions of the proposed vendor ordinance, one with all required changes to comply with State and Federal law, and another to allow moveable and/or park vendors for their consideration.

Thus, please find attached draft ordinance language that would allow vendors at designated locations only in the City. The dimensions of the kiosk area for lease from the City will be determined based on the individual location constraints. A minimum 5' of clear pedestrian path will be maintained at all times. The goal is to identify areas where we want to target additional activity, and to establish a clear plan for vendors to eliminate conflict. The draft ordinance establishes parameters for the aesthetics of kiosks, hours of operation, license regulations, insurance requirements, the lease terms available and all license fees and lease payment calculations. The draft ordinance also provides selection criteria including the type of product to be sold, the pricing of the product, and the vendor's previous experience in Birmingham to allow the City to control both the number of vendors, and the type of products sold.

Suggested Resolution:

To adopt Ordinance _____ to allow moveable and/or park vendors at specified locations in the City on a trial basis, and to establish selection criteria for such vendors;

OR

To direct City staff to bring this matter back to the City Commission at a later date with the following additional information:

OR

To take no action.

Principal Shopping District Board Minutes August 5, 2010

Jana Ecker presented the proposed ordinance amendment for commercial vendors, peddlers and solicitors to the Board. Ecker stated that one of the ideas behind having vendors in the park is to encourage people to stay and enjoy the park. Ecker stated that alleys and passages are also in the 2016 plan. The possibility is there for vendors in some of the city's pedestrian alleys and passages as well. Ecker stated the proposal allows for the city to have a request for proposal (RFP) for Shain and Booth parks for vendors. The park vendors would be a more permanent vendor probably set up for the season. Ecker stated that the city would encourage the seasonal vendors to have a plaza area with tables and chairs for patrons.

The discussion opened up for the Board to ask questions.

Some examples of PSD questions:

- the fees to be charged
- what time would the vendors be restricted to
- where are the locations that vendors will be allowed and can the city dictate the location for each vendor, such as where to put food vendors and opposed to a magazine vendor
- would there be a preference to PSD businesses
- would the size of the vendor space be limited, and what would that size be
- could PSD merchants be added to the RFP, so that it was in writing they would get preference over an outside vendor
- was there a retailer on the ordinance committee
- would the vendors be allowed to operate during PSD special events
- where will patrons be sent for restroom facilities after City Hall is closed or in areas where there is not a public restroom

Hockman stated the city went through a process to approve outdoor dining with the Bistros and to create activity on the city streets. Hockman went on to ask, where are the deficiencies that the city feels a need to have street vendors? What is the city trying to accomplish that they feel is not currently being done? Ecker stated that this vision was outlined in the 2016 plan.

Alan Borman a Birmingham resident gave a brief presentation to the Board on why he felt the City of Birmingham should make changes to its current vendor amendment. Borman is interested in becoming a vendor in a Birmingham park.

Hockman suggested for consideration that the PSD Board appoint a subcommittee consisting of three to four Board members along with City staff, and documents to meet and discuss the vendor ordinance and then report back to the PSD Board at the September meeting. Hockman suggested that Peter Sobelton, Richard Astrein, Bill Roberts, Doug Fehan and John Heiney represent the PSD if they were available. Hockman suggested the subcommittee try to meet one or two times before the September PSD Board meeting.

Principal Shopping District Board Minutes October 7, 2010

Heiney reported that, per the PSD Board's request, a subcommittee reviewed the recommendations of the City staff regarding modifying the vendor ordinance to allow for a season-long food or craft stand in key public locations. The PSD subcommittee concluded that such an ordinance would allow temporary vendors to compete with brick and mortar businesses who have a much higher investment in the city. Therefore the sub-committee recommended against supporting the ordinance revisions. Ecker said that the revised ordinance was an effort to fulfill a 2016 plan recommendation for areas of attraction in public spaces, including alleys and passages. Heiney said that the PSD Executive Committee also reviewed this matter. They suggested that the City consider installing outdoor dining amenities at Shain Park and other public locations around the downtown area. Ecker said that the outdoor dining suggestion was interesting, and could be a possible interim solution to try in a few locations. She said that some vendors will still request the revised ordinance at the City Commission meeting. Roberts said that the sub-committee is concerned about vendors competing with businesses, like the Sweet Earth frozen yogurt store that just opened. Fehan asked Ecker if a fee structure had been set for the proposed new vendors. Ecker said they had not set that up, but that it would be based on a fair market value to lease public property. Sherman said that the outdoor dining might be a reasonable compromise to start. He said that the PSD should communicate with restaurants in the areas of this outdoor dining. Heiney said that several restaurants offer carry out service, and some deliver. He suggested that the PSD could coordinate with these restaurants to provide delivery service to these public dining locations. Ecker cautioned that this plan would be an unanticipated cost to the City.

Hohendorf said that he reviewed the 2016 plan, and did not recall any discussion that advocated for vendors. He called Bob Gibbs to ask about this. He reported that Gibbs did not necessarily envision outdoor dining. Ecker said that the committee had several objectives to providing this vendor service. Hockman said that the outdoor dining would meet the stated objective of creating areas of interest in public spaces without creating unfair competition.

Motion by Hockman: PSD Board would report back to the City that the PSD encourages the use of outdoor dining furniture as an alternative to revising the vendor ordinance and allowing vendors on public property in the downtown area.
Second: Sobelton.

MEMORANDUM

DATE: November 2, 2010

TO: Thomas M. Markus, City Manager
Laura Broski, City Clerk

FROM: John Heiney, Executive Director,
Birmingham PSD

SUBJECT: PSD Position on Proposed Ordinance Amendment
Regarding Vendors and Peddlers

As you know, the PSD Board reviewed the provisions of the proposed vendor ordinance at their August meeting, and appointed a subcommittee to review the proposed revisions. The subcommittee consisted of PSD Board members Richard Astrein, Doug Fehan, Bill Roberts and Peter Sobelton. The committee convened twice in the month of August, and shared their conclusions with the PSD Executive Committee on September 22.

At the PSD Board meeting in August and at the first sub-committee meeting, Planning Director Jana Ecker spoke on behalf of the City staff committee, stating some of the goals for the revised ordinance.

After reviewing the proposed ordinance, the PSD subcommittee expressed concerns about setting up temporary vendors that would compete directly with existing "brick and mortar" businesses. Whether artisans or food vendors, the subcommittee agreed that these types of businesses would directly compete with existing downtown stores during a continued slow economy.

They concluded that out of all the proposed locations, either Shain Park or the Pierce Street fountain area would be the most highly sought-after locations. Their concerns are that these locations are in close proximity to existing casual dining establishments

The sub-committee, by consensus, rejected the provisions of the revised vendor ordinance and asked that the City not adopt it. They requested that if the City does decide to go forward with the ordinance, to please give preference to merchants who wish to open a vendor kiosk.

The PSD Executive Committee reviewed the sub-committee's recommendation. They established the fact that part of the reason for this proposed revisions is to create points of interest and energy around town, as per 2016 recommendations. The Executive Committee agrees with the findings of the sub-committee and suggests that the ordinance not be adopted as written.

Instead, the Executive Committee suggested that the PSD put forth the following recommendation:

Create seating and dining areas where visitors can enjoy a meal they bring in, or purchase from an existing establishment. The PSD would offer to work with appropriate staff and committees, and will organize restaurants who wish to provide delivery service at approved locations. The PSD could also work on a plan to provide restaurant information, menus, etc. at the suggested locations.

This would address the recommendations of the 2016 plan for outdoor dining in public areas, and would meet the intent of the Alleys and Passages committee to create areas of interest in certain locations without creating additional competition for existing businesses. In fact, such installations may encourage more business for some restaurants.

At their October 7 meeting the PSD Board adopted these recommendations by resolution, and asked my office to report the outcome to the City Staff committee who originally drafted the proposed ordinance revisions.

**Long Range Planning Minutes
January 22, 2011**

C. PROPOSED ORDINANCE AMENDMENT REGARDING COMMERCIAL VENDORS, PEDDLING, SOLICITING

Ms. Ecker explained that the alley and passages subcommittee is looking for different ways to improve the alleys and passages. She explained that discussions included vendors in the alleys and passages.

Ms. Ecker explained that the Principal Shopping District Board is not overly in favor of bringing in new vendors. She explained that there would be a Request for Proposal process to control the vendor location, aesthetic of the cart, number of seats, etc, including background checks on the vendors.

Ms. Broski explained that the requirements for peddlers, vendors and solicitors will be combined into one chapter of the City Code. She explained the revisions to the ordinance will include redefining the term peddler to include non-charitable soliciting, adding a provision to allow frozen confection vendors in the neighborhoods, and limiting the hours that soliciting, peddling and frozen confection will be permitted to daylight hours only.

Ms. Broski confirmed for Mayor Pro Tem Nickita that vendors must obtain a license from the City.

Commissioner McDaniel suggested that the City try this idea and see what happens.

Mayor Rinschler agreed. In response to a question from Mayor Rinschler, Ms. Ecker commented that fees have been discussed, but not set yet. She noted that the vendor would be charged a fee to use City property.

Ms. Ecker confirmed for Mayor Pro Tem Nickita that vendors in the park would be limited to one near the Pierce Street Garage and one in the alley near Tokyo Sushi and one in Shain Park and one in Booth Park. Ms. Ecker confirmed that the proposed locations would not block existing buildings.

Ron Rea suggested adding an enclosed port-a-potty to the park vendor locations.

Bill Roberts, member of Principal Shopping District (PSD) Board, stated that the Board is in support of the concept to provide dining areas in the park such as tables and chairs. He expressed the concern of the Board in allowing vendors on public property which would be in direct competition of existing businesses. He

suggested that if the Commission moves forward on this, local restaurants should get the first opportunity.

Ms. Conrad expressed that existing businesses should be given priority. She expressed concern with vendors in the neighborhoods. Ms. Broski confirmed that the police department performs background checks of the vendors.

Mr. Bloom suggested the PSD install a kiosk for those restaurants that want to deliver to those in the park.

Alan Borman, resident, expressed that food vendors will highlight the park. He pointed out that the investment for the vendors will be large.

Dave Hohendorf, resident and business owner, pointed out that there is no mention of vendors in the 2016 Plan.

The Commission recessed at 12:07 PM.

The Commission reconvened at 12:19 PM.

Planning Board Minutes February 9, 2011

STUDY SESSION VENDOR ORDINANCE

Ms. Ecker advised that in accordance with the Planning Board's Action List, the Planning Division conducted a study of the alleys and passages in the downtown area. This assessment of the current condition of alleys in the City of Birmingham was done to identify the strengths and weaknesses of the alleys and passages and to seek out possibilities for improvement to the urban fabric of the downtown area through the improvement of alleys and passages.

The recommendation of the 2016 Plan is to make a distinction between the alleys that should be considered primarily as service oriented and alleys that have a pedestrian aspect that classifies them as "passages." Those areas designated as "passages" should be held to a higher standard, similar to sidewalks and streetscapes, and should be maintained and patrolled by the City accordingly.

Ms. Ecker advised that as a result of ongoing discussions at the Planning Board regarding improvements to the alleys and passages downtown, an Alleys and Passages Committee was formed and had their first meeting in May 2009. The Committee discussed burying utility lines underground in alleys and passages, cleaning up the City alleys, adding directional signage to encourage use, adding hanging planters to the pedestrian lighting already existing in some alleys, and allowing vendors to set up kiosks in alleys and passages to create an artisan market or other similar attraction to add life to the alleys and passages.

In addition, over the past year the Clerk's Office has received numerous requests from residents to allow ice cream trucks in neighborhoods, and the Planning Division has been approached by multiple vendors seeking to set up kiosks in Birmingham on the streets, sidewalks, alleys, passages, and in the parks.

The city attorney has now drafted an ordinance that would allow vendors at designated locations only in the City, based on the suggestions of the Alleys and Passages Committee and the City Departments. The goal is to identify areas where we want to target additional activity, and to establish a clear plan for vendors to eliminate conflict. The draft ordinance also provides selection criteria including the type of product to be sold, the pricing of the product, and the vendor's previous experience in Birmingham to allow the City to control both the number of vendors, and the type of products sold. The draft ordinance talks

about four locations: one in Shain Park, one in Booth Park, one in the passage east of Tokyo Sushi, and one in front of the Pierce St. parking deck.

The Principal Shopping District ("PSD") has taken the position that they are not in favor of having vendors, but the City might want to consider giving preference to local businesses already in town if this ordinance is approved.

Ms. Lazar pointed out that vendors have very little overhead. Contrast that with a business in town that pays a very high rent along with additional taxes. A vendor may present unfair competition to someone who is well entrenched in the community.

Mr. Williams expressed his aversion to the thought of eating a hot dog in an alley. To him it is inappropriate for Birmingham. On the other hand he thinks something should be done to allow vendors in the parks and the opportunity should be made available to the PSD to provide vending services in the parks.

Mr. DeWeese said the definition for *frozen confection vendors* should be changed to say "any commercial vendor traveling by vehicle," rather than "traveling by automotive vehicle" to include bicycles.

Ms. Lazar suggested existing businesses might want to set up a rotation to share a location.

The chairman opened up discussion to the audience at 10 p.m.

Ms. Dorothy Conrad pointed out that the Boy Scouts sell ice cream in the park for special events. They do a lot of public things with the money that they make. She only supports vendors if an offer is made to the existing businesses to provide vending services.

Mr. Bill Roberts, 273 Pierce, a member of the PSD Board, said there is a lot of opportunity to take food to the parks. The board cannot support the idea of bringing more vendors into town at this point. There is plenty of competition already.

Mr. John Kloche thought that having vendors in town would be complimentary to the cityscape.

Ms. Susan Peabody from Peabody's Restaurant said there are 53 restaurants in town. There is no food that they are not doing. If this is to happen, give the businesses in town the opportunity first.

Ms. Alice Thimm felt the customer base is already diluted enough for the current food establishments. There is a history with the businesses that are in town now and she thinks the City ought to do its best to keep them.

Ms. Ecker read a letter into the record in favor of street vendors because they would add interest and bring new business into the downtown area. That ends up helping all of the merchants.

Mr. Williams suggested the ordinance could be defined so that somebody who does not have a significant investment in Birmingham will not be eligible. Mr. DeWeese recommended that the PSD might work in conjunction with the City to have an ongoing special event for vendors that introduces Birmingham restaurants to the larger community. That would limit the opportunity to existing businesses in town.

Chairman Boyle said the minutes of tonight's discussion will be sent to the PSD and forwarded to the City Commission.

City Commission Minutes
February 28, 2011

02-53-11 VENDOR, PEDDLER, SOLICITOR ORDINANCE UPDATE

The Commission received the Vendor, Peddler, and Solicitor Ordinance Update submitted by City Clerk Broski.

Ms. Broski explained that the movable and park vendors have been removed from the ordinance in order to move forward with combining the vendor, peddler and soliciting into one ordinance to bring it into compliance with state law before the vending season begins. She noted that movable and park vendors will continue to be studied.

Edward Nemerkaiser questioned the concerns of the Principal Shopping District (PSD) with the mobile or stationary vendors. Mayor Rinschler referred him to the PSD.

Mr. Valentine commented that the concerns from the PSD Board and Planning Board are what have delayed this discussion from moving ahead.

Commissioner Sherman suggested both drafts of the ordinance be given to the Commission for review.

Commissioner McDaniel suggested starting small, such as a vendor in Shain Park instead of allowing four vendors around town.

The Commission agreed to bring the language which includes movable and park vendors as an alternative for discussion and possible modification.

MEMORANDUM

DATE: July 19, 2010

TO: Principal Shopping District

FROM: Laura M. Broski, City Clerk
Jana Ecker, Planning Director
Bruce R. Johnson, Building Official
Lauren A. Wood, Director of Public Services
Christian Wuerth, Management Analyst

SUBJECT: Proposed Ordinance Amendment
Commercial Vendors, Peddling, Soliciting

A group of staff members have been working to revise the peddler/vendor and soliciting ordinance. Highlights to the ordinance include the following:

- Combining the requirements for peddler & vendor and soliciting into one chapter of the city code
- Add provision for frozen confection vendor (ie: ice cream truck)
- Add provision for movable vendors at designated locations in the downtown area
- Add provision for stationary park vendor at Shain Park or Booth Park

Combining the Peddler & Vendor and Soliciting ordinance

The purpose in combining the peddler, vendor, and soliciting into one ordinance is to streamline and clarify the ordinance.

The current ordinance allows for charitable and non-charitable solicitors to solicit in the downtown and residential areas. The proposed ordinance allows charitable solicitors, as well as those groups protected by the first amendment, to continue to solicit in the City once the application has been approved at no cost. The proposed ordinance defines non-charitable solicitors as peddlers. In addition to the application fee, peddlers will have the option to pay a daily fee for those who will only be peddling for several days or an annual fee for the calendar year.

The type of vendor has been broken down to include frozen confection vendors, stationary park vendors, movable vendors, special event vendors, and school vendor/vendor at an athletic event in a city park. The requirement for special event vendors and school vendors remains the same.

Addition of Frozen Confection Vendors

Every summer the Clerk's Office receives several calls regarding ice cream trucks. The current ordinance does not allow for ice cream vendors in residential areas. The proposed ordinance would allow only three frozen confection licenses to be issued per year and limit each company to one truck.

Addition of Movable Vendors at Designated Locations

In accordance with the Planning Board's action list, the Planning Division conducted a study of the alleys and passages in the downtown area. This assessment of the current condition of alleys in the City of Birmingham was done to identify the strengths and weaknesses of the alleys and passages and seek out possibilities for improvement to the urban fabric of the downtown area through the improvement of these areas.

The 2016 plan identified the alleys behind commercial buildings as underutilized assets within the city. The alleys of the downtown area are primarily used to service shops in the manner of deliveries and trash disposal. While the 2016 plan recognizes the service value of the alleys as an essential function of the downtown area, it also identifies certain alleys as pedestrian passages as they are more pedestrian oriented and used only lightly for service functions. The 2016 Plan recommends the enhancement of pedestrian passages to improve routes for pedestrians. The recommendations contained in Circulation 5 of the 2016 Plan state that alleys should be kept clean and well lit, but that their service function should not be compromised. The Plan further states that pedestrian passages should be held to higher standards, similar to sidewalks, given their pedestrian function. The 2016 Plan specifically recommends encouraging outdoor dining areas along pedestrian passages.

The recommendation of the 2016 plan is to make a distinction between the alleys that should be considered primarily as service oriented and alleys that have a pedestrian aspect that classify them as "passages". Appendix C-9 of the 2016 Plan provides a map of all alleys in downtown Birmingham, and classifies each as an alley or a pedestrian passage. Those areas designated as "passages" should be held to a higher standard, similar to sidewalks and streetscapes, which should be maintained and patrolled by the City accordingly.

Since the time that the 2016 plan was written there has been significant development which could alter the way these alleys are classified. Most notably, the Willits building was erected on the former Jacobson's site. During the development process, a great deal of attention was given to this alley and its ability to function as a pedestrian corridor. In addition, many stores have since opened rear entrances to their establishments. Standard streetscape elements such as streetlights and landscaping were installed. The enhancement of the passages and pedestrian oriented alleys benefit the vitality and walkability of

Birmingham, and adds to the ambience of downtown. The vias leading from Maple and S. Old Woodward to the plaza space where the passages meet at Café Via's entrance are excellent examples of what can be done to create interesting and lively spaces out of alleys, passages and their connection points. This area can be used as a model for discussion of improvements to the public alleys.

On August 8, 2007, the Planning Board discussed alleys and passages and the need to improve many of the passages for pedestrian use as recommended in the DB 2016 Plan. The Planning Division conducted a PowerPoint presentation to illustrate the condition of many of the alleys and passages discussed in the DB 2016 Plan. The Board concluded that baseline standards should be created, and a priority list created outlining which alleys and passages should be addressed first. Planning Board members also requested that staff coordinate with the DPS to ensure that any wayfinding signage for alleys and passages be connected to the trail marker signage that is currently in the works. Finally, a GIS map was requested to show all alleys and passages and their connections to open space networks, trails and the downtown.

On September 12, 2007, the Planning Board again reviewed the issue of alleys and passages. Board members suggested coming up with guidelines for the improvement of alleys and passages. The Planning Board also discussed combining trash facilities and encouraging trash compactors. A suggestion was also made to consider establishing an "adopt an alley" program and allowing donors to purchase naming rights in exchange for donations for alley or passage improvements.

On October 10, 2007, the Planning Board again discussed alleys and passages. The Planning Board recommended creating a trash compactor program similar to the City newsrack program, as well as drafting an off-site signage ordinance to allow directional signage in alleys and passages. The Planning Board also suggested preparing a plan for one portion of an alley to assist in creating guidelines for improvement.

On August 13, 2008, the Planning Board discussed this issue again and recommended establishing a subcommittee on alleys and passages, with representatives from the DRB, PSD and Planning Board. Board members suggested that the next elements to be addressed should be off site signage and the integration of wayfinding and coordination with the trail marker system, and determining how many businesses there are downtown with entrance doors only on alleys and/or passages.

The Alleys and Passages Committee was formed and had their first meeting in May 2009. The Committee discussed burying utility lines underground in alleys and passages, cleaning up the City alleys, adding directional signage to

encourage use, adding hanging planters to the pedestrian lighting already existing in some alleys, and allowing vendors to set up kiosks in alleys and passages to create an artisan market or other similar attraction to add life to the alleys and passages. The Committee also recommended contacting the PSD to discuss many of these issues further.

Over the past several months, the Planning Division has been approached by multiple vendors seeking to set up kiosks in Birmingham on the streets, sidewalks, alleys, passages, and in the parks. As it was one of the recommendations that the Alleys and Passages Committee made to allow such vendors downtown, the Planning Division has been working with the Clerk's Office, the City Attorney, the Building Division and the DPS to consider allowing such vendors.

The existing regulations for vendors and peddlers can be found in Chapter 26, Businesses, Article IV. Essentially, the City's current policy is to allow peddlers throughout the year, but to be considered a peddler you must move every 20 minutes. This does not allow for an artisan market in an alley for instance, or a hot dog vendor on the same street corner every day. The City's policy on vendors (stationary kiosks) was to allow them only during special events as a part of the approved event.

The City Attorney has now drafted an ordinance that would allow stationary vendors at designated locations in the City only, based on the suggestions of the Planning Board and the City departments listed above. The Planning Division is preparing a map outlining the designated locations for discussion. Based on the individual location constraints, the dimensions of the kiosk area for lease from the City will be determined. A minimum of 5' of clear pedestrian space will be maintained at all times. The goal is to identify areas where we want to target additional activity, and to establish a clear plan for vendors to eliminate conflict. The draft ordinance will establish parameters for the aesthetics of kiosks, hours of operation, license regulations, insurance requirements, the lease terms available and all license fees and lease payment calculations. The ordinance will also provide selection criteria including the type of product to be sold, the pricing of the product, and the vendor's previous experience in Birmingham to allow the City to control both the number of vendors, and the type of product sold.

In addition, the Planning Division will be working with the City Manager's office to prepare an RFP to be issued this fall to solicit proposals for a more permanent food kiosk to be operated in Shain Park, and then in Booth Park, in accordance with the DB 2016 Plan. The DB 2016 Plan states "the reason that parks in some cities are exceedingly popular is that food and beverages are provided, allowing people to stay for extended periods of time." (p. 56). The 2016 Plan goes on to provide the following recommendation "encourage a new café or pub on Booth

Park at the corner of north Woodward and Harmon, possibly as a public-private partnership.” (p. 56).

The City would solicit proposals for a food booth that would be open all season, possibly removed in the winter, and would include seating areas around it to provide a plaza space for people to gather and enjoy the park.

Fees

A comprehensive review of the costs involved to process the applications was done by each department. The license fee for the movable vendors is based on the location cost for the fair market rent and taxes. The current fee allowed for a 50% discount on the application fee and daily fee for licensed Birmingham merchants. This discount will now only apply to the daily fee as the cost to process an application is a standard fee. In previous practice, the peddler/vendor application fee was a one-time fee per year. This proposed fee will require the application fee to be paid for each application submitted.

CHAPTER 26: BUSINESSES

ARTICLE IV. PEDDLERS AND VENDORS*

***Editor's note:** Ordinance No. 1639, adopted April 14, 1997, amended §§ 26-111--26-119, 26-131--26-138 by replacing them with §§ 26-111--26-124. Formerly, such sections pertained to similar provisions and derived from § 7.51(1)--(5), 7.52, 7.53, 7.54(1)--(3), 7.55--7.64 of the 1963 Code; Ord. No. 1518, § 7.53, 3-23-92; Ord. No. 1630, 9-16-96. Subsequently, Ord. No. 1680, adopted Sept. 14, 1998, amended Art. IV in its entirety.

Sec. 26-111. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Parent organization means the person or organization that the peddler is employed by or represents, the principal manufacturer and distributor of goods and the principal provider of services being sold.

Peddling means traveling by foot, automotive vehicle or other conveyance, from place to place or from street to street, carrying, conveying or transporting goods, wares, merchandise, including food products, offering and exposing the same for sale or making sales and delivering articles to purchasers, or taking or attempting to take orders for the sale of goods, wares and merchandise, books or magazines, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether the subject is collecting advanced payments on such sales or not.

Peddler means any person who engages in peddling. The word peddler shall include the words "hawker", "itinerant merchant", and "street vendor".

Special event means an organized activity, held on public property, specific to an identifiable place, occurring for a limited period of time, and for which a special event permit has been issued, including a) a fair, concert, carnival, festival, performance, or other similar activity, or b) an activity taking place on a designated route on public rights-of-way for the purpose of walking, running, jogging, biking, racing, conducting a parade, or engaging in a similar activity.

Vending during special events means the sale of goods, wares, or merchandise, including food products, on public property at a stationary or fixed location during a special event in and around the location of the special event.

Vending at school or other athletic events in city parks means the sale of goods, wares, or merchandise, including food products, on public property at a stationary or fixed location during school or other athletic events at city parks.

Vendor means any person who engages in vending.

(Ord. No. 1639, 4-14-97; Ord. No. 1680, 9-14-98; Ord. No. 1961, 4-7-08)

Sec. 26-112. Exceptions.

The following shall not be required to obtain a license under this division:

- (1) Any person selling solely newspapers.
- (2) Persons traveling on an established route at the request, express or implied, of their customers.
- (3) Salespersons calling on regularly licensed business establishments.

(Ord. No. 1639, 4-14-97; Ord. No. 1680, 9-14-98)

Sec. 26-113. License requirement.

No person shall engage in the business of peddling or vending in the city without first obtaining a license from the city clerk.

(Ord. No. 1639, 4-14-97; Ord. No. 1680, 9-14-98)

Sec. 26-114. License application.

Any person seeking to obtain a license pursuant to this article shall file a sworn application with the city clerk upon forms prescribed and furnished by the city clerk and shall pay an application fee to cover the cost of investigation. The application fee is set forth in appendix A. The application shall include the following information:

- (1) The name of the person who will engage in peddling or vending within the city, including the person's current address of residence and length of residence at such address, business address if other than the residence address, business and residence telephone numbers, social security number, driver's license number, and a physical description including height, weight, and color of hair and eyes.
- (2) A brief description of the business or activity to be conducted including the methods to be used and a description of the types of goods or services to be sold.
- (3) The dates, hours and location for which the right to engage in peddling or vending is sought.
- (4) Proof that the applicant has obtained all licenses or permits required by state law.
- (5) The names of three references who will certify as to the applicant's good character and business responsibility.
- (6) If employed and acting as an agent, the name, address and telephone number of the parent organization who is being represented, and when and where this organization was formed, including the form of its organization.
- (7) A statement as to whether the applicant or its parent organization has ever been found to have violated a municipal ordinance regulating peddling or vending.
- (8) A statement as to whether the applicant or an officer or director of the applicant's parent organization has ever been convicted of a felony, and if so, a brief description of the offense.
- (9) A current photograph of the applicant, taken within 60 days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches

in size showing the head and shoulders of the applicant in a clear and distinguishing manner.

(10) The application shall be signed by the applicant stating that the information contained therein is true and correct, that the city shall have the right to investigate and verify the information contained in the application, and that the applicant has read the peddlers and vendors ordinance and agrees to abide by its terms.

(11) Such other information as the city clerk shall determine to be appropriate.
(Ord. No. 1639, 4-14-97; Ord. No. 1680, 9-14-98)

Sec. 26-115. Application review and license issuance.

(a) Upon the receipt of an application, the application will be reviewed and an investigation will be conducted to insure that all information supplied by the applicant is true and accurate.

(b) Unless the application is denied in order to insure the protection of the public health, safety and general welfare, the city clerk shall issue a license to the applicant upon payment of the applicable licensing fee. Licenses shall be issued for a period of up to one year depending upon the duration of the peddler's or vendor's activities. All licenses shall expire at the end of each calendar year regardless of the date upon which the license was issued unless the license is set to expire at an earlier time.

(c) While a license is in effect, a peddler or vendor shall, within seven calendar days after a change occurs, report to the city clerk in writing any material change in any information previously provided on the application form.

(Ord. No. 1639, 4-14-97; Ord. No. 1680, 9-14-98)

Sec. 26-116. Denial of license.

(a) Upon review and investigation of the application and the information contained therein, the city may refuse to issue a license to an applicant for any one or more of the following reasons:

(1) The applicant has failed to comply with the provisions and requirements of this article.

(2) The applicant has been found to have violated a provision of this article within the two years immediately preceding the date of application.

(3) The applicant has been denied a license pursuant to this article within the immediate past year, unless the applicant shows to the satisfaction of the city that the reasons for such earlier denial no longer exist.

(4) The applicant falsified information on the application.

(5) The applicant has been convicted of a felony.

(6) The location, time, or method of peddling or vending will block or congest streets or sidewalks, impede the free flow of pedestrian or automobile traffic, or will otherwise endanger the health, safety, and welfare of the public in its use of the streets and sidewalks in the city.

(b) Whenever an application for a license is denied, the reasons for the denial shall be noted on the application, and the applicant shall be notified that his application is

denied and that no license will be issued. Notice shall be mailed to the applicant at the address shown on the license application, or at the applicant's last known address.
(Ord. No. 1639, 4-14-97; Ord. No. 1680, 9-14-98)

Sec. 26-117. License revocation and suspension.

(a) Any license issued under this article may be revoked or suspended by the city for any of the following reasons:

- (1) Fraud, misrepresentation or false statement contained in the license application.
- (2) Fraud, misrepresentation or false statement by the peddler or vendor in the course of peddling or vending.
- (3) Engaging in peddling or vending in a manner contrary to the provisions contained in the license.
- (4) Conviction for a felony.
- (5) Engaging in peddling or vending in violation of any city ordinance or state law.
- (6) Engaging in peddling or vending in such a manner as to create a public nuisance, constitute a breach of the peace, prevent the free flow of traffic on sidewalks and streets, or endanger the health, safety or general welfare of the public.

(b) A peddler or vendor shall have the right to notice and hearing before revocation or suspension occurs.

(Ord. No. 1639, 4-14-97; Ord. No. 1680, 9-14-98)

Sec. 26-118. Notice and hearing.

Notice of a hearing for revocation or suspension of a license issued under this article shall be provided in writing and shall set forth specifically the grounds for the proposed revocation or suspension and the time and place of the hearing. Notice shall be mailed to the peddler or vendor at the address shown on the license application, or at the applicant's last known address.

(Ord. No. 1639, 4-14-97; Ord. No. 1680, 9-14-98)

Sec. 26-119. Appeals.

Any person denied the issuance of a license or having a license suspended or revoked may appeal in writing to the city commission within 14 days of the denial, suspension or revocation. After receipt of the request for appeal, the city commission shall hear the appeal at its next regularly scheduled commission meeting. The decision of the city commission on the appeal shall be final and binding on all parties concerned.

(Ord. No. 1639, 4-14-97; Ord. No. 1680, 9-14-98)

Sec. 26-120. License fee.

A license fee shall be collected for the purpose of defraying the costs incurred by the city in regulation and enforcement of this article. The cost of a daily and annual license is set forth in appendix A. Whenever an applicant believes that the applicable license fee places an undue burden upon interstate commerce, the applicant may apply to the city clerk for an adjustment or waiver of the license fee. The application for an adjustment or waiver must include a sworn statement setting forth the specific reasons

why the fee reduction or waiver is sought. The application must also include sufficient information for the city clerk to make a determination as to whether the license fee would unduly burden the applicant. Current licensed operating businesses within approved business zoning districts within the city are entitled to a 50 percent reduction in a peddler's or vendor's application and applicable license fee. This reduction shall not apply to businesses which are delinquent in their payment of city taxes or special assessments at the time of application.

(Ord. No. 1639, 4-14-97; Ord. No. 1680, 9-14-98)

Sec. 26-121. License exhibition.

While peddling or vending, the license issued pursuant to this article shall be displayed so that it is visible to any person dealing with the peddler or vendor.

(Ord. No. 1639, 4-14-97; Ord. No. 1680, 9-14-98)

Sec. 26-122. Nontransferable.

No license issued pursuant to this article shall be transferred to or used by any person other than the one to whom it was issued.

(Ord. No. 1639, 4-14-97; Ord. No. 1680, 9-14-98)

Sec. 26-123. Prohibitions.

(a) No peddler or vendor shall block, obstruct, impede or otherwise interfere with the normal flow of vehicular or pedestrian traffic upon a public street, alley, sidewalk or other public area within the city. In no event shall a peddler remain stationary in any location for more than 20 minutes.

(b) No peddler or vendor shall block or impede the ingress or egress of the public into any business within the city.

(c) No peddler or vendor shall, without permission, accost, interfere with, or touch any member of the public in any manner.

(d) No peddler or vendor shall unreasonably disturb the peace and quiet of the city and shall not shout, cry out, blow any horn, ring any bell, utilize any amplification system, or use any device to attract the attention of the public.

(e) No peddler or vendor shall make any fraudulent or misleading representations to any person in connection with any sale or potential sale while peddling or vending.

(f) No person under 12 years of age shall engage in any peddling or vending during school hours, unless legally excused from school, or for a combined school and work period of more than eight hours in any one day. No person shall engage in any peddling or vending between sundown and 8:00 a.m.

(g) The city may restrict peddling and vending to certain hours or to certain areas within the city during special events where the city has determined that peddling or vending may be hazardous to the health, safety or welfare of the public due to congestion in city streets, sidewalks or other public places or when peddling or vending may cause an impediment to the free flow of pedestrian or vehicular traffic. No peddler or vendor shall engage in peddling or vending during such an event in any area or

during any time that peddling or vending is restricted after having received written notice from the city clerk of such restriction.

(h) No peddler or vendor shall operate in any residential zoned area of the city or upon a public street, alley, sidewalk or other public area adjacent to a residentially zoned area.

(i) No peddler or vendor shall operate from any conveyance device which does not meet the approved city standards for peddler conveyance devices on file in the office of the city clerk.

(Ord. No. 1639, 4-14-97; Ord. No. 1680, 9-14-98)

Sec. 26-124. Special events.

In addition to obtaining a peddler's or vendor's license, a peddler's or vendor's name shall be listed with the city clerk in the special events permit application of a sponsoring agency in order for the peddler or vendor to be permitted to operate on the streets, alleys, sidewalks or other public areas where a special event is taking place and as described in the special event permit.

(Ord. No. 1639, 4-14-97; Ord. No. 1680, 9-14-98)

Secs. 26-125--26-160. Reserved.

CITY OF BIRMINGHAM

ORDINANCE NO. ____

AN ORDINANCE TO AMEND CHAPTER 26, BUSINESSES, ARTICLE IV, PEDDLERS AND VENDORS, AND CHAPTER 38, CHARITABLE SOLICITATIONS, ARTICLE I, IN GENERAL, AND ARTICLE II, PERMIT, OF THE BIRMINGHAM CITY CODE TO REGULATE PEDDLERS AND SOLICITORS, AND TO ALLOW FOR FROZEN CONFECTION VENDORS, AND FEE SCHEDULES FOR ADMINISTRATION AND PENALTIES.

THE CITY OF BIRMINGHAM ORDAINS: Chapter 26, Businesses, Article IV, Pedders and Vendors, and Chapter 38, Charitable Solicitations, Article I, In General and Article II, Permit, of the Birmingham City Code, shall be amended as follows:

ARTICLE IV. PEDDLERS AND VENDORS*

~~Sec. 26-111. Definitions.~~

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Parent organization* means the person or organization that the peddler is employed by or represents, the principal manufacturer and distributor of goods and the principal provider of services being sold.~~

~~*Peddling* means traveling by foot, automotive vehicle or other conveyance, from place to place or from street to street, carrying, conveying or transporting goods, wares, merchandise, including food products, offering and exposing the same for sale or making sales and delivering articles to purchasers, or taking or attempting to take orders for the sale of goods, wares and merchandise, books or magazines, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether the subject is collecting advanced payments on such sales or not.~~

~~*Peddler* means any person who engages in peddling. The word peddler shall include the words "hawker", "itinerant merchant", and "street vendor".~~

~~Special event~~ means an organized activity, held on public property, specific to an identifiable place, occurring for a limited period of time, and for which a special event permit has been issued, including a) a fair, concert, carnival, festival, performance, or other similar activity, or b) an activity taking place on a designated route on public rights-of-way for the purpose of walking, running, jogging, biking, racing, conducting a parade, or engaging in a similar activity.

~~Vending during special events~~ means the sale of goods, wares, or merchandise, including food products, on public property at a stationary or fixed location during a special event in and around the location of the special event.

~~Vending at school or other athletic events in city parks~~ means the sale of goods, wares, or merchandise, including food products, on public property at a stationary or fixed location during school or other athletic events at city parks.

~~Vendor~~ means any person who engages in vending.

~~Sec. 26-112. Exceptions.~~

The following shall not be required to obtain a license under this division:

- ~~(1) Any person selling solely newspapers.~~
- ~~(2) Persons traveling on an established route at the request, express or implied, of their customers.~~
- ~~(3) Salespersons calling on regularly licensed business establishments.~~

~~Sec. 26-113. License requirement.~~

~~No person shall engage in the business of peddling or vending in the city without first obtaining a license from the city clerk.~~

~~Sec. 26-114. License application.~~

Any person seeking to obtain a license pursuant to this article shall file a sworn application with the city clerk upon forms prescribed and furnished by the city clerk and shall pay an application fee to cover the cost of investigation. The application fee is set forth in the schedule of fees, charges, bonds and insurance. The application shall include the following information:

- ~~(1) The name of the person who will engage in peddling or vending within the city, including the person's current address of residence and length of residence at such address, business address if other than the residence address, business and residence telephone numbers, social security number, driver's license number, and a physical description including height, weight, and color of hair and eyes.~~
- ~~(2) A brief description of the business or activity to be conducted including the methods to be used and a description of the types of goods or services to be sold.~~
- ~~(3) The dates, hours and location for which the right to engage in peddling or vending is sought.~~

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~~(4) Proof that the applicant has obtained all licenses or permits required by state law.~~

~~(5) The names of three references who will certify as to the applicant's good character and business responsibility.~~

~~(6) If employed and acting as an agent, the name, address and telephone number of the parent organization who is being represented, and when and where this organization was formed, including the form of its organization.~~

~~(7) A statement as to whether the applicant or its parent organization has ever been found to have violated a municipal ordinance regulating peddling or vending.~~

~~(8) A statement as to whether the applicant or an officer or director of the applicant's parent organization has ever been convicted of a felony, and if so, a brief description of the offense.~~

~~(9) A current photograph of the applicant, taken within 60 days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches in size showing the head and shoulders of the applicant in a clear and distinguishing manner.~~

~~(10) The application shall be signed by the applicant stating that the information contained therein is true and correct, that the city shall have the right to investigate and verify the information contained in the application, and that the applicant has read the peddlers and vendors ordinance and agrees to abide by its terms.~~

~~(11) Such other information as the city clerk shall determine to be appropriate.~~

~~Sec. 26-115. Application review and license issuance.~~

~~(a) Upon the receipt of an application, the application will be reviewed and an investigation will be conducted to insure that all information supplied by the applicant is true and accurate.~~

~~(b) Unless the application is denied in order to insure the protection of the public health, safety and general welfare, the city clerk shall issue a license to the applicant upon payment of the applicable licensing fee. Licenses shall be issued for a period of up to one year depending upon the duration of the peddler's or vendor's activities. All licenses shall expire at the end of each calendar year regardless of the date upon which the license was issued unless the license is set to expire at an earlier time.~~

~~(c) While a license is in effect, a peddler or vendor shall, within seven calendar days after a change occurs, report to the city clerk in writing any material change in any information previously provided on the application form.~~

~~Sec. 26-116. Denial of license.~~

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~~(a) Upon review and investigation of the application and the information contained therein, the city may refuse to issue a license to an applicant for any one or more of the following reasons:~~

- ~~(1) The applicant has failed to comply with the provisions and requirements of this article.~~
- ~~(2) The applicant has been found to have violated a provision of this article within the two years immediately preceding the date of application.~~
- ~~(3) The applicant has been denied a license pursuant to this article within the immediate past year, unless the applicant shows to the satisfaction of the city that the reasons for such earlier denial no longer exist.~~
- ~~(4) The applicant falsified information on the application.~~
- ~~(5) The applicant has been convicted of a felony.~~
- ~~(6) The location, time, or method of peddling or vending will block or congest streets or sidewalks, impede the free flow of pedestrian or automobile traffic, or will otherwise endanger the health, safety, and welfare of the public in its use of the streets and sidewalks in the city.~~

~~(b) Whenever an application for a license is denied, the reasons for the denial shall be noted on the application, and the applicant shall be notified that his application is denied and that no license will be issued. Notice shall be mailed to the applicant at the address shown on the license application, or at the applicant's last known address.~~

~~Sec. 26 116. Denial of license.~~

~~(a) Upon review and investigation of the application and the information contained therein, the city may refuse to issue a license to an applicant for any one or more of the following reasons:~~

- ~~(1) The applicant has failed to comply with the provisions and requirements of this article.~~
- ~~(2) The applicant has been found to have violated a provision of this article within the two years immediately preceding the date of application.~~
- ~~(3) The applicant has been denied a license pursuant to this article within the immediate past year, unless the applicant shows to the satisfaction of the city that the reasons for such earlier denial no longer exist.~~
- ~~(4) The applicant falsified information on the application.~~
- ~~(5) The applicant has been convicted of a felony.~~
- ~~(6) The location, time, or method of peddling or vending will block or congest streets or sidewalks, impede the free flow of pedestrian or automobile traffic, or will otherwise endanger the health, safety, and welfare of the public in its use of the streets and sidewalks in the city.~~

~~(b) Whenever an application for a license is denied, the reasons for the denial shall be noted on the application, and the applicant shall be notified that his application is denied and that no license will be issued. Notice shall be mailed to the applicant at the address shown on the license application, or at the applicant's last known address.~~

~~Sec. 26 117. License revocation and suspension.~~

~~(a) Any license issued under this article may be revoked or suspended by the city for any of the following reasons:~~

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- ~~(1) Fraud, misrepresentation or false statement contained in the license application.~~
- ~~(2) Fraud, misrepresentation or false statement by the peddler or vendor in the course of peddling or vending.~~
- ~~(3) Engaging in peddling or vending in a manner contrary to the provisions contained in the license.~~
- ~~(4) Conviction for a felony.~~
- ~~(5) Engaging in peddling or vending in violation of any city ordinance or state law.~~
- ~~(6) Engaging in peddling or vending in such a manner as to create a public nuisance, constitute a breach of the peace, prevent the free flow of traffic on sidewalks and streets, or endanger the health, safety or general welfare of the public.~~

~~(b) A peddler or vendor shall have the right to notice and hearing before revocation or suspension occurs.~~

~~Sec. 26-118. Notice and hearing.~~

~~Notice of a hearing for revocation or suspension of a license issued under this article shall be provided in writing and shall set forth specifically the grounds for the proposed revocation or suspension and the time and place of the hearing. Notice shall be mailed to the peddler or vendor at the address shown on the license application, or at the applicant's last known address.~~

~~Sec. 26-119. Appeals.~~

~~Any person denied the issuance of a license or having a license suspended or revoked may appeal in writing to the city commission within 14 days of the denial, suspension or revocation. After receipt of the request for appeal, the city commission shall hear the appeal at its next regularly scheduled commission meeting. The decision of the city commission on the appeal shall be final and binding on all parties concerned.~~

~~Sec. 26-120. License fee.~~

~~A license fee shall be collected for the purpose of defraying the costs incurred by the city in regulation and enforcement of this article. The cost of a daily and annual license is set forth in the schedule of fees, charges, bonds and insurance. Whenever an applicant believes that the applicable license fee places an undue burden upon interstate commerce, the applicant may apply to the city clerk for an adjustment or waiver of the license fee. The application for an adjustment or waiver must include a sworn statement setting forth the specific reasons why the fee reduction or waiver is sought. The application must also include sufficient information for the city clerk to make a determination as to whether the license fee would unduly burden the applicant. Current licensed operating businesses within approved business zoning districts within the city are entitled to a 50 percent reduction in a peddler's or vendor's application and applicable license fee. This reduction shall not apply to businesses which are delinquent in their payment of city taxes or special assessments at the time of application.~~

~~Sec. 26-121. License exhibition.~~

~~While peddling or vending, the license issued pursuant to this article shall be displayed so that it is visible to any person dealing with the peddler or vendor.~~

~~Sec. 26-122. Nontransferable.~~

~~No license issued pursuant to this article shall be transferred to or used by any person other than the one to whom it was issued.~~

~~Sec. 26-123. Prohibitions.~~

~~(a) No peddler or vendor shall block, obstruct, impede or otherwise interfere with the normal flow of vehicular or pedestrian traffic upon a public street, alley, sidewalk or other public area within the city. In no event shall a peddler remain stationary in any location for more than 20 minutes.~~

~~(b) No peddler or vendor shall block or impede the ingress or egress of the public into any business within the city.~~

~~(c) No peddler or vendor shall, without permission, accost, interfere with, or touch any member of the public in any manner.~~

~~(d) No peddler or vendor shall unreasonably disturb the peace and quiet of the city and shall not shout, cry out, blow any horn, ring any bell, utilize any amplification system, or use any device to attract the attention of the public.~~

~~(e) No peddler or vendor shall make any fraudulent or misleading representations to any person in connection with any sale or potential sale while peddling or vending.~~

~~(f) No person under 12 years of age shall engage in any peddling or vending during school hours, unless legally excused from school, or for a combined school and work period of more than eight hours in any one day. No person shall engage in any peddling or vending between sundown and 8:00 a.m.~~

~~(g) The city may restrict peddling and vending to certain hours or to certain areas within the city during special events where the city has determined that peddling or vending may be hazardous to the health, safety or welfare of the public due to congestion in city streets, sidewalks or other public places or when peddling or vending may cause an impediment to the free flow of pedestrian or vehicular traffic. No peddler or vendor shall engage in peddling or vending during such an event in any area or during any time that peddling or vending is restricted after having received written notice from the city clerk of such restriction.~~

~~(h) No peddler or vendor shall operate in any residential zoned area of the city or upon a public street, alley, sidewalk or other public area adjacent to a residentially zoned area.~~

~~(i) No peddler or vendor shall operate from any conveyance device which does not meet the approved city standards for peddler conveyance devices on file in the office of the city clerk.~~

~~Sec. 26-124. Special events.~~

~~In addition to obtaining a peddler's or vendor's license, a peddler's or vendor's name shall be listed with the city clerk in the special events permit application of a sponsoring agency in order for the peddler or vendor to be permitted to operate on the streets, alleys, sidewalks or other public areas where a special event is taking place and as described in the special event permit.~~

~~Chapter 38, Charitable Solicitations.~~

~~ARTICLE I. IN GENERAL~~

~~Sec. 38-1. Definitions.~~

~~The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Business* means any building where commercial, industrial or mercantile transactions, dealings or intercourse of any nature, customarily engaged in as a means of livelihood, is carried on.~~

~~*Charitable, religious or political organization* means an organization or institution of persons engaged in the free assistance of the poor, the suffering, or the distressed, or any political, religious, benevolent, educational, philanthropic, humane, patriotic, eleemosynary or civic purpose.~~

~~*Express* means directly and distinctly stated or expressed rather than implied or left to inference.~~

~~*Intimidation* means to make frightened or fearful.~~

~~*Nonecommercial speech* means speech that does more than inform private economic decisions and is not primarily concerned with providing information about the characteristics and costs of goods and services.~~

~~*Person* means any individual, firm, copartnership, corporation, company, association or joint stock association, church, religious sect, religious denomination, society, organization or league, political party or organization, and includes any trustee, receiver, assignee, agent or other similar representative thereof.~~

~~*Residence* means a temporary or permanent dwelling place or abode.~~

~~*Solicitation* means going from house to house, business to business, to engage in one or more of the following: (1) seeking to obtain orders for the purchase of goods, (2) seeking to obtain prospective customers for any application or purchase of insurance of any type, kind or character, (3) seeking to obtain subscriptions to books, magazines, periodicals, newspapers or other types of publications, and (4) seeking to obtain gifts or contributions of money, clothing or other property for the support or benefit, in whole or in part, of any charitable or nonprofit organization.~~

~~*Undue burden* means the effects that follow from an exercise of police powers that put interstate commerce on a plane of inequality with local trade.~~

~~Sec. 38-2. Hours prohibited.~~

~~No person shall solicit in the city between the hours of 9:00 p.m. and 8:00 a.m. Any violation of this section shall be punishable under section 38-44.~~

ARTICLE II. PERMIT*

~~Sec. 38-26. Exemptions.~~

~~The following activities are exempt from the provisions of this chapter:~~

- ~~(1) Any communication by an organization soliciting contributions solely from persons who are members of the organization at the time of such solicitation.~~
- ~~(2) Any solicitation in the form of a collection at a regular meeting, assembly or service of a charitable, religious or political organization.~~
- ~~(3) Any solicitation pursuant to a political candidacy or ballot issue qualified pursuant to "The Michigan Election Law" or "The School Code of 1976" as they are amended from time to time.~~

~~Sec. 38-27. "No solicitation" list.~~

~~The city manager or an authorized representative shall maintain a "no solicitation" list, at all times, which shall include the address(es) of each residence or business in the city whose occupant(s) or owner(s) have expressed their intention to prohibit all soliciting at a residence or business.~~

- ~~(1) This list shall be accessible to the public.~~
- ~~(2) The list shall be renewed from time to time.~~
- ~~(3) A photocopy shall be provided to each applicant upon filing an application for a solicitation permit.~~
- ~~(4) No person shall attempt to access any residence or business included on the city manager's "no solicitation" list for the purpose of securing an audience with the occupant(s) thereof and engaging in solicitation.~~
- ~~(5) Any violation of this section shall be punishable under section 38-44.~~

~~Sec. 38-28. "No solicitation" notices.~~

~~The city manager or an authorized representative shall have "no solicitation" decals, which shall be available for any residence or business in the city.~~

- ~~(1) The owner(s) or occupant(s) of any residence or business in the city may evidence a determination to refuse to receive any uninvited solicitors by posting a card, decal or sign not less than three inches by four inches in size upon or near the main entrance door to the residence, containing the words "no soliciting." Any such card, decal or sign that complies with the requirements of this section shall be exempt from any additional or different requirements contained in the planning and zoning code.~~
- ~~(2) No person shall go upon any residence and ring the door bell, rap or knock upon any door, or create any sound in any other manner calculated to attract the attention of any occupant of such residence for the purpose of securing an audience with the occupant(s) thereof and engage in solicitation in disregard of a notice posted pursuant to this section.~~
- ~~(3) Any violation of this section shall be punishable under section 38-44.~~

~~Sec. 38-29. Solicitation permit—Requirement.~~

~~No person shall solicit within the city without having first obtained a solicitation permit from the city authorizing such solicitation. Any violation of this section shall be punishable under section 38-44.~~

~~Sec. 38-30. Permit application—Forms.~~

~~Applications for solicitation permits shall be obtained at the city clerks office.~~

~~Sec. 38-31. Same—Information.~~

~~Applicants for solicitation permits must fill out the application form in its entirety. The information that is required for the application includes the following:~~

- ~~(1) The applicant shall furnish his or her own name, address and telephone number, as well as that of the soliciting organization and of the person, if any, who was in charge of any solicitation in the city for the prior year.~~
- ~~(2) The applicant shall state the number of persons that will be soliciting on behalf of the soliciting organization.~~
- ~~(3) The applicant shall state whether or not the soliciting organization is exempt from federal taxation as a nonpartisan nonprofit organization, and whether or not the soliciting organization is permitted with the state to solicit (Act No. 169 of the Public Acts of Michigan of 1975 (MSA 3.240(2))).~~
- ~~(4) The applicant shall identify the purpose for solicitation.~~
- ~~(5) The applicant shall state the names of at least the last three municipal governmental organizations that have issued soliciting permits to the applicant. This requirement shall be waived when the soliciting organization has not been issued at least three soliciting permits in the past.~~
- ~~(6) The applicant shall identify the proposed date(s) and time(s) of solicitation.~~
- ~~(7) The applicant shall identify the proposed location(s) of solicitation.~~

~~Sec. 38-32. Exemptions from the permit fee.~~

~~All charitable, religious or political organizations shall be exempt from paying the permit application fee required by section 38-33.~~

~~Sec. 38-33. Permit application fee.~~

~~Upon submission of the application to the city clerk, the applicant shall pay a \$20.00 permit application fee. The city manager or his authorized representative may, if he determines that the permit fee would constitute an "undue burden" upon the applicant, waive or otherwise reduce the amount of the fee.~~

~~Sec. 38-34. Permit denial.~~

~~A solicitation permit shall be denied whenever the city manager or his authorized representative shall find that the applicant:~~

- ~~(1) Has failed to pay the required permit application fee (where applicable).~~
- ~~(2) Has failed to fill out the permit application form completely.~~
- ~~(3) Has falsified information on the application.~~

~~Sec. 38-35. Permit contents.~~

~~Upon approval of a permit application, the city manager or his authorized representative shall issue the number of solicitation permits to the applicant as is requested in the permit application. Solicitation permits shall bear the name and address of the person by whom the solicitation is made, the date issued, the dates within which the permit holder may solicit, and a statement that the permit does not constitute an endorsement by the city of the purpose or of the person conducting the solicitation. All permits shall be signed by the city manager or an authorized representative.~~

~~Sec. 38-36. Replacement permits.~~

~~Replacement copies of solicitation permits shall be issued only to the applicant.~~

~~Sec. 38-37. Permit expiration.~~

~~A permit issued under this article shall last for a period not to exceed one calendar year from the date of issuance.~~

~~Sec. 38-38. Nontransferability.~~

~~Any permit approved and issued under this article shall be nontransferable.~~

~~Sec. 38-39. Identification.~~

~~All solicitors shall produce a copy of their city solicitation permit upon request of any citizen or city official. Every city solicitation permit shall contain the name, address and phone number of the person who is soliciting.~~

~~Sec. 38-40. Granting of permit not endorsement by the city.~~

~~No person shall represent that the granting of a solicitation permit under this article is an endorsement by the city of the particular organization involved. Any such representation is hereby declared to be a misrepresentation of fact and subject to the provisions for revocation of the permit.~~

~~Sec. 38-41. Permit revocation.~~

~~Any solicitation permit issued under this chapter may be revoked or suspended by the city manager or his authorized representative, after notice has been sent by mail (to the applicant's last known address), if the city manager or his authorized representative has reason to believe that any officer, agent or representative of a permittee has engaged in any of the following:~~

- ~~(1) Fraud, misrepresentation or false statement contained in the application for a permit.~~
- ~~(2) Fraud, misrepresentation or false statement made in the course of conducting solicitation.~~
- ~~(3) Conviction for any crime while soliciting within the city.~~
- ~~(4) Conducting solicitation in such a manner as to create a public nuisance, constitute a breach of the peace or endanger the health, safety or general welfare of the public.~~
- ~~(5) Any violation of the guidelines contained in the document entitled "City of Birmingham: Methods for Solicitation."~~

~~Sec. 38-42. Appeals.~~

~~Any person aggrieved by the action of the city manager or one of his representatives due to the denial or revocation of a permit, or in the assessing of a fee, or any other administrative action, as provided in this chapter, shall have the right to appeal to the city commission.~~

~~(1) Such an appeal shall be taken by filing a written statement setting forth fully the grounds for the appeal.~~

~~(2) The commission shall set a time and place for a hearing on such appeal.~~

~~(3) Notice of a hearing date shall be sent to the person's last known address within 14 days after the appeal has been received.~~

~~(4) A hearing shall take place no later than 45 days after the appeal has been received.~~

~~(5) The decision and order of the commission on such appeal shall be final and conclusive.~~

~~Sec. 38-43. Intimidation.~~

~~No person, while soliciting in the city, shall intentionally intimidate any citizen. Any violation of this subsection shall be punishable under section 38-44.~~

~~Sec. 38-44. Penalties.~~

~~A violation of any portion of this chapter may result in the revocation of the person's solicitation permit. A violation of any portion of this chapter is a misdemeanor, punishable by a fine as set forth in this section or imprisonment for a term not exceeding 90 days, or both.~~

~~(1) For a first offense: A fine not less than \$50.00 and not to exceed \$100.00.~~

~~(2) For all subsequent offenses: A fine not less than \$100.00 and not to exceed \$500.00~~

~~Sec. 38-45. Repealer.~~

~~All ordinances or parts of ordinances inconsistent with the provisions of this chapter, be and the same are hereby repealed.~~

~~Sec. 38-46. Severability.~~

~~The provisions of this chapter are declared to be severable and if any section, sentence, clause or phrase of this chapter shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this chapter but they shall remain in effect, it being the legislative intent that this chapter shall stand notwithstanding the invalidity of any part.~~

CHAPTER 26, BUSINESSES, ARTICLE IV, PEDDLERS, COMMERCIAL VENDORS
AND SOLICITORS AND FROZEN CONFECTION VENDORS

26-111. Purpose.

The purpose of this chapter is to license and regulate the movement, location, business practices and hours of operation of commercial vendors, peddlers and solicitors in the City; to reduce vehicular and pedestrian traffic congestion; to promote the safe use of the streets and sidewalks; to protect the citizens' quiet enjoyment and peace while leaving ample business opportunity and means for commercial vendors, peddlers and solicitors; and to protect the health, safety and welfare of the people of the City.

26-112. Definitions.

As used in this chapter:

Commercial vendor shall mean any person offering, exposing for sale or making available for a price or donation, making sales and delivering articles to purchasers, or taking or attempting to take orders for sale of goods, foodstuffs or services of any kind, for immediate or future delivery or performance, whether or not such person has, carries or exposes for sale a sample of the subject of such sale or whether or not the person is collecting advance payment on such sale, by any of the following:

(1) *Frozen Confection Vendors* shall mean any commercial vendor traveling by automotive vehicle, from place to place, or street to street, carrying, conveying or transporting goods, wares, merchandise or foodstuffs;

a) *Frozen confection* means ice cream, ice, popsicles, ice cream bars, frozen candy, frozen dairy products and all other ice cream or other frozen sugar items.

(2) *Park Vendors* shall mean any commercial vendor who sells food or other products from a non-permanent stand at a fixed location as set forth in the vendor location map established by resolution of the City Commission, without the necessity of moving from place to place.

(3) *Movable Vendor* shall mean any commercial vendor who sells food or other products from a non-motorized removable stand such as a stationary cart, stand, wagon, or from one's person at a fixed location located on the sidewalks, alleys, rights-of-way, or other public property. The location for movable vendors shall be set forth in the vendor location map established by resolution of the City Commission.

(4) *Special Event Vendor* shall mean any commercial vendor engaged in the sale of goods, wares, or merchandise, including food products, on public property at a stationary or fixed location during a special event in the location of the special event.

(5) *School Vendor or other Vendor at an athletic event in a City park* shall mean any commercial vendor engaged in the sale of goods, wares, or merchandise, including food products, on City property at a stationary or fixed location during school or other athletic events at City parks.

Peddling, unless otherwise defined in this Chapter, shall mean traveling by foot or automotive vehicle from place to place or from street to street, carrying, conveying or transporting goods, wares, merchandise, including food products, offering and exposing the same for sale or making sales and delivering articles to purchasers, or taking or attempting to take orders for the sale of

goods, wares and merchandise, books or magazines, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether the subject is collecting advanced payments on such sales or not.

Peddler means any person who engages in peddling. The word peddler shall include the words "hawker", "itinerant merchant", and "street vendor".

Person shall mean any individual, firm, co-partnership, corporation, company, association, or joint stock association, church, religious sect or denomination, society, organization or league, and includes any trustee, receiver, assignee, agent or other similar representative.

Removable stand shall mean a trailer, cart or stand that is not permanently affixed to a location, the primary purpose of which is vending.

Solicitor shall mean any person who requests money, credit, property, financial assistance or other thing of value, by personal interview or otherwise, on the plea or representation that such money, credit, property, financial assistance or other thing of value, or the net proceeds over reasonable expenses thereof, will be used for a charitable, religious, patriotic, civic, educational or philanthropic purposes.

Special Event means an organized activity, held on public property, specific to an identifiable place, occurring for a limited period of time, and for which a special event permit has been approved pursuant to Chapter 98, Article VI, as may be amended from time to time.

Vendor shall mean commercial vendors.

26-113. License requirements.

(a) *License required.* No person shall engage in commercial vending, soliciting or peddling without a license authorized and issued by the City Clerk, as required under this Chapter. Applications shall be completed and given to the City Clerk no later than fourteen (14) days prior to the requested effective date. Commercial Vendor applications shall not be filed with the City Clerk prior to November 1st before the year the vendor is seeking the license.

(b) *Form.* The license application shall be made upon a form provided by the City Clerk.

(c) *Fees.* License and application fees shall be set by the Schedule of Fees, Charges, Bonds and Insurance.

(d) *Exemption from fees.* The following are exempt from payment of all license and application fees under this Chapter:

- (1) A solicitor;
- (2) Solicitations made in books, magazines, periodicals, newspapers and other similar publications or through the mail;

- (3) Any person exempt by law.

The applicant shall provide the City Clerk with proof of the claimed exemption. The City Clerk shall indicate upon the face of the license that it was issued, pursuant to such exemption without any fee being paid.

(e) *License period.* The license term for all commercial vendors, unless otherwise stated, shall be one (1) year, based on a calendar year. The License term for Special Event vendors, School vendors, Vendors at an athletic event in a City park, Solicitors, and Peddlers shall be limited to the time frame approved by the City Clerk.

26-114. License required.

It shall be unlawful for any commercial vendor, peddler or solicitor to engage in such business within the City without first obtaining a license as provided in this Chapter.

26-115. Exceptions to license.

The following activities are exempt from this Chapter:

- (1) Solicitations made to a congregation or group in attendance at one location and made by the person or organization inviting the individuals composing the congregation or group;
- (2) Solicitations made over the radio, television or telephone;
- (3) Any communication by an organization soliciting contributions solely from persons who are members of the organization at the time of such solicitation;
- (4) Any solicitation pursuant to a political candidacy or ballot issue qualified pursuant to “The Michigan Election Law” or “The School Code of 1976” as they are amended from time to time;
- (5) Any peddler selling solely newspapers;
- (6) Any peddler traveling on an established route at the request, express or implied, of their customers;
- (7) Salespersons calling on regularly licensed business establishments;
- (8) The distribution of handbills or leaflets where the individual distributing them does not accept payments, orders or contributions;
- (9) A person handling vegetables, fruits or perishable farm products at any established City Farmers’ Market;

(10) A person who is not a business or merchant as defined by Chapter 26 or Chapter 126, section 4.77, A, 3 of this Code, who engages in a garage sale whereby they are selling their own items from their household.

26-116. Special events licensing.

Additional vendor licenses may be authorized for a special event by the City Clerk as follows:

- (1) Any such request must be in conjunction with a special event as defined by the City Code.
- (2) Such a request must have the prior written authorization from the coordinator of the special event.

26-117. Requirements For All Applications.

- (a) *Applications.* All applicants for a license under this Chapter shall pay to the City the fee required by the Schedule of Fees, Bonds, Charges and Insurance, and, file with the City Clerk a sworn application in the form required by the City Clerk, which shall include the following:

- (1) The name of the person(s) who will engage in vending, soliciting or peddling within the City, including the person's current address of residence and length of residence at such address, business address if other than the residence address, business and residence telephone numbers, driver's license number, and a physical description including height, weight, and color of hair and eyes.
- (2) A brief description of the business or activity to be conducted including the methods to be used and a description of the types of goods or services to be sold.
- (3) The dates, hours and location for which the right to engage in vending, soliciting or peddling is sought.
- (4) Proof that the applicant has obtained all licenses or permits required by state law.
- (5) The names of three references who will certify as to the applicant's good moral character and business responsibility.
- (6) If employed and acting as an agent, the name, address and telephone number of the parent organization who is being represented, and when and where this organization was formed, including the form of its organization.
- (7) A statement as to whether the applicant or its parent organization has ever been found to have violated a municipal ordinance regulating vending, soliciting or peddling.

(8) A statement as to whether the applicant or an officer or director of the applicant's parent organization has ever been convicted of a felony, and if so, the date and location of such conviction, and a brief description of the offense.

(9) A current photograph of the applicant and/or a photograph of the person(s) who will be engaged in the vending, taken within 60 days immediately prior to the date of the filing of the application, which picture shall be two inches by two inches in size showing the head and shoulders of the applicant and or vendor, peddler or solicitor, in a clear and distinguishing manner.

(10) The application shall be signed by the applicant stating that the information contained therein is true and correct, that the City shall have the right to investigate and verify the information contained in the application, and that the applicant has read the vendors, solicitors and peddlers ordinance and agrees to abide by its terms.

(11) Such other information as the City Clerk shall determine to be appropriate.

(b) *Requirements of all vendors, solicitors and peddlers.*

(1) *Loud noises, speaking devices, lights.* No drum, loudspeaker, amplifier, or other instrument or device which creates noise, or flashing lights which are for the purpose of attracting attention to commercial or noncommercial enterprises so as to annoy or disturb the quiet, comfort or repose of persons in any office, dwelling or other residence, or other place of employment or repose shall be used and may be treated as a violation under this Chapter, and Chapter 50, Article II, Division 4 of the City Code.

(2) Frozen confection vendors shall not utilize any bell, chime or other noisemaking device beyond a moderate noise level for the purpose of attracting persons to buy the frozen confection. This prohibition shall not be construed to exclude the customary horn required under the motor vehicle laws of the State of Michigan.

(3) *Off-limit locations.* No vendor, peddler or solicitor shall conduct business within fifty (50) feet of any school, church, synagogue or place of worship during services or within one-hour of services; courthouse; police station; or other public location unless specifically authorized pursuant to the terms of the license. In addition, the City Manager shall have power to designate such streets, sidewalks, parts of streets, or sidewalks, districts or areas where it shall be unlawful for any licensee to operate or conduct her/his business, such designation to be made based upon congested traffic conditions, character of the neighborhood, or if the conduct of such business constitutes a public nuisance.

(4) *"No Soliciting" signs and "No Soliciting" list.* No solicitor or peddler shall enter into property that has a posted "No Soliciting" sign or shall remain on property after being requested to leave by the occupant. No solicitor or peddler shall solicit or peddle their wares or enter any property that is listed on the No Soliciting list on file at the City Clerk's office.

(5) *Threatening or harassing behavior.* No vendor, solicitor or peddler shall threaten or harass any citizen in the course of their activities or in any way engage in conduct that threatens the health and safety of another or causes a nuisance.

(6) *Effect of delinquent personal property taxes.* No vendor, solicitor or peddler license shall be granted to any person owing any personal property taxes or other indebtedness to the City, or who contemplates using any personal property on which personal property taxes are owed, in the operation of such business.

(7) *Sales limited to products on application.* Vendors, solicitors and peddlers shall be limited to the sale of products specified on their application. Amendments to originally approved applications must be submitted to the City Clerk for review and approval, and shall not be effective prior to such approval. An application fee of an amount established in the Schedule of Fees, Charges, Bonds and Insurance must accompany each request for an amendment.

(8) *Licenses non-sellable and non-transferable.* Vendor, solicitor and peddler's licenses issued under the authority of this Chapter shall be non-sellable and non-transferable, either as to persons or as to location.

(c) *Traffic regulations, obstructing public places.*

(1) Vendors, solicitors and peddlers shall observe all traffic and parking regulations. Unless specifically approved, vendors, peddlers and solicitors shall not conduct business in a congested area, or occupy a stationary location on a public street, sidewalk, parkway, park, parking lot, or any other public property which is to be used by pedestrians or persons operating motor vehicles. Such vendors, peddlers and/or solicitors shall be presumed to have occupied a location if he/she has conducted business in any such public place for a period in excess of ten (10) minutes.

(2) Sales to persons standing in roadway, to vehicles at red lights and to vehicles in moving traffic lanes are prohibited.

(d) *Display of license required.* All vendors, solicitors and peddlers shall display the license provided by the City Clerk, on his or her person or in a prominent place on their vehicle or removable or non-permanent stand. The failure of a vendor, peddler and/or solicitor to conspicuously and constantly exhibit such license when engaged in his/her licensed business shall be sufficient cause for the suspension or revocation of his/her license.

(1) Any certificate or license issued by the Oakland County Health Department shall also be prominently displayed on any vehicle or stand subject to this ordinance.

(e) *Prices posted.* A park vendor, movable vendor, and frozen confection vendor shall have posted on their vehicle, removable stand or non-permanent stand, the current prices charged for each item sold and no item shall be sold for more than the posted price.

(f) *Litter clean-up required.* Vendors shall (at their own expense) keep the sidewalks, streets, and other public places adjoining and adjacent to their locations of business clean and free from any refuse generated or resulting from the operation of their business.

(1) Under no circumstances may any vendor, solicitor or peddler use any City trash can, dumpster or other receptacle, drain or sewer to dispose of any litter, refuse, substance, fluid, liquid or grease.

(2) Violation of this subparagraph more than twice during one license year may constitute license revocation.

(g) *Cash Deposit for Litter clean-up.* Movable vendors and Park vendors shall file with the City a cash deposit for the removal of any litter on any sidewalk, street and/or other public place adjoining and adjacent to their locations in the event the vendor fails to maintain such areas in compliance with this Ordinance. The amount of the cash deposit shall be set forth in the Schedule of Fees, Charges, Bonds and Insurance. If the vendor fails to remove any such litter, the City may remove the litter and charge the costs against the cash deposit. In the event a Movable vendor or Park Vendor exhausts its cash deposit, the vendor shall be invoiced by the City for any restoration or litter on City property in excess of the amount of the deposit.

(h) Commercial vendors, peddlers and solicitors shall obtain insurance as set forth in the Schedule of Fees, Charges, Bonds and Insurance.

(i) Commercial vendors shall agree to indemnify and hold the City harmless, the language of which is set forth in the Schedule of Fees, Charges, Bonds and Insurance.

(j) Removable stands must be removed from the designated zone between 12:00 a.m. and 6:00 a.m. each day or as otherwise restricted on a location by location basis by park hours or by resolution of the City Commission.

(k) Removable stands, carts, wagons, automotive vehicles, non-permanent stands and other conveyances must be maintained in a clean and neat condition, and must be maintained in good repair and in a safe manner acceptable to the City.

26-118. Park Vendor and Movable Vendor license.

(a) *Shain Park and Booth Park.* For purposes of this Ordinance, there shall be one (1) Park Vendor allowed in the City. The one Park Vendor shall be allowed in Shain Park. Applicants

for a Park vendor license in Shain Park shall be required to submit to a Request For Proposal (RFP) procedure as established by the City.

(b) *Moveable Vendor.* For purposes of this Ordinance, there shall be established two (2) Moveable Vendors allowed in the City. Applicants for a Moveable Vendor license shall be required to submit a Request For Proposal (RFP) procedure as established by the City.

(c) *Specific Application Information.* Applicants for a Park Vendor and/or a Movable Vendor license under this Chapter shall file with the City Clerk a sworn application in the form required by the City Clerk, the additional following information:

- (1) The type of goods or property being sold, the location where the goods or property are sought to be sold, location where the goods or property are manufactured or produced, where such goods or products are located at the time the application is filed, and the proposed method of delivery;
- (2) If food or beverages are proposed to be sold from the vendor, a copy of the proposed menu and price list;
- (3) A copy of the vendor's current license and any applicable renewals from the Health Department must be attached to the application;
- (4) A description of the vendor stand, moveable commercial vendor stand, temporary stand, cart or wagon which the vendor will be offering goods, merchandise and wares from, including measurements of its height, width and length;
- (5) A photograph of the vendor stand, moveable commercial vendor stand, temporary stand, cart or wagon proposed to be placed on the City's sidewalks, rights-of-way, alley's and/or public property.

(d) *Basis for granting licenses for park vendor and movable vendors.* To assure the safety of citizens, reduce congestion of pedestrian and vehicular traffic, to promote safe use of streets and sidewalks, and assure the highest quality offering of food and other products, park vendor licenses will be granted based upon:

- (1) The application and the applicants demonstrated ability finance and operate the proposed vending unit.
- (2) The extent of the products/cuisine offered and the price offered.
- (3) Construction, quality, appearance and design of the stand, cart or mobile vending unit to be used and whether the applicant has an adequate site plan to handle the proposed vending activities.

(4) Previous performance with the City including responding to City and/or citizen concerns as a vendor or merchant.

(5) No license shall be issued to a food vendor until the applicant and any equipment used by such applicant are approved by the Oakland County Health Department.

(6) All fees have been paid and any arrearages have been made current with the City.

Any conflict between vendors over license location shall be resolved by the City Clerk based upon the suitability of the vendor for the specific location in conflict and the prior commercial relationship between the City and the vendors.

In an effort to promote diversity in the types of vendors throughout the City, a commercial vendor applicant shall not be granted approval for more than 2 locations for the same calendar year.

(e) Review of Police Chief.

(1) After an application for a commercial vendor license has been filed, the City Clerk shall refer it to the Police Chief, or appointed officers of the Police Department, who shall review the applicant's and employees background and shall respond to the City Clerk with a recommendation on issuance of the license. No license shall be issued against the recommendation of the Police Chief.

(2) The Police Chief, or appointed officers of the Police Department, shall report to the City Clerk all violations of this Chapter and the City Clerk shall maintain a record for each license issued and record the reports of violations. The City Clerk shall file with the Police Chief a copy of each license and the Police Chief shall report to the City Clerk any complaints against any licensee and/or employee(s) and any convictions, pleas or other findings of responsibility for violations of this Chapter. The City Clerk shall keep a record of all such complaints and violations.

26-119. Frozen Confection Vendor License.

(a) *Specific Application Information.* Frozen Confection Vendor applications shall not be filed with the City Clerk prior to November 1st before the year the vendor is seeking the license. A person desiring to be a frozen confection vendor shall meet all of the requirements of this Chapter, and shall pay to the City the fee required by the Schedule of Fees, Bonds, Charges and Insurance, and, in addition, shall submit:

- (1) A copy of such person's most recent driver's license, and the Police Department shall perform a background and criminal check and also check such person's driving record to ascertain that the person is authorized to

operate a vending motor vehicle as well as had a valid and unrestricted driver's license and to also ascertain that the person does not pose an unreasonable risk and/or hazard to those persons to whom the frozen confections will be sold and/or offered for sale to.

- (2) Proof of liability insurance, as required by the City, which must be kept current during the lifetime of the license.
- (3) If the applicant applying for a license to be a frozen confection vendor will be selling and/or vending the frozen confection on behalf of another person and/or business entity, and/or if the motor vehicle to be used by the applicant is owned by another person and/or business entity, the applicant shall set forth on its application, the name, address and telephone number of such person and/or business entity and, if the business entity is a corporation, the applicant shall set forth the state of incorporation, as well as the registered agent of such corporation.

(b) *Basis for granting frozen confection vendor license.* To assure the safety of citizens, reduce congestion of pedestrian and vehicular traffic, to promote safe use of streets and sidewalks, and assure the highest quality offering of food and other products, frozen confection vendor licenses will be granted by the City Clerk based upon:

- (1) The application and the applicants demonstrated ability finance and operate the proposed frozen confection vending unit.
- (2) The extent of the products/cuisine offered and the price offered.
- (3) Construction, quality, appearance and design of the mobile frozen confection vending unit to be used and whether the applicant has a plan to handle the proposed vending activities.
- (4) Previous performance with the City including responding to City and/or citizen concerns as a frozen convection vendor or merchant.
- (5) All fees have been paid and any arrearages have been made current with the City.
- (6) The applicant has not made a material misrepresentation of fact in and/or falsified any of the contents of the application.
- (7) The applicant has not had a frozen confection vendor's license denied or revoked by the City within a period of one (1) year prior to the date of the application.

- (8) The applicant has not ever been convicted of operating a motor vehicle under the influence of liquor, operating a motor vehicle with an unlawful blood alcohol content, operating a motor vehicle under the influence of narcotics and/or other controlled substances, operating a motor vehicle while visibly impaired and/or any other drinking and driving offenses and/or any other offenses pertaining to driving and narcotics and/or controlled substances.
- (9) The applicant has a valid and unrestricted driver's license.
- (10) The applicant has never been convicted of a felony and/or convicted of any sexual offenses.
- (11) The applicant has met all other requirements of this Chapter.
- (12) The applicant/licensee shall be responsible for notifying the City of any changes in any of the above criteria within 3 calendar days of the change of status.

(13) No license shall be issued to a frozen confection food vendor until the applicant and any equipment used by such applicant are approved by the Oakland County Health Department. A copy of the vendor's current license and any applicable renewals from the Health Department must be attached to the application.

(c) *Review of Police Chief.*

(1) After an application for a frozen confection vendor license has been filed, the City Clerk shall refer it to the Police Chief, or appointed officers of the Police Department, who shall review the applicant's and employees background and shall respond to the City Clerk with a recommendation on issuance of the license. No license shall be issued against the recommendation of the Police Chief.

(4) The Police Chief, or appointed officers of the Police Department, shall report to the City Clerk all violations of this Chapter and the City Clerk shall maintain a record for each license issued and record the reports of violations. The City Clerk shall file with the Police Chief a copy of each license and the Police Chief shall report to the City Clerk any complaints against any licensee and/or employee(s) and any convictions, pleas or other findings of responsibility for violations of this Chapter. The City Clerk shall keep a record of all such complaints and violations.

(d) *Limited number of frozen confection vendor licenses.*

(1) To assure the safety of citizens, reduce congestion of pedestrian and vehicular traffic, to promote safe use of streets and sidewalks, and assure the

highest quality offering of food and other products, the City shall only grant 3 frozen confection licenses per year. A frozen confection vendor shall not obtain more than one license per year. A frozen confection vendor shall not operate more than one truck per license in the City.

(e) Requirements specific to Frozen Confection Vendors.

(1) Except as otherwise provided herein, the sale and/or offer for sale of frozen confection by frozen confection vendor in the City shall only be permitted from 9:00 a.m. to 5:00 p.m. during Eastern Standard Time and from 9:00 a.m. to 8:00 p.m. during [State of] Michigan daylight savings time. In addition, all frozen confection vendors shall comply with the regulations contained in subsection (b) of this section.

(2) No frozen confection vendors shall:

(i) Sell or offer for sale any unsound, unwholesome, defective, faulty or deteriorated frozen confection.

(ii) At any time in the conduct of the sale and/or offer of sale of a frozen confection obstruct any street, alley, sidewalk or driveway.

(iii) Remain in front of, or at the side of, any property against the wish or desire of the property owner or the tenant or occupant of such property.

(iv) Engage in the sale of and/or the offer of sale of frozen confection within 500 feet of the entrance of any school building between the hours of 9:00 a.m. and 5:00 p.m. on the days when school is in session.

(v) Engage in the sale of and/or the offer of sale of frozen confection on those portions of streets on which a public park abuts and/or engage in the sale of and/or offer of sale of any frozen confection in any public park, unless prior approval for the sale of and/or offer of sale of frozen confections in a public park is granted by the City Clerk.

(vi) Stop its vehicle for the purpose of engaging in the sale of and/or offer for sale of any frozen confection within fifty (50) feet of any street intersection in the City.

(vii) Fail to comply with all provisions of the traffic ordinances and/or any other ordinances of the City.

(viii) Remain standing at any one place on any of the streets, alleys or other permitted public places in the City for a longer period of time than ten minutes while engaging in the sale and/or offer for sale of frozen confections.

(ix) Remain upon premises owned by another person for a longer period of time than ten minutes while engaging in the sale and/or offer for sale of frozen confection.

(x) Sell or offer to sell frozen confections from vehicles to minors under the age of sixteen (16) unless there is displayed on the vehicle properly operating vehicle flashing warning lights visible from the front and rear and from each side of the vehicle which under normal atmospheric conditions are visible from a distance of five hundred (500) feet unless such vehicle is stopped in a legal parking location not closer than one hundred (100) feet to the nearest intersecting street.

(f) *Revocation of Frozen Confection Vendor License.* A frozen confection vendor's license issued under this Chapter may be revoked by the City for any of the following:

(1) The licensee violating and/or failing to comply with any of the terms, provisions and/or requirements of this ordinance.

(2) The licensee violating any health and/or food laws of the State of Michigan.

(3) The licensee being convicted of operating a motor vehicle while under the influence of liquor, operating a motor vehicle with an unlawful blood alcohol content, operating a motor vehicle while under the influence of narcotics and/or other controlled substances, operating a motor vehicle while visibly impaired and/or any other drinking and driving offenses and/or any other offenses pertaining to driving and narcotics and/or controlled substances.

(4) The licensee has been convicted of a felony and/or a sexual offense.

(5) The licensee has made a material misrepresentation of fact in and/or has falsified any of the contents of its application.

(6) The licensee no longer has a valid and unrestricted driver's license.

(7) The licensee poses an unreasonable risk and/or hazard to those persons to whom the frozen confections will be sold and/or offered for sale to.

(8) The licensee refuses to allow the City Police Department and/or its duly authorized representatives to inspect the licensed vehicle/premises during normal business hours for purposes of enforcement of this division, including inspection purposes, any vehicle from which the licensee will be selling and/or offering to sell frozen confections from.

26-120. Peddler's License.

(a) *Specific Application Information.* Applicants for a peddler's license under this Chapter shall file with the City Clerk a sworn application in the form required by the City Clerk.

(b) *Basis for granting peddlers license.*

(1) Upon the receipt of an application, the application will be reviewed and an investigation will be conducted to insure that all information supplied by the applicant is true and accurate.

(2) Unless the application is denied in order to ensure the protection of the public health, safety and general welfare, the City Clerk shall issue a license to the applicant upon payment of the applicable licensing fee. Licenses shall be issued for a period of up to one year depending upon the duration of the peddler's activities. All licenses shall expire at the end of each calendar year regardless of the date upon which the license was issued unless the license is set to expire at an earlier time.

(3) While a license is in effect, a peddler shall, within 3 calendar days after a change occurs, report to the City Clerk in writing any material change in any information previously provided on the application form.

(4) The required fees have been paid.

(5) The applicant has not made a material misrepresentation of fact in and/or falsified any of the contents of the application.

(6) The applicant has not had a peddler's license denied or revoked by the City within a period of one (1) year prior to the date of the application.

(7) The applicant has never been convicted of a felony and/or convicted of any sexual offenses.

(8) The applicant has met all other requirements of this Chapter.

(9) The applicant/licensee shall be responsible for notifying the City of any changes in any of the above criteria within 3 calendar days of the change of status.

(c) *Review of Police Chief.*

(1) After an application for a peddler's license has been filed, the City Clerk shall refer it to the Police Chief, or appointed officers of the Police Department, who shall review the applicant's background and shall respond to the City Clerk with a recommendation on issuance of the license. No license shall be issued against the recommendation of the Police Chief.

(2) The Police Chief, or appointed officers of the Police Department, shall report to the City Clerk all violations of this Chapter and the City Clerk shall maintain a record for each license issued and record the reports of violations. The City Clerk shall file with the Police Chief a copy of each license and the Police Chief shall report to the City Clerk any complaints against any licensee and any convictions, pleas or other findings of responsibility for violations of this Chapter. The City Clerk shall keep a record of all such complaints and violations.

(d) Requirements Specific to Peddlers.

(1) No peddler shall block, obstruct, impede or otherwise interfere with the normal flow of vehicular or pedestrian traffic upon a public street, alley, sidewalk or other public area within the City. In no event shall a peddler remain stationary in any location for more than 10 minutes.

(2) No peddler shall block or impede the ingress or egress of the public into any business within the City.

(3) No peddler shall, without permission, accost, interfere with, or touch any member of the public in any manner.

(4) No peddler shall unreasonably disturb the peace and quiet of the City and shall not shout, cry out, blow any horn, ring any bell, utilize any amplification system, or use any device to attract the attention of the public.

(5) No peddler shall make any fraudulent or misleading representations to any person in connection with any sale or potential sale while peddling.

(6) No person under 12 years of age shall engage in any peddling during school hours, unless legally excused from school, or for a combined school and work period of more than eight hours in any one day.

(7) Except as otherwise provided herein, peddling in the City shall only be permitted from 9:00 a.m. to 5:00 p.m. during Eastern Standard Time and from 9:00 a.m. to 8:00 p.m. during [State of] Michigan daylight savings time. In addition, all peddlers shall comply with the regulations contained in subsection (b) of this section.

(8) The City may restrict peddling to certain hours or to certain areas within the City during special events where the City has determined that peddling may be hazardous to the health, safety or welfare of the public due to congestion in City streets, sidewalks or other public places or when peddling may cause an impediment to the free flow of pedestrian or vehicular traffic. No peddler shall engage in peddling during such an event in any area or during any time that peddling is restricted after having received written notice from the City Clerk of such restriction.

(9) No peddler shall remain in front of, or at the side of, any property against the wish or desire of the property owner or the tenant or occupant of such property.

(10) No peddler shall engage in the sale of and/or the offer of sale of goods/services on those portions of streets on which a public park abuts and/or engage in the sale of and/or offer of sale any goods/services in any public park, unless prior approval for the sale of and/or offer of such goods/services in a public park is granted by the City Clerk.

(e) *Prohibitions to Peddling.*

(1) The owner(s) or occupant(s) of any residence or business in the City may evidence a determination to refuse to receive any uninvited peddlers by posting a card, decal or sign not less than three inches by four inches in size upon or near the main entrance door to the residence, containing the words "no soliciting." Any such card, decal or sign that complies with the requirements of this section shall be exempt from any additional or different requirements contained in the zoning ordinance. No peddler shall peddle their wares or enter any property that is listed on the No Soliciting list on file at the City Clerk's office.

(2) No person shall go upon any residence and ring the door bell, rap or knock upon any door, or create any sound in any other manner calculated to attract the attention of any occupant of such residence for the purpose of securing an audience with the occupant(s) thereof and engage in solicitation in disregard of a notice posted pursuant to this section.

(3) No person shall represent that the granting of a peddler's license under this article is an endorsement by the City of the particular organization involved. Any such representation is hereby declared to be a misrepresentation of fact and subject to the provisions for revocation of the permit.

- (4) No person, while peddling in the City, shall intentionally intimidate any citizen.

26-121. Solicitor license.

(a) *Applications.* Persons applying for a license under this Chapter shall file with the City Clerk a sworn application in the form required by the City Clerk, which shall include the following:

- (1) Names and addresses of individuals who will be soliciting on behalf of the organization;
- (2) Length of time and exact dates for which the license is requested;
- (3) A brief description of the nature of the organization, and proof of its tax exempt status;

(b) *Approval.* The City Clerk shall issue a solicitor license upon determination that the application meets all provisions of this Chapter.

(c) *Review of Police Chief.*

(1) After an application for a solicitation license has been filed, the City Clerk shall refer it to the Police Chief, or appointed officers of the Police Department, who shall review the applicant's and employees background and shall respond to the City Clerk with a recommendation on issuance of the license. No license shall be issued against the recommendation of the Police Chief.

(2) The Police Chief, or appointed officers of the Police Department, shall report to the City Clerk all violations of this Chapter and the City Clerk shall maintain a record for each license issued and record the reports of violations. The City Clerk shall file with the Police Chief a copy of each license and the Police Chief shall report to the City Clerk any complaints against any licensee and/or employee(s) and any convictions, pleas or other findings of responsibility for violations of this Chapter. The City Clerk shall keep a record of all such complaints and violations.

(d) *Requirements Specific to Solicitors.*

(1) No person shall solicit within the City without having first obtained a solicitation permit from the City authorizing such solicitation.

(2) Upon submission of the application to the City Clerk, the applicant shall pay a permit application fee, the amount of which shall be as established in the Schedule of Fees, Charges, Bonds and Insurance.

(3) The owner(s) or occupant(s) of any residence or business in the City may evidence a determination to refuse to receive any uninvited solicitors by posting a card, decal or sign not less than three inches by four inches in size upon or near the main entrance door to the residence, containing the words "no soliciting." Any such card, decal or sign that complies with the requirements of this section shall be exempt from any additional or different requirements contained in the zoning ordinance. No solicitor shall solicit or enter any property that is listed on the No Soliciting list on file at the City Clerk's office.

(4) No person shall go upon any residence and ring the door bell, rap or knock upon any door, or create any sound in any other manner calculated to attract the attention of any occupant of such residence for the purpose of securing an audience with the occupant(s) thereof and engage in solicitation in disregard of a notice posted pursuant to this section.

(5) No person shall represent that the granting of a solicitation permit under this article is an endorsement by the City of the particular organization involved. Any such representation is hereby declared to be a misrepresentation of fact and subject to the provisions for revocation of the permit.

(6) No person, while soliciting in the City, shall intentionally intimidate any citizen.

(7) No person under 12 years of age shall engage in any soliciting during school hours, unless legally excused from school, or for a combined school and work period of more than eight hours in any one day.

(8) Except as otherwise provided herein, soliciting in the City shall only be permitted from 9:00 a.m. to 5:00 p.m. during Eastern Standard Time and from 9:00 a.m. to 8:00 p.m. during [State of] Michigan daylight savings time. In addition, all solicitors shall comply with the regulations contained in subsection (d) of this section.

(9) No solicitor shall remain in front of, or at the side of, any property against the wish or desire of the property owner or the tenant or occupant of such property.

(10) No solicitor shall engage in soliciting on those portions of streets on which a public park abuts and/or engage in soliciting in any public park, unless prior approval for such soliciting in a public park is granted by the City Clerk.

26-122. Enforcement.

(a) It shall be the duty of any police or Code Official to require any person seen soliciting, merchandising, or vending and who is not known by such official to be duly licensed, to show proof of a license issued by the City Clerk, and to enforce the provisions of this Chapter against any person found to be violating them.

(b) Any police officer or Code Official may enter any licensed premises at any time during business hours for the purpose of ascertaining the manner in which such business is conducted and to investigate complaints. At all such times, the official shall be permitted access to the books of such business to ascertain compliance with the provisions of this Chapter.

26-123. Revocation/Appeal.

(a) The City Clerk is authorized to revoke any license issued under this Chapter for violation of the provisions of this Chapter, including, but not limited to the following:

(1) Vendor, solicitor or peddler has violated any provision of this Chapter, any provision of the City of Birmingham Code of Ordinances, or state or federal laws, rules or regulations.

(2) Vendor, solicitor or peddler has made a false material statement in the application or has otherwise become disqualified for issuance of the license.

(3) Vendor, solicitor or peddler has had a written complaint filed against it for violation of this Chapter and probable cause exists for substantiation of the complaint.

(4) Vendor, solicitor or peddler has acted in a manner contrary to the public health, safety or welfare of the citizens of Birmingham.

(b) The City Clerk shall provide the vendor, solicitor or peddler with written notice at the address on the application for the license for the revocation of the license. The written revocation notice must clearly set forth in writing the grounds for revocation, and allow the vendor, solicitor or peddler to file a written request with the City Clerk's office for a hearing to appeal the revocation; such request shall be filed with the City Clerk within fifteen (15) days from the date appearing on the notice of revocation. The hearing shall be held by the City Manager or the City Manager's designated representative.

(c) If a vendor's, solicitor's or peddler's appeal of the revocation to the City Manager or his designee is not reversed by the City Manager, the vendor, solicitor or peddler has seven days to file a written appeal of the revocation to the City Commission, so that the appeal can be placed on the next available City Commission agenda for consideration of the appeal.

26-124. Non-Exclusive/No Property Interest.

Any license applied for and/or granted pursuant to this ordinance is non-exclusive, and does not grant any property right or right to receive such licenses in the future.

26-125. Other permits or licenses.

A license obtained under this Chapter shall not relieve a person of the responsibility for obtaining any other license or authorization required by any other ordinance, statute or administrative rule.

26-126. Appearance tickets.

The Police Chief and the appointed officers of the Police Department, or such code officials as are designated by the City Manager, are hereby authorized to issue and serve appearance tickets with respect to a violation of this Chapter pursuant to Section 1 of Act 147 of Public Acts of 1968, as amended; MCL 764.9c(2). Appearance tickets shall be in such form as determined by the City Attorney and shall be in conformity with all statutory requirements.

26-127. Civil infraction.

Municipal civil infraction. Any person who violates any section of this Chapter shall be responsible for a municipal civil infraction, subject to a fine as provided herein, plus costs and other sanctions for each infraction. Each violation of the chapter shall be deemed a separate offense.

(1) For a first offense, a civil fine as set forth in the Schedule of Fees, Charges, Bonds, and Insurance.

(2) For a second offense and any subsequent offense, a civil fine as set forth in the Schedule of Fees, Charges, Bonds, and Insurance.

ORDAINED this ____ day of _____ 2011. Effective upon publication

Gordon L. Rinschler, Mayor

Laura M. Broski, City Clerk

I, Laura M. Broski, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the commission of the City of Birmingham, Michigan at a regular meeting held _____, 2011 and that a summary was published _____, 2011.

Laura M. Broski, City Clerk

Approved:

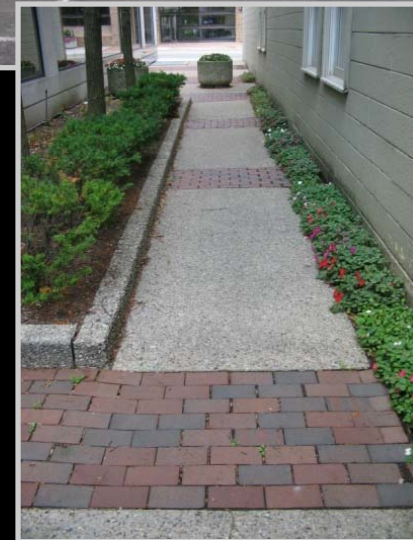
Robert J. Bruner, Jr., City Manager
(Approved as to substance)

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



Invigorating Birmingham's Public Spaces

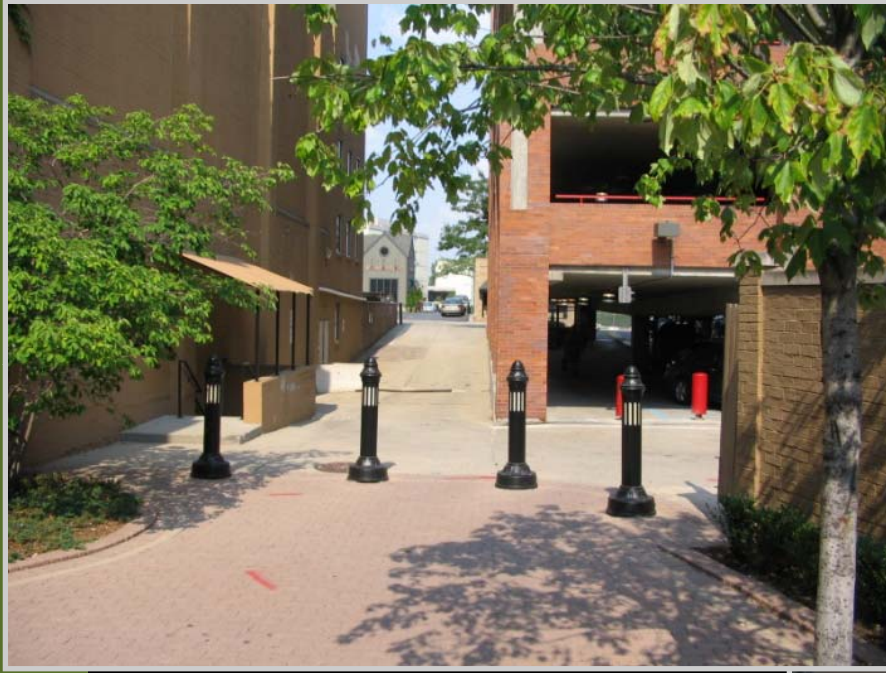
Daines passage



CafeVia Passage



Peabody Alley



Willits Alley



Willits passage

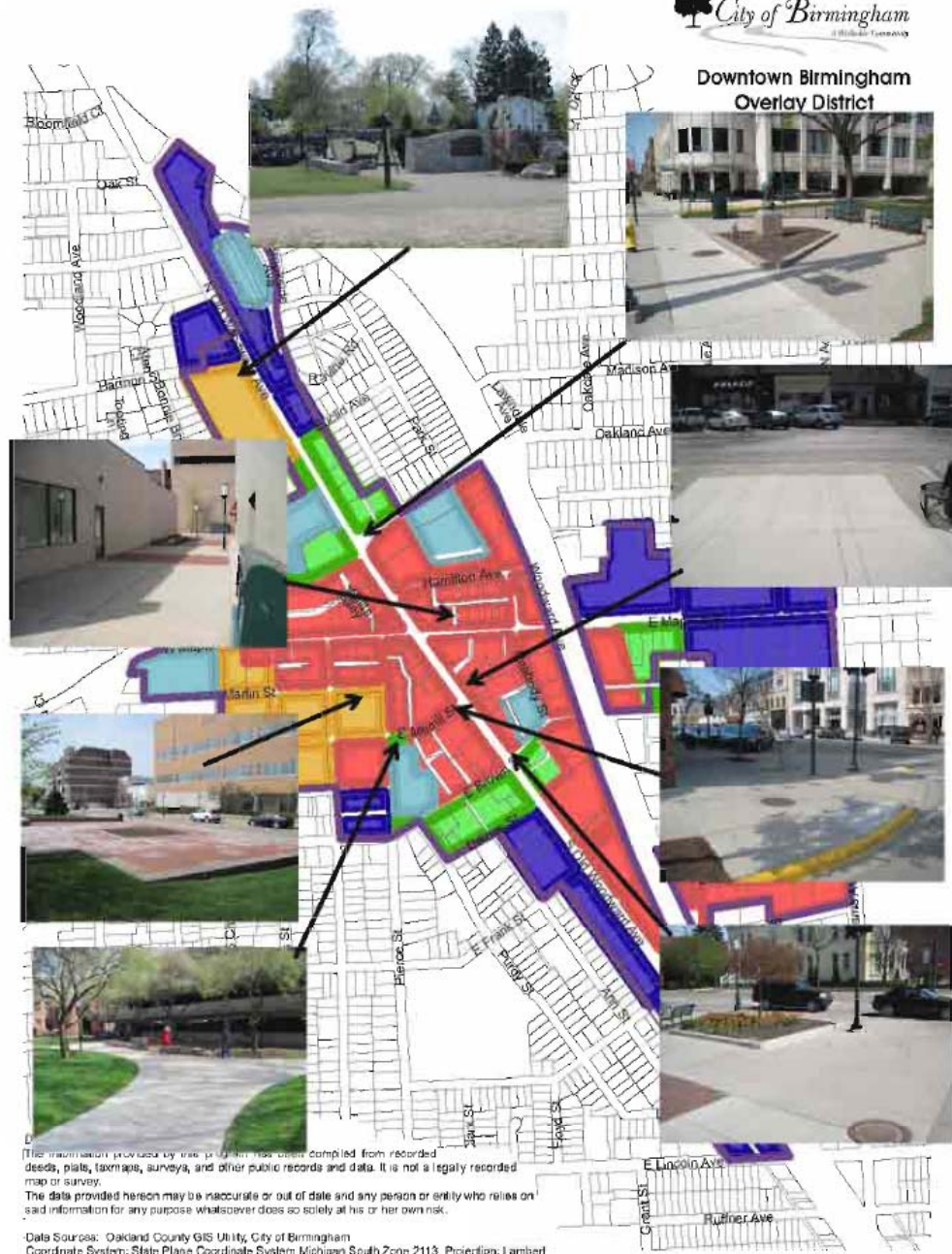


Tokyo Sushi passage





Downtown Birmingham Overlay District



The information provided by this program has been compiled from recorded deeds, plats, taxmaps, surveys, and other public records and data. It is not a legally recorded map or survey.
The data provided herein may be inaccurate or out of date and any person or entity who relies on said information for any purpose whatsoever does so solely at his or her own risk.

Data Source: Oakland County GIS Utility, City of Birmingham
Coordinate System: State Plane Coordinate System Michigan South Zone 2113 Projection: Lambert

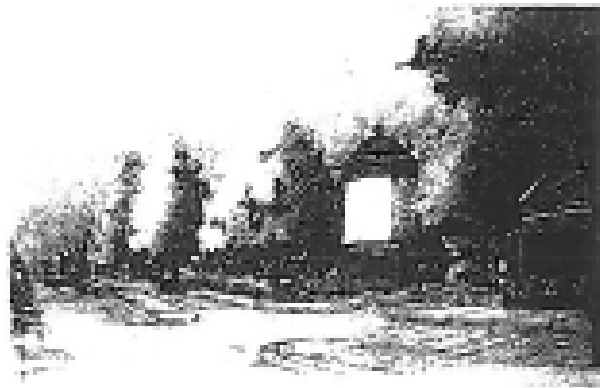
Pierce Street Parking Structure



Shain Park



Booth Park



Plan 55. The proposed pavilion at Booth Park should anchor the corner and supply food and drink to the people in the park.



Alley Shopfronts



Alley Wayfinding



Existing Vendor Displays



...in
Birmingham



... and around
the world



Food Cartology Study, Portland

“...food carts have positive impacts on street vitality and neighborhood life.”



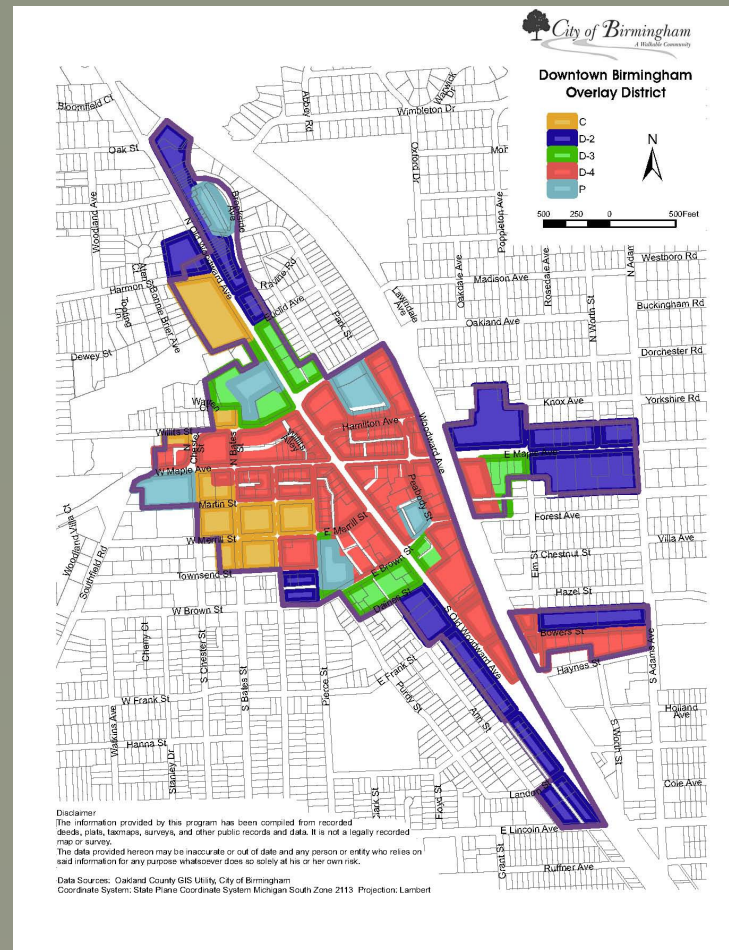
**RETHINKING URBAN SPACES
AS PEOPLE PLACES**

Urban Vitality Group
Planning • Economics • Consulting



Potential Vendor Locations

These locations were highlighted as potential areas throughout the Downtown that have the space to support vendors.



City Hall



Pierce parking garage



“Bump out” on S. Old WW



Oak and N. Old WW



NW corner of Merrill and S. Old WW



SW corner Merrill and S. Old WW



Tokyo Sushi Passage



NE corner of Brown and S. Old WW



Hamilton by Movie theater



Chester and maple



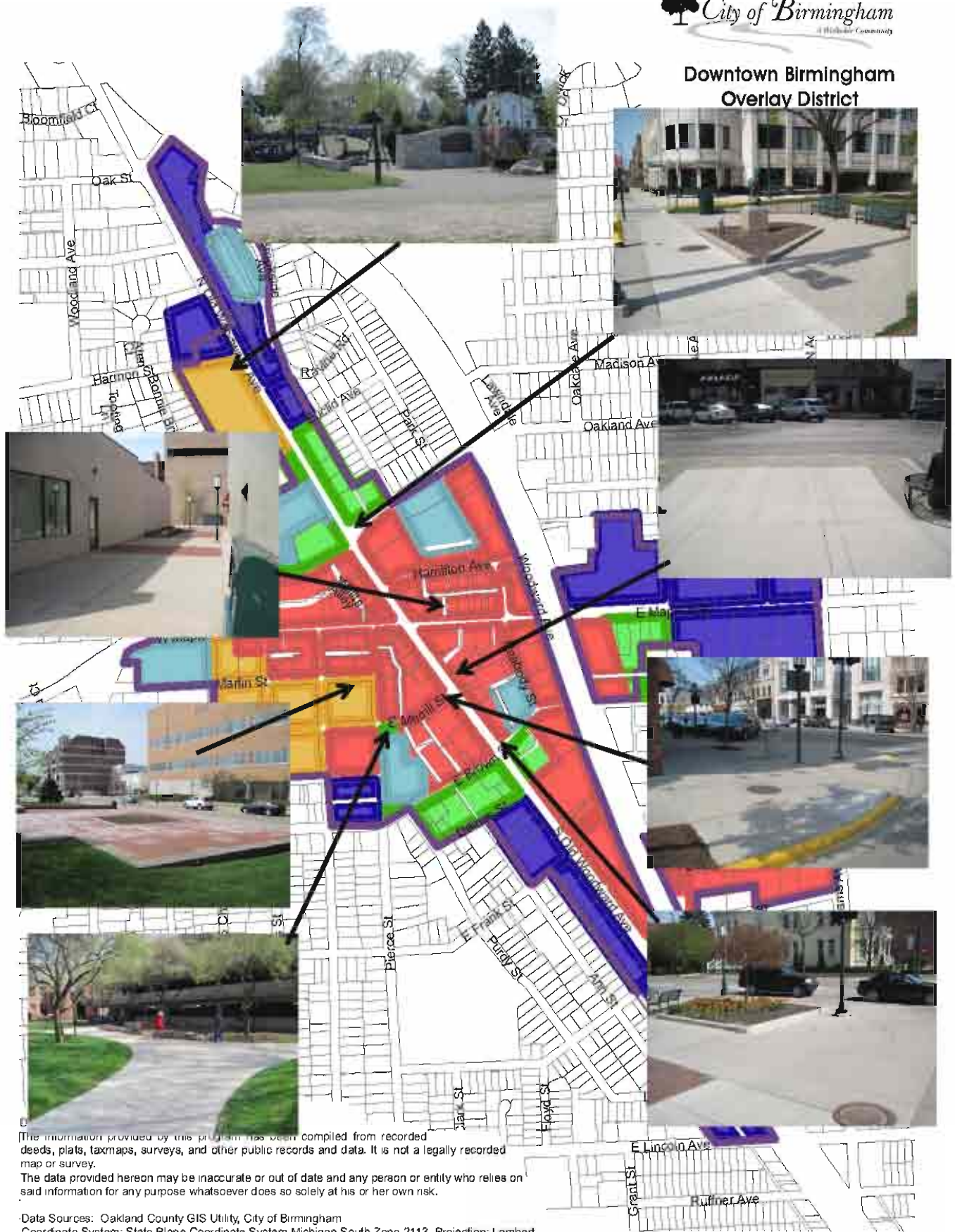
Chester Garage



Library



Downtown Birmingham Overlay District



The information provided by this program has been compiled from recorded deeds, plats, taxmaps, surveys, and other public records and data. It is not a legally recorded map or survey.

The data provided hereon may be inaccurate or out of date and any person or entity who relies on said information for any purpose whatsoever does so solely at his or her own risk.

Data Sources: Oakland County GIS Utility, City of Birmingham
Coordinate System: State Plane Coordinate System Michigan South Zone 2113 Projection: Lambert

Peddler/Vendor License

A vendor permit or peddler permit is required to sell items in the city of Birmingham.

See Chapter 26, Article 4 of the city code for additional information.

Definitions

Peddling means traveling by foot, automotive vehicle or other conveyance, from place to place or from street to street, carrying, conveying or transporting goods, wares, merchandise, including food products, offering and exposing the same for sale or making sales and delivering articles to purchasers, or taking or attempting to take orders for the sale of goods, wares and merchandise, books or magazines, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale or whether the subject is collecting advanced payments on such sales or not.

*Please note:

- Peddlers must keep moving. They may only stop to make a sale.
- Peddlers are not allowed in the residential areas.

Vending means the sale of goods, wares or merchandise, including food products, on public property at a stationary or fixed location during a special event in and around the location of the special event.

***Please note:** Vendors must be approved by the special event coordinator.

Prohibitions

Section 26-123 of the city code.

Fees

Application Fee: \$20.00*

Daily Fee per Location: \$10.00*

***(Please note:** According to section 26-120 of the Birmingham city code, "Current licensed operating businesses within approved business zoning districts within the City of Birmingham are entitled to a 50% reduction in a peddler's or vendor's application and applicable license fee. This reduction does not apply to businesses which are delinquent in their payment of city taxes or special assessments at the time of application.")

BIRMINGHAM CITY COMMISSION MINUTES
MARCH 21, 2011
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

03-83-11 VENDOR, PEDDLER, SOLICITOR ORDINANCE

The Commission received the Vendor, Peddler, Solicitor Ordinance submitted by Planning Director Ecker.

The Commission received a communication from Alan Borman supporting food vendors in City parks.

BIRMINGHAM CITY COMMISSION MINUTES

APRIL 11, 2011

MUNICIPAL BUILDING, 151

MARTIN 7:30 P.M.

04-89-11 VENDOR, PEDDLER, SOLICITOR ORDINANCE

Ms. Broski explained the ordinance amendments include combining the peddler and vendor ordinance with the soliciting ordinance, defining non-charitable solicitors as peddlers, and adding frozen confection vendors.

The Commission discussed allowing frozen confection vendors to operate using bicycles and hand-pushed carts.

MOTION: Motion by Hoff, seconded by McDaniel:

To adopt an ordinance amending Chapter 26, Businesses, Article IV, Peddlers and Vendors, and Chapter 38, Charitable Solicitations, Article I, In General, and Article II, Permit, of the Birmingham City Code to regulate peddlers and solicitors, and to allow for frozen confection vendors, and fee schedules for administration and penalties, and to expand the frozen confection vendor definition to include bicycles and hand-pushed carts.

Dave Hohendorf pointed out that broadening the definition of frozen confection vendor has brought the topic closer to the moveable vendor concept.

Commissioner Hoff withdrew the motion.

MOTION: Motion by Hoff, seconded by McDaniel:

To adopt an ordinance amending Chapter 26, Businesses, Article IV, Peddlers and Vendors, and Chapter 38, Charitable Solicitations, Article I, In General, and Article II, Permit, of the Birmingham City Code to regulate peddlers and solicitors, and to allow for frozen confection vendors, and fee schedules for administration and penalties.

VOTE: Yeas, 7
 Nays, None
 Absent, None

The Commission discussed the fee for frozen confection vendors. Ms. Broski explained the application fee covers the cost to process the application as well as the background check by the Police Department. Ms. Ecker explained that the annual fee covers items such as handling complaints. Commissioner Moore noted that, by operating in the City, the vendors are getting police protection, in addition to doing business in the City and not paying taxes or rent, yet using the streets to operate a business.

The Commission requested staff to review this fee after the current season and contact other cities to get information on their experience with the fees for frozen confection vendors.

Commissioner Sherman questioned how this will be enforced. Mr. Currier explained that an

appearance ticket would be issued.

MOTION: Motion by Sherman, seconded by Nickita:

To amend the Schedule of Fees, Charges, Bonds and Insurance, City Clerk's Office, Peddlers and Vendors, to provide fees for commercial vendors, peddlers and solicitors with the change to the fee for frozen confection vendors to \$500.00.

VOTE: Yeas, 7
 Nays, None
 Absent, None

The Commission discussed moveable and park vendors. Commissioner McDaniel suggested having a test program with a local restaurant using a temporary outdoor food facility in Shain Park and evaluating it after the season.

Mr. Bruner noted that if the Commission desires to have a pilot project, it could be done with a license agreement through the RFP process.

Commissioner Moore agreed the vendor should be limited to Shain Park. He suggested a cart for PSD members to promote their business on a rotating basis.

The following individuals expressed concern with vendors in the park:

David Hohendorf

Michael Collins

Terri Stefanakis, Greek Island Restaurant

Leslie Banis, attorney for 250 Martin

Barry Murphy, Batteries Plus

Walter Stone, 215 North Old Woodward

Holly Anselmi, The Italian Dish

Susan Peabody

Ashley Posley, former resident, commented that a large kiosk map would be a great tool.

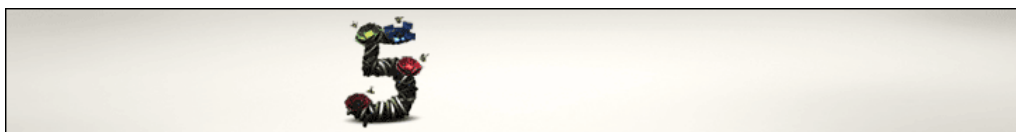
Edward Nemerkaizer expressed support of the park vendor concept.

Commissioner McDaniel suggested taking the concept of a local business pilot project in Shain Park and present it to the PSD for their comment.

Commissioner Dilgard noted that the PSD has already expressed their opinion. He expressed support for putting tables and chairs in the park.

The Commission agreed to direct staff to review the concepts as discussed and how they would benefit the entire community.

The Commission received a communication from Howard Atesian regarding the proposed ordinance.



NEWS AUTOS BUSINESS SPORTS ENTERTAINMENT LIFE OPINION OBITUARIES INDEX

CLASSIFIEDS JOBS CARS REAL ESTATE RENTALS

DEALS

SEARCH



DINING OUT

ENTERTAINMENT MAIN: MUSIC | MOVIES | RESTAURANTS | CELEBRITIES | CITY GUIDE

POSTED: OCT. 6, 2010

1

Recommend

3

Chef sells gourmet tacos from his restaurant on wheels in metro Detroit

BY SYLVIA RECTOR
FREE PRESS STAFF WRITER

Comments (2) Recommend (3) Print E-mail Letter to the editor Share

A few months ago, Wesley Holton was executive chef of the Michelin-starred Daniel Boulud Brasserie in Las Vegas, overseeing a talented staff and a high-end French menu.

Last week, he was making Little Piggy tacos for customers lined up at a food truck in a Farmington Hills office park.

Career crash? Hardly.

The 32-year-old Plymouth native is the chef and owner of Jacques' Tacos, thought to be the first licensed, Los Angeles-style roving gourmet food truck to get up and running in metro Detroit.

The trucks are the hottest new dining trend in America. Hundreds are rolling in cities from Miami to Seattle, each serving its own specialty cuisine and cooking on-site in their fully equipped kitchens. Menus range from stylish tacos like Holton's to sushi, grilled cheese sandwiches, sliders and ethnic cuisines.

The upscale food truck concept may be new here, but with national media coverage -- including a reality TV show -- it's not unknown, and Holton is finding an eager reception.

First-timers are trying the food and "coming back two or three times for more," he says. "All these people are contacting me, and Twitter is really taking off," as customers tweet to their friends about his food or location.

"The food is wonderful," engineer Bob Leffler of Ferndale said Wednesday, taking another bite of his D-Town braised beef short rib taco outside Henniges Automotive in Farmington Hills -- Holton's regular Wednesday lunch stop.

Leffler's coworker Steve Murree of Macomb Township called the 7-Way Smothered Rice and Beans "very good, very fresh." Murree had bought food from trucks before, he said, "but it wasn't like this."

That's because dishes from conventional trucks are prepared at a commissary and driven to the sales point, whereas Holton makes each item on-site when customers place their orders. His classical culinary skills, premium ingredients and contemporary recipes make a difference, too.

Other items on his small but polished menu include a pulled chicken taco, a marinated avocado taco and crispy tortilla chips with salsa.

His shiny black truck, customized by a Miami company, is easy to spot, decorated with orange lettering and the mug of a sombrero-wearing English bulldog -- who looks exactly like the Holtons' own 2-year-old family pet, Jacques.



Hilary Holton, her husband, chef Wesley Holton, and Holton's father Dan Holton with Jacques the English bulldog at the Jacques' Tacos truck.



A version of this story appears on page 1D of the Wednesday, Oct. 6, 2010, print edition of the Detroit Free Press.

RELATED INFORMATION

Jacques' Tacos

www.jacquestacos.com

<http://twitter.com/jacquestacos>

www.facebook.com/pages/Canton-MI/Jacques-Tacos/136211289746042

Current stops

Wednesday: 11:45 a.m., Henniges Automotive, 36600 Corporate Drive, Farmington Hills

Saturday: noon-4 p.m., Shell Station, 13 Mile and Woodward, Royal Oak

Sunday: 10 a.m.-2 p.m., Canton Farmers Market, 500 N. Ridge Road, Canton

PHOTO GALLERIES

Jacques' Tacos



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Holton's wife, Hilary, 33, brings the dog on a leash to the food truck stops as often as she can. "He loves it," she says, and customers frequently come over and meet him. The chef's dad -- Dan Holton, 63, of South Lyon -- pitches in as cashier and helper.

The chef, a 1999 Schoolcraft College culinary graduate, had worked for internationally known chef Daniel Boulud for eight years in Miami, New York and Las Vegas before Boulud decided to close the Vegas restaurant last summer.

For a year before that, though, Holton had been looking for a way to get back home. He couldn't find the kind of job he wanted here at a salary he would accept. He finally decided on a food truck as a good entrepreneurial opportunity.

He wouldn't say how much the truck cost, except that it was "more than I wanted to pay." He projects he'll make more per year than in his previous job and hopes to buy more trucks if things go well.

He says he's willing to be a consultant for the many other people hoping to follow his lead.

The hardest part of getting started is figuring out the requirements not only for county health departments, but in each city where the truck stops, he says. Every city has its own fees, applications, licenses, background and credit checks, and operating restrictions. "They even want your shoe size," Holton jokes.

Even after getting permits, operators still have to find specific locations where it's OK to park and sell food. Brick-and-mortar restaurant owners often don't want trucks near them for competitive reasons.

"I don't want to go into detail about how to get started," Holton says. "I had to go through so much to find out -- that's the biggest challenge, working the bureaucracy.

"If I had known what I know now, my life would have been a lot easier," he adds.

He has regular stops in Royal Oak, Farmington Hills and Canton and hopes to add more cities and locations. And he's quickly gaining followers on Facebook and Twitter.

So far, he has no regrets. Customers are loving the food, and the lines are growing longer at every stop.

"The best part is working for myself," he says. "I think I know what's best, and I work so hard. I want to answer to myself."

Contact SYLVIA RECTOR: 313-222-5026 or

srector@freepress.com

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5. Michigan capitalizing on 5-0 start, Denard Robinson hype
6. Michigan-MSU the hottest ticket in college football
7. 'Parker Spitzer' appalls critics
8. 3 teens held in sexual assault of girl, 14, in Melvindale
9. Drew Sharp: Pistons would get crumbs from pie
10. Ex-coach, 45, pleads no contest to abusing teen boys



COMPLETE COVERAGE
Pistons sale to Ilitch could boost Detroit
The Red Wings and Tigers owner is negotiating for the Palace Sports & Entertainment empire.



NEW BOOK
'Lost Detroit': Photos of Motor City relics
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SITE INDEX

TOP SECTIONS INDEX

Home
Local news
Detroit news
Oakland news
Macomb news
Michigan news
Auto news
Detroit Auto Show
Business
Weather Forecasts
Sports
Lions
Tigers
Red Wings
Pistons
Shock
Wolverines
Spartans
Detroit Marathon
Michigan Outdoors
Entertainment
Music
Movies
Restaurants
Life
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Features

What Food Trucks Say About Ferndale

NICOLE RUPERSBURG | THURSDAY, AUGUST 04, 2011



CRISTINA SHEPPARD-DECIUS- EXECUTIVE DIRECTOR OF THE FERNDALE DDA PHOTO BY DAVID LEWINSKI

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Last month in Concentrate, the Ann Arbor-based sister publication to Metromode, we looked at the burgeoning [food truck scene in Ann Arbor](#), with the arrival of the new food truck courtyard [Mark's Carts](#). We also looked at Portland, Ore.'s successful "pod" model, groups of food trucks located in semi-permanent positions on privately-owned lots. The scene has been so successful that there are now over 600 food carts operating in Portland, and they regularly make national headlines in food, travel, and business publications.

This week in Metromode, we look to Ferndale to see how feasible a food truck scene might be here, and what it means for the greater community.

In terms of urban cred, Ferndale doesn't really have any one thing that makes it extraordinary. When considering the amenities that typically make a community stand out - rich history, impressive architecture, unique cultural heritage, major museums, exceptional restaurants - the city struggles to distinguish itself. And yet, distinguish itself it does.

What makes this inner ring Detroit burb so attractive is its energetic commitment to developing a vibrant downtown, nurturing local entrepreneurship, drawing young professionals, and facilitating the creativity of its citizens. The nickname "Fabulous

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Top 10 Feature Stories



[If Dallas Can Do It, Why Can't Detroit?](#)

In Texas, Dallas is referred to as The Big D. And like our D, it's a

sprawling metropolitan region ringed by suburbs and freeways, and deeply in love with its cars. We are talking oil country after all. Despite that, the city also has a growing light rail system with over 70 miles of track. So, why them and not us?

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Ferndale" isn't just a tongue-in-cheek response to the city's growing LGBT population. It's become a mission statement of sorts. And unlike many local governments, the city has political and municipal leaders willing to embrace the changes necessary to meet those goals.

"Ferndale is easy to work with as far as the city goes," says Chris Johnston, owner of popular Ferndale spots Woodward Avenue Brewers (WAB), the Emory and the Loving Touch. "A lot of other places seem to have red tape for no reason... it should be a given to not get in the way of people who have a lifelong dream of doing something and are willing to put money up to do it. [It almost seems like] some cities watch you do things the wrong way just to say 'Oh, you did it wrong.'"

As if to drive that point home, consider the New Theater Project, an Ann Arbor troupe that was [recently driven out of its small space because of zoning issues](#). Despite a year of performing and renovating the space, the city demanded \$1,000 to apply for an exception hearing or move out. The company ended up relocating to Ypsilanti.

Someone says, "I have an idea" and Ferndale answers, "Let's make it work."

Recently a brand-new mobile food truck called [El Guapo](#) made headlines for becoming the [first fully-sanctioned food truck in downtown Detroit](#). It only took 60 trips to City Hall to make it happen.

In Ann Arbor, where the city's mantra is "[If it's not specifically permitted, it's forbidden](#)", Mark's Carts opened against all municipal odds. Given the constraints and requirements, it was the urban equivalent of lightning striking.

In contrast, two weeks ago the [Ferndale Downtown Development Authority](#) was approached with four applications for mobile vending permits (two push-carts and two trucks). Three out of four are already operating -- Underdog and Motor City Franks, both sidewalk hot dog vendors, and [Jacques' Tacos](#), which is renting a space in the privately-owned parking lot of Ferndale Radiator. The fourth, another Mexican food truck called Taco Mama, is delayed only until an agreement on the truck's location can be reached and secured. Treat Dreams will also soon be operating an ice cream cart.

"We had a vision session at the end of June of what people want to see here," explains Cristina Sheppard-Decius, executive director of the Ferndale DDA. "We had a little wish board and had so many people say 'I wish we had a mobile taco stand, a mobile hot dog

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stand...' then a week later we got a bunch of applications!"

The myth of competition

As contended in the [Concentrate article](#), food trucks increase street excitement and neighborhood vitality, essential components for urban growth. Rather than creating competition with brick and mortar businesses, on-street vending can be used to help diversify a downtown area, draw a larger customer base (nothing attracts a crowd like a crowd) and supplement specific food niches. Sheppard-Decius notes that food carts help to build what is known in market analysis terms as "good competition" and "clustering."

"When you have clusters of, say, clothing stores or certain types of restaurants or restaurants in general, it actually builds a stronger economy for all those businesses in that cluster," she explains. "With smaller items like food and gifts, people will go out and browse for awhile before they make their selection. When you have [these businesses] all within one area it draws them there and keeps them there longer which means more money spent [in that area]. There's a lot of strategy to all of this!"

This should be of some comfort to those businesses who have expressed concern (to put it mildly) that our downtown areas will be overrun with food trucks stealing away jobs and customers. The hand-wringing makes for good rhetoric in an "earth is flat" sort of way, but the experiences of cities that have embraced food cart culture doesn't support the argument.

Consider fast food franchises. How often do you see McDonald's, Subway, Jimmy John's and Tao Bell all within hailing distance of one another? Consider how often you see those very same places open right next to each other.

Or to give a more localized example, take the WAB. A taco cart serving carnitas for \$1.50 each is not going to cut into the customer base that is paying \$8 for the WAB's taco entrees. One is a sit-down full-service establishment. The other is a truck. One serves a wide selection of hand-crafted beers, wines and spirits. The other is a truck. One has live music on weekends. The other is a truck. The reason you typically find fast food joints clustered together, food courts drawing large crowds, and so many food options in Chinatown

(pick any Chinatown) is because having all of those places in one area creates a destination for customers, a reason to go that they wouldn't otherwise have if each establishment were an island unto itself.

Brad Dahlhofer, owner of Ferndale's [B Nektar Meadery](#), loves the idea of working with food trucks for his annual "Mead Day" celebration. He has to sell food in



order to serve alcohol, which is a challenge for his business which does not have the equipment to prepare food and must bring it in from the outside.

"This could be the future of our Mead Day," he says. "I welcome every one of those carts and food trucks to get a hold of me!"

Mobile economics

Let's say you love to cook and dream of one day opening your own restaurant. The challenges associated with opening a brick and mortar establishment are enormous. Couple that to the financial failure rate of most eateries and it's a minor miracle when a local restaurant survives, no less thrives.

But lest you think food trucks have some unfair marketplace advantage, consider that the average owner-operator puts in 12 hours of work a day and typically employs only one or two additional people.

According to "[Food Cartology](#)", a study conducted by Portland's Urban Vitality Group, food trucks tend to be family-operated businesses that attract unskilled minority workers and mostly generate a modest living wage. No one is opening a food truck to become a millionaire. They don't have the advantage of investors, and rarely qualify for bank loans.

This low barrier to entry is part of what makes mobile vending such [an attractive option to aspiring entrepreneurs](#). While opening a restaurant might cost up to \$2 million before a single customer is served, a mobile vendor needs only the truck itself, food and supplies, necessary permits and leased space (if in a permanent parked position).

There is a certain "grass is greener" mentality here, as Johnston mentions: lower overhead might sound like a dream to a restaurant owner, but challenges such as lack of seating, limited menu options, inability to sell alcohol, and the pitfalls of Michigan's weather all ensure that there is a pretty low ceiling to how much money a food truck can make.

From the city's standpoint, however, every food truck that opens is one more locally-owned business generating tax revenue for the city and employing local residents with little infrastructure or formal support needed. Five carts may seem inconsequential, but on the scale of Portland's 600 mobile vendors that's thousands of added jobs and nearly \$100,000 in additional tax revenue for the city. It adds up.

For Ferndale, it just means more of doing what they do best.

"Ferndale has always been very pro-small business, especially with things a little left of center," Johnston notes. "The government itself is very easy on everybody; there are rules you have to follow and if you do that, no problem."

The rules governing mobile vending in Ferndale are thus: mobile units must have all necessary permits and food handlers' licenses; meet health department requirements; can prepare food inside the truck itself (no commercial kitchen required); and must relocate every two hours unless renting a permanent space in a privately-owned lot. The DDA has said it is amenable to discussing a "pod" concept so long as the location has the volume potential and doesn't eat into available parking spaces).

Sheppard-Decius explains that the DDA has a motto: "Change is good." And in today's shifting and shaky economic climate, change is not only good but

necessary. Food trucks may be a "fad," but they're also an innovative approach to a sole proprietorship business that may have as-yet unknown effects on the local economy and the public approach to entrepreneurship.

And if anything, they're certainly DIY. Which means they're the perfect fit for Ferndale.

Nicole Rupersburg is a freelance writer and popular Metro Detroit food blogger.

Read her blog at <http://www.eatitdetroit.com>

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Anne Schenk · Ferndale, Michigan

Love my city!

2 · Like · Reply · 2 hours ago



Shelley Curry · Harrisburg, Pennsylvania

I love your city too.

Like · Reply · 2 hours ago



Woodward Avenue Action Association

Ferndale stepping out again ahead of the pack...this would be a really cool concept for Woodward too!

1 · Like · Reply · 3 hours ago



Tom Borg · President at Tom Borg Consulting, LLC

The city of Ferndale's leadership team is consciously doing the things that are success oriented. It is no accident.. Other cities could learn a thing or two from their example.

Like · Reply · about an hour ago

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MAIN STREET VENDOR GUIDELINES

Outdoor vendors and activities are a desirable element in the animation of Main Street Mall, and the Center City Commission encourages such sidewalk merchants. In order to ensure a uniform standard of quality in appearance and operation, certain guidelines have been established. These guidelines must be followed for a vendor permit (Main Street Mall encroachment permit) to be issued and maintained.

The Center City Commission is authorized to approve or disapprove vendors on Main Street Mall according to Volume I, Chapter 7, Article II, Section 7-17 of the Code of Ordinances of the City of Memphis. The Commission is further empowered to establish written rules and regulations governing operation of all common mall activities through Volume I, Chapter 7, Article IV, and Section 7-77 of the Code. The mall area as defined by Article IV extends from Peabody Place on the south to Exchange Avenue on the north including Court Square and Civic Center Plaza.

OPERATIONAL GUIDELINES:

1. All merchandise vendors must use official Main Street Mall vendor carts or Canopies leasable from the Center City Commission. Food vendors must supply their own carts, which meet the approval of the Memphis and Shelby County Health Department, 814 Jefferson Avenue.
2. Carts/Canopies owned by the Center City Commission must be stored in the location designated by the CCC and picked up and returned at the times specified in the lease agreement. Food vendors are also required to have a designated storage place.
3. All vendors must have a valid Memphis and Shelby County business license prior to opening for business.
4. All food vendors must have a valid permit from the Memphis-Shelby County Health Department and submit their cart design to the CCC prior to a vendor permit being issued. The vendor must also purchase a permit from code enforcement before the Health Department will issue a permit.
5. All vendors are responsible for carrying reasonable liability insurance before operating. A certificate of insurance naming the Center City Commission and the City of Memphis as additional insureds may be required by the CCC, in addition to a signed hold harmless agreement prior to the first day of vendor operations.
6. Displays or activities that may be detrimental to the public health and welfare will not be allowed.

7. All vendors will be located on Main Street Mall in the Court Square area and Civic Center Plaza. The CCC will assign designated locations to any and all operating vendors. Vendors are not allowed to set up in front of an operating business without the permission of the business owner.
8. Merchandise must be displayed on the vendor cart or inside canopies. All merchandise must be displayed in a professional manner. Vendors are required to keep their products, chairs, tables and equipment inside their canopy area. Tables must have appropriate skirting for a professional appearance. Any vendor with merchandise not inside their assigned area will be given a written citation.
9. Merchandise vendors are allowed to sell novelty/souvenir tee shirts and caps and accessories (i.e. ties, scarves, and sunglasses, etc.). At no time shall a Mall vendor sell other clothing, e.g. pants, dresses, shirts, skirts, shoes, etc., unless it is handcrafted.
10. All vendors are responsible for maintaining their spaces in a clean & sanitary condition. They are responsible for keeping their immediate areas clean and safe. They also have to make arrangements for trash disposal. Vendors are not to deposit their refuse in the Mall trash containers.
11. Recorded music or noise is not allowed with any vendor stand or cart except by special permit.
12. No "hawking" (i.e., calling out to passersby) is allowed.
13. Vendors are not permitted to eat food or drink alcoholic beverages while selling merchandise.
14. Displays that include literature such as pamphlets or flyers must have the literature secured in such a way that it will not become a trash problem on the Mall. Should such a problem occurs, clean up is the responsibility of the vendor.
15. Organizations applying for a permit to solicit money must submit proof of non-profit status, I.e. State of Tennessee tax-exempt number.
16. Arts and crafts vendors are encouraged; and all merchandise to be sold must be approved by the Center City Commission.
17. A valid Center City Commission Mall Encroachment permit specifying approved merchandise; period of time authorized and specific location must be produced on demand if requested by an officer of the Memphis Police Department or employee of the Center City Commission (Blue Suede Brigade & Public Safety Officers). A CCC vendor permit should be visible at all times.
18. No vendor vehicles will be allowed on the mall but must be legally parked in other locations.
19. Street musicians are permitted unless a valid complaint is made regarding the musician/ performance to the CCC office. No sound amplification is allowed.
20. Sample distribution or product promotion is permitted at a special weekly fee providing no hawking occurs. All consumable samples must be pre-packaged or have a Shelby County health permit.
21. Vendors must notify the CCC if said vendor will not be able to operate for five or more consecutive days.
22. On days of inclement weather each vendor may decide whether or not to operate. No refunds will be made for days on which a vendor does not operate.
23. The Center City Commission reserves the right to:
 - a. limit the number of vendors/exhibitors on the mall

- b. specify the vendor's location to ensure that high pedestrian traffic routes. Fire lanes and pedestrian walkways are not blocked in any way.
 - c. refuse to issue a permit to any vendor or organization based on these guidelines
24. Mall encroachment permits may be revoked at any time with no fees refunded if complaints are received or problems occur, or violations are not corrected within five (5) working days after vendor is notified.
25. Revocation of permits will be automatic following three (3) violations of design or operational guidelines.
26. Final revocations are permanent and future applications will be denied once a vendor's permit has been revoked.

FEE SCHEDULE:

All fees must be paid to the Center City Commission before a permit will be issued. All fees are payable in advance on a minimum weekly basis.

CCC Merchandise Carts / Canopies

\$50/week

\$200/month

\$1000/6 months

\$2000/year

Food vendors providing their own approved carts will pay half the above fees. Food carts must be approved by the Health Department.

Sample distribution or product promotion fee is \$250/week.

No vendor cart or canopy shall be taken from the CCC storage location if appropriate fee has not been paid.

The CCC reserves the right to waive or reduce any of the above fees (i.e. for non-profit groups performing a public service, bona fide religious groups, charitable organization, etc.)

Other agencies to be contacted for necessary permits are:

Shelby County Clerks Office (Business License)

150 Washington Avenue
Memphis, TN 38103
(901) 545-4249

Health Department

814 Jefferson Avenue
Memphis, TN 38105
(901) 544-7600
(901) 544-7757

Memphis & Shelby County Code Enforcement

6465 Mullins Station Road
Memphis, TN 38134
(901) 379-4200
(901) 379-4205 fax

City Permits Office

2714 Union Ave Ext.
Suite 200-A
Memphis, TN 38112
(901) 636-6711



CENTER CITY COMMISSION

MAIN STREET MALL ENCROACHMENT PERMIT

Organization _____

Representative _____ Phone _____

Address _____

City _____ State _____ Zip _____

Driver's License # _____ Vehicle License # _____

Applicant is granted permission to encroach on the common mall area for the purpose of:

From(date) _____ to _____ (time) _____ to _____

Location _____

Authorized Equipment _____

This encroachment is authorized for the above-described activity only. **This permit can be revoked if complaints and/or disturbances arise.** Applicant agrees not to deface any mall surfaces in any way or to block pedestrian traffic and further agrees to abide by all provisions of the Main Street Mall Operations Policies & Vendor Guidelines.

Any applicant leasing a Center City Commission vendor cart agrees to return the cart in the same condition in which it was received, less normal wear and tear.

Applicant does hereby indemnify and hold the Center City Commission and the City of Memphis harmless from any claim, demand, action, suit, and otherwise, of any type whatsoever, directly or indirectly, resulting or alleged to have resulted from the temporary use of the Main Street Mall as stated above.

For (Organization): _____

By: _____ Title: _____

Date: _____ Attest: _____

Center City Commission

GET TO KNOW YOUR STREET VENDORS

WAYS TO A BETTER VENDOR WORLD

In New York, street vending has always attracted ambitious, hard-working men and women with limited economic options. Successive waves of immigrants – Jewish and Italian in a previous era, now Chinese, Bangladeshi, Afghan, and Senegalese – have used vending to gain a foothold in their new country. Its low startup costs, independence, and flexibility make vending a traditional first stop for small business entrepreneurs.

But vending isn't an easy way to get ahead. Throughout New York City's history, merchants resentful of "unfair" competition have joined forces with city officials concerned with congestion, modernization, and "quality of life" to bar vendors from streets and regulate them excessively. These complex and shifting laws force vendors back and forth across the border between the formal and informal economies, making it difficult for vendors to serve the public and make a decent and honest living.

Here are four basic ways the City can make vending laws work better for vendors, their customers, and everyone else.

LICENSE	\$25-200 PER YEAR
FOOD PERMIT	\$15-200
TABLE	\$20-200
CART	\$3,000-30,000
GARAGE RENTAL FOR CART	\$300-500 PER MONTH
INVENTORY	\$500-3,000 TO START

FORMER NYC VENDORS

JERRY SEINFELD
JAY-Z
JEAN-MICHEL BASQUIAT
AMARU DIALLO
LEVI STRAUSS

BUSINESSES THAT STARTED AS PUSHCARTS

BLOOMINGDALE'S
DRESSING
MACY'S
ROC-A-FELLA RECORDS
COHEN'S FASHION OPTICAL
GOLDMAN SACHS

NUMBER OF NYC VENDORS
~12,000

AVERAGE NYC VENDOR SALARY
\$14,000

WHY DO VENDORS VEND?

50% WANT TO HAVE TO

1880s

Four Jewish peddlers set up pushcarts along Hester Street in the Lower East Side, leading to the first pushcart market in New York City. The main Italian market evolved on Grand Street in lower Manhattan, and Patsy's Market in Hell's Kitchen served Irish immigrants.

1927

Between 10-15% of all produce sold in New York was sold in pushcart markets.

1939

New York City featured an exhibit in the World's Fair called "The Life and Death of a Pushcart"

ETHNIC BACKGROUND OF VENDORS IN LOWER MANHATTAN



COST OF FOOD VENDING PERMIT



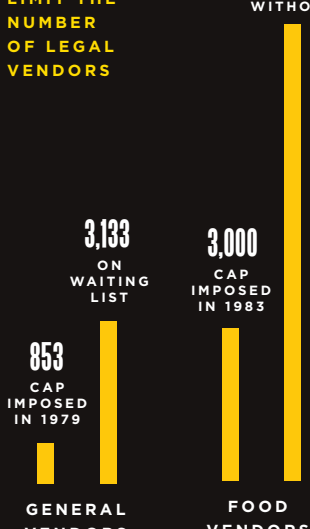
1. LIFT THE CAPS

It's virtually impossible to get a vending license in New York City because of strict caps, or limits, placed on the number of vendors in the 1970s and '80s. The estimated wait for a general vending license is several decades. By setting the caps far below vendor supply and public demand, the City unintentionally creates a thriving and exploitative black market for permits and licenses. Legal vendors have to buy licenses from illegal middlemen at exorbitant prices. Other vendors are driven underground, where they're unlicensed and unregulated. To bring vendors into the legal mainstream, the City should raise the caps to realistic levels and crack down on the black market in licenses and permits.

NUMBER OF LICENSED NYC VENDORS THROUGH HISTORY



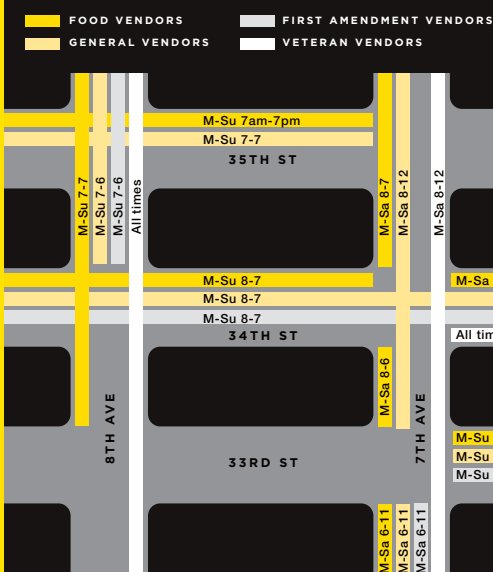
LICENSE CAPS DRASTICALLY LIMIT THE NUMBER OF LEGAL VENDORS



MIXED ACTION TOWARDS A "NOBLE PROFESSION"

Mayor Edward Koch (1978-1989) said "peddling is a noble profession" and proposed a bill to open more streets to vending while restricting the number of vendors per block through a site lottery, but it didn't pass. While he didn't enforce increased street restrictions, he signed Local Law 50 in 1979 capping general vendor licenses at 853, the number of licenses at the time. It was the first hard cap in the city's history.

THE WILD WEB OF STREET RESTRICTIONS



2. INCREASE STREET ACCESS

Vendors need foot traffic to survive, but waves of street restrictions have forced them farther away from the areas of the city that can support them. Pressure from merchant associations in the 1970s and Business Improvement Districts (BIDs) in later decades led to widespread restrictions, and Mayor Rudolph Giuliani made street restrictions a centerpiece of his "quality of life" campaign. Even on open streets, complex rules make it difficult to legally vend. The City should review street closings according to set criteria and rescind restrictions not founded in legitimate concerns about safety and street congestion. It should also simplify time-of-day restrictions to make them easier for vendors to understand and follow.

LOWERING THE QUALITY OF VENDORS' LIVES

Mayor Rudolph Giuliani (1994-2001) cracked down on vendors as part of his "quality of life" campaign. He enforced street restrictions that Koch and Dinkins disregarded. He closed the outdoor bazaar on 125th Street in Harlem. He also wrestled control of street closures from the City Council and formed a special committee - the Street Vendor Review Panel - with one mission: to close more streets.

LISTENING TO HIS INNER VENDOR

As a youth, Mayor David Dinkins (1990-1993) was an unlicensed vendor in Harlem. He proposed raising the license caps and increasing vending enforcement. After an attempt to ban vendors from 125th Street in 1993 led to large protests, the mayor refrained from further restrictions.

MOST RESTRICTED VENDING AREAS



MIDTOWN MAN

The first Midtown ban dates back to the Depression, when thousands of former bankers, brokers, and other jobless residents took to Midtown to sell the iconic 5-cent apple.

WHAT'S A BUSINESS IMPROVEMENT DISTRICT (BID)?

First formed in the 1960s, Business Improvement Districts (BIDs) are groups of merchants and property owners in a given area that take on certain city responsibilities - like sidewalk maintenance, security, and capital improvements - in exchange for greater control over their neighborhoods. BIDs have led the fight against vendors, pressing city officials for caps and street restrictions, or simply placing large planters and other obstructions that prevent vendors from operating in their neighborhoods.

COMPARISON OF FINES



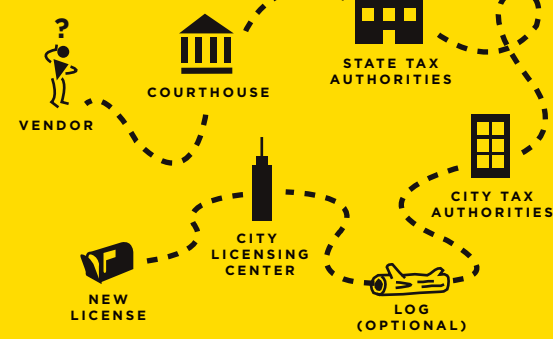
3. REDUCE THE FINES

In 2005, Mayor Michael Bloomberg quadrupled the maximum fines for street vendor violations from \$250 to \$1000. A few tickets for parking a cart more than 18 inches from the curb or less than 20 feet from a storefront can wipe out months of earnings. Other businesses pay less for more serious violations while having a greater ability to pay. Vendors are entry-level small business owners who cannot absorb fines as a cost of business. The city should reduce fines to pre-2005 amounts - a level that deters violations but doesn't put vendors out of business.

SETBACKS AND STEPS FORWARD

Mayor Michael Bloomberg (2001-present) is responsible for increasing fines from \$250 to \$1000 and for banning vending near the World Trade Center. He did, however, sign the GreenCarts bill in 2008 which grants specialized vending permits that allow vendors to sell fruit in low income neighborhoods. While limited in scope, it is the first increase in vending permits in decades.

STEPS TO RENEW YOUR LICENSE



4. REFORM ADMINISTRATION AND ENFORCEMENT

Vending regulation is a patchwork of policies from the last hundred years that both vendors and the police find hard to understand. The official rulebook is a series of photocopied and unformatted excerpts from the city code - rough going, even for native English speakers. As a consequence, vendors who want to follow the rules often get tickets for violations they don't understand, and police who want to enforce the rules often give tickets for violations that don't exist. To increase compliance, the City should simplify vendor regulation and create a new rulebook that clearly explains the rules in English and a few of the many languages vendors speak.

GOOD LUCK TO YOU

1. First vendors must be prohibited from vending on the following streets at the following times:
Third Avenue East side to East 11th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 11th Street to East 14th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 14th Street to East 17th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 17th Street to East 20th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 20th Street to East 23rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 23rd Street to East 26th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 26th Street to East 29th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 29th Street to East 32nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 32nd Street to East 35th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 35th Street to East 38th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 38th Street to East 41st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 41st Street to East 44th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 44th Street to East 47th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 47th Street to East 50th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 50th Street to East 53rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 53rd Street to East 56th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 56th Street to East 59th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 59th Street to East 62nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 62nd Street to East 65th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 65th Street to East 68th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 68th Street to East 71st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 71st Street to East 74th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 74th Street to East 77th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 77th Street to East 80th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 80th Street to East 83rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 83rd Street to East 86th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 86th Street to East 89th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 89th Street to East 92nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 92nd Street to East 95th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 95th Street to East 98th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 98th Street to East 101st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 101st Street to East 104th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 104th Street to East 107th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 107th Street to East 110th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 110th Street to East 113th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 113th Street to East 116th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 116th Street to East 119th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 119th Street to East 122nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 122nd Street to East 125th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 125th Street to East 128th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 128th Street to East 131st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 131st Street to East 134th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 134th Street to East 137th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 137th Street to East 140th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 140th Street to East 143rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 143rd Street to East 146th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 146th Street to East 149th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 149th Street to East 152nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 152nd Street to East 155th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 155th Street to East 158th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 158th Street to East 161st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 161st Street to East 164th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 164th Street to East 167th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 167th Street to East 170th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 170th Street to East 173rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 173rd Street to East 176th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 176th Street to East 179th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 179th Street to East 182nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 182nd Street to East 185th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 185th Street to East 188th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 188th Street to East 191st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 191st Street to East 194th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 194th Street to East 197th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 197th Street to East 200th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 200th Street to East 203rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 203rd Street to East 206th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 206th Street to East 209th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 209th Street to East 212th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 212th Street to East 215th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 215th Street to East 218th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 218th Street to East 221st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 221st Street to East 224th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 224th Street to East 227th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 227th Street to East 230th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 230th Street to East 233rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 233rd Street to East 236th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 236th Street to East 239th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 239th Street to East 242nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 242nd Street to East 245th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 245th Street to East 248th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 248th Street to East 251st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 251st Street to East 254th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 254th Street to East 257th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 257th Street to East 260th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 260th Street to East 263rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 263rd Street to East 266th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 266th Street to East 269th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 269th Street to East 272nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 272nd Street to East 275th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 275th Street to East 278th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 278th Street to East 281st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 281st Street to East 284th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 284th Street to East 287th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 287th Street to East 290th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 290th Street to East 293rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 293rd Street to East 296th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 296th Street to East 299th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 299th Street to East 302nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 302nd Street to East 305th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 305th Street to East 308th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 308th Street to East 311th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 311th Street to East 314th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 314th Street to East 317th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 317th Street to East 320th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 320th Street to East 323rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 323rd Street to East 326th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 326th Street to East 329th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 329th Street to East 332nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 332nd Street to East 335th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 335th Street to East 338th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 338th Street to East 341st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 341st Street to East 344th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 344th Street to East 347th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 347th Street to East 350th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 350th Street to East 353rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 353rd Street to East 356th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 356th Street to East 359th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 359th Street to East 362nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 362nd Street to East 365th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 365th Street to East 368th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 368th Street to East 371st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 371st Street to East 374th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 374th Street to East 377th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 377th Street to East 380th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 380th Street to East 383rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 383rd Street to East 386th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 386th Street to East 389th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 389th Street to East 392nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 392nd Street to East 395th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 395th Street to East 398th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 398th Street to East 401st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 401st Street to East 404th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 404th Street to East 407th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 407th Street to East 410th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 410th Street to East 413th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 413th Street to East 416th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 416th Street to East 419th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 419th Street to East 422nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 422nd Street to East 425th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 425th Street to East 428th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 428th Street to East 431st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 431st Street to East 434th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 434th Street to East 437th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 437th Street to East 440th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 440th Street to East 443rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 443rd Street to East 446th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 446th Street to East 449th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 449th Street to East 452nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 452nd Street to East 455th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 455th Street to East 458th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 458th Street to East 461st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 461st Street to East 464th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 464th Street to East 467th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 467th Street to East 470th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 470th Street to East 473rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 473rd Street to East 476th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 476th Street to East 479th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 479th Street to East 482nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 482nd Street to East 485th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 485th Street to East 488th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 488th Street to East 491st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 491st Street to East 494th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 494th Street to East 497th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 497th Street to East 500th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 500th Street to East 503rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 503rd Street to East 506th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 506th Street to East 509th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 509th Street to East 512nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 512nd Street to East 515th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 515th Street to East 518th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 518th Street to East 521st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 521st Street to East 524th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 524th Street to East 527th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 527th Street to East 530th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 530th Street to East 533rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 533rd Street to East 536th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 536th Street to East 539th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 539th Street to East 542nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 542nd Street to East 545th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 545th Street to East 548th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 548th Street to East 551st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 551st Street to East 554th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 554th Street to East 557th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 557th Street to East 560th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 560th Street to East 563rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 563rd Street to East 566th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 566th Street to East 569th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 569th Street to East 572nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 572nd Street to East 575th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 575th Street to East 578th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 578th Street to East 581st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 581st Street to East 584th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 584th Street to East 587th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 587th Street to East 590th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 590th Street to East 593rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 593rd Street to East 596th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 596th Street to East 599th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 599th Street to East 602nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 602nd Street to East 605th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 605th Street to East 608th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 608th Street to East 611th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 611th Street to East 614th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 614th Street to East 617th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 617th Street to East 620th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 620th Street to East 623rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 623rd Street to East 626th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 626th Street to East 629th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 629th Street to East 632nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 632nd Street to East 635th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 635th Street to East 638th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 638th Street to East 641st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 641st Street to East 644th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 644th Street to East 647th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 647th Street to East 650th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 650th Street to East 653rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 653rd Street to East 656th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 656th Street to East 659th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 659th Street to East 662nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 662nd Street to East 665th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 665th Street to East 668th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 668th Street to East 671st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 671st Street to East 674th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 674th Street to East 677th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 677th Street to East 680th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 680th Street to East 683rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 683rd Street to East 686th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 686th Street to East 689th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 689th Street to East 692nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 692nd Street to East 695th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 695th Street to East 698th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 698th Street to East 701st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 701st Street to East 704th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 704th Street to East 707th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 707th Street to East 710th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 710th Street to East 713th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 713th Street to East 716th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 716th Street to East 719th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 719th Street to East 722nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 722nd Street to East 725th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 725th Street to East 728th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 728th Street to East 731st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 731st Street to East 734th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 734th Street to East 737th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 737th Street to East 740th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 740th Street to East 743rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 743rd Street to East 746th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 746th Street to East 749th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 749th Street to East 752nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 752nd Street to East 755th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 755th Street to East 758th Street, Monday through Friday, 8 a.m.

MEMORANDUM

DATE: June 7, 2021

TO: Thomas M. Markus, City Manager and City Commission

FROM: Mary M. Kucharek

SUBJECT: Request for Closed Session Under Sec. 8(e) and Sec. 8(h) of the Open Meetings Act

INTRODUCTION:

- This matter concerns pending litigation entitled *Birmingham Wine Shop, LLC, et al v City of Birmingham, et al; Oakland County Circuit Court Case No.: 2021-186823-AA*

BACKGROUND:

- Birmingham Wine Shop, LLC, d/b/a Winesense filed its appeal to the Circuit Court based on Birmingham Board of Zoning Appeal's denial of a use variance.

LEGAL REVIEW:

- I am requesting closed session on June 14, 2021 pursuant to MCL § 15.268 Sec. 8(e) and 8(h) of the Open Meetings Act to discuss the pending litigation.

FISCAL IMPACT:

- To be discussed in closed session.

ATTACHMENTS:

- Open Meetings Act (Excerpt) Act 267 of 1976, MCL § 15.268 Closed sessions; permissible purposes

RECOMMENDED RESOLUTION:

- To meet in closed session to discuss a written Attorney/Client Privilege communication pursuant to MCL § 15.268(h) of the Open Meetings Act regarding *Birmingham Wine Shop, LLC, et al v City of Birmingham, et al; Oakland County Circuit Court Case No.: 2021-186823-AA* and to discuss pending litigation, pursuant to MCL § 15.268(e) of the Open Meetings Act regarding *Birmingham Wine Shop, LLC, et al v City of Birmingham, et al; Oakland County Circuit Court Case No.: 2021-186823-AA*.

OPEN MEETINGS ACT (EXCERPT)
Act 267 of 1976

15.268 Closed sessions; permissible purposes.

Sec. 8. A public body may meet in a closed session only for the following purposes:

(a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the request at any time, in which case the matter at issue shall be considered after the rescission only in open sessions.

(b) To consider the dismissal, suspension, or disciplining of a student if the public body is part of the school district, intermediate school district, or institution of higher education that the student is attending, and if the student or the student's parent or guardian requests a closed hearing.

(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

(f) To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act. This subdivision does not apply to a public office described in subdivision (j).

(g) Partisan caucuses of members of the state legislature.

(h) To consider material exempt from discussion or disclosure by state or federal statute.

(i) For a compliance conference conducted under section 16231 of the public health code, 1978 PA 368, MCL 333.16231, before a complaint is issued.

(j) In the process of searching for and selecting a president of an institution of higher education established under section 4, 5, or 6 of article VIII of the state constitution of 1963, to review the specific contents of an application, to conduct an interview with a candidate, or to discuss the specific qualifications of a candidate if the particular process of searching for and selecting a president of an institution of higher education meets all of the following requirements:

(i) The search committee in the process, appointed by the governing board, consists of at least 1 student of the institution, 1 faculty member of the institution, 1 administrator of the institution, 1 alumnus of the institution, and 1 representative of the general public. The search committee also may include 1 or more members of the governing board of the institution, but the number shall not constitute a quorum of the governing board. However, the search committee shall not be constituted in such a way that any 1 of the groups described in this subparagraph constitutes a majority of the search committee.

(ii) After the search committee recommends the 5 final candidates, the governing board does not take a vote on a final selection for the president until at least 30 days after the 5 final candidates have been publicly identified by the search committee.

(iii) The deliberations and vote of the governing board of the institution on selecting the president take place in an open session of the governing board.

(k) For a school board to consider security planning to address existing threats or prevent potential threats to the safety of the students and staff. As used in this subdivision, "school board" means any of the following:

(i) That term as defined in section 3 of the revised school code, 1976 PA 451, MCL 380.3.

(ii) An intermediate school board as defined in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

(iii) A board of directors of a public school academy as described in section 502 of the revised school code, 1976 PA 451, MCL 380.502.

(iv) The local governing board of a public community or junior college as described in section 7 of article VIII of the state constitution of 1963.

History: 1976, Act 267, Eff. Mar. 31, 1977;—Am. 1984, Act 202, Imd. Eff. July 3, 1984;—Am. 1993, Act 81, Eff. Apr. 1, 1994;—Am. 1996, Act 464, Imd. Eff. Dec. 26, 1996;—Am. 2018, Act 467, Eff. Mar. 27, 2019.



NOTICE OF INTENTION TO APPOINT TO RETIREMENT BOARD

At the regular meeting of Monday, July 26, 2021, the Birmingham City Commission intends to appoint one member to serve a three-year term to expire July 26, 2024.

The retirement board shall consist of seven voting trustees as follows:

- (1) The mayor.
- (2) A city commissioner to be selected by the city commission and to serve at the pleasure of the city commission.
- (3) The city manager.
- (4) A citizen, who is an elector of the city, and who is not eligible to participate in the retirement system as a member or retired member, to be appointed by the mayor by and with the consent of the city commission.
- (5) A police member to be elected by the police members.
- (6) A fire member to be elected by the fire members.
- (7) A general member to be elected by the general members.

In addition, there shall be one nonvoting ex officio retired member/beneficiary member to be elected by the retired members and beneficiaries currently receiving benefits from the system.

RETIREMENT BOARD DUTIES

The retirement board consists of seven members who serve three-year terms without compensation. The retirement board shall hold meetings regularly, at least one in each quarter year. The retirement board shall have the power to administer, manage, and properly operate the retirement system, and to make effective the applicable provisions of the City Code.

Interested citizens may submit an application available at the city clerk's office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the city clerk's office on or before noon on Wednesday, July 21, 2021. These applications will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on the appointments.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Elector of the city who is not eligible to participate in the retirement system as a member or retired member.	7/21/2021	7/26/2021

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.



NOTICE OF INTENTION TO APPOINT TO THE MUSEUM BOARD

At the regular meeting of Monday, July 26, 2021, the Birmingham City Commission intends to appoint two regular members to the Museum Board to serve three-year terms to expire July 5, 2024, and one alternate member to serve the remainder of a three-year term to expire July 5, 2023.

Interested parties may submit an application available at the City Clerk's office on or before noon on Wednesday, July 21 2021. These applications will appear in the public agenda for the regular meeting at which time the commission will discuss recommendations, and may make nominations and vote on appointments.

Board Duties

The Museum Board is charged with collecting, arranging, cataloging and preserving historical material. The Board may locate and erect plaques or markers at historic sites, buildings or properties in the City of Birmingham with the consent of the owner or owners of any such property and subject to the approval of the City Commission with respect to properties that, in the opinion of the Board, have historic significance. Further, the Board shall have the power to develop, operate and maintain the Allen House as a museum and to exercise authority, control and management over the Hunter House and John West Hunter Memorial Park.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Shall be qualified electors of the City.	07/21/2021	07/26/2021

NOTE: All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.



NOTICE OF INTENTION TO APPOINT TO THE GREENWOOD CEMETERY ADVISORY BOARD

At the regular meeting of Monday, July 26, 2021 the Birmingham City Commission intends to appoint three regular members to the Greenwood Cemetery Advisory Board to serve three-year terms to expire July 26, 2024.

Members must be chosen from among the citizens of Birmingham and, insofar as possible, represent diverse interests, such as persons with family members interred in Greenwood Cemetery; owners of burial sites within Greenwood Cemetery intending to be interred in Greenwood Cemetery; persons familiar with and interested in the history of Birmingham; persons with familiarity and experience in landscape architecture, horticulture, law or cemetery or funeral professionals.

Interested citizens may submit a form available at the City Clerk's Office on or before noon on Wednesday, July 21, 2021. These applications will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on the appointments.

Committee Duties

In general, it shall be the duty of the Greenwood Cemetery Advisory Board to provide recommendations to the City Commission on:

1. Modifications. As to modifications of the rules and regulations governing Greenwood Cemetery.
2. Capital Improvements. As to what capital improvements should be made to the cemetery. Future Demands. As to how to respond to future demands for cemetery services.
3. Day to Day Administration. The day to day administration of the cemetery shall be under the direction and control of the City, through the City Manager or his/her designee.
4. Reports. The Greenwood Cemetery Advisory Board shall make and submit to the City Commission an annual report of the general activities, operation, and condition of the Greenwood Cemetery for the preceding 12 months. The Greenwood Cemetery Advisory Board shall, from time to time, as occasion requires, either in the annual report, or at any time deemed necessary by the Greenwood Cemetery Advisory Board, advise the City Commission in writing on all matters necessary and proper for and pertaining to the proper operation of Greenwood Cemetery and any of its activities or properties.

All members of boards and commissions are subject to the provisions of City of Birmingham City Code Chapter 2, Article IX, Ethics and the filing of the Affidavit and Disclosure Statement.

Criteria/Qualifications of Open Position	Date Applications Due (by noon)	Date of Interview
Must be a resident of Birmingham and, insofar as possible, represent diverse interests, such as persons with family members interred in Greenwood Cemetery; owners of burial sites within Greenwood Cemetery intending to be interred in Greenwood Cemetery; persons familiar with and interested in the history of Birmingham; persons with familiarity and experience in landscape architecture, horticulture, law or cemetery or funeral professionals.	07/21/2021	07/26/2021

DATE: June 8, 2021

TO: Thomas M. Markus, City Manager

FROM: Paul A. Wells, Fire Chief

SUBJECT: Return to in-person City Commission and Board meetings

It is anticipated that current MDHHS orders that restrict indoor capacities to 50% will be lifted on July 1st, 2021. With this change in MDHHS orders, the City will no longer be able to operate under the public health emergency declared at the regular March 22nd, 2021 Commission meeting. With the emergency declaration expiring, all City Commission and Board members must meet in person beginning July 1st, 2021 unless they attend virtually due to active military duty or have a medical condition. "Medical condition" means an illness, injury, disability, or health-related condition. MCL 15.263(12)(b)

In order to provide a safe environment for Board members, visitors, and constituents, a hybrid in-person/virtual option for the public attendees will be allowed under the amended Open Meetings Act (OMA) Public Act 254 of 2020. While Commission and Board members will meet in person, a virtual option will also be available to the public since the OMA regulates the body, not the public at large. The virtual option will be provided to help reduce the volume of people inside meeting rooms at any given time. This option will allow individuals and staff members to attend and participate in meetings offsite, if they so choose. Additionally, the following precautions and procedures will be put into place in the City Commission and conference rooms to ensure a safe environment and to adhere to Public Act 254 requirements.

- According to Public Act 254, "For each member of the public body attending the meeting remotely, a public announcement at the outset of the meeting by that member, to be included in the meeting minutes, that the member is in fact attending remotely." Unless on active military duty, a virtual attending member must identify their physical location.
- Signs will be posted at the doors of the Commission and conference rooms to have all non-vaccinated attendees wear a CDC approved face mask.
- Signs will be posted at the doors of the Commission and conference rooms to remind attendees not to enter if they are exhibiting any COVID-19 symptoms.
- HVAC controls will be set to circulate air continuously and portable air purifiers will be placed in the Commission and conference rooms to help clean and circulate room air.
- Signs will be placed on seats in the Commission room to ask participants to maintain social distance.
- The City Commission room will be cleaned before and after any meeting with an electrostatic sprayer using an EPA approved solution.

Although COVID-19 numbers are currently low, the possibility of an uptick of cases is likely as MDHHS orders are rescinded and variants of COVID-19 are detected. We will continue to monitor the infection rate and make any appropriate changes.

MEMORANDUM

DATE: June 7, 2021

TO: Thomas M. Markus, City Manager and City Commission

FROM: Mary M. Kucharek

SUBJECT: Public Comment During City Meetings

INTRODUCTION:

- There have been certain comments made by members of the public discussing public comment and the rules and regulations associated with public comment during City meetings. Therefore, the intent of this Memo is to clarify the rules for public comment during City Commission meetings.

LEGAL REVIEW:

- The Open Meetings Act (OMA) provides that a person may address a public body "under rules established and recorded by the public body." MCL § 15.263(5)
- The OMA only provides that public comment is permitted during the meeting. It does not, however, proscribe where on the agenda or when public participation is to occur during a meeting.
- As a general rule, every commission must allow members of the public to attend all open meetings. Individuals also must be permitted to address the commission during the open meeting.
- The OMA and as opined by the Attorney General in a July 13, 1978 Opinion, states that a public body may adopt rules imposing individual time limits for the public addressing the body. There cannot be a rule limiting the period for public comment, nor may it be applied in such fashion that denies any one person of the right to address the body. The body, however, may limit the time each person may speak at a public hearing.
- Per the Attorney General Opinion dated June 7, 1978, the public has no right to address the Commission during its deliberations on a particular matter.
- Per the 1977 Attorney General Opinion 5183, a commission may establish public participation rules that assist in balancing the commission's interest in conducting a meeting in an orderly manner with individuals' rights under the First Amendment. The rules must be reasonable, flexible, and written in a way that encourages public participation. To be enforceable, the rules must be adopted by the Commission and

recorded in the minutes. The Birmingham City Commission has adopted Rules of Procedure which can be found on the City's web page under *City Commission*. Regarding public comment, the Rules of Procedure state:

"Citizen Participation

During any City Commission meeting, any person may question or comment upon any specific agenda item at the time the City Commission considers that item.

The public shall also be invited to make comments on any item not on the meeting agenda under the agenda item, 'Meeting Open To The Public For Items Not On the Printed Agenda.'

No person shall address the City Commission without first having been recognized by the presiding officer. Once recognized, the member of the public shall go to one of the available microphones, and state his or her name and community of residence before speaking.

Speakers may be requested to limit their comments so as to provide opportunities for comments from all interested persons. In particular, no member of the public shall normally be permitted to speak a second time on the same issue until all others wishing to make a presentation on the subject have had an opportunity to do so.

If any person becomes loud or unruly, the presiding officer may rule that person out of order and may forfeit that person's opportunity to speak further. A person may also be expelled from the meeting for breach of the peace."

- Approximately 12 months ago, the City Commission decided to hear public comment at the beginning of the Commission meetings. There has not been a vote by the Commission determining when to hear public comment during non-regular Commission meetings.
- There has also been statements that if the public has to wait to the end of a meeting to speak or to not be allowed to speak during deliberations, that procedure is in violation of a Court Order issued by Victoria A. Roberts of the United States District Court in 2019. This is not accurate. The Court in a Stipulated Order simply orders and states:

1. During the 'Citizen Participation' portions of Birmingham City Commission meetings, as defined in the Commission's Rules of Procedure, the City (1) will not stop the cable broadcast of Commission meetings if a speaker engages in political advocacy; and (2) will allow speakers to engage in political advocacy.

2. The City may impose restrictions on speakers as set forth in the 'Citizen Participation' section of the Commission's Rules of Procedure."

SUMMARY:

- In conclusion, the rules regarding public comment are regulated by the OMA and the Rules of Procedure of the City Commission. The public has a right to speak and be heard at a public meeting. The public has a right for the time of public comment to be unlimited. The Commission has a right, pursuant to state law, to schedule public comment during its meetings when it chooses. The Commission has the right pursuant to Michigan law to limit individual speaking time as long as that limitation is applied to all members of the public without discrimination.

ATTACHMENTS:

- Stipulated Order

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CLINTON BALLER and
DAVID BLOOM,

Plaintiffs,

No. 19-12138

Hon. Victoria A. Roberts

v.

CITY OF BIRMINGHAM,
a municipal corporation,
PATTY BORDMAN,
individually and in her
official capacity as Birmingham
Mayor, and TIMOTHY
CURRIER, individually and
in his official capacity as
Birmingham City Attorney,

Defendants.

STIPULATED ORDER

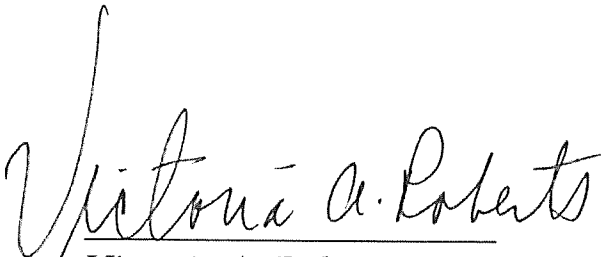
Clinton Baller and David Bloom ("Plaintiffs") and the City of Birmingham, Patty Bordman, individually and in her official capacity as Birmingham Mayor, and Timothy Currier, individually and in his official capacity as Birmingham City Attorney ("Defendants"; collectively, the "Parties") stipulate to resolve their differences as follows:

1. During the "Citizen Participation" portions of Birmingham City Commission meetings, as defined in the Commission's Rules of Procedure, the City (1) will not stop the cable broadcast of Commission meetings if a speaker engages in political advocacy; and (2) will allow speakers to engage in political advocacy.
2. The City may impose restrictions on speakers as set forth in the "Citizen Participation" section of the Commission's Rules of Procedure.
3. Nothing in this Order precludes the City from withdrawing from participation in the Birmingham Area Cable Board or discontinuing the practice of broadcasting City Commission meetings on the government access channel.

This is a final order. This matter is dismissed with prejudice and without costs. The Court retains jurisdiction for the limited purpose of enforcing this stipulated order.

IT IS ORDERED.

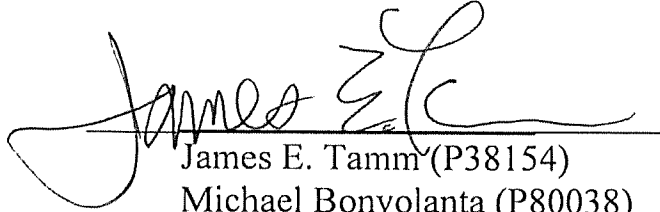
Dated: OCT 01 2019


Victoria A. Roberts
United States District Judge

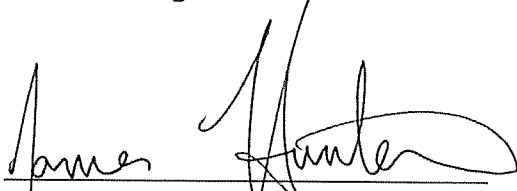
Counsel approves this for entry on behalf of the parties:



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Dear Ms. Ecker and Mr. Markus,

We are writing to provide an update on the Peabody parcel located at 34965 Woodward Avenue. As Alden Development Group, the City of Birmingham, and the State of Michigan continue to navigate through the current pandemic and its economic fallout, we wanted to ensure you that it is still our intent to develop the property as previously planned.

While it is wonderful that the vaccine has finally arrived and is being distributed across the country, we recognize a 'return to normal' will take time. As you can likely appreciate and understand, the uncertainty of the last 18 months has resulted in an almost complete pause in vertical development across the country, particularly in the Office and Commercial asset classes. Unfortunately, the timing of this could not have been worse for our Peabody project. After we had worked through some of the issues with the neighboring properties in 2019 we were finally starting to see an increase in leasing interest in the 4th quarter of that year when everything came to a halt when the pandemic hit in early 2020.

Fast forward to today and corporate leasing has still yet to get out of the pandemic stalemate that has existed across the SE Michigan market for the 14 months. The pandemic related challenges have caused us to slow down our development process as it is not economically feasible to build a 200,000 square foot building purely on market speculation given the current environment. Leases of more than a few thousand square feet are few and far between in the current marketplace, especially in the world of new construction which commands a higher price per foot creating yet another barrier-of-entry.

In addition to the leasing challenges, construction and materials pricing has skyrocketed in the past year. Prices for new construction are over 40% higher than they were in mid-2019. The pandemic has also resulted in a shortage of qualified trades and skilled workers. These increases to material and labor costs further necessitate the need to have tenants lined up prior to breaking ground on a project of this scope.

In summary, the leasing market is still flat, lead times for materials have increased significantly and costs for materials and labor are at all-time highs. Given these challenges one cannot in good conscious begin a project of this size in the current environment. Fortunately, our analysis of the overall environment shows encouraging trends that should create more stabilization within the general construction industry and will hopefully allow us to begin this beautiful project in the near future. As the world continues to make strides towards normalcy, we will adjust our strategies to best fit the situation. We humbly ask that the City take all of this into consideration and work with our team to overcome the hurdles that we are faced with including preserving our permit approval so that we may be in a position to attract prospective tenants with the certainty that we can start construction and provide swift occupancy as the economy stabilizes post Pandemic fallout. Our entire team looks forward to creating another new project in the City that will enhance the "Woodward Gateway" streetscape and will stand in Birmingham to be admired by all for many years to come.

With gratitude.

A handwritten signature in blue ink, appearing to read "Matthew Shiffman", with a long, sweeping horizontal line extending to the right.

Matthew Shiffman
Chief Executive Officer
Alden Development Group

353 N OLD WOODWARD | BIRMINGHAM, MI | 48009
(248) 430-8888

INFORMATION ONLY



Fwd: Woodward Speeding/noise

2 messages

Tom Markus <tmarkus@bhamgov.org>

Tue, May 25, 2021 at 1:08 PM

To: City Commission <city-commission@bhamgov.org>, DepartmentHeads <departmentheads@bhamgov.org>

Ongoing communications and response re enforcement on Woodward.

----- Forwarded message -----

From: **Mark Clemence** <Mclemence@bhamgov.org>

Date: Tue, May 25, 2021 at 12:31 PM

Subject: Re: Woodward Speeding/noise

To: Brad Host <bhost@bhamgov.org>

Cc: Tom Markus <tmarkus@bhamgov.org>, Grewe, Scott <Sgrewe@bhamgov.org>, Kucharek, Mary <Mkucharek@bhlaw.us.com>

Commissioner Host,

I am glad you take the time to ride with officers and experience what we see and do every day. We have not been allowing people to ride because of COVID until now, so hopefully others will come out and ride as well. As you know, I met with police officials from Bloomfield Township, Bloomfield Hills, the Oakland County Sheriff's Office (OCSO) and the Michigan State Police (MSP) on April 7, 2021. Royal Oak PD was not able to attend that day, but I have been in communication with their chief and he assures me that Royal Oak is approaching the issue the same way Birmingham is approaching it. At the meeting, we discussed our situation at great length. Like Birmingham, Bloomfield Twp. is committing extra police presence to the problem. Bloomfield Hills is not bringing in additional officers and is addressing it with on-duty staff. Both the OCSO and MSP stated that they would do their best to patrol the Woodward corridor when manpower allowed for it. The OCSO also stated that they would try and use their traffic unit to assist when timing and manpower allowed for it.

According to my staff and from what I have seen working Woodward myself, weather has a huge factor in the number of cruisers who are out and about. My command staff feels that they are doing a good job of addressing traffic violations observed and in addressing noise within the parameters of the law. I agree with their assessment and the service response we are providing.

Just a few facts for you to consider:

1. Over the course of this past weekend, the police department only received **one** call from the public as it related to traffic, traffic noise or reckless driving. The call was received on Friday night at 9:55 PM and the complainant stated that cars were "Racing in the Dairy Mart parking lot and that they were extremely loud." Officers immediately responded to the area and did not observe any vehicles racing or any loud noise.
2. Over the course of the weekend, officers issued 56 traffic violations just on Woodward Ave alone.

I am very aware of citizen concerns over Woodward Ave vehicle noise. You and I have had numerous conversations about this issue. I have written reports on the issue. I have sought legal advice on the issue. I have thoroughly discussed the issue with the City Attorney to ensure that I am doing everything within the legal limits of the law to address the concerns. I have networked with the other cities on the Woodward corridor and MSP and the OCSO to coordinate an organized/joint response. The fact that the City only received one call from the general community over the entire weekend and the fact that the police department has been aggressively patrolling Woodward and issuing sound/legal violations of the motor vehicle code (56 violations) should be reassuring to you as a citizen that the police department understands the scope of the issue and is addressing it. When this issue arises with residents you have contact with as a Commissioner, please feel free to educate them on all that we are doing and as always, please do not hesitate to have them reach out to me or Commander Grewe for clarification and understanding of the law and our department's response.

Regards,
Mark

Mark H. Clemence
Chief of Police
Birmingham Police Department

INFORMATION ONLY

151 Martin St.
Birmingham, MI. 48009
248-530-1875



On Mon, May 24, 2021 at 2:19 PM Brad Host <bhost@bhamgov.org> wrote:

Dear Gentlemen,

Many thanks for allowing me to spend Friday night with Sargeant Romanowski on Woodward Avenue. It was the busiest night of the year, and we only had 4 cars out on Woodward. When are we going to ramp it up to 12/13? Based on my neighbors, last Friday and Saturday were the worst nights this year. Friday night I saw an Oakland County Sheriff car, and two Township cars (North of Oak), and am wondering if the State Police might be coming back?

Am told there is a Nextdoor thread about this past weekend, and the tread says we do not care. Can we add money to the budget to show we care?

Best safe wishes and color me frustrated,
Brad

--

You received this message because you are subscribed to the Google Groups "City Commission" group.

To unsubscribe from this group and stop receiving emails from it, send an email to city-commission+unsubscribe@bhamgov.org.

To view this discussion on the web visit <https://groups.google.com/a/bhamgov.org/d/msgid/city-commission/CALPLqCi71i1DarmUfOx0qA7huzHJdMnmf7b07hpfAbfyKm-Fiw%40mail.gmail.com>.

**CITY CLERK
CITY OF BIRMINGHAM
P.O. BOX 3001, 151 MARTIN STREET
BIRMINGHAM, MI 48012**

**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION
NOTICE OF HEARING
FOR THE ELECTRIC CUSTOMERS OF
DTE ELECTRIC COMPANY
CASE NO. U-18091**

- DTE Electric Company requests the Michigan Public Service Commission for approval in establishing the method and avoided cost calculation for DTE Electric Company to fully comply with the Public Utility Regulatory Policies Act of 1978, 16 USC 2601 et seq.
- The information below describes how a person may participate in this case.
- You may call or write DTE Electric Company, One Energy Plaza, Detroit, MI 48226, 313-235-8000 for a free copy of its application. Any person may review the documents at the offices of DTE Electric Company.
- A pre-hearing will be held:

DATE/TIME: Tuesday, June 1, 2021 at 10:00 AM

BEFORE: Administrative Law Judge Martin Snider

LOCATION: Video/Teleconferencing

PARTICIPATION: Any interested person may participate. Persons needing any assistance to participate should contact the Commission's Executive Secretary at (517) 284-8090, or by email at mpscdockets@michigan.gov in advance of the hearing.

The Michigan Public Service Commission (Commission) will hold a pre-hearing to consider DTE Electric Company's (DTE Electric) April 21, 2021 application requesting the Commission to: 1) approve all of DTE Electric requests as proposed, including its avoided cost calculation methods and that the avoided costs meet the requirements; 2) approve the criteria DTE Electric will use to evaluate a qualifying facility's (QF) commercial viability and financial

INFORMATION ONLY

commitment; 3) grant DTE Electric all necessary regulatory authority and approvals as proposed; and 4) grant DTE Electric further relief.

All documents filed in this case shall be submitted electronically through the Commission's E-Dockets website at: michigan.gov/mpscedockets. Requirements and instructions for filing can be found in the User Manual on the E-Dockets help page. Documents may also be submitted, in Word or PDF format, as an attachment to an email sent to: mpscedockets@michigan.gov. If you require assistance prior to e-filing, contact Commission staff at (517) 284-8090 or by email at: mpscedockets@michigan.gov.

Any person wishing to intervene and become a party to the case shall electronically file a petition to intervene with this Commission by May 25, 2021. (Interested persons may elect to file using the traditional paper format.) The proof of service shall indicate service upon DTE Electric Company's attorney, Jon P. Christinidis, One Energy Plaza, Detroit, MI 48226.

The prehearing is scheduled to be held remotely by video conference or teleconference. Persons filing a petition to intervene will be advised of the process to participate in the hearing.

Any person wishing to participate without intervention under Mich Admin Code, R 792.10413 (Rule 413), or file a public comment, may do so by filing a written statement in this docket. The written statement may be mailed or emailed and should reference Case No. U-18091. Statements may be emailed to: mpscedockets@michigan.gov. Statements may be mailed to: Executive Secretary, Michigan Public Service Commission, 7109 West Saginaw Hwy., Lansing, MI 48917. All information submitted to the Commission in this matter becomes public information, thus available on the Michigan Public Service Commission's website, and subject to disclosure. Please do not include information you wish to remain private. For more information on how to participate in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

Requests for adjournment must be made pursuant to Michigan Office of Administrative Hearings and Rules R 792.10422 and R 792.10432. Requests for further information on adjournment should be directed to (517) 284-8130.

A copy of DTE Electric Company's application may be reviewed on the Commission's website at: michigan.gov/mpscedockets, and at the office of DTE Electric Company. For more information on how to participate in a case, you may contact the Commission at the above address or by telephone at (517) 284-8090.

Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.54 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1982 PA 304, as amended by 1987 PA 81, MCL 460.6h et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and Parts 1 & 4 of the Michigan Office of Administrative Hearings and Rules, Mich. Admin Code, R 792.10106 and R 792.10401 through R 792.10448; and PL 95-617, 92 STAT 3117; and 18 CFR 292 et. seq.



The American Rescue Plan Act: Identifying eligible uses by governments

DANNY SKLENICKA / MICHELLE WATTERWORTH / AMANDA WARD

June 2, 2021 / Article

Government agencies receiving federal Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) under the American Rescue Plan Act, need to carefully consider the best use of these funds. Read our overview of current guidance on eligible expenditures over the period of performance.



The American Rescue Plan Act (ARPA), signed into law in March 2021, provides \$350 billion in relief to states and local governments to combat the continued impact of the COVID-19 pandemic. To offer swift guidance on the use of Coronavirus State and Local Fiscal Recovery Funds (CSLFRF), the U.S. Department of Treasury (Treasury) published the interim final rule (IFR) on May 10, 2021, through an expedited rule-making process. The IFR outlines the requirements for CSLFRF and went into effect immediately upon issuance, despite the fact that Treasury is seeking comment on all aspects of the rule. If warranted by public comments, the IFR may subsequently be modified, but that doesn't change its current authoritative status.

The IFR establishes a framework for determining the types of programs and services eligible under this program, along with examples of uses that state and local governments may consider. These uses build on eligible expenditures under the Coronavirus Relief Fund issued through the CARES Act by recognizing a broad range of additional eligible uses. The objective of CSLFRF is to help governments support the families, businesses, and communities hardest hit by the COVID-19 public health emergency.

Eligible state, territorial, metropolitan city, county, and tribal governments may request their allocation of CSLFRF through the Treasury Submission Portal. Eligible local governments classified as nonentitlement units — generally local governments with populations under 50,000 — will receive this funding through their applicable state government.

With the IFR guidance in mind, we recommend you consider the following as you begin to plan how you'll use this funding: (1) eligible uses, (2) ineligible uses, and (3) appropriate planning for spending.

Eligible uses of CSLFRF INFORMATION ONLY

Eligible uses of CSLFRF fall into four broad categories:

1. Public health & economic impacts
2. Premium pay
3. Revenue loss
4. Investments in water, sewer, or broadband infrastructure

Expenditures qualifying under public health and economic impact can be used to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality. Eligible uses in this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency.

Expenditures qualifying under public health and economic impact can be used to respond to the public health emergency with respect to COVID-19 or its negative economic impacts.

A nonexhaustive list of eligible expenditures identified in the IFR includes:

- COVID-19 mitigation and prevention programs (medical care, testing, contact tracing, purchases of PPE, public communication efforts)
- Behavioral health and substance abuse treatment
- Payroll and covered benefits for public health and safety personnel
- Addressing disparities in public health outcomes and responding to negative impacts on households and individuals
- Qualifying business loans and grants
- Rehiring staff for state and local governments
- Aid to impacted industries such as tourism, travel, and hospitality
- Affordable housing in qualifying areas
- Serving the homeless

The IFR also provides flexibility to use CSLFRF payments for programs or services not identified in the nonexhaustive list by providing considerations for evaluating other potential uses.

Premium pay can be provided to eligible workers performing essential work during the COVID-19 public health emergency. A few of the more important aspects in the IFR related to premium pay include the following:

- The ARPA defines premium pay as an amount up to \$13 per hour, in addition to wages or remuneration the worker otherwise receives.
- Premium pay is limited to an aggregate amount not to exceed \$25,000 per eligible worker.
- Premium pay or grants provided using CSLFRF should prioritize compensation of those lower-income eligible workers who perform essential duties.
- Premium pay that increases a worker's total pay above 150% of their residing state's average annual wage for all occupations or their residing county's average annual wage, whichever is higher, must be supported by written justification of how the premium pay is responsive to individuals performing essential work during the public health emergency.
- Providing retrospective premium pay is encouraged, where possible, for work performed since the start of the public health emergency (Jan. 27, 2020), recognizing that many essential workers haven't yet received additional compensation for work conducted over the course of many months.
- Essential workers who have already earned premium pay for essential work performed during the COVID-19 public health emergency remain eligible for additional payments; an essential worker may receive both retrospective premium pay for prior

work as well as prospective premium pay for current or ongoing work.

Examples of workers who may qualify for premium pay include:

- Staff at nursing homes, hospitals, and home care settings
- Workers at farms, food production facilities, grocery stores, and restaurants
- Janitors and sanitation workers
- Truck drivers, transit staff, and warehouse workers
- Public health and safety staff
- Childcare workers, educators, and other school staff
- Social service and human services staff

Revenue loss should be used to provide government services to the extent of a reduction in revenue due to the COVID-19 public health emergency. The revenue loss will be measured relative to revenues collected in the most recent full fiscal year prior to the emergency. The IFR provides further guidance and a methodology for this calculation. Note that recipients should look at general revenue in the aggregate, rather than on a source-by-source basis. Given that recipients may have experienced offsetting changes in revenues across sources, this approach is intended to provide a more accurate representation of the effect of the pandemic on overall revenues.

Investments in infrastructure category allows for a broad range of necessary investments in projects that improve access to clean drinking water, improve wastewater and stormwater infrastructure systems, and provide access to high-quality broadband service. Necessary investments include projects that are required to maintain a level of service that, at least, meets applicable health-based standards, taking into account resilience to climate change, or establishes or improves broadband service to unserved or underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.

For water and sewer infrastructure, governments have wide latitude to identify investments that are of the highest priority for their own communities, which may include projects on privately owned infrastructure. The guidance aligns with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency (EPA) Clean Water State Revolving Fund or Drinking Water State Revolving Fund.

For water and sewer infrastructure, governments have wide latitude to identify investments that are of the highest priority for their own communities.

For broadband infrastructure, eligible investments are those designed to provide services meeting adequate speeds and provided to unserved and underserved households and businesses. The IFR offers governments flexibility to identify the specific locations within their communities to be served and to otherwise design the project.

Ineligible uses of CSLFRF

The ARPA includes two provisions that define the boundaries of the statute's eligible uses. First, ARPA prohibits recipients from using the funds for deposit into a pension fund. A deposit under the Act refers to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the IFR doesn't permit CSLFRF to be used to make a payment into a pension fund if both: (1) the payment reduces a liability incurred prior to the start of the COVID-19 public health emergency, and (2) the payment occurs outside the recipient's regular timing for making such payments. It's important to understand that a deposit is distinct from a payroll contribution, which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a predetermined percentage of employees' wages and salaries. Therefore, if an employee's wages and salaries are an eligible use of CSLFRF, governments may treat the employee's covered benefits, including pension, as an eligible use as well.

ARPA prohibits recipients from using the funds for deposit into a pension fund.

Second, state and territories may not use CSLFRF to either directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation during the covered period. Note that this prohibition only applies to entities covered under Section 602 of ARPA, not entities covered under Section 603. Therefore, local governments aren't subject to this offset limitation.

Although not explicit in ARPA, payments from CSLFRF are also subject to preexisting limitations provided in other federal statutes and regulations. For example, CSLFRF funds may not be used as a source of an entity's required matching contribution when other federal programs prohibit the use of federal matching funds. It's important to check eligibility requirements of other federal programs before applying CSLFRF.

Finally, the IFR gives additional examples of ineligible uses — expenditures that Treasury believes don't qualify within any of the four broad buckets — including contributions to rainy day funds, payments on outstanding debt, and fees or issuance costs of new debt.

Appropriate planning for the best use of CSLFRF for your community

Within the four broad categories of eligible uses, you'll need to determine the best use of the CSLFRF for your government. The needs for each government will be different, so it's imperative to quickly begin discussions — both within the walls of your government and with your constituents — to start planning so you can maximize the use of these funds for your community.

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As you engage in robust discussions about spending CSLFRF, here are some other planning considerations to keep in mind:

- **Period of performance:** Before you begin to plan for spending your CSLFRF award, you must first understand the period of performance, that is, the start of the award and the planned end date. The period of performance or spending period for eligible expenditures begins March 3, 2021, except for retroactive premium pay, which is discussed above. Funds must be obligated by Dec. 31, 2024, and those obligated funds must be spent by Dec. 31, 2026.
- **Double dipping:** With the influx of increased federal funding, you'll likely face the challenge of preventing the same costs from being charged to multiple funding sources. The first two broad eligible categories have similar eligible uses as the Coronavirus Relief Fund (CRF) (CFDA 21.019) and the Coronavirus Emergency Supplemental Funding Program (CESF) (CFDA 16.034), which could raise the risk that the same cost is charged to multiple grants. It's important to establish and ensure adequate cost tracking controls to avoid **double dipping**.
- **Reporting and recordkeeping requirements:** Treasury will establish reporting and recordkeeping requirements, including enhanced reporting requirements for certain uses. For certain types of expenditures, the IFR also includes public disclosure requirements. In addition to ensuring the CSLFRF are used on eligible expenditures, it's also critical for all governments to identify, track, and adhere to the required reporting and public disclosure requirements.
- **Funds are subject to single audit:** Be aware that these funds are subject to the provisions of the Uniform Guidance (2 CFR Part 200) and therefore a single audit is required when total expenditures equal or exceed \$750,000 in a given fiscal year. If you'll have a single audit for the first time or simply would like a refresher, take a look at the following articles:
 - **Top three things to consider if you've received COVID-19 funding**
 - **COVID-19 funding impact on single audits: Key questions and answers**
- **Documentation:** No matter how you choose to use the funding, documentation of any decision-making will be key. The calculation of revenue loss in particular will likely present its own unique challenges in this regard.

Given that the spending period extends to Dec. 31, 2026, projects eligible for CSLFRF can have a lasting impact on communities. In some cases, premium pay and public health expenses may provide more immediate relief while water, sewer, and broadband may provide much-needed services that will benefit constituents well into the future.

Given that the spending period extends to Dec. 31, 2026, projects eligible for CSLFRF can have a lasting impact on communities.

As you consider how to spend your ARPA funds and navigate its complexities, we're here to help. Don't hesitate to reach out.

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CITY OF AUBURN HILLS, VILLAGE OF BEVERLY HILLS, VILLAGE OF
BINGHAM FARMS, CITY OF BIRMINGHAM, CHARTER TOWNSHIP OF
BLOOMFIELD, CITY OF BLOOMFIELD HILLS, CITY OF FARMINGTON, CITY
OF FARMINGTON HILLS, VILLAGE OF FRANKLIN, CITY OF KEEGO HARBOR,
CITY OF LATHRUP VILLAGE, CITY OF ORCHARD LAKE VILLAGE, CITY OF
SOUTHFIELD, CITY OF TROY, CHARTER TOWNSHIP OF WEST BLOOMFIELD
COUNTY OF OAKLAND

EVERGREEN-FARMINGTON SANITARY DRAIN

NOTICE OF MEETING TO HEAR OBJECTIONS
TO APPORTIONMENT OF COST OF ABOVE
INTRA-COUNTY DRAIN PROJECT

NOTICE IS HEREBY GIVEN, that the cost of the Evergreen-Farmington Sanitary Drain which consists of locating, establishing and constructing an intra-county drain project consisting of the existing Evergreen-Farmington Sewage Disposal System and all improvements necessary to bring the Evergreen-Farmington Sewage Disposal System into compliance with Administrative Consent Order 04995 entered by the State of Michigan Department of the Environment, Great Lakes, and Energy on August 14, 2019, in accordance with the provisions of Chapter 20 of Act 40, Public Acts of Michigan, 1956, as amended, all as more fully set forth in the petition filed by the Charter Township of West Bloomfield and the City of Southfield with respect to the drain project, has been tentatively apportioned as follows, to wit:

<u>Public Corporation</u>	<u>Tentative Percentage of Cost</u>
City of Auburn Hills	0.46%
Village of Beverly Hills	5.75%
Village of Bingham Farms	0.69%
City of Birmingham	0.11%
Charter Township of Bloomfield	9.54%
City of Bloomfield Hills	1.44%
City of Farmington	0.34%
City of Farmington Hills	28.29%
Village of Franklin	0.21%
City of Keego Harbor	0.32%
City of Lathrup Village	3.06%
City of Orchard Lake Village	0.37%
City of Southfield	38.17%
City of Troy	3.15%
Charter Township of West Bloomfield	8.10%

NOTICE IS FURTHER GIVEN, that the Drainage Board for the Evergreen-Farmington Sanitary Drain, will meet at 2:00 p.m., prevailing Eastern Time, on the 22nd day of June, 2021, electronically via GoToMeeting, as provided by law, for the purpose of hearing any objections to said apportionment. Those that wish to participate may do so by utilizing the following link

<https://global.gotomeeting.com/join/906361541> or by dialing +1 (224) 501-3412, access code 906-361-541.

NOTICE IS FURTHER GIVEN, that the plans, specifications, route and course and estimate of cost of the Evergreen-Farmington Sanitary Drain and also a description of the area to be served thereby are on file in the office of the Oakland County Water Resources Commissioner, One Public Works Drive, Waterford, Michigan. The estimated cost of the drain project is \$68,000,000, but the apportionment percentages as finally established by the Drainage Board shall apply to the actual cost of the aforementioned portions of the drain project when finally completed.

NOTICE IS FURTHER GIVEN, that at said hearing the public corporations to be assessed, or any taxpayer thereof, will be entitled to be heard.

NOTICE IS FURTHER GIVEN, that after consideration of all objections to the apportionment the Drainage Board shall determine whether the apportionment fairly reflects the benefits to accrue to each public corporation and the extent to which each public corporation contributes to the conditions which make the drain project necessary. If the Drainage Board determines that the apportionment is equitable it will enter a Final Order of Apportionment confirming the apportionment. Section 483 of Act 40, Public Acts of Michigan, 1956, as amended, provides that the Final Order of Apportionment shall not be subject to attack in any court, except by proceedings in certiorari brought within 20 days after the order is filed in the office of the Oakland County Water Resources Commissioner, with the Chairperson of the Drainage Board for the Evergreen-Farmington Sanitary Drain, and that if no such proceedings shall be brought within said 20 day period the legality of the assessments for the drain shall not thereafter be questioned in any suit at law or in equity, either on jurisdictional or nonjurisdictional grounds.

NOTICE IS FURTHER GIVEN, that if the Drainage Board enters the Final Order of Apportionment a special assessment roll assessing the estimated cost of the drain project against said public corporations in accordance with the confirmed apportionment will be prepared and presented to the Drainage Board for approval.

This notice is given to and for the benefit of the aforesaid mentioned public corporations and all taxpayers thereof by order of the Drainage Board for the Evergreen-Farmington Sanitary Drain.



Jim Nash
Chairperson of the Drainage Board for the
Evergreen-Farmington Sanitary Drain;
Oakland County Water Resources Commissioner

Dated: April 27, 2021