

# **BIRMINGHAM CITY COMMISSION AGENDA**

**AMENDED**

**June 28, 2021**

**7:30 P.M.**

**VIRTUAL MEETING**

**ZOOM MEETING ID: 655 079 760**

## **I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Pierre Boutros, Mayor

## **II. ROLL CALL**

Alexandria Bingham, City Clerk

## **III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.**

### **ANNOUNCEMENTS**

Legislative Update from Sen. McMorrow

### **APPOINTMENTS**

#### **A. Board of Ethics:**

1. John Schrot

To appoint \_\_\_\_\_ as a regular member to the Board of Ethics to serve a three-year term to expire June 30, 2024.

#### **B. Historic District Study Committee**

1. Jake German
2. Colleen McGough

To appoint\_\_\_\_\_, as a regular member to the Historic District Study Committee to serve a three-year term to expire June 25, 2024.

To appoint\_\_\_\_\_, as a regular member to the Historic District Study Committee to serve a three-year term to expire June 25, 2024.

To appoint\_\_\_\_\_, as a regular member to the Historic District Study Committee to serve the remainder of a three-year term to expire June 25, 2022.

#### **C. Building Trade Appeals**

1. Arya Afrakhtch
2. Rick Wiand
3. Thomas Lindberg

To appoint \_\_\_\_\_ to the Board of Building Trades Appeals as a regular member to serve a three-year term to expire May 23, 2024.

To appoint \_\_\_\_\_ to the Board of Building Trades Appeals as a regular member to serve a three-year term to expire May 23, 2024.

To appoint \_\_\_\_\_ to the Board of Building Trades Appeals as a regular member to serve the remainder of a three-year term to expire May 23, 2022.

#### **IV. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA**

#### **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.

- A. Resolution to approve the City Commission Workshop meeting minutes of June 14, 2021
- B. Resolution to approve the City Commission meeting minutes of June 14, 2021
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated June 16, 2021, in the amount of \$1,430,167.59.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated June 23, 2021, in the amount of \$722,368.00.
- E. Resolution to approve the service agreement with Next in the amount of \$122,940 for services described in Attachment A of the agreement for fiscal year 2021-2022, account number 101-299.000-811.0000, and further direct the Mayor and City Clerk to sign the agreement on behalf of the City.
- F. Resolution to approve the purchase of two (2) Toro 3555-D fairway mowers from Spartan Distributors, through State of Michigan extendable purchasing contract #071B0200329 at a cost of \$107,917.56 less the trade in amount of \$13,000 for a total expenditure of \$94,917.56. Funds for this purchase are available in the Auto Equipment Fund account # 641-441.006-971.0100.
- G. Resolution to approve the Cost Participation Agreement with Oakland County for the City of Birmingham to participate in the 2021 OAKSTEM Program. Further, to authorize the Director of Public Services to sign on behalf of the City of Birmingham the Cost Participation Agreement with Oakland County, for an amount not to exceed \$15,000, for planting street trees in Spring 2022.
- H. Resolution to allow the IT department to purchase the 36-month subscription for Enterprise Data protection and endpoint email and drive protection from Virtru for a total cost \$27,717.00 paid as a yearly subscription of \$9,239.00. Funds available in the IT Computer maintenance account: 636-228.000-933.0600

- I. Resolution to set a public hearing date for July 26th, 2021 to consider the Special Land Use Permit, Final Site Plan and Design Review application for 501 S. Eton – Whistle Stop to allow the operation of a bistro.
- J. Resolution to set public hearings on July 26, 2021 to consider the following amendments to Chapter 126, Zoning:
  - 1. Article 3, Section 3.04 (Specific Standards) to amend the Architectural Standards;
  - 2. Article 4, Section 4.90 (Window Standards) to amend storefront window requirements; and
  - 3. Article 9, Section 9.02 (Definitions) to redefine clear glazing and eliminate lightly tinted glazing.
- K. Resolution to set public hearings for July 26, 2021 to consider the following amendments to Chapter 126, Zoning:
  - 1. Article 4, Section 4.09 (Essential Services) to remove Roof Mounted Solar Electric Systems; and
  - 2. Article 4, Section 4.88 (Alternative Energy) to add amended Roof Mounted Solar Electric Systems language.
- L. Resolution to adopt a resolution for the City Commission to meet on Monday, July 26, 2021, at 7:30 P.M., for the purpose of conducting a Public Hearing of Necessity for the replacement of sewer and water services within the Townsend & Peabody Street Paving project areas.

Be it further RESOLVED, that the City Commission meet on Monday, August 9, 2021 at 7:30 P.M. for the purpose of conducting a Public Hearing on Confirmation of the Roll for the replacement of sewer and water services in the Townsend & Peabody Street Paving project areas.

## **VI. UNFINISHED BUSINESS**

## **VII. NEW BUSINESS**

- A. Resolution to authorize the City Manager to use the City's allocation of Coronavirus State and Local Fiscal Recovery Funds towards lead service line replacement.
- B. Resolution to enter into a Consent Judgement in connection with the pending litigation entitled *Birmingham Wine Shop, LLC et al v City of Birmingham, et al*; *Oakland County Circuit Court Case No.: 2021-186823-AA*.
- C. Commission discussion on items from prior meeting.
  - 1. Food Trucks in Birmingham

- D. 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.
- E. Resolution for the City Commission to meet in closed session pursuant to the OMA at MCL §15.268(a) for a performance evaluation of Mr. Markus at Mr. Markus' request that such performance evaluation be held in closed session.

**(A roll call vote is required and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)**

#### **VIII. REMOVED FROM CONSENT AGENDA**

#### **IX. COMMUNICATIONS**

#### **X. REPORTS**

- A. Commissioner Reports
  - 1. New Construction Demands on Parking Space – Commissioner Brad Host
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
  - 1. Return to in-person City Commission & Board meetings, submitted by Fire Chief Wells
  - 2. Public comment during City meetings, submitted by City Attorney Kucharek
  - 3. City Commission Vote Revisited, submitted by City Attorney Kucharek
  - 4. Temporary COVID-19 Outdoor Structure Fire Code Violations, submitted by Fire Chief Wells
  - 5. Parking Structure Debt, submitted by Finance Director Mark Gerber
  - 6. City Manager's Report

#### **INFORMATION ONLY**

#### **XI. ADJOURN**

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

*Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al [\(248\) 530-1880](tel:2485301880) por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).*





## **NOTICE OF INTENTION TO APPOINT TO THE BOARD OF ETHICS**

At the regular meeting of Monday, June 28, 2021, the Birmingham City Commission intends to appoint one regular member to the Board of Ethics to serve a three-year term to expire June 30, 2024.

Board members are to serve as an advisory body for the purposes of interpreting the Code of Ethics. The board consists of three members who serve without compensation. The members shall be residents and have legal, administrative or other desirable qualifications.

Interested citizens may submit an application available at the City Clerk's office or online at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities). Applications must be submitted to the City Clerk's office on or before noon on Wednesday, June 21, 2021. These documents 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 appointments.

### Applicant(s) Presented For City Commission Consideration:

<b>Applicant Name</b>	<b>Criteria/Qualifications</b>
	Applicants shall be residents and have legal, administrative or other desirable qualifications.
John J. Schrot, Jr.	Resident, Attorney-at-law

*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.*

### **SUGGESTED ACTION:**

To appoint \_\_\_\_\_ as a regular member to the Board of Ethics to serve a three-year term to expire June 30, 2024.



## BOARD OF ETHICS

Ordinance 1805 (Birmingham Code of Ordinances Sec. 2-320 through 2-326)

The board shall serve as an advisory body for purposes of interpreting the Code of Ethics.

The board consists of three members who serve without compensation. The members shall be residents and have legal, administrative, or other desirable qualifications.

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Fierro-Share	Sophie	(248) 642-7340 <i>Sfierro-share1@comcast.net</i>	7/14/2003	6/30/2023
1040 Gordon Lane				
Robb	James	(517) 712-3469 <i>jamesdrobb55@gmail.com</i>	8/11/2003	6/30/2022
1533 Pleasant Ct				
Schrot	John	(248) 646-6513 <i>jschrot@berrymoorman.com</i>	7/14/2003	6/30/2021
1878 Fairway				

## CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board:        Board of Ethics                      Year:    2019

Members Required for Quorum:        2

MEMBER NAME	1/23	6/12	6/19				Total Mtgs. Att.	Total Absent	Percent Attended Available
<b>REGULAR MEMBERS</b>									
Sophie Fierro-Share	P	p	p				3	0	100%
James Robb	P	p	p				3	0	100%
John Schrot	P	p	p				3	0	100%
Reserved									
Reserved									
Present or Available	3	3	3	0	0	0			

**KEY:**

- A** = Member absent
- P** = Member present or available
- CP** = Member available, but meeting canceled for lack of quorum
- CA** = Member not available and meeting was canceled for lack of quorum
- NA** = Member not appointed at that time
- NM** = No meeting scheduled that month
- CM** = Meeting canceled for lack of business items

## CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board:        Board of Ethics                      Year:    2020

Members Required for Quorum:        2

MEMBER NAME	9/1	9/11	11/20				Total Mtgs. Att.	Total Absent	Percent Attended Available
<b>REGULAR MEMBERS</b>									
Sophie Fierro-Share	P	p	p				3	0	100%
James Robb	P	p	p				3	0	100%
John Schrot	P	p	p				3	0	100%
Reserved									
Reserved									
Present or Available	3	3	3	0	0	0			

**KEY:**

- A** = Member absent
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- CA** = Member not available and meeting was canceled for lack of quorum
- NA** = Member not appointed at that time
- NM** = No meeting scheduled that month
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## CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board:        Board of Ethics                      Year:    2021

Members Required for Quorum:        2

MEMBER NAME	2/15	2/22	3/15	3/29			Total Mtgs. Att.	Total Absent	Percent Attended Available
<b>REGULAR MEMBERS</b>									
Sophie Fierro-Share	P	p	p	p			4	0	100%
James Robb	P	p	p	p			4	0	100%
John Schrot	P	p	p	p			4	0	100%
Reserved									
Reserved									
Present or Available	3	3	3	3	0	0			

**KEY:**

- A** = Member absent
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- NA** = Member not appointed at that time
- NM** = No meeting scheduled that month
- CM** = Meeting canceled for lack of business items



**OFFICE USE ONLY**  
Meets Requirements? ☒ Yes ☐ No  
☒ Will Attend / ☐ Unable to Attend

## APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities).

(Please print clearly)

Board/Committee of Interest Ethics Board

Specific Category/Vacancy on Board Reappointment (see back of this form for information)

Name John J. Schrot, Jr.

Phone (248) 765-9843

Residential Address 1878 Fairway Drive

Email \* jschrot@berrymoorman.com

Residential City, Zip Birmingham, MI 48009

Length of Residence 38 years

Business Address 255 E. Brown, Suite 320

Occupation Attorney-at-Law

Business City, Zip Birmingham, MI 48009

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied \_\_\_\_\_

Ethics Board member since 2003; Drafted initial Procedural Rules; Authored numerous Ethics Board Opinions; Trial Attorney

List your related employment experience Attorney-at-Law, Arbitrator, Mediator

List your related community activities Birmingham Rotary Club, Birmingham Holy Name Knights of Columbus, Member Birmingham/Bloomfield Chamber of Commerce, Former Board of Birmingham YMCA Member

List your related educational experience Bachelor of Science, Master of Business Administration, Juris Doctor, American Arbitration Association.

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: No

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? Yes

John J. Schrot Jr.  
Signature of Applicant

4-29-2021  
Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to [clerk@bhamgov.org](mailto:clerk@bhamgov.org) or fax to 248.530.1080.

Updated 11/18/2020

*\*By providing your email 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.*



## NOTICE OF INTENTION TO APPOINT TO HISTORIC DISTRICT STUDY COMMITTEE

At the regular meeting of Monday, June 28, 2021, the Birmingham City Commission intends to appoint two regular members to the Historic District Study Committee to serve three-year terms to expire June 25, 2022, and one regular member to serve the remainder of three-year terms to expire June 25, 2022.

The goal of the Historic District Study Committee is to conduct historical research regarding the proposed designation of historic landmarks or districts in the City of Birmingham.

A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation, although city residency is not required if an expert on the potential historic district topic is not available among city residents. The committee shall include representation of at least one member appointed from one or more duly organized local historic preservation organizations. The meetings are held by resolution of the City Commission.

Interested parties may submit an application available at the City Clerk's Office on or before noon on Wednesday, June 23, 2021. Applications will appear in the public agenda at which time the commission will discuss recommendations, and may make nominations and vote on appointments.

### Applicant(s) Presented For City Commission Consideration:

Applicant Name	Criteria/Qualifications
	Shall have a clearly demonstrated interest in or knowledge of historic preservation.
Jake German	current member of HDSC
Colleen McGough	current member of HDSC

*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.*

### SUGGESTED ACTION:

To appoint\_\_\_\_\_, as a regular member to the Historic District Study Committee to serve a three-year term to expire June 25, 2024.

To appoint\_\_\_\_\_, as a regular member to the Historic District Study Committee to serve a three-year term to expire June 25, 2024.

To appoint\_\_\_\_\_, as a regular member to the Historic District Study Committee to serve the remainder of a three-year term to expire June 25, 2022



# HISTORIC DISTRICT STUDY COMMITTEE

Goal: To conduct historical research regarding the proposed designation of historic landmarks or districts in the City of Birmingham.

The committee shall consist of seven members in addition to a city appointed liaison. A majority of the members shall have a clearly demonstrated interest in or knowledge of historic preservation, although city residency is not required if an expert on the potential historic district topic is not available among city residents. The committee shall include representation of at least one member appointed from one or more duly organized local historic preservation organizations.

Terms: three years

Meetings are held by resolution of the City Commission.

Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
Beshouri	Paul	(248) 895-4576  <i>beshouri24@gmail.com</i>	12/12/2016	6/25/2022
1740 Grant				
Cantor	Joy	(248) 752-7773  <i>Joycantor@me.com</i>	8/24/2020	6/25/2023
636 Lakeview Ave				
German	Jacob	(734) 934-9051  <i>jake@dunaskiss.biz</i>	1/14/2019	6/25/2021
475 S. Adams #18				
McGough	Colleen	(248) 808-4410  <i>mcgough88@comcast.net</i>	1/14/2019	6/25/2021
543 Watkins				



Last Name	First Name	Home Business E-Mail	Appointed	Term Expires
<b>Roush</b> 2010 Buckingham	<b>Jennifer</b>	(248) 736-2801 <i>jennygwtw@comcast.net</i>	8/10/2020	6/25/2022
<b>VACANT</b>				6/25/2022
<b>Xenos</b> 608 W. Lincoln	<b>Michael</b>	(248) 496-8983 <i>mxenos@comcast.net</i>	2/22/2016 Nat'l Trust for Historic Preservation	6/25/2023

# CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: HISTORIC DISTRICT STUDY COMMITTEE Year: 2021

Members Required for Quorum: 4

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
<b>REGULAR MEMBERS</b>																	
Paul Beshori	NM	NM	NM	NM	NM	P									1	0	100%
Jacob German	NM	NM	NM	NM	NM	CA									0	1	0%
Colleen McGough	NM	NM	NM	NM	NM	CA									0	1	0%
Michael Xenos	NM	NM	NM	NM	NM	P									1	0	100%
Jennifer Roush	NM	NM	NM	NM	NM	A									0	1	0%
Joy Cantor	NM	NM	NM	NM	NM	P									1	0	100%
															0	0	#DIV/0!
<b>ALTERNATES</b>																	
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
<b>TOTAL</b>	0	0	0	0	0	3	0	0	0	0	0	0	0	0	0	0	0

## KEY:

A = Member absent

P = Member present or available

CP = Member available, but meeting canceled for lack of quorum

CA = Member not available and meeting was canceled for lack of quorum

NA = Member not appointed at that time

NM = No meeting scheduled that month

CM = Meeting canceled for lack of business items

Department Head Signature

# CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Historic District Study Committee Year: 2020  
Members Required for Quorum: 4

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
<b>REGULAR MEMBERS</b>																	
Paul Beshori	NM	P	NM	NM	NM	NM	NM	NM	NM	NM	NM	NM			1	0	100%
Jonathan DeWindt	NM	A	NM	NM	NM	NM	NM	NM	NM	NM	NM	NM			0	1	0%
Jacob German	NM	P	NM	NM	NM	NM	NM	NM	NM	NM	NM	NM			1	0	100%
Colleen McGough	NM	P	NM	NM	NM	NM	NM	NM	NM	NM	NM	NM			1	0	100%
Michael Xenos	NM	P	NM	NM	NM	NM	NM	NM	NM	NM	NM	NM			1	0	100%
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
<b>ALTERNATES</b>																	
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
Present or Available	0	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	#DIV/0!

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Department Head Signature

# CITY BOARD/COMMITTEE ATTENDANCE RECORD

Name of Board: Historic District Study Committee Year: 2019  
Members Required for Quorum:

MEMBER NAME	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	SPEC MTG	SPEC MTG	Total Mtgs. Att.	Total Absent	Percent Attended Available
<b>REGULAR MEMBERS</b>																	
Paul Beshori	NM	NM	NM	NM	NM	P	NM	NM	NM	NM	CP	NM			1	0	100%
Jonathan DeWindt	NM	NM	NM	NM	NM	A	NM	NM	NM	NM	NA	NM			0	1	0%
Jacob German	NM	NM	NM	NM	NM	P	NM	NM	NM	NM	CA	NM			1	1	50%
Colleen McGough	NM	NM	NM	NM	NM	P	NM	NM	NM	NM	CP	NM			1	0	100%
Michael Xenos	NM	NM	NM	NM	NM	P	NM	NM	NM	NM	CP	NM			1	0	100%
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
<b>ALTERNATES</b>																	
Member 1															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
															0	0	#DIV/0!
Present or Available	0	0	0	0	0	4	0	0	0	0	3	0	0	0	0	0	#DIV/0!

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Department Head Signature



<b>OFFICE USE ONLY</b>	
Meets Requirements?	Yes No
Will Attend / Unable to Attend	

## APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. NOTE: Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities).

(Please print clearly)

Board/Committee of Interest Historic District Study Committee

Specific Category/Vacancy on Board Regular Member (see back of this form for information)

Name Jake German

Phone 734.934.9051

Residential Address 475 S. Adams, #18

Email \*jake@dunaskiss.biz

Residential City, Zip Birmingham, MI 48009

Length of Residence 17 years

Business Address 900 S. Lapeer Road

Occupation political consultant/lobbyist

Business City, Zip Oxford, MI 48371

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied I have  
been a member of this board for the last two years, have found the fellow board members engaged and fun to work  
with, and desire to continue serving on this board.

List your related employment experience Working in politics and consulting means dealing with diverse opinions and requires  
an ability to work as a team, which we do well on the HSDC board. My academic research background also helps.

List your related community activities I have been and HSDC board member for the last two years, a former candidate  
for Birmingham City Commissioner, and am an active member of Holy Name Parish. Passionate about historic preservation within B'ham.

List your related educational experience BA, Hillsdale College where I worked as the special resarch assistant to the President  
and worked directly with Sir Martin Gilbert on the final document volumes of the official biography of Sir Winston Churchill.

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: \_\_\_\_\_

No.

Do you currently have a relative serving on the board/committee to which you have applied? No.

Are you an elector (registered voter) in the City of Birmingham? Yes.

13 May 2021

Signature of Applicant

Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to [Ahauff@bhamgov.org](mailto:Ahauff@bhamgov.org) or by fax to 248.530.1080.

Updated 3/24/2021

*\*By providing your email 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.*

Please consult the criteria required to be a member of each City Board or Committees. Fill in the criteria you meet in the "Specific Category/Vacancy on Board" on the Application. If you are applying for a spot as an Alternate Member, you must still meet at least one of the criteria. Please contact Abby Hauff, Deputy City Clerk, at 248-530-1880 or [Ahauff@bhamgov.org](mailto:Ahauff@bhamgov.org) with any questions.

#### ADVISORY PARKING COMMITTEE

- Building Owner within the Parking Assessment District
- Restaurant owner within the Parking Assessment District
- Representative of a professional firm within the Parking Assessment District

#### ARCHITECTURAL REVIEW COMMITTEE

- Licensed architect and resident of Birmingham

#### CABLECASTING BOARD

- Resident of Birmingham

#### ALTERNATE HEARING OFFICER

- Resident of Birmingham with legal, administrative or other qualifications that will aid in the performance of the duties.

#### HISTORIC DISTRICT STUDY COMMITTEE

- Clearly demonstrated interest in or knowledge of historic preservation.

#### HOUSING BOARD OF APPEALS

- Education or experience in building construction administration, social services, real estate, or other such positions.

#### MULTI-MODAL TRANSPORTATION BOARD

- Urban planning, architecture or design education and/or experience.

#### MUSEUM BOARD

- Resident of Birmingham.

#### PARKS AND RECREATION BOARD – ALTERNATE MEMBER

- Registered to vote in Birmingham.

#### PUBLIC ARTS BOARD

- Represent a major cultural institution, be a Michigan registered architect, an artist, an art historian, or art consultant.

#### TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY

- Ownership or business interest in property located in the Development Area.



## APPLICATION FOR CITY BOARD OR COMMITTEE

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(Please print clearly)

Board/Committee of Interest Historic District Study Committee

Specific Category/Vacancy on Board Regular Member (see back of this form for information)

Name Colleen McLaugh Phone \_\_\_\_\_

Residential Address 543 Watkins Email \* \_\_\_\_\_

Residential City, Zip Birmingham 48009 Length of Residence 22 years

Business Address \_\_\_\_\_ Occupation \_\_\_\_\_

Business City, Zip \_\_\_\_\_

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied \_\_\_\_\_

See Attached

List your related employment experience \_\_\_\_\_

List your related community activities \_\_\_\_\_

List your related educational experience \_\_\_\_\_

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: No

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? Yes

Colleen McLaugh 6/23/21  
Signature of Applicant Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to [Ahauff@bhamgov.org](mailto:Ahauff@bhamgov.org) or by fax to 248.530.1080. Updated 3/24/2021

\*By providing your email 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

JAN 9 2019

## APPLICATION FOR CITY BOARD OR COMMITTEE

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(Please print clearly)

Board/Committee of Interest Historic District Study Committee

Specific Category/Vacancy on Board Regular Member

Name Colleen McGough

Phone 248 808 4410

Residential Address 543 Watkins

Email mccough88@comcast.net

Residential City, Zip Birmingham 48009

Length of Residence 20 years

Business Address 415 S Old Woodward

Occupation Real Estate Agent

Business City, Zip Birmingham 48009

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied I have lived in "inner-city" suburbs my entire adult life - Oak Park IL, Shaker Heights, OH, Milwaukee's Eastside & Birmingham since 1998. I have a passion for architecture & old homes. I renovated a Tudor in Shaker Heights & (over)

List your related employment experience Real Estate Agent working in Birmingham since 2015

List your related community activities Active Volunteer in Community: Board of Directors, Christ Child Society Detroit, President Parent One Holy Name School, Board Member Marian Mothers Club, Birmingham Neighbors Club, Community House Antiques Show

List your related educational experience MBA - University of Wisconsin Milwaukee, B.S. Engineering Marquette University, Real Estate License State of Michigan

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: No

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? yes

Colleen McGough  
Signature of Applicant

1/9/19  
Date



I also renovated a 1920 Arts + Crafts home in downtown Birmingham. I researched Arts + Crafts design prior to the renovation. It is still my home and I raised my kids here. My husband and I love it and couldn't imagine living anywhere else.



## NOTICE OF INTENTION TO APPOINT TO BOARD OF BUILDING TRADES APPEAL

At the regular meeting of Monday, May 24, 2021 the Birmingham City Commission intends to appoint to the Board of Building Trades Appeals two regular members to serve three-year terms to expire May 23, 2024 and one regular member to serve the remainder of a three year term to expire on May 23, 2022. Applicants shall be qualified by experience or training in fields such as architecture, engineering, mechanical engineering, building, electrical plumbing, heating or refrigeration.

Interested citizens may submit an application available at the City Clerk's office or online at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities). Applications must be submitted to the City Clerk's office on or before noon on Wednesday, May 19, 2021. These documents 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 appointments.

The Board of Building Trades Appeal hears and grants or denies requests for variances from strict application of the provisions of the Michigan Building, Residential, Mechanical and Plumbing Codes and the National Electrical Code. The board will decide on matters pertaining to specific code requirements related to the construction or materials to be used in the erection, alteration or repair of a building or structure.

NOTES: Attendance records are not included in this report because the Board has not met since before 2015.

Resignation letters received from David Force & Ronald White.

### Applicant(s) Presented For City Commission Consideration:

<b>Applicant Name</b>	<b>Criteria/Qualifications</b>
	Applicants shall be qualified by experience or training.
Arya Afrakhtch	Builder/Engineer
Rick Wiand	Builder
Thomas Lindberg	HVAC Mechanical

*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.*

### SUGGESTED ACTION:

To appoint \_\_\_\_\_ to the Board of Building Trades Appeals as a regular member to serve a three-year term to expire May 23, 2024.

To appoint \_\_\_\_\_ to the Board of Building Trades Appeals as a regular member to serve a three-year term to expire May 23, 2024.

To appoint \_\_\_\_\_ to the Board of Building Trades Appeals as a regular member to serve the remainder of a three-year term to expire May 23, 2022.



# BOARD OF BUILDING TRADES APPEALS

Chapter 22, Article II, 1972 PA 230, MCL 125.1514

Members shall be qualified by experience or training (such as Architect, Engineer, Mechanical Engineer, Building Contractor, Electrical Contractor, Plumbing Contractor, Heating Contractor, and Refrigeration Contractor).

Term: Three years – 6 members

The Board of Building Trades Appeal hears and grants or denies requests for variances from strict application of the provisions of the Michigan Building, Residential, Mechanical and Plumbing Codes and the National Electrical Code. The board will decide on matters pertaining to specific code requirements related to the construction or materials to be used in the erection, alteration or repair of a building or structure.

Last Name	First Name	Home Business	E-Mail	Appointed	Term Expires
VACANT					5/23/2022
Force	David	(248) 420-9968	12/11/2006	5/23/2021	
557 Henrietta St.			Building Contractor		
Birmingham	48009	force0621@ameritech.net			
Klein	Bradley	(248) 863-6302	6/4/2018	5/23/2022	
5063 Parkside Drive			Electrician		
West Bloomfield	48323	bklein@kleinelectric.net			
Mando	Dennis	(248) 767-0515	1/30/2006	5/23/2023	
5310 Heron Cove		(248) 669-4338	Heating Contractor		
Beaverton	48612	denny@dennysonline.com			
Sirich	Scott H.	(248) 385-5398	8/10/2020	5/23/2023	
1756 Melbourne			Construction Law Attorney		
Birmingham	48009	ssirich@plunkettcooney.com			

Last Name	First Name	Home Business	Appointed	Term Expires
Home Address		E-Mail		
White	Ronald	(248) 543-5532	7/15/1991	5/23/2021
1825 Bellaire			Electrical Contractor	
Royal Oak	48067	offices@rdwhiteco.com		

## APPLICATION FOR CITY BOARD OR COMMITTEE

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(Please print clearly)

Board/Committee of Interest Board Of Building Trades Appeals

Specific Category/Vacancy on Board Builder/Engineer (see back of this form for information)

Name Arya Afrakhtch

Phone 248-635-9925

Residential Address 490 Lakeside Dr.

Email \* arya26@att.net

Residential City, Zip Birmingham MI 48009

Length of Residence 3 yrs / 16 yrs in city

Business Address Same

Occupation Builder/Engineer

Business City, Zip \_\_\_\_\_

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied \_\_\_\_\_

I have been building in the city for 16 years & would love to help out when needed. I have also done construction supervision for large commercial projects working for consulting firms.

List your related employment experience \_\_\_\_\_

17 years nuclear/consulting Engineer / 16 years as builder

List your related community activities Fund raising for habitat for humanity

lighthouse /

List your related educational experience BSEE Dec 1990 University of Florida in Gainesville

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: No

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? Yes

[Signature]  
Signature of Applicant

6/3/21  
Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to [Ahauff@bhamgov.org](mailto:Ahauff@bhamgov.org) or by fax to 248.530.1080. Updated 3/24/2021

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**OFFICE USE ONLY**  
Meets Requirements? Yes No  
Will Attend / Unable to Attend

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(Please print clearly)

Board/Committee of Interest Board of Building Trade Appeals

Specific Category/Vacancy on Board Builder (see back of this form for information)

Name Rick Wiand

Phone 248-766-2275

Residential Address 956 Westwood Drive

Email \* rickw@hunterrobertshomes.com

Residential City, Zip Birmingham, MI 48009

Length of Residence 20 years +

Business Address 36800 Woodward Suite 115

Occupation Residential Builder

Business City, Zip Bloomfield Hills, MI 48304

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied \_\_\_\_\_

I believe having substantial residential construction experience particularly in Birmingham. Having dealt with our local codes and ordinances with my professional experience will give me a balanced view of issues which may come before the Board.

List your related employment experience \_\_\_\_\_

I am a builder and founder of Hunter Roberts Homes. I been involved in the design, renovation or new construction of 150-200 homes in Birmingham

List your related community activities \_\_\_\_\_

List your related educational experience BBA, MBA, CPA

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: \_\_\_\_\_

No

Do you currently have a relative serving on the board/committee to which you have applied? No

Are you an elector (registered voter) in the City of Birmingham? Yes

6/10/21

Signature of Applicant

Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to [Ahauff@bhamgov.org](mailto:Ahauff@bhamgov.org) or by fax to 248.530.1080.

Updated 3/24/2021

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## APPLICATION FOR CITY BOARD OR COMMITTEE

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(Please print clearly)

Board/Committee of Interest Birmingham

Specific Category/Vacancy on Board Housing board of appeals (see back of this form for information)

Name Thomas Brian Lindberg

Phone 586-531-7705

Residential Address 71075 Oaktree Ln.

Email \* phoenixhac@comcast.net

Residential City, Zip Bruce, MI. 48065

Length of Residence 5 years

Business Address PO Box 820

Occupation HVAC business owner

Business City, Zip Washington, MI. 48094

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied \_\_\_\_\_

My background is in residential, and commercial heating, air conditioning and ventilation. I believe my background in the field over the last

18 years has shown me about every situation you could encounter in the HVAC business. I have also worked in the city of Birmingham for the last 15-18 years.

List your related employment experience I worked for Randazzo heating and cooling from 16-18 years of age, Comfort temp heating and cooling from 18-21 years of age. I started my business at 21 years of age and am still currently in business 19 years later.

List your related community activities \_\_\_\_\_  
Providing heating and air conditioning installations and service to the city of Birmingham.


List your related educational experience \_\_\_\_\_  
I attended south campus of macomb community college trade program, and have been through private trainings staying updated in the industry ever since.

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: \_\_\_\_\_

No.

Do you currently have a relative serving on the board/committee to which you have applied? No.

Are you an elector (registered voter) in the City of Birmingham? No.

  
Signature of Applicant

6-18-21  
Date

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to [Ahauff@bhamgov.org](mailto:Ahauff@bhamgov.org) or by fax to 248.530.1080.

Updated 3/24/2021

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Abrial Hauff <ahauff@bhamgov.org>

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## Term Expiration on City of Birmingham Board

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Tara Richardson <offices@rdwhiteco.com>

Tue, May 18, 2021 at 9:02 AM

To: Abrial Hauff <ahauff@bhamgov.org>

Good morning Abrial,

After careful consideration, I have decided at this time to resign my position with the City Board of Appeals.

Respectfully,

**Ronald White, President**

**R.D. White Co. Inc.**

Electrical Contracting, Audio Video

Home Automation, Design & Installation

1825 Bellaire Ave

Royal Oak, MI 48067

Phone: 248-543-5532

Fax: 248-543-5605

[Quoted text hidden]





Abrial Hauff <ahauff@bhamgov.org>

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## Re: Board of Building Trades Appeal

1 message

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**David Force** <forcebuildingco@gmail.com>  
To: clerks@bhamgov.org, clerk@bhamgov.org

Mon, May 17, 2021 at 3:29 PM

On Mon, May 17, 2021 at 3:24 PM David Force <[forcebuildingco@gmail.com](mailto:forcebuildingco@gmail.com)> wrote:

Hello. This email is to confirm that I will not be reapplying for a position on the Board of Building Trades Appeal.

--

Best regards,  
David Force

--

Best regards,  
David Force

**Birmingham City Commission - Special Workshop Meeting Minutes**  
**Monday, June 14, 2021**

**6:30 p.m.**

**Virtual Meeting**

**Meeting ID: 655 079 760**

**Vimeo Link:** <https://vimeo.com/event/3470/videos/554567339/>

**Workshop Session**

**This will be considered a workshop session of the City Commission. No formal actions will be taken. The purpose of this workshop is to participate in a discussion regarding short-term Rentals.**

**I. Call to Order**

Pierre Boutros, Mayor

**II. Roll Call**

Alexandria 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, Building Official Johnson, City Attorney Kucharek

**III. Presentation & Discussion**

CM Markus introduced the item.

A. Presentation

BO Johnson and CA Kucharek presented.

B. Discussion

In response to Commission discussion, Building Official Johnson explained:

- Licensed rentals are permitted a maximum number of occupants. If the City were notified that the number of occupants in a rental exceeded the maximum occupancy, they would start by contacting the property owner and conducting an inspection of the rental property. Issues of overcrowding can be

somewhat difficult to enforce, but have been infrequent in the City thus far.

- The City has begun tracking short-term rentals via the properties' addresses. For longer-term rentals, a real estate agent in Birmingham sends the City newly-listed rental properties every month and the City reaches out to those properties not yet licensed with the City.
- Birmingham ordinances prohibit renting out an accessory dwelling unit (ADU) because it would create a multi-family property in a single-family zone. ADUs cannot be rented out because the zoning ordinance requires that they are only to be occupied by someone who has their main living quarters in the house.
- All of the City's residential districts permit up to two boarders without the need for a license.

CA Kucharek noted:

- Short-term and long-term rentals must be treated the same.
- The City has not had complaints about specific properties that turned out to be unlicensed short-term rentals.
- The City already has many tools available in its codes and ordinances for making sure that short-term rentals do not infringe on the health, safety and welfare of the community. In addition, Birmingham's codes and ordinances have sufficient penalties available for encouraging compliance.
- In her 24 years as a prosecutor, she never prosecuted a short-term rental matter. Only a handful of long-term rental properties ever received misdemeanor tickets. The goal overall is always to encourage compliance with codes and ordinances.
- She could not comment on whether homeowners' associations could ban short-term rentals since that process would not be a City matter.

CM Markus said the City would continue its work on noticing not-yet-licensed short-term rentals to get them licensed with the City.

CA Kucharek recommended that residents reach out to their state representatives to encourage them to take a close look at current bills regarding short-term rentals. She said some of the proposals could strip municipalities of their abilities to regulate any rentals and could possibly take away municipalities' licensing ability. She stated that the Michigan Municipal League has a publication available on their website that offers both further information on the matter and contact information.

Commissioner Baller said that some people may not be aware that they have to license their short-term rentals with the City. He recommended the City use its newsletters and other means of communication to publicize the need for short-term rental licensing. He said he would also like to find a way to address some residents' concerns about short-term renters, though he stated he was not yet sure how to do that.

CM Markus said part of the issue seemed to arise from the commercial aspect of short-term rentals occurring in a residential neighborhood.

#### **IV. Public Comment**

In reply to Jack Burns, BO Johnson confirmed that a lease of a residential property would be subject to the same requirements as short-term and long-term rentals.

In reply to David Bloom, CA Kucharek said it would be most appropriate for residents to reach out to their representatives to voice their concerns regarding the short-term rental bills now. She said she could not comment on whether legal action regarding the matter might be appropriate in the future since it would be specific to the facts and circumstances at the time. She confirmed that the City has been also been expressing its concerns regarding the bills.

Andrew Haig asked that information on where to lodge complaints regarding the short-term rental bills be included with the minutes. The city maintains those contacts on the following page:

In reply to Mr. Haig, CA Kucharek said that in her opinion short-term rentals are indeed a commercial use of property. She explained that so far the state legislature and state courts had disagreed with that assessment, however.

CM Markus said the proposed legislation was inappropriate since it tries to apply a one-size-fits-all approach to municipalities with a variety of different needs in regards to short-term rentals. He said it would be a disservice to not respect the home-rule rights of the individual communities.

<b>V. Adjourn</b>
-------------------

Mayor Boutros adjourned the meeting at 7:30 p.m.

## **Birmingham City Commission Minutes**

**June 14, 2021**

**7:30 p.m.**

**Virtual Meeting**

**Meeting ID: 655 079 760**

**Vimeo Link: <https://vimeo.com/event/3470/videos/554567339/>**

### **I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Pierre Boutros, Mayor, opened the meeting with the Pledge of Allegiance.

### **II. ROLL CALL**

Alexandria 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, BSD Operations & Event Manager Brook, IT Manager Brunk, Police Chief Clemence, City Planner Cowan, City Attorney Kucharek, Planning Director Ecker, City Attorney Kucharek, Consulting City Engineer Surhigh, Deputy Treasurer Todd, Fire Chief Wells, DPS Director Wood

### **III. PROCLAMATIONS, CONGRATULATORY RESOLUTIONS, AWARDS, APPOINTMENTS, RESIGNATIONS AND CONFIRMATIONS, ADMINISTRATION OF OATHS, INTRODUCTION OF GUESTS AND ANNOUNCEMENTS.**

#### **ANNOUNCEMENTS**

- Common Ground proclamation and congratulations. Jeff Kapuscinski, representative for Common Ground, thanked the City for its ongoing partnership and support.

### **IV. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA**

Rosanne Acciaioli voiced concerns about residents in the City having inadequate control of their dogs. She noted the danger the situation can pose to walkers and other dog owners. She asked the City to use its bulletin to remind dog owners of their obligations to prevent their dogs from impinging on others' safety, and asked the City to consider making up a list of walkers' rights.

## **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.

### **06-154-21 Consent Agenda**

The following items were pulled from the Consent Agenda:

Commissioner Sherman: Item H – Technology & Audio Visual Equipment Installation – Ice Arena

Commissioner Hoff: Item E – Upgrade Internet Connections to Parking Structures  
Item F – Engineering & Transportation Consultant Agreements

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Nickita:  
To approve Consent Agenda with the exclusion of Items E, F and H.

**ROLL CALL VOTE:** Ayes, Commissioner Sherman  
Commissioner Nickita  
Mayor Boutros  
Commissioner Baller  
Commissioner Host  
Mayor Pro Tem Longe  
Commissioner Hoff

Nays, None

- A. Resolution to approve the City Commission meeting minutes of May 24, 2021.
- B. Resolution to approve the warrant list, including Automated Clearing House payments, dated May 26, 2021, in the amount of \$538,196.60.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated June 2, 2021, in the amount of \$625,182.63.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated June 9, 2021, in the amount of \$506,594.83.
- G. Resolution to waive the competitive bidding requirement and to authorize an expenditure in the amount of \$7,770.47 to Poco, Inc., for a past and urgent purchase to provide temporary traffic barricades to expand the lane closure on Pierce Street from July 2020 to January 2021; to be charged to the Major Streets Fund, account #202-449.003-937.0400.
- I. Resolution to approve the purchase of one (1) 2022 Ford F-350 4x4 Crew Cab from Gorno Ford through the State of Michigan MIDEAL extendable purchasing contract #071B7700181 in the amount not to exceed \$54,106.00. Funds for this purchase are available in the FY 2021-2022 Auto Equipment Fund account #641-441.006.971.0100.
- J. Resolution to award the 2020-2021 Public Services contract totaling \$36,377.00 for Yard Services,

Senior Outreach Services, and Minor Home Repair to NEXT under the Community Development Block Grant Program; and further, to authorize the Mayor to sign the contract on behalf of the City.

- K. Resolution to approve the appropriations and amendments to the fiscal year 2020-2021 budget as indicated in the staff report.
- L. Resolution to set a public hearing for Monday, July 12th, 2021 at 7:30 PM to consider the Special Land Use Permit, Final Site Plan and Design Review application for 239 N. Old Woodward – Bloom Bistro. (complete resolution in agenda packet)
- M. Resolution to set a public hearing for Monday, July 12th, 2021 at 7:30 PM to consider the Special Land Use Permit, Final Site Plan and Design Review application for 115 Willits – MARE Mediterranean. (complete resolution in agenda packet)
- N. Resolution to set a public hearing for Monday, July 12th, 2021 at 7:30 PM to consider the Special Land Use Permit, Final Site Plan and Design Review application for 176 S. Old Woodward – Sushi Japan. (complete resolution in agenda packet)

#### **06-155-21 (Item H) Technology & Audio Visual Equipment Installation – Ice Arena**

DPS Director Wood confirmed that this was an anticipated cost from when the Commission approved the contract with the general contractor. She noted that the report at the time mentioned other items that would have to be bid out separately, including this one. She said it was the last anticipated charge to the soft cost portion laid out in that approved documentation.

DPS Director Wood also explained that DTE had recently notified the City that the City would have to replace the electric line that goes from the pole on Lincoln to the Ice Arena. She noted that would be an estimated additional cost of \$75,000.

CM Markus said he would review the matter with DTE further to clarify whether the stated costs are entirely the City's responsibility.

DPS Director Wood stated that this installation was not a line item in the contract for the general contractor because neither the contractor nor their subcontractors specialize in these types of installations. She reiterated that the costs for this installation were included in the total Commission-approved amount for the Ice Arena.

DPS Director Wood stated that once the costs for the DTE line replacement are finalized those costs would come out of the bond funds.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Host:  
To approve the Technology and Audio Visual Installation services for the Birmingham Ice Arena Renovation project to Advanced Lighting and Sound (ALS) in the amount not to exceed \$45,067.00. Funds are available in the Capital Projects Fund account #401-901.001-977.0000 for this work. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of the required insurance coverage.

ROLL CALL VOTE: Ayes, Commissioner Sherman  
Commissioner Host  
Mayor Pro Tem Longe

Commissioner Nickita  
Mayor Boutros  
Commissioner Hoff  
Commissioner Baller

Nays, None

**06-156-21 (Item E) Upgrade Internet Connections to Parking Structures**

IT Manager Brunk explained that Crown Castle's quote was for a 100mb line for each parking structure, as requested, whereas Clear Castle only offered one 100mb connection to City Hall. He noted that Crown Castle also handles the City's internet connection and that he would like to be working with a single vendor. He concluded by noting that Crown Castle also offers additional services that may be of benefit to the City in the future.

**MOTION:** Motion by Commission Hoff, seconded by Mayor Pro Tem Longe:  
To authorize the IT department to engage Crown Castle to upgrade the internet connection at each of the city parking structures for a term of 36 months with the monthly fee of \$570.00 charged to each of the 5 parking structure accounts. Total cost of \$2850.00 per month Total term cost not to exceed \$102,600.00.

ROLL CALL VOTE: Ayes, Commissioner Hoff  
Mayor Pro Tem Longe  
Commissioner Nickita  
Mayor Boutros  
Commissioner Baller  
Commissioner Sherman  
Commissioner Host

Nays, None

**06-157-21 (Item F) Engineering & Transportation Consultants' Agreements**

CCE Surhigh stated that reasonable increases in costs for consultants tend to be three to five percent per year. He stated that since the last time these contracts were signed in 2018 MKSK's rates increased by 2.3% per year, F&V's rates increased by 3.7% per year, and OHM's rates increased by 2.8% per year. He affirmed that those were reasonable increases in costs.

**MOTION:** Motion by Commission Hoff, seconded by Commissioner Nickita:

1. Resolution to execute the Second Amendment to the MKSK Old Woodward Corridor Agreement to provide preliminary design development, public engagement, and detailed design input services in accordance with their June 2, 2021 proposal, for an amount not to exceed \$178,380.00, to be charged to the Major Street Fund account #202-449.001-981.0100; and to authorize the Mayor and City Clerk to sign the agreement on behalf of the City.
2. Resolution to execute the MKSK Multi-Modal Transportation Consultant Contract to provide as requested professional services related to multi-modal transportation reviews and participation with the Multi-Modal Transportation Board, for a three-year term, to be



charged to the Major Street Fund account 202-449.007-804.0100 and Local Street Fund account #203-449.007-804.0100 as appropriate; and to authorize the Mayor and the City Clerk to sign the agreement on behalf of the City.

3. Resolution to execute the Fleis & Vandenbrink Multi-Modal Transportation Consultant Contract to provide as-requested professional services related to multi-modal transportation reviews and participation with the Multi-Modal Transportation Board, for a three-year term, to be charged to the Major Street Fund account #202-449.007-804.0100 and Local Street Fund account #203-449.007-804.0100 as appropriate; and to authorize the Mayor and the City Clerk to sign the agreement on behalf of the City.
4. Resolution to execute the OHM Advisors Consulting Agreement to provide as-requested professional services including, but not limited to, construction engineering and administration services, for a three-year term, to be charged to the General Fund, Sidewalks account #101-444.001- 981.0100, Major Street Fund account #202-449.001-981.0100, Local Street Fund account #203- 449.001-981.0100, Sewer Fund account #590-536.001-981.0100, and/or Water Fund account #591-537.004-981.0100 as appropriate; and to authorize the Mayor and City Clerk to sign the agreement on behalf of the City.

#### Public Comment

In reply to Paul Reagan, CCE Surhigh stated that MKSK's services are as-requested. He stated that MKSK would be soliciting public feedback on the proposed designs for the S. Old Woodward project.

ROLL CALL VOTE:     Ayes, Commissioner Hoff  
                                 Commissioner Nickita  
                                 Mayor Boutros  
                                 Commissioner Baller  
                                 Commissioner Sherman  
                                 Commissioner Host  
                                 Mayor Pro Tem Longe

Nays, None

## **VI. UNFINISHED BUSINESS**

### **06-158-21 Public Hearing to consider a Special Land Use Permit, Final Site Plan & Design Review at 720 N. Old Woodward – Vinewood Kitchen & Cocktails**

The Mayor opened the public hearing at 8:10 p.m.

Mayor Boutros stated that the applicant was withdrawing their request for a bistro license at this time.

CM Markus noted that the applicant requested a reduction in the City's fees. CM Markus explained that between Staff and Board meetings numerous hours were spent on the review of this project, and consequently he was not recommending that the City offer a fee reduction.

PD Ecker stated that the City's fees for review of this project amounted to \$2800. She confirmed that the City had expended at least that amount in the process of conducting reviews of this project.

The Mayor closed the public hearing at 8:12 p.m.

**MOTION:** Motion by Commission Sherman, seconded by Commissioner Hoff:  
To remove this item from the agenda.

ROLL CALL VOTE: Ayes, Commissioner Sherman  
Commissioner Hoff  
Mayor Pro Tem Longe  
Commissioner Nickita  
Mayor Boutros  
Commissioner Baller  
Commissioner Host

Nays, None

**06-159-21 Woodward Dream Cruise**

Fire Chief Wells presented.

He explained that the BSD would select which car clubs could use the space in the City as they do every year. He stated that the City would be maintaining a larger fire lane and having a more generally scaled-down event.

**MOTION:** Motion by Commission Hoff, seconded by Commissioner Nickita:  
To approve a scaled down participation in the annual Woodward Dream Cruise event for 2021 in the City of Birmingham, 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. (complete resolution in agenda packet).

ROLL CALL VOTE: Ayes, Commissioner Hoff  
Commissioner Nickita  
Mayor Boutros  
Commissioner Baller  
Commissioner Host  
Commissioner Sherman  
Mayor Pro Tem Longe

Nays, None

<b>VII. NEW BUSINESS</b>
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**06-160-21 Public Hearing for a Rezoning Request for 300 - 394 S. Old Woodward  
and a portion of 294 E. Brown Street from D3 to D4**

The Mayor opened the public hearing at 8:18 p.m.

The Mayor explained that due to improper noticing of the project by the applicant on the property it was being recommended that the item be postponed to a date certain of July 12, 2021.

City Attorney explained the issue with the lack of proper noticing in this case.

CM Markus said he would likely be recommending updates to the noticing process in the future. He noted that the requirement is to notice that a public hearing will be held, and said that further specifying the type of public hearing on the signage itself was likely making the process excessively difficult for both developers and Staff. CM Markus thanked Mr. Reagan for alerting the City to the noticing issue in this case.

Commissioner Sherman opined that the memo provided by Staff in the evening's agenda for this public hearing was initially somewhat confusing, in that it seemed to indicate that the lot split was again under consideration, when in fact this hearing was regarding the rezoning request.

Rick Rattner, attorney for the project, said he had nothing to add besides for a request that the public hearing be rescheduled to July 12, 2021.

#### Public Comment

David Bloom recommended that QR codes be added to the public noticing signs. He also said that the extra month could afford the City and the applicant more time to discuss matters of parking.

PD Ecker noted the City previously had QR codes on signs and public feedback indicated that they were not used.

CM Markus noted that if this project necessitated more parking in the future that parking could be added by specially assessing the benefitting property owners and the charging of permit and daily use parking fees. He said he could not foresee a situation in which the taxpayers would be charged for additional parking required by this development.

The Mayor closed the public hearing at 8:33 p.m.

**MOTION:** Motion by Commission Hoff, seconded by Commissioner Sherman:  
To postpone the public hearing for a Rezoning Request for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street from D3 to D4 to July 12, 2021.

ROLL CALL VOTE: Ayes, Commissioner Hoff  
Commissioner Sherman  
Mayor Pro Tem Longe  
Commissioner Nickita  
Mayor Boutros  
Commissioner Baller  
Commissioner Host

Nays, None

**06-161-21 Public Hearing - Zoning Amendment to Economic Development License Map – 300-394 S. Old Woodward**

The Mayor opened the public hearing at 8:34 p.m.

PD Ecker stated that the same issue with noticing for the previous item existed for this item.

Rick Rattner, attorney for the project, told Commissioner Host that RH would be the owner of the property and is the developer of the property.

#### Public Comment

Mr. Bloom stated that an RH representative at a previous meeting had indicated that once the property was developed the property would be sold and then leased back by RH.

The Mayor closed the public hearing at 8:36 p.m.

**MOTION:** Motion by Commission Sherman, seconded by Commissioner Nickita:  
To postpone the public hearing for a Public Hearing - Zoning Amendment to Economic Development License Map – 300-394 S. Old Woodward to July 12, 2021.

ROLL CALL VOTE: Ayes, Commissioner Sherman  
Commissioner Nickita  
Mayor Boutros  
Commissioner Baller  
Commissioner Host  
Mayor Pro Tem Longe  
Commissioner Hoff

Nays, None

#### **06-163-21 Temporary COVID-19 Off-Season Outdoor Dining Standards Expiration Date**

Police Chief Clemence reviewed the item.

Commissioner Host thanked Police Chief Clemence and Fire Chief Wells for their careful and comprehensive work on this item and the Woodward Dream Cruise item.

Police Chief Clemence estimated that at least a dozen parking spaces were presently occupied by temporary outdoor dining structures.

CM Markus said the alternative expiration date of September 10, 2021 would give restaurants until Labor Day 2021 with a bit of additional time to dismantle the decks.

PD Ecker stated that potential revisions to outdoor dining ordinances would be a topic of discussion at the upcoming joint meeting between the Planning Board and Commission scheduled for June 21, 2021.

#### Public Comment

Jennifer Hammond spoke in favor of extending the temporary outdoor dining standards through the summer.

Dulce and Ted Fuller spoke against maintaining the temporary outdoor dining standards.

John Henke spoke in favor of extending the temporary outdoor dining standards for another 12 weeks.

David Klein spoke against maintaining the temporary outdoor dining standards.

Gerard Marti spoke in favor of extending the temporary outdoor dining standards.

Joe Bongiovanni spoke in favor of extending the temporary outdoor dining standards.

Beth Hussey spoke in favor of extending the temporary outdoor dining standards.

Nino Cutaro spoke in favor of extending the temporary outdoor dining standards.

Kelly Allen spoke in favor of extending the temporary outdoor dining standards. She noted that Birmingham restaurateurs put together a petition of over 1,000 signatures supporting the extension of the temporary outdoor dining standards.

A number of Commissioners expressed concerns that temporary outdoor dining was creating obstacles and encroaching into the pedestrian walkways and yellow curb areas, taking up parking spaces, blurring the distinction between Class C and bistro licensees, creating unsafe storage situations, and blocking neighboring retailers.

Commissioner Nickita asked if there was a way to increase enforcement of safety and code issues without doing away with the temporary outdoor dining requirements entirely.

In reply to Commissioner Nickita, CA Kucharek stated that most of the issues listed were already addressed in Article 4 of the Development Standards of the Zoning Ordinance. She said a simplified motion, if the Commission were so inclined, would be to require that all establishments take down their outdoor dining walls and ceilings, comply with outdoor dining standards, and comply with their outdoor cafe license agreements until September 10, 2021.

In reply to Mayor Pro Tem Longe, PD Ecker said that while the potential compromise under discussion could technically be implemented, it would not necessarily be practical. She said that managing the temporary outdoor dining operations so far had already taken up an inordinate amount of time, and enforcement and work on getting establishments in compliance would increase.

Chief Clemence noted that Staff considered hybrid options between letting the temporary outdoor dining standards expire and extending them, but that the consensus had been to let them expire.

In reply to Commissioner Baller, CM Markus said that the City would likely give restaurateurs two weeks after whichever date the Commission approved to comply with a reversion to the previous outdoor dining standards.

## **06-162-21                      Motion to Extend the Meeting**

**MOTION:**                      Motion by Commission Sherman, seconded by Commissioner Nickita:  
To extend the meeting for an additional 15 minutes plus the closed session.

Commissioner Sherman confirmed that this motion would forestall another motion to extend.

ROLL CALL VOTE:     Ayes, Commissioner Sherman  
                             Commissioner Nickita  
                             Mayor Boutros  
                             Commissioner Baller  
                             Commissioner Hoff

                             Nays, Commissioner Host  
                                 Mayor Pro Tem Longe

**06-163-21    Temporary COVID-19 Off-Season Outdoor Dining Standards  
Expiration Date (continued)**

In reply to Commissioner Nickita, PD Ecker confirmed that the Planning Board could begin crafting ordinance amendments to the outdoor dining standards after the upcoming joint Commission-Planning Board meeting.

Mayor Pro Tem Longe clarified that even with expedited work on the ordinance amendments they would not prevent the June 30, 2021 expiration of the temporary outdoor dining standards.

Commissioner Host noted that if the State was no longer limiting indoor capacity starting July 1, 2021 that it was most appropriate to let the temporary outdoor dining standards expire then.

Mayor Boutros said that Covid-19 was not yet over, and supported extending the temporary outdoor dining standards to September 10, 2021. He recommended that the Commission table the present discussion to their June 28, 2021 meeting and try to come up with a compromise motion similar to the potential one discussed by Commissioner Nickita and CA Kucharek. He said he would personally ensure that the necessary dialogues between restaurants and the City would occur to eliminate the mentioned areas of concern.

**MOTION:**                Motion by Commission Hoff, seconded by Commissioner Sherman:  
To take no action. The current City resolution allowing Temporary COVID-19 Off-Season Outdoor Dining Standards would expire on June 30, 2021.

CM Markus stated for the Mayor Pro Tem that while the Commission could have additional discussion regarding this matter at its June 28, 2021 meeting, the Commission would have to give further direction to Staff in order to do more than that.

Commissioner Baller recommended that the restaurateurs contact the City to propose a solution.

Kara Bongiovanni stated that restaurant customers want to sit outside.

Mr. Bloom said that ending the temporary outdoor dining standards would be more fair to Class C licensees.

ROLL CALL VOTE:     Ayes, Commissioner Sherman  
                             Commissioner Baller  
                             Commissioner Host  
                             Mayor Pro Tem Longe  
                             Commissioner Hoff

                             Nays, Commissioner Nickita

Mayor Boutros

**06-164-21 Postpone New Business Items D and E to Next Meeting**

**MOTION:** Motion by Commission Hoff, seconded by Commissioner Sherman:  
To postpone new business items D and E to the next meeting.

Commissioner Host said postponing those items would be unfair to those in the audience who were in attendance to discuss them.

ROLL CALL VOTE: Ayes, Commissioner Sherman  
Commissioner Nickita  
Mayor Boutros  
Commissioner Baller  
Commissioner Hoff

Nays, Commissioner Host  
Mayor Pro Tem Longe

**06-165-21 Closed Session**

**MOTION:** Motion by Commission Sherman, seconded by Commissioner Hoff:  
To meet in closed session to discuss a written Attorney/Client Privilege communication pursuant to MCL Sec. 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 Sec. 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 and to meet in closed session to discuss a written Attorney/Client Privilege communication pursuant to MCL Sec. 15.268(h) of the Open Meetings Act.

ROLL CALL VOTE: Ayes, Commissioner Sherman  
Commissioner Nickita  
Mayor Boutros  
Commissioner Host  
Mayor Pro Tem Longe  
Commissioner Baller  
Commissioner Hoff

Nays, None

**(A roll call vote is required and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)**

The Commission went into closed session at 10:26 p.m.

The Commission reconvened into open session at 10:45 p.m.

## **VIII. REMOVED FROM CONSENT AGENDA**

## **IX. COMMUNICATIONS**

## **X. REPORTS**

- A. Commissioner Reports
  - 1. Notice to appoint to the Retirement Board
  - 2. Notice to appoint to the Museum Board
  - 3. Notice to appoint to the Greenwood Cemetery Advisory Board
- B. Commissioner Comments
  - 1. Commissioner Hoff noted that the City would be returning to in-person Commission and Board meetings.
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
  - 1. Return to In person City Commission & Board meetings, submitted by Fire Chief Wells
  - 2. Public comment during City meetings, submitted by City Attorney Kucharek

INFORMATION ONLY

## **XI. ADJOURN**

Mayor Boutros adjourned the meeting at 10:45 p.m.



**City of Birmingham**  
**Warrant List Dated 06/16/2021**

Meeting of 06/28/2021

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
279753	*	006965	7UP DETROIT	233.05
279754		MISC	ABSOLUTE EXHIBITS	1,445.00
279755	*	007266	AETNA BEHAVIORAL HEALTH LLC	879.06
279756	*	000161	ALPHA PSYCHOLOGICAL SERVICES PC	3,675.00
279757	*	008977	JOBMATCH LLC DBA APPLICANTPRO	717.00
279758		009260	ARCHIVESOCIAL INC	4,788.00
279759	*	006759	AT&T	158.73
279760	*	006759	AT&T	108.63
279761		003703	AT&T MOBILITY	361.13
279762	*	004027	AUTOMATED BENEFIT SVCS INC	24,637.99
279764		MISC	BELAGGIO HOMES INC	900.00
279765		000522	BIG BEAVER PLUMBING, HEATING INC.	100.00
279766		009286	BLACK CLOVER ENTERPRISES LLC	328.93
279767	*	000546	KAREN D. BOTA	4,050.00
279768		003526	BOUND TREE MEDICAL, LLC	502.27
279769	*	MISC	BRENT JACKSON	70.00
279770		006966	BRIDGESTONE GOLF, INC	1,209.93
279771	*	006953	JACQUELYN BRITO	122.91
279772		003907	CADILLAC ASPHALT, LLC	942.41
279773	*	000444	CDW GOVERNMENT INC	412.44
279774	*	009293	CHEMICAL BANK	48,200.09
279775		000605	CINTAS CORPORATION	49.52
279776	*	004026	COFINITY	3,024.00
279777	*	008955	COMCAST	80.90
279778	*	007774	COMCAST BUSINESS	258.35
279779		002668	CONTRACTORS CLOTHING CO	825.55
279780		008512	COOL THREADS EMBROIDERY	2,344.00
279781		008582	CORE & MAIN LP	805.44
279782		009170	DC DENTAL	300.95
279783		008005	DE LAGE LANDEN FINANCIAL SVCS INC	173.75
279784		000177	DELWOOD SUPPLY	66.21
279785		006907	DENTEMAX, LLC	152.10
279785	*	006907	DENTEMAX, LLC	153.00
279786	*	006956	R.L. DEPPMANN COMPANY	2,574.00
279787	*	000190	DOWNRIVER REFRIGERATION	23.00
279788	*	000179	DTE ENERGY	90.33
279789	*	000179	DTE ENERGY	1,352.56
279790	*	000179	DTE ENERGY	56.93
279791	*	000179	DTE ENERGY	95.08
279792	*	000179	DTE ENERGY	1,923.82
279793	*	000179	DTE ENERGY	453.53
279794	*	000179	DTE ENERGY	818.93

**City of Birmingham**  
**Warrant List Dated 06/16/2021**

Meeting of 06/28/2021

Check Number	Early Release	Vendor #	Vendor	Amount
279795	*	000179	DTE ENERGY	83.68
279796	*	000179	DTE ENERGY	645.07
279797	*	000179	DTE ENERGY	34.33
279798		000196	EJ USA, INC.	1,724.80
279799		MISC	FIVE STAR PROPERTY	100.00
279800	*	004604	GORDON FOOD	1,901.71
279801		009275	GREAT LAKES COCA-COLA DISTRIBUTION	288.42
279802	*	MISC	GREGORY M RIFFLE	82.83
279803		000249	GUARDIAN ALARM	246.80
279804		006346	HARRELL'S LLC	1,813.88
279805	*	001956	HOME DEPOT CREDIT SERVICES	212.90
279806		001415	HORNUNG'S PRO GOLF SALES INC	32.93
279810	*	MISC	JAMES HOCK	58.73
279811		MISC	JBE MANAGEMENT LLC	100.00
279812	*	009249	JOHN C COOK	200.00
279813		MISC	KASTLER CONSTRUCTION INC	200.00
279814		004088	KGM DISTRIBUTORS INC	264.00
279815		MISC	KILANO DESIGN & BUILD	500.00
279816	*	009287	KYLE KRAFT	982.08
279817		MISC	LIBERMAN, KIRILL	900.00
279818	*	MISC	LINDA WELLS	513.03
279819		MISC	LISA KNUDSON	227.50
279820		000888	MCKENNA ASSOCIATES INC	23,561.25
279822		001169	MJ AWARDS	140.00
279823	*	007744	MOHAMED F. CHAMMAA	36.96
279824		MISC	MOSHER DOLAN	1,825.00
279826		007755	NETWORK SERVICES COMPANY	720.40
279826	*	007755	NETWORK SERVICES COMPANY	1,149.10
279827		007469	NIGHT FLYER GOLF	395.70
279828		008687	NORTH BREATHING AIR, LLC	165.00
279829		009292	NOVA ENVIRONMENTAL INC	1,867.50
279830	*	000477	OAKLAND COUNTY	806,461.20
279831	*	004370	OCCUPATIONAL HEALTH CENTERS	1,297.00
279832		001325	P.K. CONTRACTING INC	500.00
279833		MISC	PELLA WINDOWS & DOORS, INC.	500.00
279834	*	001753	PEPSI COLA	494.04
279836		001146	PLANNING & ZONING NEWS	210.00
279837		008901	PLANTE & MORAN CRESA, LLC	11,332.09
279838		006625	PTS COMMUNICATIONS	78.00
279839		005379	RED WING BUSINESS ADVANTAGE ACCT	1,308.92
279839	*	005379	RED WING BUSINESS ADVANTAGE ACCT	279.98
279840	*	005344	RESERVE ACCOUNT	8,000.00
279841		002566	REYNOLDS WATER	211.75

# City of Birmingham

## Warrant List Dated 06/16/2021

Meeting of 06/28/2021

Check Number	Early Release	Vendor #	Vendor	Amount
279842		MISC	RON AND ROMAN	100.00
279843	*	MISC	RON DIX	70.00
279844		MISC	ROOF ONE LLC	100.00
279845		MISC	RUMPLE, STEPHEN	200.00
279846	*	007897	JEFFREY SCAIFE	25.00
279847	*	007142	SHERWIN-WILLIAMS COMPANY	437.28
279848	*	004202	SHRED-IT USA	153.72
279849	*	008073	SITEONE LANDSCAPE SUPPLY, INC	2,206.96
279850		000260	SPARTAN DISTRIBUTORS INC	501.25
279851		MISC	STAR BUILDERS INC	2,507.00
279852		002809	STATE OF MICHIGAN	680.00
279853		MISC	TECHHOME BUILDING CO., LLC	400.00
279854		000272	TENNANT SALES & SVC CO	701.00
279855		MISC	THOMAS SEBOLD & ASSOCIATES, IN	2,500.00
279856	*	003173	TIFFANY FLORIST	84.00
279857		004379	TURNER SANITATION, INC	150.00
279858		005806	ULINE	48.17
279859	*	005806	ULINE	3,199.43
279860	*	005449	UNEMPLOYMENT INS AGENCY	34,741.78
279861		007226	VALLEY CITY LINEN	125.90
279862	*	009177	VANDYKE HORN PUBLIC RELATIONS LLC	8,152.00
279863	*	000158	VERIZON WIRELESS	308.16
279864	*	000158	VERIZON WIRELESS	151.89
279865		001490	WEST SHORE FIRE INC	503.90
279866		MISC	WILLOUGHBY, SARAH E	100.00
279867		MISC	WILSON, BRANDON J	100.00
279868		MISC	WINDOW PRO HOLDINGS LLC	186.25
279869		007620	WJE-WISS, JANNEY, ELSTNER ASSOC.INC	29,512.70
279870	*	004512	WOLVERINE POWER SYSTEMS	346.75
279871	*	008391	XEROX CORPORATION	538.53
SUBTOTAL PAPER CHECK				\$1,069,942.77

### ACH TRANSACTION

3850	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	47,168.22
3851	*	002284	ABEL ELECTRONICS INC	34.98
3852		009126	AMAZON CAPITAL SERVICES INC	630.83
3853		008667	APOLLO FIRE APPRATUS REPAIR INC	227.34
3854	*	000282	APOLLO FIRE EQUIPMENT	73.75
3855	*	001357	ART/DESIGN GROUP LTD	50.00
3856	*	000517	BEIER HOWLETT P.C.	36,813.25
3857	*	007345	BEVERLY HILLS ACE	125.80
3858		006683	BIRMINGHAM LAWN MAINTENANCE	20,150.00
3858	*	006683	BIRMINGHAM LAWN MAINTENANCE	1,490.00
3859	*	000542	BLUE WATER INDUSTRIAL PRODUCTS INC	115.50

**City of Birmingham**  
**Warrant List Dated 06/16/2021**

Meeting of 06/28/2021

Check Number	Early Release	Vendor #	Vendor	Amount
3860	*	008044	CLUB PROPHET	540.00
3861	*	000847	DETROIT SALT COMPANY	20,633.40
3862	*	000207	EZELL SUPPLY CORPORATION	111.44
3863		006181	FIRST CHOICE COFFEE SERV	149.01
3864	*	000243	GRAINGER	16.73
3865		003870	GREAT LAKES TURF, LLC	3,486.50
3866	*	007870	J.C. EHRLICH CO. INC.	131.00
3867	*	000891	KELLER THOMA	165.00
3868	*	005876	KROPF MECHANICAL SERVICE COMPANY	1,366.00
3870	*	008158	LOGICALIS INC	9,700.00
3871	*	000377	MICHIGAN MUNICIPAL LEAGUE	129.72
3872	*	006359	NYE UNIFORM COMPANY	25.00
3873	*	006027	PENCHURA, LLC	462.00
3874	*	003785	SIGNS-N-DESIGNS INC	1,136.00
3875	*	001097	SOCWA	180,370.14
3876	*	004355	SYMETRA LIFE INSURANCE COMPANY	32,774.54
3877	*	004692	TRANSPARENT WINDOW CLEANING	500.00
3878		002088	WM. CROOK FIRE PROTECTION CO.	1,648.67
SUBTOTAL ACH TRANSACTION				\$360,224.82
GRAND TOTAL				\$1,430,167.59

All bills, invoices and other evidences of claim have been audited and approved for payment.



Mark Gerber  
Finance Director/ Treasurer

\*-Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.

# City of Birmingham

## Warrant List Dated 06/23/2021

Meeting of 06/28/2021

Check Number	Early Release	Vendor #	Vendor	Amount
<u>PAPER CHECK</u>				
279872		MISC	ALBAN IVEZAJ	100.00
279873		MISC	CAPRI CONSTRUCTION CORP.	100.00
279874	*	006999	CHRISTOPHER DEMAN	13.50
279875	*	007289	BRIAN FREELS	15.00
279876		001040	HOUR MEDIA LLC	750.00
279877	*	007244	CHRISTOPHER JUDKINS	25.00
279878		005465	RYAN KEARNEY	261.10
279879	*	MISC	KENNETH PIERCE	244.78
279880	*	MISC	MEAGAN KAWA	200.00
279881		MISC	NEAL MARC ALPINER	40.00
279882		008214	OAKLAND COUNTY WATER DEPARTMENT	5,326.88
279883	*	001484	OCAA	160.00
279884		003447	RAFT	400.00
279885		MISC	RIVERSIDE HOMES LLC	6,900.00
279886		MISC	ROGER MARCHETTI	230.77
279887	*	007897	JEFFREY SCAIFE	1.55
279888		MISC	SHERRIFF-GOSLIN CO.	100.00
279889		MISC	STERLING DEVELOPMENT CORP	14.78
279890		MISC	THE HOUSEWAY CO	100.00
279891		005686	ADVANCED MARKETING PARTNERS INC	1,306.00
279892		000394	AERO FILTER INC	165.00
279893		003708	AIRGAS USA, LLC	244.79
279894	*	001000	ALLIED INC	2,018.42
279895	*	000161	ALPHA PSYCHOLOGICAL SERVICES PC	725.00
279896	*	008977	JOBMATCH LLC DBA APPLICANTPRO	464.00
279897		009290	ARSENAL POWERSPORTS LLC	992.90
279898	*	006759	AT&T	221.15
279899	*	006759	AT&T	108.63
279900	*	003703	AT&T MOBILITY	345.53
279902		008059	BALL EQUIPMENT	87.94
279903	*	003839	MATTHEW J. BARTALINO	300.00
279904		MISC	BCM HOME IMPROVEMENT	100.00
279905	*	007540	BIO SYSTEMS, INC.	872.25
279907		MISC	BISKUP, ROBERT & MAUREEN	1,010.65
279908		MISC	BOA CONSTRUCTION	100.00
279909		003526	BOUND TREE MEDICAL, LLC	138.74
279910		007772	BRIXNSTONE LLC	5,400.00
279911		003907	CADILLAC ASPHALT, LLC	6,502.41
279912		MISC	CAPALDI BUILDERS	200.00
279913	*	009083	CARTEGRAPH	28,000.00
279914	*	000444	CDW GOVERNMENT INC	2,330.24
279915		000605	CINTAS CORPORATION	227.94

# City of Birmingham

## Warrant List Dated 06/23/2021

Meeting of 06/28/2021

Check Number	Early Release	Vendor #	Vendor	Amount
279916		009194	CLARKSTON ANIMAL MEDICAL CENTER	583.42
279917	*	008006	CLEAR RATE COMMUNICATIONS, INC	1,325.37
279918		009187	CLEARVIEW CAPTIONING LLC	6,510.00
279919	*	MISC	CLEARY, CARLA J	2,000.00
279920	*	000627	CONSUMERS ENERGY	1,256.11
279921		002668	CONTRACTORS CLOTHING CO	1,000.12
279922		001367	CONTRACTORS CONNECTION INC	381.60
279923		004386	CYNERGY PRODUCTS	242.00
279924		009170	DC DENTAL	162.05
279925	*	000179	DTE ENERGY	32.39
279926	*	000180	DTE ENERGY	46,746.53
279927		004671	ELDER FORD	965.44
279929		001495	ETNA SUPPLY	470.00
279930		008495	FALCON ASPHALT REPAIR EQUIPMENT	204.44
279931		000936	FEDEX	30.99
279933		000213	FIRE DEFENSE EQUIP CO INC	290.96
279933	*	000213	FIRE DEFENSE EQUIP CO INC	309.96
279934	*	007366	FIRST ADVANTAGE OCCUPATIONAL	45.00
279935		006384	GEOGRAPHIC INFORMATION SERVICES, IN	210.96
279936		002532	GOLLING CHRYSLER JEEP DODGE INC	1,912.79
279937		008293	GRAINGER	247.92
279939		001447	HALT FIRE INC	258.87
279940	*	001956	HOME DEPOT CREDIT SERVICES	101.91
279945	*	MISC	JACK TODD- PETTY CASH	1,208.24
279946		008564	JERRY'S TIRE INC	769.46
279947		MISC	KARBAL, ALANA	100.00
279948	*	002659	CHRISTOPHER KOCH	677.20
279949		MISC	LEMAN ADEL AUSI	100.00
279951		002648	MARC DUTTON IRRIGATION INC	1,434.75
279952	*	MISC	MARY BOESON	3,000.00
279953		MISC	MARYKO HOSPITALITY LLC	250.00
279954		009200	MICHAEL MORRISON	700.00
279956		000230	MIKE SAVOIE CHEVROLET INC	766.60
279957		007163	MOBILE HEALTH RESOURCES	1,754.12
279958		002010	MULTISTATE TRANSMISSIONS	2,126.20
279960		009276	NEWTONS SOLUTIONS LLC	4,350.00
279961	*	000477	OAKLAND COUNTY	206,832.98
279962	*	003461	OBSERVER & ECCENTRIC	872.42
279963	*	004370	OCCUPATIONAL HEALTH CENTERS	52.00
279964	*	000481	OFFICE DEPOT INC	2,920.92
279965		008669	OHM ADVISORS INC	39,001.25
279966	*	008785	KEVIN ONG	408.91
279968		001325	P.K. CONTRACTING INC	4,850.08

# City of Birmingham

## Warrant List Dated 06/23/2021

Meeting of 06/28/2021

Check Number	Early Release	Vendor #	Vendor	Amount
279970		002518	PITNEY BOWES INC	195.00
279971		009087	POCO SALES, INC	7,770.47
279972	*	000801	POSTMASTER	1,986.86
279973		MISC	POWER HOME SOLAR	895.00
279974		MISC	RICHARD WEINGARTNER	200.00
279976		MISC	RUFFNER 1487 LLC	62.50
279977	*	002806	SAM'S CLUB/SYNCHRONY BANK	26.86
279978		MISC	SET IN STONE HOME IMPROVEMENT LLC	200.00
279979	*	009009	SIGNATURE CLEANING LLC	14,576.94
279980	*	008073	SITEONE LANDSCAPE SUPPLY, INC	94.40
279982		007907	SP+ CORPORATION	54,257.97
279983		004544	STRYKER SALES CORPORATION	4,244.90
279984		000256	SUBURBAN BUICK GMC INC	144.92
279985	*	000286	TARGET SPECIALTY PRODUCTS	565.80
279986		008748	TECHSEVEN COMPANY	1,517.65
279987		007586	TELEFLEX LLC	562.50
279988		000275	TIRE WHOLESALERS CO INC	242.52
279989		008941	UPTOWN MARKET OF BIRMINGHAM	55.41
279990	*	009177	VANDYKE HORN PUBLIC RELATIONS LLC	152.00
279991	*	000158	VERIZON WIRELESS	49.31
279993		MISC	WEINTRAUB, DAVID	200.00
279995	*	005794	WINDSTREAM	869.35
279996		005112	WOLVERINE	691.87
279997	*	008391	XEROX CORPORATION	100.64
SUBTOTAL PAPER CHECK				\$493,971.78
<u>ACH TRANSACTION</u>				
3879	*	008847	ABS- AUTOMATED BENEFIT SVCS, INC	67,716.17
3880	*	002284	ABEL ELECTRONICS INC	2,380.46
3881		003858	ADVANCED LIGHTING & SOUND	22,533.50
3882		009126	AMAZON CAPITAL SERVICES INC	55.18
3884	*	007345	BEVERLY HILLS ACE	19.99
3885		006683	BIRMINGHAM LAWN MAINTENANCE	1,075.00
3886		009183	BOB ADAMS TOWING	250.00
3887		007875	CANFIELD EQUIPMENT SERVICE INC.	120.00
3888		009195	CROWN CASTLE FIBER LLC	643.00
3889	*	000207	EZELL SUPPLY CORPORATION	2,681.00
3890		000217	FOUR SEASON RADIATOR SERVICE INC	179.80
3892		000261	J.H. HART URBAN FORESTRY	16,388.63
3893	*	002576	JAX KAR WASH	212.00
3894	*	003458	JOE'S AUTO PARTS, INC.	583.77
3896	*	005876	KROPF MECHANICAL SERVICE COMPANY	340.34
3897	*	005550	LEE & ASSOCIATES CO., INC.	2,495.68
3898	*	007856	NEXT	870.00

**City of Birmingham**  
**Warrant List Dated 06/23/2021**

Meeting of 06/28/2021

Check Number	Early Release	Vendor #	Vendor	Amount
3899	*	006359	NYE UNIFORM COMPANY	418.95
3900	*	000478	ROAD COMM FOR OAKLAND CO	3,605.75
3901	*	001181	ROSE PEST SOLUTIONS	145.00
3902		000254	SOCRRA	68,287.00
3902	*	000254	SOCRRA	75.00
3903	*	004355	SYMETRA LIFE INSURANCE COMPANY	28,615.00
3904	*	004692	TRANSPARENT WINDOW CLEANING	5,720.00
3905		002088	WM. CROOK FIRE PROTECTION CO.	775.00
3905	*	002088	WM. CROOK FIRE PROTECTION CO.	2,210.00
SUBTOTAL ACH TRANSACTION				\$228,396.22
GRAND TOTAL				\$722,368.00

All bills, invoices and other evidences of claim have been audited and approved for payment.



Mark Gerber  
Finance Director/ Treasurer

\*-Indicates checks released in advance and prior to commission approval in order to avoid penalty or to meet contractual agreement/obligation.





## MEMORANDUM

Finance Department

**DATE:** June 22, 2021

**TO:** Thomas M. Markus, City Manager

**FROM:** Mark Gerber, Director of Finance/Treasurer

**SUBJECT:** Next 2021-2022 Service Agreement

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### INTRODUCTION:

The City contracts with outside agencies which provide services that benefit the community and are not provided by City operations. These contracts are reviewed on an annual basis along with a description of services to be provided in the next fiscal year and a summary of services provided in the current fiscal year.

### BACKGROUND:

The City Commission previously approved a master service agreement to be used by various outside agencies that are requesting and have previously received funding from the City. Next has completed the required agreement and Attachments A and B, which provides a description of the services to be provided and the direct benefit of their services to the City and how the money is being spent in the current fiscal year.

### LEGAL REVIEW:

The City attorney has reviewed and approved the contract with Next.

### FISCAL IMPACT:

Next is requesting funding totaling \$122,940 for fiscal year 2021-2022. This is an increase of \$2,560, or 2.1%, in funding from fiscal year 2020-2021. Funding has been approved in the fiscal year 2021-2022 budget in account 101-299.000-811.0000 for this expenditure.

### SUMMARY:

Based on the services that Next provides and the direct benefit to the City, it is recommended that the City Commission approve Next's funding request in the amount of \$122,940.

### ATTACHMENTS:

1. Contract with Next for fiscal year 2021-2022
2. Attachment A – Summary of Services to be Provided – Fiscal Year 2021-2022
3. Attachment B – Summary of Services Provided – Fiscal Year 2020-2021

### SUGGESTED RESOLUTION:

To approve the service agreement with Next in the amount of \$122,940 for services described in Attachment A of the agreement for fiscal year 2021-2022, account number 101-299.000-811.0000, and further direct the Mayor and City Clerk to sign the agreement on behalf of the City.

## **SERVICES AGREEMENT**

**THIS SERVICES AGREEMENT** ("Agreement"), made this 21 day of June, 2021 by and between the **CITY OF BIRMINGHAM**, having its principal office at 151 Martin Road, Birmingham, MI 48009 ("CITY"), and NEXT, whose address is 2121 Midvale Birmingham 48009 ("SERVICE PROVIDER"), provides as follows:

### **WITNESSETH:**

**WHEREAS**, the CITY desires to have certain services provided, which shall be of the type, nature and extent as set forth on Attachment A; and

**WHEREAS**, SERVICE PROVIDER desires to provide said services for the CITY, which it shall do in accordance with the experience it has attained from providing similar services of this nature, under the terms and conditions hereinafter stated.

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

1. SERVICE PROVIDER shall perform the services as set forth on Attachment A. The type, nature and scope may be changed if mutually agreed upon in writing by SERVICE PROVIDER and the CITY.
2. The CITY shall pay a total of \$122,940 to SERVICE PROVIDER for the performance of this Agreement, which amount shall compensate SERVICE PROVIDER for all aspects of the services to be performed including, but not limited to, all preparation, coordination, management, staffing and all other services incidental thereto. Payment shall be made to SERVICE PROVIDER pursuant to the schedule contained in Attachment A.
3. All services performed shall be of the highest quality and standards that meet or exceed that which is required and expected in that service industry.

CITY.

5. This Agreement shall commence immediately after both parties have signed in the place and manner indicated below and shall terminate in accordance with the provisions as set forth in Attachment A.

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

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

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

9. SERVICE PROVIDER agrees that neither it nor its employees will discriminate against any employee, independent contractor, or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, sex, height, weight or marital status. SERVICE PROVIDER shall inform the CITY of all claims or suits asserted against it by SERVICE PROVIDER's employees or contractors who work pursuant to this Agreement. SERVICE PROVIDER shall provide the CITY with periodic status reports concerning all such claims or suits, at intervals established by the CITY.

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

11. SERVICE PROVIDER shall not commence work under this Agreement until it has, at its sole expense, obtained the insurance required by this paragraph. All certificates of insurance shall be with insurance carriers licensed and admitted to do business in the State of Michigan. All certificates of insurance shall be with insurance carriers acceptable to the CITY. SERVICE PROVIDER shall maintain during the life of this Agreement the types of insurance coverage and minimum limits as set forth below:

- A. Workers' Compensation Insurance: SERVICE PROVIDER shall procure and maintain during the life of this contract, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.
- B. Commercial General Liability Insurance: SERVICE PROVIDER shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence for combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

- C. Motor Vehicle Liability: SERVICE PROVIDER shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than \$ 1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- D. Additional Insured: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The City of Birmingham, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary and any other insurance maintained by the additional insureds shall be considered to be excess and non-contributing with this insurance required from SERVICE PROVIDER under this Section.
- E. Cancellation Notice: Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal shall be sent to: Finance Department, City of Birmingham, P.O. Box 3001, 151 Martin Street, Birmingham, Michigan 48012.
- F. Proof of Insurance Coverage: SERVICE PROVIDER shall provide the CITY at the time the contracts are returned for execution, Certificates of Insurance and/or policies, acceptable to the CITY, as listed below.
1. Two (2) copies of Certificate of Insurance for Workers' Compensation;
  2. Two (2) copies of Certificate of Insurance for Commercial General Liability;
  3. Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
  4. If so requested, Certified Copies of all policies mentioned above will be furnished.
- G. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, SERVICE PROVIDER shall deliver renewal certificates and/or policies to the CITY at least (10) days prior to the expiration date.

12. If, after the effective date of this Agreement, any official of the CITY or spouse, child, parent or in-law, of such official or employee shall become directly or indirectly interested in this

Agreement, or the affairs of SERVICE PROVIDER, the CITY shall have the right to terminate this Agreement without further liability to SERVICE PROVIDER if the disqualification has not been removed within thirty (30) days after the CITY has given SERVICE PROVIDER notice of the disqualifying interest. Ownership of less than one percent (1%) of the stock or other equity interest in a corporation or partnership shall not be a disqualifying interest. Employment shall be a disqualifying interest.

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

14. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties, except as specifically set forth herein. No supplement, modification, addition, deletion or waiver of this Agreement or any provision of this Agreement shall be binding unless executed in writing by both parties to be bound thereby.



15. SERVICE PROVIDER and the CITY agree that SERVICE PROVIDER shall be liable for its own actions and neither SERVICE PROVIDER nor its employees or contractors shall be construed as employees of the CITY. Neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. SERVICE PROVIDER, including its employees and contractors, shall not be considered entitled or eligible to participate in any benefits or privileges given or extended by the CITY, or be deemed an employee of the CITY for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers' compensation and other employer contributions on behalf of SERVICE PROVIDER or SERVICE PROVIDER's employees or contractors.

16. SERVICE PROVIDER acknowledges that in performing services pursuant to this Agreement, certain confidential and/or proprietary information (including, but not limited to, internal organization, methodology, personnel and financial information, etc.) may become involved. SERVICE PROVIDER recognizes that unauthorized exposure of such confidential or proprietary information could irreparably damage the CITY. Therefore, the SERVICE PROVIDER agrees to use reasonable care to safeguard the confidential and proprietary information and to prevent the unauthorized use or disclosure thereof. SERVICE PROVIDER shall inform its employees and contractors of the confidential or proprietary nature of such information and shall limit access thereto to employees rendering services pursuant to this Agreement. SERVICE PROVIDER further agrees to use such confidential or proprietary information only for the purpose of performing services pursuant to this Agreement.

The said parties have caused this Agreement to be executed as of the date and year above written.



**THE CITY OF BIRMINGHAM**

By: \_\_\_\_\_  
Pierre Boutros, Mayor

By: \_\_\_\_\_  
Alex Bingham, City Clerk

**[SERVICE PROVIDER]**

By: Christine Braun

Its: Next

**APPROVED:**

Thomas M. Markus  
Thomas M. Markus, City Manager  
(Approved as to substance)

[Signature]  
Department Head  
(Approved as to substance)

Mary M. Kucharek  
Mary Kucharek, City Attorney  
(Approved as to form)

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

## **ATTACHMENT A**

I. Name of Organization: Next, Your Place to Stay Active & Connected

II. Funding Request: \$122,944.00

III. Amount of funding received from City in current fiscal year: \$122,944.00

IV. Organization's Purpose or Mission:

The mission of Next, is to identify and meet the needs of older adults by soliciting and coordinating community resources to provide educational recreational and social programs; support outreach searches; and volunteer opportunities.

V. Description of Services to be provided (Scope of Work):

Extensive quality programming for community residents to include lifelong learning and wellness, fitness, creative arts and social enrichment. In addition, Next provides comprehensive support services to assist residents who need additional support to age in place. This might include but not limited to Meals on Wheels, transportation, free tax preparation, health screenings and legal assistance, low income assistance with home and yard maintenance, home loans for major repairs along with information and referrals.

VI. Explain the value of the services to the City of Birmingham:

As Birmingham's aging population continues rapidly grow, Next provides vital enrichment opportunities while supporting independence to area residents. Strong communities are built and sustained when there is a diverse population of engaged citizens. A partnership between the city and Next is important to provide a wide variety of high quality activities, and supportive services to Birmingham residents in order to live comfortably in the City.

VII. Provide a list of the other funding sources: (List below. Attach additional sheet if necessary.)

Facility use, in-kind donation Birmingham Public Schools 36% of Next operating budget, additional sources of revenue as part of the operating budget: business donations 11%, transportation 10%, fundraisers 8% program fees 7%, membership dues 5% of the Next operating budget.

VIII. Provide a detailed list of services provided in the 2020-2021 Fiscal Year (July 1, 2020 – June 30, 2021). Include the following for each quarter:

Date & Timeframe of each service provided

- Explanation of the service provided
- Number of Birmingham residents in attendance/effectuated by service
- Explanation of how the funds were used

(Use Attachment B to record the services. Attach additional sheets if necessary.)

NOTE: Organizations receiving funding are required to provide invoices to the City for services coinciding with the timing of the delivery of those services.

Submitted by: Christine Brown Title: Executive Director  
(Print Name)

Signature: Christine Brown Date: 6/22/21

Name of Organization: Next

**ATTACHMENT B**

**First Quarter (July 1, 2020 – September 30, 2020)**

<b>Date of Service</b>	<b>Duration of Service (timeframe)</b>	<b>Explain the services provided</b>	<b>Number of Birmingham residents in attendance or affected by the service</b>	<b>Breakdown of funds used for Program/Service</b>
7/1- 9/30 2020	On going	Transportation to area doctors, hospitals, grocery stores, Next, etc	200 rides given to Birmingham residents	\$1,200
7/1-9/30 2020	On going	Meals delivered to homes	1800 meals delivered to Birmingham residents	\$1,582
7/1-9/30 2020	On going	Outreach support to area residents	2695 units of service to Birmingham residents	\$11,124
7/1-9/30 2020	On going	Programs- In house: weekly speakers, daily fitness and creative art classes, health education classes, enrichment and social opportunities	2000 plus members- over 750 from Birmingham	\$21,875

**Second Quarter (October 1, 2020– December 31, 2020)**

<b>Date of Service</b>	<b>Duration of Service (timeframe)</b>	<b>Explain the services provided</b>	<b>Number of Birmingham residents in attendance or affected by the service</b>	<b>Breakdown of funds used for Program/Service</b>
10/1-12/30 2020	On going	Transportation to area doctors, hospitals, grocery stores, Next, etc	200 rides given to Birmingham residents	\$1,200
10/1-12/30 2020	On going	Meals delivered to homes	1800 meals delivered Birmingham residents	\$1,582
10/1-12/30 2020	On going	Outreach support to area residents	2695 units of service to Birmingham residents	\$11,124
10/1-12/30 2020	On going	Programs- In house: weekly speakers, daily fitness and creative art classes, health education classes, enrichment and social opportunities	2000 plus members- over 750 from Birmingham	\$21,875

Name of Organization: Next

**ATTACHMENT B**

**Third Quarter (January 1, 2021 – March 31, 2021)**

<b>Date of Service</b>	<b>Duration of Service (timeframe)</b>	<b>Explain the services provided</b>	<b>Number of Birmingham residents in attendance or affected by the service</b>	<b>Breakdown of funds used for Program/Service</b>
1/1-3/31 2020	On going	Transportation to area doctors, hospitals, grocery stores, Next, etc	200 rides given to Birmingham residents	\$1,200
1/1-3/31 2020	On going	Meals delivered to homes	1800 meals delivered to Birmingham residents	\$1,582
1/1-3/31 2020	On going	Outreach support to area residents	2695 units of service to Birmingham residents	\$11,124
1/1-3/31 2020	On going	Programs- In house: weekly speakers, daily fitness and creative art classes, health education classes, enrichment and social opportunities	2000 plus members- over 750 from Birmingham	\$21,875

**Fourth Quarter (April 1, 2021 – June 30, 2021)**

<b>Date of Service</b>	<b>Duration of Service (timeframe)</b>	<b>Explain the services provided</b>	<b>Number of Birmingham residents in attendance or affected by the service</b>	<b>Breakdown of funds used for Program/Service</b>
4/1-6/30 2020	On going	Transportation to area doctors, hospitals, grocery stores, Next, etc	200 rides given to Birmingham residents	\$1,200
4/1-6/30 2020	On going	Meals delivered to homes	1800 meals delivered to Birmingham residents	\$1,582
4/1-6/30 2020	On going	Outreach support to area residents	2695 units of service to Birmingham residents	\$11,124
4/1-6/30 2020	On going	Programs- In house: weekly speakers, daily fitness and creative art classes, health education classes, enrichment and social opportunities	2000 plus members- over 750 from Birmingham	\$21,875





BIRMARE-01

LJOLLIFF

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/17/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Hershey Insurance Group, Inc. 2855 Coolidge Highway Ste 204 Troy, MI 48084	<b>CONTACT NAME:</b> Megan Fischer	
	<b>PHONE (A/C, No, Ext):</b>	<b>FAX (A/C, No):</b>
	<b>E-MAIL ADDRESS:</b> meganf@higmi.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>
	<b>INSURER A:</b> Philadelphia Insurance Co.	<b>18058</b>
<b>INSURED</b>  Birmingham Area Seniors Coordinating Council dba NEXT 2121 Midvale Street. Birmingham, MI 48009	<b>INSURER B:</b> Citizens Insurance Company of America	<b>31534</b>
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Prof \$1Mil/\$2Mil <input checked="" type="checkbox"/> Abuse \$500k/\$500K GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	X		PHPK2201941	11/1/2020	11/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 20,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY	X		PHPK2201941	11/1/2020	11/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			PHUB744949	11/1/2020	11/1/2021	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
B	<input checked="" type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		W2B7925648	1/9/2020	1/9/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Birmingham, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary and any other insurance maintained by the additional insureds shall be considered to be excess and non-contributing.

## CERTIFICATE HOLDER

## CANCELLATION

City of Birmingham  
P.O. Box 3001  
Birmingham, MI 48012

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



## MEMORANDUM

Department of Public Services

**DATE:** June 11, 2021

**TO:** Thomas M. Markus, City Manager

**FROM:** Lauren A. Wood, Director of Public Services

**SUBJECT:** Purchase of Two Toro 3555-D Fairway Mowers – Golf Courses

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### INTRODUCTION:

The Department of Public Services (DPS) is requesting the Purchase of two (2) Toro 3555-D fairway mowers to replace two (2) Toro 5410-D fairway mowers at Lincoln Hills and Springdale Golf Courses. These two (2) new mowers will replace the two (2) mowers #172 and #195 purchased in 2013 that have surpassed their useful life of eight (8) years.

### BACKGROUND:

These mowers are used to mow fairways at both courses on average of three (3) times per week. They are essential for the day-to-day operations of both golf courses. They will be purchased for a unit price of \$53,958.78 from Spartan Distributors, for a total of \$107,917.56.

The Department of Public Services is requesting the purchase of two (2) Toro 3555-D fairway mowers to replace two (2) Toro 5410-D fairway mowers at Lincoln Hills golf course and Springdale golf course. We have reviewed the condition of the existing mowers and determined they need replacement due to the age of the mowers, the rising costs that come with repairing older mowers, and the diminished condition of the mowers. We have observed a significant loss of power with the mowers, resulting in them not being able to perform the tasks we need them to perform.

These two mowers are identified for replacement and listed in the 2020-2021 Vehicle/Equipment Replacement Schedule, as part of the FY 2020-2021 budget.

### LEGAL REVIEW:

This item does not require legal review.

### FISCAL IMPACT:

The State of Michigan extended purchasing contract #071B0200329 is available for the two (2) Toro 3555-D fairway mowers. Spartan Distributors is the exclusive dealer for this contract. Funds for this purchase are available in the Auto Equipment Fund account #641-441.006-971.0100 in the amount of \$107,917.56 and included in the 2020-2021 budget. The existing mowers will be traded in to Spartan Distributors for \$6,500 each, for a total of \$13,000.00. The trade in value will be deducted from the final invoice from Spartan Distributors for a total amount of \$94,917.56.

**PUBLIC COMMUNICATIONS:**

This does not apply for this purchase.

**SUMMARY**

Due to the age, condition and performance, the Department of Public Services recommends the purchase of two (2) Toro 3555-D fairway mowers to replace two (2) Toro 5410-D fairway mowers at Lincoln Hills Golf Course and Springdale Golf Course. The total cost for this purchase is \$107,917.56.

**ATTACHMENTS:**

There are no attachments included with this report.

**SUGGESTED RESOLUTION:**

To approve the purchase of two (2) Toro 3555-D fairway mowers from Spartan Distributors, through State of Michigan extendable purchasing contract #071B0200329 at a cost of \$107,917.56 less the trade in amount of \$13,000 for a total expenditure of \$94,917.56. Funds for this purchase are available in the Auto Equipment Fund account # 641-441.006-971.0100.





## MEMORANDUM

Department of Public Services

**DATE:** June 18, 2021

**TO:** Thomas M. Markus, City Manager

**FROM:** Lauren A. Wood, Director of Public Services

**SUBJECT:** 2021 OAKSTEM Oakland County Tree Grant Application

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### INTRODUCTION:

Oakland County has introduced the 2021 OAKSTEM (Oakland County Street Tree Enhancement Match) Grant Program to decrease impervious surface area and increase the tree canopy in communities that make up the George W. Kuhn (GWK) Drainage District – Birmingham included. This grant currently allocates \$12,089 to Birmingham, with the potential for more depending on how many communities choose to apply. Communities must have an approved resolution by their governing body in order to apply, agreeing to enter a Cost Participation Agreement with Oakland County. A sample agreement is attached for reference, and the deadline to apply is July 30, 2021.

### BACKGROUND:

The Department of Public Service (DPS) conducts semi-annual tree plantings every spring and fall, and currently have \$50,000 budgeted for each planting. We would be able to supplement, and likely expand, our Spring 2022 tree purchase and planting program with these funds. Grant funding would be matched and applied strictly for the purchase of the trees and the 2-year warranty only, with the remainder of the budgeted money spent on installation labor and additional material (mulch, stakes, etc.). DPS contracts out the purchase, delivery and installation of these semi-annual plantings.

### LEGAL REVIEW:

The City Attorney's Office will be included with the review of the OAKSTEM Agreement during this process.

### FISCAL IMPACT:

This grant would potentially award Birmingham with up to \$15,000, which we would use to supplement (and likely expand) our street tree planting in Spring 2022.

### PUBLIC COMMUNICATION:

All mediums of communication will be available to the City of Birmingham to announce the 2021 OAKSTEM grant program award to the members of the community.

**SUMMARY:**

The Department of Public Services recommends approving Birmingham's participation in the Program, by authorizing our application and the Director of Public Services to sign on the City of Birmingham's behalf to enter a Cost Participation Agreement with Oakland County, for an amount not to exceed \$15,000, for planting street trees in Spring 2022.

**ATTACHMENTS:**

- OAKSTEM 2021 Grant Pilot Program Application Guide
- OAKSTEM 2021 Cost Participation Agreement Draft

**SUGGESTED RESOLUTION:**

The Department of Public Services recommends approving the Cost Participation Agreement with Oakland County for the City of Birmingham to participate in the 2021 OAKSTEM Program. Further, to authorize the Director of Public Services to sign on behalf of the City of Birmingham the Cost Participation Agreement with Oakland County, for an amount not to exceed \$15,000, for planting street trees in Spring 2022.

# OAKSTEM

## Oakland County Street Tree Enhancement Match Grant Program

## Program Overview

The purpose of the OAKSTEM 2021 Grant Pilot Program is to decrease impervious surface area and increase the tree canopy in communities that make up the George W. Kuhn (GWK) Drainage District.

The GWK Drainage District has among the highest percentage of impervious surface area in the County (49.2%) and the OAKSTEM program is intended to encourage GWK communities to either begin, or continue and expand, their public street tree planting program(s).

Communities can apply for this grant to supplement tree planting projects that occur during the fall 2021 or spring 2022 planting seasons.

OAKSTEM 2021 is a matching grant program for the 14 eligible communities in partnership with:

- Oakland County Department of Water Resources, George W. Kuhn Drainage District
- Oakland County Board of Commissioners
- Oakland County Department of Economic Development

### Key Dates

**Mid-June 2021 (anticipated)**

Eligible communities will receive a unique link to an online application

**July 30, 2021**

Deadline for applying

**June 30, 2022**

Last day to submit final report for reimbursement funds

### Questions? Contact:

Oakland County Department of Economic Development

**Jim Schafer**

schaferj@oakgov.com  
(248) 285-2321

**Mike Woods**

woodsmp@oakgov.com  
(248) 762-6395

# Grant Funding Criteria & Eligibility

Limited matching funds will be distributed as reimbursement for costs expended among qualifying GWK Communities with approved OAKSTEM 2021 Program Applications for specific, targeted street tree planting projects on public road rights of way (ROW) that are under their jurisdiction or on public road ROW directly adjacent to land publicly owned by the GWK Communities.

Funding shall be utilized to supplement and enhance GWK Community street tree plantings only. Funding is not intended for previously planted street trees, to replace existing budgeted street tree planting programs or to replace funding already committed to street tree plantings.

## Funding Sources

Oakland County Department of Economic Development	\$100,000
Oakland County Department of Water Resources, George W. Kuhn Drainage District	\$50,000
Oakland County Board of Commissioners	\$50,000
Participating GWK District Communities	1 to 1 Match Requirement

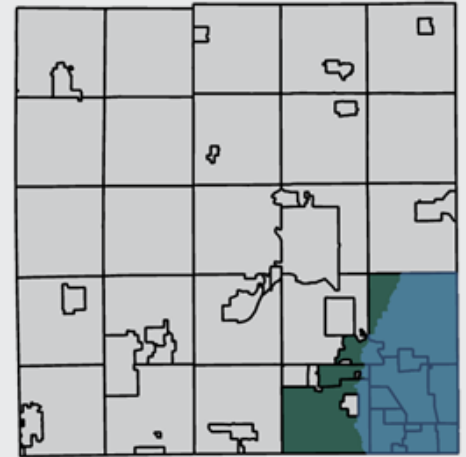
## Eligible and Non-Eligible Expenses

Participating communities are required to provide a 1 to 1 match of their awarded grant amount. The match calculation consists of the cost for the purchase and warranty of street trees only. Administration expenses, engineering, maintenance, planting and inspection costs will not count toward match.

Communities can apply for this grant to supplement tree planting projects that occur during the fall 2021 or spring 2022 planting seasons.

The trees must be purchased on or after the execution date of the Cost Participation Agreement and a final report with documentation must be received by the County on or before June 30, 2022 in order for the Community to be reimbursed.

The OAKSTEM 2021 Grant Program will be administered by the Oakland County Department of Economic Development. This program is intended to increase the tree canopy and decrease the detrimental impervious surface impacts, including flooding, erosion and the urban heat island effect. Trees help soak up water and slow the rate of water moving across the land's surface—improving water quality, increasing green infrastructure and reducing traditional infrastructure needs and costs.



## Eligible Cities Villages and Townships (CVTs)

The following 14 Oakland County CVTs (whole or part) make up the GWK Drainage District and are eligible to participate:

- Berkley
- Beverly Hills (part)
- Birmingham (part)
- Clawson
- Ferndale
- Hazel Park
- Huntington Woods
- Madison Heights
- Oak Park
- Pleasant Ridge
- Royal Oak
- Royal Oak Township
- Southfield (part)
- Troy (part)

# Base Funding Allocations for Eligible CVTs

To establish the OAKSTEM 2021 Program Base Funding Allocation, it is anticipated that all fourteen (14) eligible CVTs will apply for a grant.

Calculations for base funding allocation for eligible CVTs began with a total budget of \$200,000 and are based on three factors:

- 60% based on all eligible CVTs participating in the Program
- 30% based on an estimate of the CVT eligible road miles
- 10% based on an estimate of the CVT impervious surface area

The Base Funding Allocation Table (below) contains the base funding amounts available for each eligible CVT.

CVTs are not required to request their full base funding allocation amount.

It is anticipated that some CVTs may not participate, so additional funding may be available.

**TOTAL BUDGET: \$200,000**

	Factor		Factor 1: Participation			Factor 2: Eligible Road Miles			Factor 3: Imperviousness				% of Total Budget
	% of Budget		60%			30%			10%				
	Budget Allocation per Factor		\$120,000			\$60,000			\$20,000				
	Community	Type	(Y/N)	% Allocation	Factor 1 Allocation	Road Miles	% Allocation	Factor 2 Allocation	Impervious Score*	% Allocation	Factor 3 Allocation	Base Allocation per CVT	
1	Berkley	City	1	7.1%	\$8,571	54.4	5.3%	\$3,172	0.48	7.1%	\$1,411	\$13,155	6.6%
2	Beverly Hills	Village	1	7.1%	\$8,571	5.9	0.6%	\$344	0.376	5.5%	\$1,106	\$10,021	5.0%
3	Birmingham	City	1	7.1%	\$8,571	32.8	3.2%	\$1,913	0.546	8.0%	\$1,605	\$12,089	6.0%
4	Clawson	City	1	7.1%	\$8,571	39.5	3.8%	\$2,303	0.502	7.4%	\$1,476	\$12,351	6.2%
5	Ferndale	City	1	7.1%	\$8,571	73.8	7.2%	\$4,303	0.539	7.9%	\$1,585	\$14,459	7.2%
6	Hazel Park	City	1	7.1%	\$8,571	58.9	5.7%	\$3,434	0.558	8.2%	\$1,641	\$13,647	6.8%
7	Huntington Woods	City	1	7.1%	\$8,571	25.0	2.4%	\$1,458	0.385	5.7%	\$1,132	\$11,161	5.6%
8	Madison Heights	City	1	7.1%	\$8,571	99.3	9.7%	\$5,790	0.561	8.2%	\$1,650	\$16,011	8.0%
9	Oak Park	City	1	7.1%	\$8,571	89.3	8.7%	\$5,207	0.507	7.5%	\$1,491	\$15,269	7.6%
10	Pleasant Ridge	City	1	7.1%	\$8,571	10.4	1.0%	\$606	0.485	7.1%	\$1,426	\$10,604	5.3%
11	Royal Oak	Township	1	7.1%	\$8,571	1.0	0.1%	\$58	0.52	7.6%	\$1,529	\$10,159	5.1%
12	Royal Oak	City	1	7.1%	\$8,571	219.9	21.4%	\$12,822	0.475	7.0%	\$1,397	\$22,790	11.4%
13	Southfield	City	1	7.1%	\$8,571	47.9	4.7%	\$2,793	0.429	6.3%	\$1,261	\$12,626	6.3%
14	Troy	City	1	7.1%	\$8,571	270.9	26.3%	\$15,796	0.439	6.5%	\$1,291	\$25,658	12.8%
Subtotals:			14	100.0%	\$120,000	1,029	100%	\$60,000	6.802	100%	\$20,000	\$200,000	100%

\*Impervious Score is the percent of impervious surface land area within the community expressed as a decimal.

CVTs are encouraged to request additional program funding over their base funding allocation amount and demonstrate the available matching funds. Oakland County may re-allocate these additional funds based on availability and CVT match capacity.

Determinations on grant award amounts (greater than the base funding allocation, if any) will be made after all applications have been received and reviewed.



# Grant Application & Cost Participation Agreement

Eligible CVTs will receive a unique link to an online application by Mid-June 2021 (anticipated). The deadline for applying is July 30, 2021.

CVTs awarded an OAKSTEM 2021 Program Grant will be required to enter into a Cost Participation Agreement with Oakland County.

CVTs applying for the OAKSTEM 2021 Program will be required to submit the following information:

✓	Checklist
<input type="checkbox"/>	Acknowledgment that, if awarded a grant, the CVT will be required to enter into a Cost Participation Agreement with Oakland County.
<input type="checkbox"/>	Identification of the local official or staff person authorized to execute the Cost Participation Agreement. This individual would be the recipient of the Cost Participation Agreement for electronic signature.
<input type="checkbox"/>	Contact information for the point person administering the program for the CVT.
<input type="checkbox"/>	Description of the project.
<input type="checkbox"/>	Intended planting schedule (dates).
<input type="checkbox"/>	Public road right(s)-of-way where trees will be planted (including maps).
<input type="checkbox"/>	A summary of the quantity, size and species of street trees to be planted.
<input type="checkbox"/>	Acknowledgment that the CVT will provide a final report and documentation to the County as requested that demonstrate how the grant funds were used.
<input type="checkbox"/>	Certified copy of a resolution of the Community's elected governing body (city council, village council, township board) approving the Community's participation in the Program, authorizing application for the Program, designating the person authorized to sign on the Community's behalf, and certifying the Community's commitment to complying with the Program's requirements (Sample Community Resolution provided on the following page).



# Sample Community Resolution



WHEREAS, Oakland County has established the OAKSTEM 2021 Oakland County Street Tree Enhancement Match Pilot Program (the “Program”) for communities that are wholly or partly within the George W. Kuhn (GWK) Drainage District; and

WHEREAS, the Program seeks to assist GWK Communities by providing limited matching funds for street tree planting projects on public road rights of way (ROW) that are under their jurisdiction or on public road ROW directly adjacent to land publicly owned by the GWK Communities; and

WHEREAS, the CVT Name (the “Community”) wishes to submit a 2021 OAKSTEM Program Application seeking matching reimbursement funds from the Program, in an estimated amount of \$\_\_\_\_\_ on a 1 / 1 matching basis for reimbursement for a project briefly described as \_\_\_\_\_, which is located in the GWK Drainage District; and

NOW THEREFORE, CVT Council/Board hereby approves (i) the completion and submission of the 2021 OAKSTEM Application to seek funding through the Program; (ii) if the Application is approved by Oakland County, the Community’s participation in the Program; and (iii) the appropriation and expenditure of funds necessary or appropriate to fund its obligations under the Program as set forth in the Application and the Cost Participation Agreement, and hereby authorizes Name and Title of Person to sign the Application and all Agreements and take any other action necessary or appropriate on the Community’s behalf to participate in the Program and certifies that the Community will comply with the Program’s requirements, including submittal of a final report and other documentation as required by the County, as a condition to receiving reimbursement in accordance with the Program.

## GRANT APPLICATION REVIEW CRITERIA

Grant applications will be reviewed based on the following criteria:

- Clarity and completeness of the application
- Demonstration that the Community's Project meets the goals and requirements of the OAKSTEM 2021 Program

## FINAL REPORT FOR REIMBURSEMENT FUNDS

Due on or before June 30, 2022

CVTs will be required to submit a final report to the County after the completion of the Project describing in detail with supporting documentation, including, but not limited to, narratives, drawings, maps, warranties, and/or photographs and paid invoices to sufficiently evidence that the Project was completed in accordance with the Program Policies and is consistent with the Community's Application.

The final report with documentation must be received by the County on or before June 30, 2022 in order for the County to disburse reimbursement funds.

The County will provide an online form that CVTs will use to submit the final report and documentation.

## TREE WARRANTY

All trees planted using the OAKSTEM 2021 Program funds shall be covered by a minimum two (2) year warranty, guaranteeing survival of the tree for two years from the date of Project completion. Said warranty shall provide for the complete costs of removal and replacement. Replacement trees shall also be covered with a full two-year replacement warranty.

## RIGHT TREE, RIGHT PLACE

When choosing a planting location, identify existing site conditions, overhead/ underground utilities, salt exposure, proximity to adjacent infrastructure and soil conditions.

These factors will affect the long-term viability of your selected tree species as it relates to pest and disease resistance, growth rate, root structure, canopy spread and height, form and shape, moisture and sunlight requirements.

It is essential to ensure that the trees will be compatible with the planting location, able to endure environmental conditions, are harmonious to the aesthetics of the surrounding landscape, become established and are properly pruned and maintained after they are planted by your community.

For additional information on "Right Tree, Right Place," visit the following Arbor Day Foundation links:

- <https://www.arborday.org/trees/righttreeandplace/>
- <https://www.arborday.org/trees/bulletins/documents/004-summary.pdf>

## SUGGESTED TREE SPECIES

The corresponding list represents several trees that can be found in Oakland County and Southeast Michigan.

Communities are encouraged to plant native and/or climate resilient species where possible; however, local knowledge is critical during the selection process. Species diversity is also important; therefore, please consider selecting a variety of tree species to include in your OAKSTEM 2021 Program Application.



\*The tree species and cultivars on this list are not the only suitable trees for planting in Oakland County. This list is merely intended to be used as a starting point. There are many native and non-native trees that can be considered.

The tree species and cultivars on this list should not be used exclusively for replacement planting or reforestation of large areas. The diversity of all tree species on individual streets, in neighborhoods, and in the entire community should be taken into consideration. Monocultures should be avoided.

Adapted from: Green  
Macomb - January 2017

**QUESTIONS?** Contact  
Oakland County Department  
of Economic Development

**Jim Schafer**  
[schaferj@oakgov.com](mailto:schaferj@oakgov.com)  
(248) 285-2321

**Mike Woods**  
[woodsmp@oakgov.com](mailto:woodsmp@oakgov.com)  
(248) 762-6395

Minimum Right-of-Way Width													
Botanical Name	Common Name	MI Native	Drought Tolerance	Soil Salt Tolerance	Pest Resistance	Shape	Mature Spread (ft)	Mature Height (ft)	< 3.5'	3.5 - 4.5'	4.5'+	Under Wires	Notes
Acer buergerianum	Trident Maple	No	Yes	Mod			20 to 30	20 to 35		•		•	Choose tree form
Acer griseum	Paperbark Maple	No	Mod	Mod		Round/Oval	10 to 30	20 to 30		•		•	
Acer pensylvanicum	Striped Maple	Yes					10 to 20	15 to 25	•			•	
Acer rubrum	Red Maple	Yes	Mod	Poor	Resistant	Round/Oval	25 to 35	60 to 75			•		Spreading surface roots
Acer saccharum	Sugar Maple	Yes	Low	Poor		Round/Oval	40 to 50	60 to 75			•		Spreading surface roots
Acer x freemanii	Freeman Maple	Hybrid	Mod	Poor	Resistant	Upright/Oval	20 to 40	40 to 60			•		
Aesculus x carnea	Red Horsechestnut	Hybrid	Mod	Poor	No Serious Pests	Upright/Oval	30 to 40	60 to 80		•			
Aesculus flava	Yellow Buckeye	No	Mod	Low		Upright/Oval	25 to 35	60 to 80			•		Messy fruit
Amelanchier arborea	Downy Serviceberry	Yes	Mod	Low		Rounded		15 to 25	•			•	Choose single stem/tree form
Carpinus betulus	European Hornbeam	No	Mod	Low	No Serious Pests	Oval	20 to 30	10 to 30	•			•	
Carpinus caroliniana	American Hornbeam/ Musclewood	Yes	Mod	Low	No Serious Pests	Upright	20 to 30	20 to 30	•			•	
Caryo ovata	Shagbark Hickory	Yes	Mod	Low	No Serious Pests	Oval/ Irregular	30 to 50	60 to 80			•		Best in large landscapes
Celtis occidentalis	Common Hackberry	Yes	Mod	Mod	No Serious Pests	Rounded	40 to 50	60 to 70			•		Surface roots
Cercidiphyllum japonicum	Katsura tree	No	Low	Mod	No Serious Pests	Oval/Pyramidal	20 to 30	40 to 60			•		Surface roots
Cercis canadensis	Eastern Redbud	Yes	Mod	Low	No Serious Pests	Rounded	15 to 25	15 to 30	•			•	
Chionanthus retusus	Chinese Fringetree	No	Low	Low	No Serious Pests	Rounded	15 to 25	15 to 25	•			•	Choose single stem/tree form
Chionanthus virginicus	White Fringetree	No	Low	Mod	No Serious Pests	Oval	10 to 20	10 to 20	•			•	Choose single stem/tree form
Cladrastis kentukea	American Yellowwood	No	Mod	Low	Resistant	Rounded/Vase	20 to 50	40 to 50		•			Spreading surface roots
Cornus kousa	Kousa Dogwood	No	Mod	Low		Rounded	20 to 30	20 to 30	•			•	Choose single stem/tree form
Cornus mas	Cornelian-Cherry Dogwood	No	Low	Low	No Serious Pests	Rounded	15 to 20	20 to 25	•			•	Choose single stem/tree form
Corylus columna	Turkish Hazelnut	No	High	Low	No Serious Pests	Oval/Pyramidal	15 to 35	40 to 50			•		
Cotinus coggygria	Eurasian Smoketree	No	Mod			Upright	10 to 15	10 to 15	•			•	Choose single stem/tree form
Cotinus obovatus	American Smoketree	No	Mod		No Serious Pests	Oval	10 to 20	20 to 30	•			•	Choose single stem/tree form
Crataegus crusgalli var Inermis	Cockspur Thornless Hawthorn	Yes	High	Mod	Somewhat Sensitive	Rounded	10 to 25	15 to 30	•			•	
Crataegus viridis	Winter King Hawthorn	No	High	Low		Rounded/Spreading	25 to 35	25 to 35	•				
Ginkgo biloba	Ginkgo	No	High	Mod		Pyramidal, Spreading	Variable	50 to 80			•		Choose male variety only
Gleditsia triacanthos var inermis	Thornless Honeylocust	Yes	High	High	No Serious Pests	Rounded	30 to 70	30 to 70			•		Surface roots
Gymnocladus dioicius	Kentucky Coffeetree	No	High	Mod	No Serious Pests	Upright to Rounded	40 to 70	50 to 70		•			
Halesia carolina	Carolina Silverbell	No	Low	Low	No Serious Pests	Upright to Rounded	20 to 35	30 to 40		•		•	
Liquidambar styraciflua	Sweetgum	Yes	Mod	Low	Resistant	Pyramidal/Oval	35 to 50	60 to 75			•		Surface roots
Liriodendron tulipifera	Tuliptree	Yes	Low	Low	No Serious Pests	Pyramidal/Oval	35 to 50	70 to 90			•		Surface roots
Maackia amurensis	Amur maackia	No	Mod	Low	No Serious Pests	Round	20 to 35	20 to 30	•			•	
Magnolia virginiana	Sweet Bay Magnolia	No	Low	Low	No Serious Pests	Rounded	10 to 35	10 to 35		•			
Metasequoia glyptostroboides	Dawn Redwood	No	Med	Low	Resistant	Upright Pyramidal	20 to 30	60 to 100			•		
Nyssa sylvatica	Blackgum	Yes	Mod	Mod	No Serious Pests	Pyrmadial / Oval	20 to 30	30 to 60			•		
Ostrya virginiana	Ironwood	Yes	High	Low	No Serious Pests	Pyramidal/Rounded	15 to 40	25 to 40+		•			
Parrotia persica	Persian Ironwood	No	High	Low		Oval/Rounded	15 to 30	20 to 40		•			
Platanus x acerifolia	London Planetree	No	Mod	Mod	Resistant	Pyramidal / Rounded	50 to 70	75 to 90			•		Surface roots
Platanus occidentalis	Sycamore	Yes	Mod	Mod	Sensitive	Pyramidal / Rounded	50 to 70	75 to 90			•		Surface roots
Quercus alba	White Oak	Yes	High	Low		Rounded/Spreading	100	50 to 80			•		
Quercus bicolor	Swamp White Oak	Yes	High	Mod	Resistant	Upright Oval / Rounded	50 to 60	50 to 70			•		
Quercus imbricaria	Shingle Oak	Yes	Mod	Low		Pyramidal/Oval	50 to 60	50 to 60			•		
Quercus lyrata	Overcup Oak	No				Rounded	35 to 50	45 to 70			•		
Quercus macrocarpa	Bur Oak	Yes	High	High	Resistant	Upright Oval / Spreading	40 to 60	60 to 70			•		
Quercus muehlenbergii	Chinkapin Oak	Yes	High	Low		Pyramidal/Rounded	50 to 70	50 to 80			•		
Quercus palustris	Pin Oak	Yes	High	Low	Resistant	Upright Pyramidal / Oval	40 to 50	60 to 80			•		
Quercus robur fastigiata	English Oak	No	High	Low		Upright Narrow Columnnar	10 to 20	50 to 60			•		
Quercus rubra	Northern Red Oak	Yes	High	Mod	Resistant	Rounded	60 to 80	50 to 60			•		Surface roots
Quercus shumardii	Shumard Oak	Yes	High	Low		Pyramidal/Rounded	40 to 60	40 to 60			•		
Taxodium distichum	Bald Cypress	No	High	Mod	Resistant	Pyramidal	25 to 35	60 to 80			•		
Tilia americana	American Linden, American Basswood	Yes	Mod	Low	No Serious Pests	Rounded	30 to 50	50 to 80			•		
Tilia cordata	Little-leaf Linden	No	Mod	Low	No Serious Pests	Pyramidal to Rounded	30 to 40	40 to 60		•			
Tilia tomentosa	Silver Linden	No	High	Low	Resistant	Broad Columnnar	30 to 50	50 to 70			•		Surface roots
Ulmus americana	American Elm	Yes	Mod	High	Resistant	Vase	50 to 70	70 to 90			•		Surface roots, choose Dutch Elm Disease resistant cultivar
Ulmus "Frontier"	Frontier Elm	No	High	High	Resistant		20 to 30	30 to 40			•		
Ulmus X	Hybrid Elm	No	High	High	Resistant	Vase	30 to 45	40 to 60			•		Surface roots, choose Dutch Elm Disease resistant cultivar

# Sample OAKSTEM 2021 Program Application



This is a sample application provided as reference. Eligible CVTs must complete an online version of the application—a unique link will be emailed to the contact person by Mid-June 2021 (anticipated).

The deadline for applying is July 30, 2021.

Oakland County Street Tree Enhancement (OAKSTEM) 2021 Pilot Match Program

*Additional information on the Project Policies, Guidelines, Available Funding and Required Matching Funds will be provided in the Cost Participation Agreement.*

## REQUESTING LOCAL GOVERNMENT

MUNICIPALITY  
CONTACT PERSON  
TITLE OF CONTACT PERSON  
TELEPHONE NUMBER  
STREET ADDRESS CITY/ZIP  
E-MAIL ADDRESS

## PROJECT INFORMATION

SHORT DESCRIPTION OF PROJECT  
INTENDED PLANTING SCHEDULE (DATES)  
ROAD/ROAD(S) RIGHT(S) OF WAY WHERE TREES WILL BE PLANTED (INCLUDE MAP)  
NUMBER, SIZE (DBH) / SPECIES OF STREET TREES TO BE PLANTED

## PROJECT BUDGET

COMMUNITY Base Program Allocation = \_\_\_\_\_

It is anticipated that some COMMUNITIES may not participate, and additional funding may be available. COMMUNITIES are encouraged to request additional Program funding over their base Program allocation amount and demonstrate the available match. The COUNTY may allocate these additional funds based on availability and COMMUNITY match capacity.

## COMMUNITY PROJECT COST BREAKDOWN

### Street Tree Purchase (Including Warranty)

COMMUNITY Contribution (Tree and warranty costs only): (MATCH)	\$ _____
FY2021 OAKSTEM 2021 Program: (REQUEST)	\$ _____
Total Street Tree Purchase (Including Warranty)	\$ _____

*TREES MUST BE PURCHASED ON OR AFTER THE EXECUTION DATE OF THE COST PARTICIPATION AGREEMENT*

### Additional Costs (not Program match eligible)

COMMUNITY Admin., PE/CE, Maintenance, Planting and Inspection costs.	\$ _____
----------------------------------------------------------------------	----------

Administration, engineering, maintenance, planting and inspection costs will be paid by COMMUNITY.

Total Project Costs (All project costs)	\$ _____
-----------------------------------------	----------

## PROJECT COMPLIANCE WITH PROGRAM GOALS

The project meets the following program goals: (check all that apply and provide brief description)

- ☐ Increased tree canopy
- ☐ Reduced impervious surface area
- ☐ Reduced peak flow storm water run-off
- ☐ Reduced flooding risk
- ☐ Reduced noise
- ☐ Improved air quality
- ☐ Enhanced aesthetics
- ☐ Attraction, retention and growth of business, retention of jobs
- ☐ Encouragement of further community investment



## REQUIRED PROGRAM COMPONENTS AND APPLICATION DOCUMENTATION

- ☐ Copy of Two (2) year warranty provided for all trees planted using Program funds.
- ☐ Map showing street(s) where trees are to be planted.
- ☐ Table summarizing quantity, size and species of street trees to be planted.
- ☐ Copy of local elected governing body (City Council, Village Council or Township Board) certified Resolution of Approval, including person authorized to sign for GWK Community.

## ADDITIONAL INFORMATION

Please Include Any Additional Information You Feel Important for The Consideration of This Program Application

## REPORT FOLLOWING COMPLETION OF THE PROJECT

This Cost Participation Agreement shall require the GWK Community entering into such agreement to deliver to the COUNTY a report regarding the activities of the GWK COMMUNITY and the degree to which the recipient has met the stated public purpose of the funding, including before and after photos and other documentation as may be described in the Cost Participation Agreement. The COMMUNITY acknowledges and agrees to give the COUNTY permission to use photographs, logos, published/printed information, and any other materials supplied, without further notice, in press releases and/or publication.

## CERTIFICATIONS

I, \_\_\_\_\_, as the \_\_\_\_\_ on behalf of \_\_\_\_\_, have been provided with a copy of the Draft Cost Participation Agreement, including Attachments "A" and "B" and (i) agrees to comply with the terms and conditions of the this Application; (ii) understands and agrees to comply with the requirement to provide the COUNTY with a report following the completion of an approved project outlining the degree to which the project met the stated purpose of the funding as set forth in this Application; and (iii) understands that its failure to provide the reports and document or perform any other obligation under this Application or the Cost Participation Agreement shall, at the COUNTY'S option, render its reimbursement obligation null and void.

\_\_\_\_\_  
Signature of Authorized Party

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title

**If you have any questions, please contact the following  
Oakland County Economic Development staff:**

**Jim Schafer**  
[schaferj@oakgov.com](mailto:schaferj@oakgov.com)  
(248) 285-2321

**Mike Woods**  
[woodsmp@oakgov.com](mailto:woodsmp@oakgov.com)  
(248) 762-6395

**OAKSTEM 2021 STREET TREE ENHANCEMENT MATCHING GRANT PILOT PROGRAM**  
**COST PARTICIPATION AGREEMENT**

**County Project Number:** 2021-XX

**Purchasing / Fiscal:** XXXXXX

**Project Name (the "Project"):** \_\_\_\_\_

**Participating GWK Community (the "Community"):** \_\_\_\_\_

This Cost Participation Agreement ("Agreement") is made and entered into this [insert day] day of [insert month], 2021, by and between the County of Oakland, Michigan (the "County"), and the above-referenced Community.

WHEREAS, the County has established the OAKSTEM 2021 Street Tree Enhancement Matching Grant Pilot Program (the "Program") to decrease impervious surface area and increase the tree canopy in communities that are within the George W. Kuhn ("GWK") Drainage District (the "GWK District") (individually, a "GWK Community" and, collectively, the "GWK Communities"), as further described in the Terms and Policies of the Program set forth in Attachment A to this Agreement (the "Program Policies"). The County intends for the Program to assist GWK Communities with projects located within the GWK District. Limited matching funds will be distributed as reimbursement for costs expended among qualifying GWK Communities with approved 2021 Program Applications for specific, targeted street tree planting projects on public road rights of way (ROW) that are under their jurisdiction or on public road ROW directly adjacent to land publicly owned by the GWK Communities; and

WHEREAS, the GWK Community has submitted to the County a 2021 Application Form seeking funds from the Program relating to the project identified above as more fully described in such Application and summarized in Attachment B of this Agreement (the "Project") and made a part hereof, and the County has reviewed and approved the GWK Community's Application; and

WHEREAS, the County desires to contribute funds to the Project in accordance with the terms of this Agreement and subject to the Program Policies on a 1 / 1 match basis in an amount not to exceed the limits set forth in this Agreement and in no instance exceeding the maximum match amount set forth for the GWK Community set forth on Schedule 1 to Attachment A to this Agreement; and

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties to this Agreement, the parties agree as follows:

1. GWK Community's Representations and Warranties. The GWK Community acknowledges and agrees to the Program Policies and represents and warrants to the County that (i) the Project, and the implementation thereof, is and will be consistent with the purposes of the Program, the description of the Project set forth in the GWK Community's Application and in Attachment B to this Agreement,

and in compliance with the Program Policies; and (ii) any funds received from the County through the Program or otherwise related to the Project shall solely be used by the GWK Community for the permitted expenses for the Project and for no other purpose.

2. Reporting Requirements. This is a reimbursement program. The GWK Community shall submit a report to the County after the completion of the Project describing in detail with supporting documentation, including, but not limited to, narratives, drawings, maps, warranties, and/or photographs and paid invoices to sufficiently evidence that the Project was completed in accordance with the Program Policies, the GWK Community's Application, and Attachment B to this Agreement. Said report and documentation must be received by the County on or before June 30, 2022
3. Authorization to Publicize. The GWK Community hereby authorizes and permits and grants a non-exclusive, irrevocable license to the County, without further notice and action required by the GWK Community or the County, to use photographs, logos, published/printed information, and any other materials to promote or otherwise publicize the County, the Program, the Project and/or the GWK Community in any manner or form, including, but not limited to, in social media, press releases, advertisements, and/or publications of any nature.
4. No Guaranty of Participation. The GWK Community acknowledges, understands, and agrees (i) the funding provided by the County through the Program is meant to supplement, and not replace, funding for existing street tree planting programs or projects engaged in by the GWK Community; (ii) the Program is expressly established as a pilot program, there is no guarantee that the Program will be continued from year-to-year and the County expects that most projects funded under the Program will be completed by the end of calendar year 2021; and (iii) there is no obligation on behalf of the County to either fund the Project or continue the Program in the future.
5. Assumption of Liabilities and Responsibilities; Release. The GWK Community assumes any and all responsibilities, including, but not limited to, costs and expenses, and liabilities arising out of the administration and implementation of the Project and the ongoing maintenance and warranty compliance of any and all trees planted through the Project, and acknowledges and agrees that the County shares no such responsibilities or liabilities in administering or implementing the Project or maintaining any and all trees planted through the Project, or insuring compliance with any warranties. The GWK Community, on its behalf and on behalf of its employees, agents, representatives, elected and appointed officials, and volunteers, agrees to not sue and to waive, release, and forever discharge the County and its employees, agents, representatives, elected and appointed officials, and volunteers from all liability, damages, injuries, claims, or demands of any nature and for any reason ("Claims") arising from or in any way connected to the Program and/or the Project, including, but not limited to, any matters relating to the selection of tree species, planting location or processes, maintenance, tree growth, or removal, and shall indemnify and hold the County harmless against any third party Claims.
6. Approval of Funding. In reliance on the representations, warranties, and agreements made by the GWK Community in this Agreement and each document referenced herein, the County approves the funding of the Project through the Program in the amount identified as "FY2021 OAKSTEM 2021 Program Award" set forth on Attachment B to this Agreement, which amount shall be paid as a



reimbursement to the GWK Community by the County upon successful completion of the Project and receipt by the County from the GWK Community of a report and the documentation described in Section 2 of this Agreement and the GWK Community's performance of any and all other obligations set forth in this Agreement or any document referenced herein. Said report and documentation must be received by the County on or before June 30, 2022. If a Project is not completed in accordance with the Application and as approved by the County and/or applicable report and documentation is not received by the County on or before June 30, 2022, to its satisfaction, the County's obligation to pay the reimbursement funds under this Agreement is null and void. The report and the documentation described in Section 2 shall be sent to both the:

Manager of Fiscal Services  
Executive Office Building  
2100 Pontiac Lake Road, Building 41 West  
Waterford, MI 48328

Planning Manager  
Economic Development Department  
Executive Office Building  
2100 Pontiac Lake Road, Building 41 West  
Waterford, MI 48328

7. References to the County and/or the Program. All marketing materials created, or references or acknowledgments made, by the GWK Community regarding the receipt or use of funding under the Program for the Project shall reference the County and the Program and the GWK Community, through its authorized representative, shall, upon the County's request, execute a License Agreement for the use of the County's or Program's name and/or any materials, logos, or items related thereto, provided, however, the GWK Community shall cease the use or reference to the County or the Program upon notice by the County.
8. Counterpart and Electronic Signatures. This Agreement may be signed in counterparts which together shall be deemed a fully executed document. Any signature to this Agreement delivered electronically shall be deemed an original signature to this Agreement.

The parties to this Agreement have executed this Agreement as indicated below.

**OAKLAND COUNTY**

**COMMUNITY**

**Signed:** \_\_\_\_\_

**Signed:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Attachment A****OAKSTEM 2021 STREET TREE ENHANCEMENT MATCHING GRANT PILOT PROGRAM****Terms and Policies****STATEMENT OF PURPOSE**

Recognizing a continuing need to enhance and maintain public street trees on public road rights of way (ROW), Oakland County Government wishes to pilot a discretionary street tree matching program that will allow the County to assist communities that are within the GWK George W. Kuhn ("GWK") Drainage District (the "GWK District")(collectively, the "GWK Communities") with the planting of street trees on public road rights of way ("ROW") that are under their jurisdiction or on public road ROW directly adjacent to land publicly owned by these GWK Communities, and that are within the GWK District.

The County wishes to provide limited matching funds to qualifying GWK Communities to plant street trees that will provide the following direct public benefits: Increase tree canopy; reduce impervious surface area; reduce peak flow storm water run-off; reduce flooding risk; reduce noise; improve air quality; enhance aesthetics; attract, retain and grow business, retain jobs and encourage community investment.

The County wishes to assist GWK Communities to accomplish these public objectives by test-piloting a Street Tree Enhancement Match Program.

**PROGRAM SUMMARY**

The County established the OAKSTEM 2021 Street Tree Enhancement Matching Grant Pilot Program (the "Program") to increase tree canopy and reduce impervious surface area in the GWK District. The Program seeks to assist the GWK Communities by offering limited matching funds for street tree plantings on public road ROWs that are under their jurisdiction, or on public road ROW directly adjacent to land publicly owned by these GWK Communities, and that are within the GWK District.

Each GWK Community seeking funds through the Program shall submit to the County (i) a fully completed Pilot OAKSTEM 2021 Program Application Form (an "Application"), including a description of the project and supporting documentation for which the funding is sought (the "Project"); and (ii) if the County approves such Application, an executed Cost Participation Agreement as presented by the County. Submission of an Application by a GWK Community does not entitle such GWK Community to participation in the Program. Any funding under the Program is subject to the discretion of the County.

The Program provides for reimbursement on 1 / 1 match basis, to a maximum as outlined in Schedule 1 to these Terms and Policies. Funding shall be utilized to supplement and enhance GWK Community street tree plantings only. Funding is not intended for previously planted street trees, to replace existing budgeted street tree planting programs or to replace funding already committed to street tree plantings.

## **PROJECT GUIDELINES**

### **Program Funding:**

1. Shall be utilized solely for the purposes of street tree plantings on public road ROW that are under their jurisdiction, or on public road ROW directly adjacent to land publicly owned by these GWK Communities, and that are within the GWK District.
2. Shall not be utilized to fund street tree improvements on any state trunk lines or ROW under the jurisdiction of the Michigan Department of Transportation.
3. Shall be limited to costs associated with purchase and warranty of street trees only and shall not be utilized for other purposes, such as administrative expenses, ongoing maintenance, personnel, overhead, utilities, consultants or other similar purposes.
4. Shall not be utilized for any motorized or non-motorized road improvements to a roadway.
5. Shall be utilized for street tree planting projects that will result in: Increased tree canopy; reduced impervious surface area; reduced peak flow storm water run-off; reduced flooding risk; reduced noise; improved air quality; enhanced aesthetics; attraction, retention and growth of business, retention of jobs and encouragement of further community investment.

### **Warranty:**

All trees planted using Program funding shall be covered by a minimum two (2) year warranty, guaranteeing survival of the tree for two years from the date of Project completion. Said warranty shall provide for the complete costs of removal and replacement. Replacement trees shall be covered with a full two-year replacement warranty as well.

### **Local Elected Governing Body Resolution of Approval:**

Each Application shall be accompanied by a certified copy of a resolution of the GWK Community's elected governing body (city council, village council, township board) approving the GWK Community's participation in the Program (including the appropriation of the required funds to fund the Community's obligations under the Program to complete the Project(s)), authorizing application for the Program, designating the person authorized to sign on the GWK Community's behalf, and certifying the GWK Community's commitment to complying with the Program's requirements. A Sample Community Resolution is attached to the Application.

## **ADMINISTRATION**

Funding for Projects through the Program may be appropriated annually by the County, but is not guaranteed. Funding availability shall be determined annually through the budget process.

Program funding may be reduced or eliminated based upon the ability of the County to meet its primary constitutional and statutory duties. The County expressly reserves the right to adjust the County matching funds share at any time based upon County budget needs.



The amount of funds available for match shall be determined by the total amount of funds allocated by the County added to an equal amount representing the match provided by the participating GWK Communities.

The Economic Development Department Planning Manager shall administer the Program, including receiving Applications for Program funding and approval of funding by the County.

## **DISBURSEMENT**

The Planning Manager shall forward an approved Program Award Summary in a form prescribed by the County and a Cost Participation Agreement to each participating GWK Community for local approval.

Minimally, each Application shall include: the GWK Community's responsibility for administering the Project, the Project location, purpose, scope, estimated costs, including supporting details, provisions ensuring compliance with project guidelines, as well as disbursement eligibility requirements. The Cost Participation Agreement shall require the maintenance and delivery of supporting documentation to ensure compliance with the following provisions:

1. Any and all supporting documentation for Project expenditures reimbursed with appropriated funding through the Program shall be maintained a minimum of seven years from the date of final reimbursement for actual expenditures incurred.
2. The Oakland County Fiscal Services Division reserves the right to audit all Project expenditures reimbursed through the Program.

The deadline for submitting the Application shall be established in the Program announcement.

Upon completion by a GWK Community of its Project, the GWK Community shall submit a report and documentation in accordance with the terms and conditions set forth in the Cost Participation Agreement. Said report and documentation must be received by the County on or before June 30, 2022 to receive a reimbursement payment. The Oakland County Department of Management and Budget Fiscal Services Division shall process payments in accordance with its policies and procedures.

In the event an eligible GWK Community chooses not to participate in the Program after having been awarded funding under the Program, any previously undistributed funding allocated to such award may be reallocated to other participating GWK Communities, provided they each meet the requirements under the Program.

At the completion of a Project, the participating GWK Community shall provide a final report to the County as more fully described in the Cost Participation Agreement, including a description of the activities of the recipient and the degree to which the recipient has met the stated public purpose of these Terms and Policies.

**Schedule 1 to Attachment A  
OAKSTEM 2021 – BASE VALUE DISTRIBUTION FORMULA**

Total Budget:		\$200,000										
Factor		Factor 1: Participation			Factor 2: Eligible Road Miles			Factor 3: Imperviousness			Must equal 100%	
Percent of Budget		60%			30%			10%			100%	
Budget Allocation per Factor		\$120,000			\$60,000			\$20,000			\$200,000	Percentage of Total Budget
Community	Type	(Y/N)	Percent Allocation	Factor 1 Allocation	Road Miles	Percent Allocation	Factor 2 Allocation	Impervious Score**	Percent Allocation	Factor 3 Allocation	BASE ALLOCATION per CVT	
1 Berkley	City	1	7.1%	\$8,571	54.4	5.3%	\$3,172	0.48	7.1%	\$1,411	\$13,155	6.6%
2 Beverly Hills	Village	1	7.1%	\$8,571	5.9	0.6%	\$344	0.376	5.5%	\$1,106	\$10,021	5.0%
3 Birmingham	City	1	7.1%	\$8,571	32.8	3.2%	\$1,913	0.546	8.0%	\$1,605	\$12,089	6.0%
4 Clawson	City	1	7.1%	\$8,571	39.5	3.8%	\$2,303	0.502	7.4%	\$1,476	\$12,351	6.2%
5 Ferndale	City	1	7.1%	\$8,571	73.8	7.2%	\$4,303	0.539	7.9%	\$1,585	\$14,459	7.2%
6 Hazel Park	City	1	7.1%	\$8,571	58.9	5.7%	\$3,434	0.558	8.2%	\$1,641	\$13,647	6.8%
7 Huntington Woods	City	1	7.1%	\$8,571	25.0	2.4%	\$1,458	0.385	5.7%	\$1,132	\$11,161	5.6%
8 Madison Heights	City	1	7.1%	\$8,571	99.3	9.7%	\$5,790	0.561	8.2%	\$1,650	\$16,011	8.0%
9 Oak Park	City	1	7.1%	\$8,571	89.3	8.7%	\$5,207	0.507	7.5%	\$1,491	\$15,269	7.6%
10 Pleasant Ridge	City	1	7.1%	\$8,571	10.4	1.0%	\$606	0.485	7.1%	\$1,426	\$10,604	5.3%
11 Royal Oak	Township *	1	7.1%	\$8,571	1.0	0.1%	\$58	0.52	7.6%	\$1,529	\$10,159	5.1%
12 Royal Oak	City	1	7.1%	\$8,571	219.9	21.4%	\$12,822	0.475	7.0%	\$1,397	\$22,790	11.4%
13 Southfield	City	1	7.1%	\$8,571	47.9	4.7%	\$2,793	0.429	6.3%	\$1,261	\$12,626	6.3%
14 Troy	City	1	7.1%	\$8,571	270.9	26.3%	\$15,796	0.439	6.5%	\$1,291	\$25,658	12.8%
Subtotals:		14	100.0%	\$120,000	1,029.0	100.0%	\$60,000	6.802	100.0%	\$20,000	\$200,000	100.0%
* Royal Oak Township does not have jurisdiction over any roads. The Eligible Road Miles calculation is based on the road frontage of publicly owned property adjacent to public road ROW.												
** Impervious Score is the percent of impervious surface land area within the community expressed as a decimal.												

DRAFT



ATTACHMENT B

OAKSTEM 2021 STREET TREE ENHANCEMENT MATCHING GRANT PILOT PROGRAM

Program Award Summary

County Project Number: 2021-XX

Project Name (the "Project"): 2022 SPRING TREE PURCHASE AND PLANT

Participating GWK Community (the "Community"): BIRMINGHAM

Project Description: PURCHASE AND PLANTING OF 100+ TREES IN STREET R.O.W. AND PARK PROPERTIES THROUGHOUT BIRMINGHAM.

PROJECT BUDGET

COMMUNITY PROJECT COST BREAKDOWN

Street Tree Purchase (Including Warranty)

COMMUNITY Contribution (Tree and warranty costs only):	(MATCH)	\$ 15,000
FY2021 OAKSTEM Program Award:	(AWARD)	\$ 15,000
<b>Total Street Tree Purchase (Including Warranty)</b>		<b>\$ 34,000</b>

**TREES MUST BE PURCHASED ON OR AFTER THE EXECUTION DATE OF THE COST PARTICIPATION AGREEMENT.**

Additional Costs (not Program match eligible)

COMMUNITY Admin., PE/CE, Maintenance, Planting and Inspection costs. \$ 26,000

All administration, engineering, maintenance, planting costs and inspection costs will be paid by COMMUNITY.

**Total Project Costs (All project costs)** \$ 60,000



**DATE:** 06/28/2021

**TO:** Thomas M. Markus, City Manager

**FROM:** Eric Brunk, IT Manager

**SUBJECT:** Enhanced Google Security

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**INTRODUCTION:**

In an effort to increase our endpoint and data security, and to meet Criminal Justice Information Services (CJIS) for our police department and other security requirements the IT department would like to implement end to end encryption for Gmail and Google Drive.

**BACKGROUND:**

As more and more documentation is being shared electronically the City is in need of security software that will meet strict Criminal Justice (CJIS) and Health Insurance Portability and Accountability Act (HIPAA) requirements for any data that may be transmitted via email or shared via Google Drive. The IT department worked with Google and reviewed the applications that are google compliant for security and found Virtru – an easy end to end encryption for Gmail, and google drive. This company is a google partner and is recommended by google to protect Gmail, maintain privacy and meet CJIS and HIPAA compliance for data that may be transmitted or shared electronically. The software protects and governs access to Gmail messages and attachments through their full lifecycle. Allowing end to end encryption and granular access controls that ensure sensitive data stored and shared in Gmail stays compliant with industry regulations.

**FISCAL IMPACT:**

This is a 36 month subscription with a total cost of \$27,717.00 after a subscription discount of \$18,720.00. The subscription is broken into 3 yearly payments of \$9,239.00. There are funds available for this project in the computer maintenance account 636-228.000-933.0600

**SUGGESTED RESOLUTION:**

Resolution to allow the IT department to purchase the 36 month subscription for Enterprise Data protection and endpoint email and drive protection from Virtru for a total cost \$27,717.00 paid as a yearly subscription of \$9,239.00. Funds available in the IT Computer maintenance account: 636-228.000-933.0600



1130 Connecticut Ave NW  
Suite 210  
Washington, DC 20036  
Executed Order must be received by:  
June 30, 2021

**Quote Number:** Q014519  
**Start Date:** 06/16/2021  
**Initial Term:** 36 Months



#### Order Details

Customer Details		Terms	
City of Birmingham, Michigan		City of Birmingham, Michigan	
151 Martin St		Account Manager	christian@virtru.com
Birmingham		Payment Terms:	Net 30
MI 48009		Currency	USD
United States		Notes	-Custom Discount #AL3534 (\$18,720 OFF) valid thru June 2021

Bill To:		Sold To:	
Name:	Eric Brunk	Name:	Eric Brunk
Email:	ebrunk@bhamgov.org	Email:	ebrunk@bhamgov.org



#### Quote Details

Product Name	Quantity	Effective Price	Total
Enterprise - Virtru Data Protection Platform	1	\$2,999.00	\$2,999.00
Enterprise - Endpoint Email & Drive Protection	208	\$60.00	\$12,480.00
June 2021 Discount			-(18,720.00)

**1-yr Total:** \$9,239.00  
**3-yr Total:** \$27,717.00  
**Tax:** \$0.00  
**Invoice Total:** \$9,239.00



1130 Connecticut Ave NW

Suite 210

Washington, DC 20036

Executed Order must be received by:

June 30, 2021

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*This Order Form is part of the Virtru Pro Subscription Agreement (this "Agreement"), entered into as of the date first set forth above (the "Effective Date"), by and among Virtru Corporation, a Delaware corporation ("Virtru"), and the customer identified above ("Customer"). This Agreement includes and is subject to the terms and conditions set forth:*

*<https://www.virtru.com/terms-of-service/> (collectively, the "Terms and Conditions").*

*By executing this Order Form, each signatory hereby represents and warrants that such signatory is a duly authorized representative of Customer and, on behalf of Customer, agrees that, as of the Effective Date, Customer's use of the Materials and Virtru Pro Services (as defined in the Terms and Conditions) shall be governed by this Agreement, including the Terms and Conditions.*

#### SIGNATURES

**Customer:**

By:

Name:

Title:

Date:



## MEMORANDUM

Planning Division

**DATE:** June 22<sup>nd</sup>, 2021

**TO:** Thomas Markus, City Manager

**FROM:** Nicholas Dupuis, City Planner

**APPROVED:** Jana L. Ecker, Planning Director

**SUBJECT:** Set a Public Hearing 501 S. Eton – Whistle Stop – Special Land Use Permit, Final Site Plan & Design Review

### INTRODUCTION:

The applicant has submitted an application for a Special Land Use Permit, Final Site Plan and Design Review for a proposed bistro license in the existing Whistle Stop Diner in the Rail District of Birmingham.

### BACKGROUND:

The Whistle Stop was selected by the City Commission on October 26, 2020 as the sole bistro application to move forward to contend for one of the two bistro licenses that may be approved for an existing establishment each calendar year. During the selection process, the applicant described the Whistle Stop as a true family friendly restaurant with a delicious assortment of offerings for breakfast, brunch and lunch.

On June 9<sup>th</sup>, 2021, the Planning Board recommended approval to the City Commission the Special Land Use, Final Site Plan and Design Review with the following conditions:

1. The Planning Board approves the proposed 67% glazing on the storefront façade;
2. The applicant must submit specification sheets for the proposed roll down garage doors showing a VLT of 80%;
3. The applicant must submit a Certified Land Survey and Existing Conditions Plan prior to the Public Hearing at the City Commission;
4. The applicant must work with the Planning and Engineering Departments to reduce the amount of concrete proposed and improve the streetscape as suggested by the Board for administrative approval;
5. The applicant must replace the existing tinted windows with clear glass; and,
6. The applicant must comply with the requests of all City Departments.

At this time, the applicant has begun to address several of the conditions required by the Planning Board. The Planning Division will provide a complete list of updated information at the public hearing.

**LEGAL REVIEW:**

The City Attorney has reviewed this application and has no concerns as to form and content.

**FISCAL IMPACT:**

There are no fiscal impacts for this agenda item.

**PUBLIC COMMUNICATIONS:**

As required for Special Land Use Permit and Final Site Plan Reviews, a legal ad was placed in a newspaper of local circulation to advertise the nature of the request advance of the June 9<sup>th</sup>, 2021 Planning Board meeting, and notices were sent out to all property owners and tenants within 300' of the property. In addition, a second round of notices will be sent out to advertise the public hearing at the City Commission once the date has been set.

**SUMMARY:**

The Planning Division requests that the City Commission set a public hearing date for **July 26<sup>th</sup>, 2021** to consider the Special Land Use Permit, Final Site Plan and Design Review application for 501 S. Eton – Whistle Stop.

**ATTACHMENTS:**

Please find attached the following documents for your review:

- Draft Special Land Use Permit Resolution
- Planning Division Report
- Site/Design Plans
- Meeting Minutes
- Application & Supporting Documents

**SUGGESTED RESOLUTION:**

To set a public hearing date for July 26<sup>th</sup>, 2021 to consider the Special Land Use Permit, Final Site Plan and Design Review application for 501 S. Eton – Whistle Stop to allow the operation of a bistro.



WHISTLE STOP  
501 S. Eton  
Special Land Use Permit 2021

WHEREAS, WHISTLE STOP filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a food and drink establishment serving alcoholic liquors in the MX (Mixed-Use) zoning district in accordance Article 2, Section 2.39 (C)(2)(b) of Chapter 126, Zoning, of the City Code;

WHEREAS, the land for which the Special Land Use Permit Amendment is sought is located on the east side of S. Eton, south of Maple Rd.;

WHEREAS, The land is zoned MX, which permits the operation of food and drink establishments serving alcoholic liquors using a BISTRO license with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit Amendment to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The applicant submitted an application for a Special Land Use Permit, Final Site Plan and Design Review for WHISTLE STOP to operate at 501 S. Eton;

WHEREAS, The Planning Board on June 9, 2021 reviewed the application for a Special Land Use Permit, Final Site Plan and Design Review and recommended APPROVAL to the City Commission to permit the operation of a bistro serving alcoholic liquors with the following conditions:

1. The Planning Board approves the proposed 67% glazing on the storefront façade;
2. The applicant must submit specification sheets for the proposed roll down garage doors showing a VLT of 80%;
3. The applicant must submit a Certified Land Survey and Existing Conditions Plan prior to the Public Hearing at the City Commission;
4. The applicant must work with the Planning and Engineering Departments to reduce the amount of concrete proposed and improve the streetscape as suggested by the Board for administrative approval;
5. The applicant must replace the existing tinted windows with clear glass; and,
6. The applicant must comply with the requests of all City Departments.

WHEREAS, The applicant has agreed to provide all requested information and to comply with the requests of all City departments;

WHEREAS, The Birmingham City Commission has reviewed WHISTLE STOP'S Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that

WHISTLE STOP'S application for a Special Land Use Permit, Final Site Plan and Design Review at 501 S. Eton is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

1. WHISTLE STOP will close outdoor dining areas by 3 PM each day of the week;
2. WHISTLE STOP shall abide by all provisions of the Birmingham City Code; and
3. The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, WHISTLE STOP and its heirs, successors, and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of WHISTLE STOP to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

MAY IT BE FURTHER RESOLVED that WHISTLE STOP is recommended for the operation of a food and drink establishment serving alcoholic beverages on premises, above all others, subject to final inspection.

I, Alexandria Bingham, City Clerk 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 July 26, 2021.

---

**Alexandria Bingham**  
**City Clerk**



# MEMORANDUM

Planning Division

**DATE:** June 9<sup>th</sup>, 2021

**TO:** Jana Ecker, Planning Director

**FROM:** Nicholas Dupuis, City Planner

**SUBJECT:** 501 S. Eton – Whistle Stop – Special Land Use Permit, Final Site Plan & Design Review

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The subject site, 501 S. Eton, is currently used as a restaurant within an existing one-story commercial building fronting S. Eton. The applicant has submitted a Special Land Use and Final Site Plan/Design Review application requesting a bistro license for the Whistle Stop Diner.

On January 22<sup>nd</sup>, the Planning Board reviewed and approved a Design Review application for extensive façade renovations at the Whistle Stop which included an expansion into the adjacent tenant space. The applicant is proposing minor exterior changes to the building/site as a part of this Special Land Use Permit and Final Site Plan/Design Review application, which revolve around the placement of the proposed outdoor dining facility.

The Whistle Stop was selected by the City Commission on October 26, 2020 as the sole bistro application to move forward to contend for one of the two bistro licenses that may be approved for an existing establishment each calendar year. During the selection process, the applicant described the Whistle Stop as a true family friendly restaurant with a delicious assortment of offerings for breakfast, brunch and lunch.

The Birmingham Code of Ordinances states that a contract for transfer and a Special Land Use Permit are required for all licenses approved under Chapter 10 – Alcoholic Liquors. The licensee must comply with all provisions of the contract and Special Land Use Permit, and any amendments thereto as a condition of granting of a requested transfer. Accordingly, the applicant must obtain a recommendation from the Planning Board on the Special Land Use and Final Site Plan/Design Review application, which is then reviewed for final consideration by the City Commission.

## 1.0 Land Use and Zoning

1.1 Existing Land Use – One-story multi-tenant commercial building.

1.2 Zoning – MX (Mixed-Use)

### 1.3 Summary of Adjacent Land Use and Zoning –

	North	South	East	West
Existing Land Use	Multi-Family	Commercial	Multi-Family/ Commercial	Single-Family Residential
Existing Zoning District	MX (Mixed- Use)	MX (Mixed- Use)	MX (Mixed- Use)	R3 (Single- Family Residential)
Overlay Zoning District	N/A	N/A	N/A	N/A

## 2.0 **Bistro Requirements**

Article 9, Section 9.02, Definitions, of the Zoning Ordinance defines a bistro as a restaurant with a full service kitchen with interior seating for no more than 65 people and additional seating for outdoor dining for no more than 65 people.

Article 3, Section 3.04(C)(10) of the Zoning Ordinance permits bistros in the Downtown Overlay District as long as the following conditions are met:

- a. No direct connect additional bar permit is allowed and the maximum seating at a bar cannot exceed 10 seats;
- b. Alcohol is served only to seated patrons, except those standing in a defined bar area;
- c. No dance area is provided;
- d. Only low key entertainment is permitted;
- e. Bistros must have tables located in the storefront space lining any street, or pedestrian passage;
- f. A minimum of 70% glazing must be provided along building facades facing a street or pedestrian passage between 1' and 8' in height;
- g. All bistro owners must execute a contract with the City outlining the details of the operation of the bistro; and
- h. Outdoor dining must be provided, weather permitting, along an adjacent street or passage during the months of May through October each year. Outdoor dining is not permitted past 12:00 a.m. If there is not sufficient space to permit such dining on the sidewalk adjacent to the bistro, an elevated, ADA compliant, enclosed platform must be erected on the street adjacent to the bistro to create an outdoor dining area if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
- i. Enclosures facilitating year round dining outdoors are not permitted.

- j. Railings, planters or similar barriers defining outdoor dining platforms may not exceed 42" in height.
- k. Outdoor rooftop dining is permitted with the conditions that surrounding properties are not impacted in a negative manner and adequate street level dining is provided as determined by the Planning Board and City Commission. Rooftop dining seats will count towards the total number of permissible outdoor dining seats.

At this time, the applicant appears to meet the requirements listed above. On the interior, the proposed bar counter contains 8 seats. There is no dance floor, and there are no indications on the plans there any entertainment will be provided at the proposed restaurant. In totality, the applicant is proposing 64 interior seats, including the 8 at the bar.

As far as exterior conditions, a 28-seat outdoor patio is proposed along the front of the building, which is a change from the January 2020 Design Review in which the applicant proposed to erect a platform in the grassy easement across the sidewalk. The outdoor dining area is proposed to be enclosed by a removable railing that measures 36 in. in height, contains a trash receptacle, and is accessed by two overhead garage doors and one typical entry door. Additionally, although the outdoor dining area appears to be located on public property, the applicant is proposing to repave the 453 sq. ft. area with pervious concrete to help mitigate the loss of greenspace caused by the relocation of the patio. Further streetscape/landscaping changes will be discussed below. Finally, the applicant has provided glazing calculations at 67%, which will be discussed in detail below.

The Whistle Stop has indicated that the introduction of a bistro license will not change the hours of operation for the indoor or outdoor dining areas. The Whistle stop plans to maintain the current hours of operation of 7 AM – 3 PM, Monday-Saturday, and 8 AM – 3 PM on Sundays. The proposed hours of operation for the restaurant, and subsequently the outdoor patio, meet the requirements of the Zoning Ordinance as they close well before 10 PM.

### **3.0 Setback and Height Requirements**

Please see the attached zoning compliance summary sheet for details on setback and height requirements. There are currently no issues with bulk, height or placement with the Special Land Use Permit, Final Site Plan/Design Review application submitted.

### **4.0 Screening and Landscaping**

- 4.1 Dumpster Screening – There are no changes proposed to the dumpster or screening on site.
- 4.2 Parking Lot Screening – There are no changes proposed to the parking lot or associated screening.
- 4.3 Mechanical Equipment Screening – There are no changes proposed to the mechanical equipment or screening on site.
- 4.4 Landscaping – The applicant is proposing to install new boxwood plantings and one new maple tree in front of the existing parking lot screen wall at the southwest corner of the property. The proposed new landscaping is an attempt to introduce new greenspace and tree cover to the right-of-way to make up for the greenspace and tree proposed to be removed in the easement, which is discussed in detail below.
- 4.5 Streetscape – As noted above, the proposed relocation of the outdoor dining area from a platform in the easement to a typical patio adjacent to the building has necessitated a proposed re-design of the streetscape in front of the building. The applicant is proposing to remove 1 of 3 existing street trees and the majority of the grass in the easement to repave and rework the sidewalk around their newly proposed outdoor dining area. The resulting streetscape will contain a small grassy area and tree at the south end of the streetscape, an existing tree in a new planter at the north end, and a 6 ft. clear walking path that curves around the patio to the west.

Article 4, Section 4.20 (G) requires at least 1 street tree for each 40 ft. of frontage. The entire building contains 130 ft. of frontage, which requires 3 street trees. Although the applicant is proposing to remove one of the 3 existing trees, they are proposing to replace the tree at the south end of the property. At this time, however, it is unclear as to whether or not the new tree is proposed on public or private property. Additionally, the spacing of the trees would be mismatched/uneven based on the rest of the S. Eton streetscape. The property line indicated on the site plan submitted extends roughly 5 ft. beyond the face of the building, whereas City records indicate that the S. Eton right-of-way may extend all the way to the face of the building. The Applicant has not yet submitted a Certified Land Survey to confirm the location of the property lines.

At this time, the applicant has not proposed any additional streetscape improvements such as benches, bike racks, waste receptacles, or streetlights. The Planning Board may wish to require the applicant to provide some of these

streetscape improvements as a part of the Special Land Use Permit, Final Site Plan/Design review application submitted.

## **5.0 Parking, Loading and Circulation**

- 5.1 Parking – There are no changes to the parking requirements on site. The applicant has a 13-space on-site parking facility, 8 spaces in the ROW that were approved to be counted towards the off-street parking required (2007), and received a variance of 17 parking spaces in 2020 for a total of 38 spaces.
- 5.2 Loading – There are no changes proposed to the loading requirements.
- 5.3 Vehicular Circulation and Access – There are no changes proposed to the vehicular circulation and access.
- 5.4 Pedestrian Circulation and Access – The pedestrian circulation along S. Eton is proposed to be altered by redirecting the sidewalk west to make room for the newly proposed outdoor dining area. All entrances/exits are proposed to remain as existing.

It is worth noting at this time that there are currently no sidewalks located on the north (Hazel) and south (Palmer) sides of the property. These areas are currently inhabited by greenspace and arborvitaes. As a longstanding neighborhood eatery and destination, it would be beneficial in the near future to work together on ways to improve connectivity to the site for pedestrian access from Hazel and Palmer.

## **6.0 Lighting**

There are no new light fixtures or changes in lighting proposed.

## **7.0 Departmental Reports**

- 7.1 Engineering Division – The Engineering Division has provided the following comments:
  - 1. The plans propose to remove at least one street tree, while the other two are noted as “in existing planters,” which do not exist. The current condition has the street trees in grass/mulch.
  - 2. The applicant is proposing to remove a lot of pervious area and the Engineering Division would like to balance that out. The applicant is proposing pervious concrete in the patio space, and we would like to see the drainage plan, as the pervious space would only be as successful as



its drainage area. Additionally, a maintenance plan might be needed depending on the design. Lastly, there does not appear to be any greenspace around the tree at the north of the streetscape where there may be room for some.

3. There seems to be a significant fall between the existing walk at the building and exiting top of curb, which may make extending the sidewalk challenging for ADA. Simply raising the curb height is not permitted as it would affect cars parking there from opening their doors and potentially be a hazard to drivers.
4. The existing curb does not look to be in great shape, and may need repairs if the walk were pushed to the edge. The pavement adjacent to the curb looks to be in poor condition, too, and any work on the curb may result in additional pavement replacement.
5. The fence for the outdoor dining area ends very close to the neighboring tenant space door at the south end of the outdoor dining area. The Engineering Division would suggest the applicant gain written approval for this condition.
6. When sidewalks are pushed to the curb, we would prefer a wider sidewalk than 5 feet. Even though parking is here, not a traveled lane, when a door is open, there has to be at least 30 inches of space for ADA compliance, which would reduce the sidewalk width and potentially interrupt the flow of pedestrians.

7.2 Department of Public Services – The Department of Public Services has not provided any comments at this time.

7.3 Fire Department – The Fire Department has provided the following comments and requests for information:

1. Determined occupant load by Building Department and Fire Marshal.
2. Hood suppression acceptance test.
3. Keys provided for Knox box.
4. Fire extinguisher placement.
5. Final site inspection required.

7.4 Police Department – The Police Department does not have any concerns at this time, but noted that the formal police liquor license investigation has not yet been initiated.

7.5 Building Division – The Building Division has provided the following comments:

As requested, the Building Department has examined the plans for the proposed project referenced above. The plans were provided to the Planning Department

for site plan review purposes only and present conceptual elevations and floor plans. Although the plans lack sufficient detail to perform a code review, the following comments are offered for Planning Design Review purposes and applicant consideration:

Applicable Building Codes:

- 2015 Michigan Building Code. Applies to all buildings other than those regulated by the Michigan Residential Code.
- 2015 Michigan Mechanical Code. (Residential requirements for mechanical construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)
- 2015 Michigan Plumbing Code. (Residential requirements for plumbing construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)
- 2017 National Electrical Code along with the Michigan Part 8 Rules. (Residential requirements for electrical construction in all detached one and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures are contained in the Michigan Residential Code)

Review Comments:

- No building codes concerns at this time. The applicant will need to submit revised construction documents for the proposed changes to the existing approved plans.

## **8.0 Design Review**

As noted above, the only new exterior change proposed on the building are the addition of two new overhead garage doors on the west façade, which will act as access to the outdoor dining area and provide more interaction between the restaurant and the streetscape. The two garage doors are constructed of black metal and glass.

### Glazing

Because the applicant is proposing to rework the storefront, and subsequently the glazing, the Planning division requested that the applicant submit glazing calculations

for the proposed storefront to compare to the Window Standards in Article 4, Section 4.90, as well as the bistro standards in Article 3, Section 3.04 of the Zoning Ordinance. The applicant has submitted glazing calculations that indicate a glazed area of 67% between 1 ft. and 8 ft. from grade. The Zoning Ordinance requires storefronts to contain a minimum of 70% glazing in between 1 ft. and 8 ft. from grade.

However, to allow flexibility in design, these standards may be modified by a majority vote of those appointed and serving on the Planning Board, Design Review Board for architectural design considerations provided that the following conditions are met:

- a. The subject property must be in a zoning district that allows mixed uses;
- b. The scale, color, design and quality of materials must be consistent with the building and site on which it is located;
- c. The proposed development must not adversely affect other uses and buildings in the neighborhood;
- d. Glazing above the first story shall not exceed a maximum of 70% of the façade area;
- e. Windows shall be vertical in proportion.

At this time, the applicant appears to meet the above conditions. **Thus, the applicant must receive approval from the Planning Board to provide 67% glazing on the storefront façade, provide additional glazing, or obtain a variance from the Board of Zoning Appeals.**

Furthermore, the applicant has not submitted specification sheets with Visual Light Transmittance (VLT) figures that are required with any new glazing proposed. The new glazing is required to meet the current Window Standards which is 80% VLT. At this time, the Planning Division has been advised that it will be clear and complement the existing glass. The Planning Board may cite the ordinance language above to modify the clarity requirements slightly if the applicant is unable to meet the 80% VLT requirements. Thus, **the applicant must submit specification sheets for the proposed roll down garage doors showing a VLT of 80%, receive approval from the Planning Board for a lower VLT percentage, or obtain a variance from the Board of Zoning Appeals.**

#### Outdoor Dining

Although the materials proposed within the outdoor dining area have not changed from the Design Review in 2020, the applicant has re-submitted the specification sheets for the furniture for convenience. The proposed tables and chairs are constructed of metal as required by Article 4, Section 4.44 of the Zoning Ordinance. The tables are proposed to be "Black" in color, while the chairs are proposed in "Cherry Red". The applicant is also proposing two umbrellas, which are "Logo Red" in color.

## 9.0 Required Attachments

	Submitted	Not Submitted	Not Required
Existing Conditions Plan	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Detailed and Scaled Site Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Certified Land Survey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Interior Floor Plans	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Landscape Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Photometric Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Colored Elevations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Material Specification Sheets	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Material Samples	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Site & Aerial Photographs	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Although the applicant has submitted a letter stating that they have contracted with Survey Tech for a land survey, the applicant has not yet submitted a Certified Land Survey or Existing Conditions Plan. **The applicant must submit a Certified Land Survey and Existing Conditions Plan prior to the Public Hearing at the City Commission.**

## 10.0 Bistro Criteria

Chapter 10, Alcoholic Liquors, section 10-82 provides a limitation on the number of Bistro Licenses that the City Commission may approve, and provides selection criteria to assist the Planning Board and City Commission in evaluating applications for Bistro Licenses. Section 10-82 states:

- (1) New establishments. Two (2) Bistro Licenses may be approved each calendar year to applicants who do not meet the definition of existing establishments as set forth in (a)(1) above. In addition to the usual criteria used by the city commission for liquor license requests, the commission shall consider the following non-exclusive list of criteria to assist in the determination of which of the new establishment applicants, if any, should be approved:
  - a. The applicant's demonstrated ability to finance the proposed project.
  - b. The applicant's track record with the city including responding to city and/or citizen concerns.
  - c. Whether the applicant has an adequate site plan to handle the bistro liquor license activities.
  - d. Whether the applicant has adequate health and sanitary facilities.
  - e. The establishment's location in relation to the determined interest in the establishment of bistros in the Overlay District and the Triangle District.

- f. The extent that the cuisine offered by applicant is represented in the city.
- g. Whether the applicant has outstanding obligations to the city (ie property taxes, utilities, etc.).

During the Bistro Selection process at the City Commission, the applicant demonstrated their ability to continue to finance the renovation/bistro project that has already begun. The acquisition of a liquor license, and subsequently a Special Land Use Permit from the City is the final step in this ongoing process. The applicant has also noted that they have a good track record with the City of Birmingham, as well as the City of Pleasant Ridge where the second Whistle Stop location is located. The proposed site plan appears to be able to handle the bistro liquor license activities and contains improved health and sanitary facilities. Finally, this would be the first bistro liquor license in the Rail District, and the Whistle Stop is the sole purveyor of breakfast/brunch cuisine in the area.

## **11.0 Approval Criteria**

In accordance with Article 7, section 7.27 of the Zoning Ordinance, the proposed plans for development must meet the following conditions:

- (1) The location, size and height of the building, walls and fences shall be such that there is adequate landscaped open space so as to provide light, air and access to the persons occupying the structure.
- (2) The location, size and height of the building, walls and fences shall be such that there will be no interference with adequate light, air and access to adjacent lands and buildings.
- (3) The location, size and height of the building, walls and fences shall be such that they will not hinder the reasonable development of adjoining property nor diminish the value thereof.
- (4) The site plan, and its relation to streets, driveways and sidewalks, shall be such as to not interfere with or be hazardous to vehicular and pedestrian traffic.
- (5) The proposed development will be compatible with other uses and buildings in the neighborhood and will not be contrary to the spirit and purpose of this chapter.
- (6) The location, shape and size of required landscaped open space is such as to provide adequate open space for the benefit of the inhabitants of the building and the surrounding neighborhood.

In addition, Article 7, Section 7.26 requires applications for a Special Land Use Permit to meet the following criteria:

- (1) The use is consistent with and will promote the intent and purpose of this Zoning Ordinance.

- (2) The use will be compatible with adjacent uses of land, the natural environment, and the capabilities of public services and facilities affected by the land use.
- (3) The use is consistent with the public health, safety and welfare of the city.
- (4) The use is in compliance with all other requirements of this Zoning Ordinance.
- (5) The use will not be injurious to the surrounding neighborhood.
- (6) The use is in compliance with state and federal statutes.

## 12.0 Recommendation

Based on a review of the site plan submitted, the Planning Division recommends that the Planning Board recommend **APPROVAL** to the City Commission the Special Land Use and Final Site Plan/Design Review application for 501 S. Eton – Whistle Stop – with the following conditions:

1. The Planning Board APPROVES the proposed 67% glazing on the storefront façade;

*OR*

1. The applicant must provide additional glazing, or obtain a variance from the Board of Zoning Appeals;
2. The applicant must submit specification sheets for the proposed roll down garage doors showing a VLT of 80%, receive approval from the Planning Board for a lower VLT percentage, or obtain a variance from the Board of Zoning Appeals;
3. The applicant must submit a Certified Land Survey and Existing Conditions Plan prior to the Public Hearing at the City Commission; and
4. The applicant must comply with the requests of all City Departments.

## 13.0 Sample Motion Language (*Final Site Plan & Design Review*)

Motion to recommend **APPROVAL** to the City Commission the Final Site Plan & Design Review for 501 S. Eton – Whistle Stop – with the following conditions:

1. The Planning Board APPROVES the proposed 67% glazing on the storefront façade;

*OR*

1. The applicant must provide additional glazing, or obtain a variance from the Board of Zoning Appeals;

2. The applicant must submit specification sheets for the proposed roll down garage doors showing a VLT of 80%, receive approval from the Planning Board for a lower VLT percentage, or obtain a variance from the Board of Zoning Appeals;
3. The applicant must submit a Certified Land Survey and Existing Conditions Plan prior to the Public Hearing at the City Commission; and
4. The applicant must comply with the requests of all City Departments.

**OR**

Motion to **POSTPONE** the Final Site Plan & Design Review for 501 S. Eton – Whistle Stop – pending receipt of the following:

1. The applicant must receive approval from the Planning Board to provide 67% glazing on the storefront façade, provide additional glazing, or obtain a variance from the Board of Zoning Appeals;
2. The applicant must submit specification sheets for the proposed roll down garage doors showing a VLT of 80%, receive approval from the Planning Board for a lower VLT percentage, or obtain a variance from the Board of Zoning Appeals;
3. The applicant must submit a Certified Land Survey and Existing Conditions Plan prior to the Public Hearing at the City Commission; and
4. The applicant must comply with the requests of all City Departments.

**OR**

Motion to recommend the **DENIAL** to the City Commission the Final Site Plan & Design Review for 501 S. Eton – Whistle Stop – for the following reasons:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

#### **14.0 Sample Motion Language (*Special Land Use Permit*)**

Motion to recommend **APPROVAL** to the City Commission the Special Land Use Permit for 501 S. Eton – Whistle Stop – subject to the conditions of Final Site Plan & Design Review approval.

**OR**

Motion to **POSTPONE** the Special Land Use Permit for 501 S. Eton – Whistle Stop – pending receipt of the following:



1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**OR**

Motion to recommend **DENIAL** to the City Commission the Special Land Use Permit for 501 S. Eton – Whistle Stop – for the following reasons:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

**Zoning Compliance Summary Sheet  
Final Site Plan Review  
501 S. Eton – Whistle Stop**

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**Existing Site:** 1-Story Commercial Building

Zoning: MX (Mixed-Use)

Land Use: Commercial

**Existing Land Use and Zoning of Adjacent Properties:**

	North	South	East	West
<b>Existing Land Use</b>	Multi-Family	Commercial	Multi-Family/ Commercial	Single-Family Residential
<b>Existing Zoning District</b>	MX (Mixed-Use)	MX (Mixed-Use)	MX (Mixed-Use)	R3 (Single-Family Residential)
<b>Overlay Zoning District</b>	N/A	N/A	N/A	N/A

<b>Land Area:</b>	Existing:	0.26 ac.
	Proposed:	0.26 ac.
<b>Dwelling Units:</b>	Existing:	0 units
	Proposed:	0 units
<b>Minimum Lot Area/Unit:</b>	Required:	N/A
	Proposed:	N/A
<b>Min. Floor Area /Unit:</b>	Required:	N/A
	Proposed:	N/A
<b>Max. Total Floor Area:</b>	Required:	100%
		6,000 sq. ft. for commercial, office, and service uses
	Proposed:	3,893 sq. ft. (no changes proposed)
<b>Min. Open Space:</b>	Required:	N/A
	Proposed:	N/A
<b>Max. Lot Coverage:</b>	Required:	N/A

	Proposed:	N/A
<b>Front Setback:</b>	Required:	0 ft.
	Proposed:	5 ft. (no changes proposed)
<b>Side Setbacks</b>	Required:	0 ft.
	Proposed:	8 ft. (no changes proposed)
<b>Rear Setback:</b>	Required:	10 ft.
	Proposed:	5 ft. (no changes proposed)
<b>Min. Front + Rear Setback</b>	Required:	N/A
	Proposed:	N/A
<b>Max. Bldg. Height:</b>	Permitted:	45 ft., 4 stories
	Proposed:	16 ft., 1 story (no changes proposed)
<b>Min. Eave Height:</b>	Required:	18 ft.
	Proposed:	14 ft. (no changes proposed)
<b>Floor-Ceiling Height:</b>	Required:	12 ft.
	Proposed:	None listed
<b>Front Entry:</b>	Required:	On frontage line
	Proposed:	On frontage line (no changes proposed)
<b>Absence of Bldg. Façade:</b>	Required:	32 in. screenwall
	Proposed:	32 in. screenwall (no changes proposed)
<b>Opening Width:</b>	Required:	25 ft.
	Proposed:	3 ft. (no changes proposed)
<b>Parking:</b>	Required:	38 off-street spaces
	Proposed:	38 off- street spaces (private, ROW & variance)
<b>Min. Parking Space Size:</b>	Required:	180 sq. ft.
	Proposed:	180 sq. ft. (no changes proposed)
<b>Parking in Frontage:</b>	Required:	Off-street parking contained in the first story shall not be permitted within 10 feet of any building facade on a frontage line or between the building facade and the frontage line.
	Proposed:	No parking in 1st story (no changes proposed)
<b>Loading Area:</b>	Required:	None

Proposed: None

**Screening:**

Parking: Required: 32 in. masonry screen wall  
Proposed: 32 in. masonry screen wall (no changes proposed)

Loading: Required: Minimum 6 ft. screen wall  
Proposed: N/A

Rooftop Mechanical: Required: Fully screened from public view  
Proposed: Corrugated metal panels (no changes proposed)

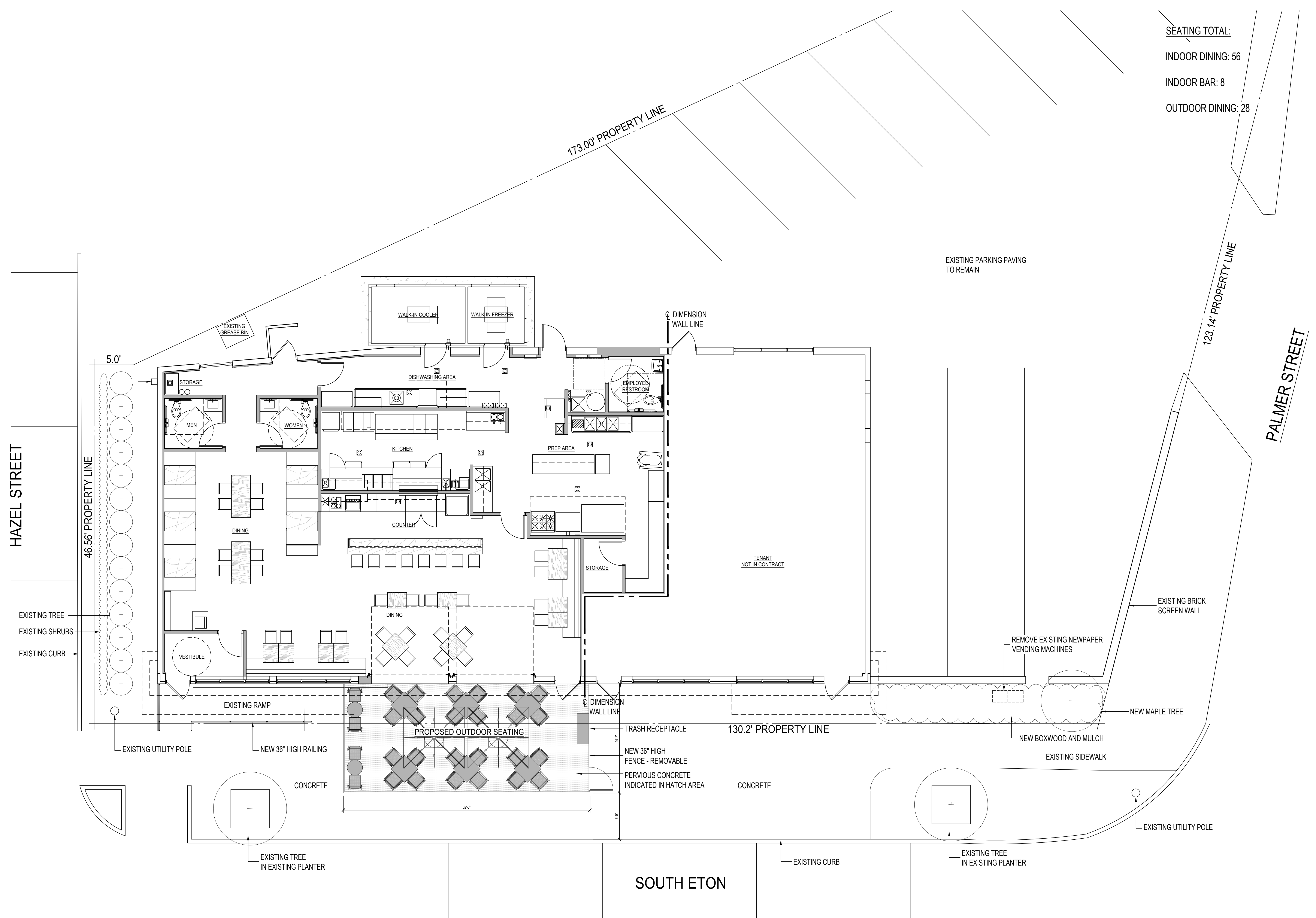
Elect. Transformer: Required: Obscured from public view  
Proposed: N/A

Dumpster: Required: 6 ft. masonry w/ wood gate  
Proposed: None (no changes proposed)

OUTDOOR DINING: 28 /

SHEET NUMBER: PRELIMINARY  
NOT FOR CONSTRUCTION

AS100



1 ARCHITECTURAL SITE PLAN  
AS100 SCALE: 1/8" = 1'-0"







JAWAN MATTI  
586-321-7727  
jawanmatti@gmail.com

PROJECT:  
WHISTLE STOP  
501 SOUTH ETON  
BIRMINGHAM, MICHIGAN

SHEET TITLE:  
EXTERIOR

(DO NOT SCALE DRAWING)

DATE: 9/10/2021 ISSUED FOR: BISTRO LICENSE

PROJECT NO: 18052

SHEET NUMBER: PRELIMINARY  
NOT FOR CONSTRUCTION

A200



GLAZING CALCULATION:

AREA: 384 S.F.

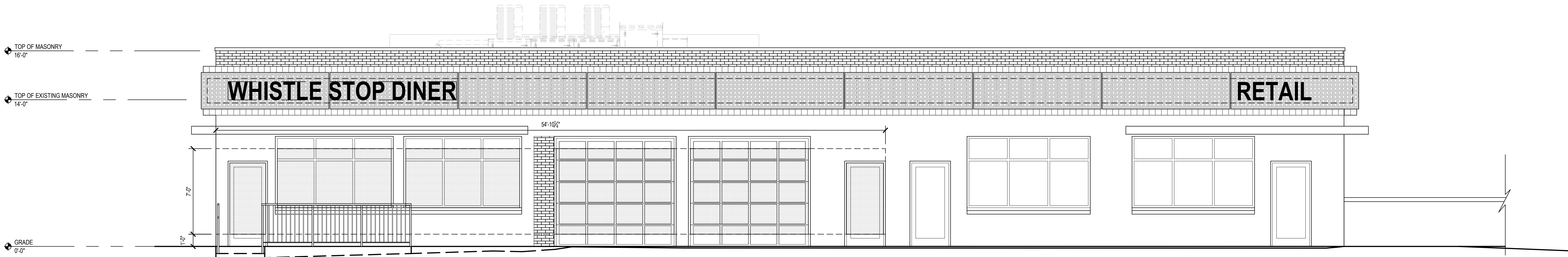
GLAZING AREA: 258 S.F.

PERCENTAGE: 67%

JAWAN MATTI  
586-321-7727  
jawanmatti@gmail.com

PROJECT:  
WHISTLE STOP  
501 SOUTH ETON  
BIRMINGHAM, MICHIGAN

SHEET TITLE:  
EXTERIOR



1 WEST (ETON) ELEVATION  
A201 SCALE: 1/4" = 1'-0"

(DO NOT SCALE DRAWING)

DATE: 5/10/2021 ISSUED FOR: BISTRO LICENSE

PROJECT NO: 18052

SHEET NUMBER: PRELIMINARY  
NOT FOR CONSTRUCTION

A201



**City Of Birmingham**  
**Regular Meeting Of The Planning Board**  
**Wednesday, June 9, 2021**

Held Remotely Via Zoom And Telephone Access

Minutes of the regular meeting of the City of Birmingham Planning Board held on June 9, 2021.  
Chair Clein convened the meeting at 7:30 p.m.

**A. Roll Call**

**Present:** Chair Scott Clein; Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin; Student Representative Daniel Murphy (arrived 7:33 p.m.)

All located in Birmingham, MI.

**Absent:** Board Members Robin Boyle; Student Representative Jane Wineman

**Administration:** Jana Ecker, Planning Director ("PD")  
Nick Dupuis, City Planner ("CP")  
Laura Eichenhorn, City Transcriptionist

**06-074-21**

**B. Approval Of The Minutes Of The Regular Planning Board Meeting of May 26, 2021**

Mr. Jeffares said that on page three of the minutes it should be specified that Mr. Williams and Chair Clein were agreeing that outdoor hours should not go past 12 a.m.

Mr. Williams and Chair Clein concurred.

**Motion by Mr. Koseck**

**Seconded by Mr. Jeffares to approve the minutes of the Regular Planning Board Meeting of May 26, 2021 as amended.**

**Motion carried, 6-0.**

ROLL CALL VOTE

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

Nays: None

Abstain: Emerine

**06-075-21**

**C. Chair's Comments**

Chair Clein welcomed everyone to the virtual meeting and reviewed the meeting's procedures.

**06-076-21**

**D. Review Of The Agenda**

There were no changes to the agenda.

**06-077-21**

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

**1. 501 S. Eton – Whistle Stop** – Request for a Special Land Use Permit to consider approval of a new bistro serving alcoholic liquors in an existing building.

CP Dupuis reviewed the item. He noted that this would actually be the second bistro in the Rail District since it would be in addition to the bistro in Whole Foods.

Patrick Howe, attorney, Jawan Matti, architect, and Elda and Valter Xhomaqi, owners, were present on behalf of the applicant.

Ms. Matti said she had proposed concrete for the area in front of the southern tenant space because she was concerned the sidewalk might otherwise be too choppy. She said she was not yet sure what the proposed pervious concrete would look like.

Mr. Koseck said he was in favor of having more green space in front of the southern tenant space instead of concrete. He also asked that the front windows be updated to the City's current standards of clear glass.

Ms. Matti confirmed that the Xhomaqis would change out the current front window glass to clear glass to meet the current standards.

Mr. Howe said that would leave the project with a 3% deficiency on the glazing and asked the Board to approve the plans as such since it is a renovation.

Mr. Jeffares concurred with Mr. Koseck that the green space should be increased in front of the southern tenant space.

In reply to the Chair, Mr. Howe stated that the alcoholic beverages served would not deviate from the sample menu provided. He stated that there would not be full bar service, and that if Whistle Stop in the future wanted to modify that proposal they would return for a SLUP amendment.

In regards to Messrs. Koseck's and Jeffares' concerns about green space in front of the restaurant, Chair Clein noted complicating the pedestrian pathway in front of the restaurant could result in difficulties for visually impaired pedestrians navigating the space. He said he would be more in favor of possibly adding a new street tree, adding more pervious pavement, or adding planters and boxes to retain more greenery without causing additional challenges for visually impaired pedestrians.

PD Ecker confirmed for the Chair that she could work with the Engineering Department and the applicant to implement the Board's comments and administratively approve the item if that was the Board's recommendation.

Mr. Jeffares said than if more green space could not be added then bike parking could be provided on the areas of extra concrete.

Mr. Koseck concurred and suggested that benches or light fixtures could be other options for areas of excess concrete.

Mr. Howe said the applicant would be happy to work with the City to improve the front streetscape.

Ms. Whipple-Boyce noted that the area around the tree proceeding north along the sidewalk did not need to be paved. She expressed appreciation for the applicant's submitted designs generally, and agreed that the applicant could work with City departments to increase green space or give the concrete purpose in the front streetscape.

Subsequent to Board discussion about vehicle door swings, Mr. Emerine noted that the sidewalk as proposed met the City's code and ordinance standards. He noted that there was only one parallel parking space in front of the Whistle Stop. He said that while door swings might be a future topic for the Board to discuss more generally it was not an issue for this item from an engineering standpoint.

PD Ecker confirmed that the sidewalk's width as proposed met the City's ordinance requirements.

#### Public Comment

James Schmier, resident of the Rail District and Board Member of Eton Two, said there were substantial issues with parking in the residential areas surround Whistle Stop. He said he was supportive of the bistro license being granted in general, but not until permit parking on the streets across from Attard was removed in order to decrease the number of vehicles parking in his neighborhood.

In reply to Chair Clein, PD Ecker confirmed that permit parking is evaluated by the Multi-Modal Transportation Board and the City Commission.

A second resident of the Rail District and a Board Member of Eton One concurred that she was fine with the bistro license being granted but not before traffic, congestion, and pedestrian safety issues at Eton and Hazel were addressed.

Chair Clein noted that the Whistle Stop is an existing establishment proposing a decreased amount of seating from what was previously approved. He stated that granting the bistro license would not likely have a significant impact on the number of patrons and would have no impact on the hours of operation. He said he also lives in the Rail District across from a restaurant and that parking has not been an issue as long as it is managed properly. He said that if the applicant

works to improve the proposed streetscape as discussed he would support the item if it came to a vote.

Mr. Emerine said he was happy to support the item moving forward. He noted that the Whistle Stop was an existing business with existing parking that would not exacerbate the area's parking and traffic issues, and that they had reduced their seating from the previous proposal. He said granting Whistle Stop a bistro license would be a wonderful asset to the City.

Mr. Jeffares said he wanted to see the Board's comments integrated into the design and returned for Board review once more. He said the changes proposed were important and stated it was unusual to allow these types of changes to be administratively approved.

Ms. Whipple-Boyce said she was confident that the Planning and Engineering Departments, working with the applicant, would be able to integrate the Board's comments without the Board needing to see the item again. She stated that the changes requested were not so significant that they required additional Board review. She also noted that PD Ecker had said she was comfortable resolving those issues as part of the administrative approval process.

Mr. Share said he agreed with Ms. Whipple-Boyce given the small area to be updated and the modest changes required. He agreed with Chair Clein that permitting the addition of eight alcoholic beverages to the Whistle Stop's menu would be unlikely to create an increase in parking congestion. He said he was not minimizing the parking issues in the area, only noting that denying this bistro application would not ameliorate those issues.

Mr. Williams concurred.

Mr. Williams also echoed some of the comments from the public. He stated that he had long been advocating for two stop signs to be added on Eton at Hazel. He explained the Police Department did not pursue his recommendations regarding the matter despite his previous appeals. He emphasized the dangerousness of the intersection of Eton and Hazel, and said installing the two stop signs he recommended would vastly improve traffic and pedestrian safety.

**Motion by Ms. Whipple-Boyce**

**Seconded by Mr. Emerine to recommend approval to the City Commission of the Final Site Plan & Design Review for 501 S. Eton – Whistle Stop – with the following conditions:**

- 1. The Planning Board approves the proposed 67% glazing on the storefront façade;**
- 2. The applicant must submit specification sheets for the proposed roll down garage doors showing a VLT of 80%;**
- 3. The applicant must submit a Certified Land Survey and Existing Conditions Plan prior to the Public Hearing at the City Commission;**
- 4. The applicant must work with the Planning and Engineering Departments to reduce the amount of concrete proposed and improve the streetscape as suggested by the Board for administrative approval;**
- 5. The applicant must replace the existing tinted windows with clear glass; and,**
- 6. The applicant must comply with the requests of all City Departments.**

**Public Comment**

Mr. Schmier asked that the public comments provided during the item's discussion be included in the documentation sent to the Commission to demonstrate the shared concerns of both Eton One and Eton Two.

Chair Clein confirmed that would occur.

**Motion carried, 6-1.**

ROLL CALL VOTE

Yeas: Whipple-Boyce, Emerine, Williams, Clein, Share, Koseck

Nays: Jeffares

**Motion by Ms. Whipple-Boyce**

**Seconded by Mr. Emerine to recommend approval to the City Commission of the Special Land Use Permit for 501 S. Eton – Whistle Stop – subject to the conditions of Final Site Plan & Design Review approval.**

**Motion carried, 6-1.**

ROLL CALL VOTE

Yeas: Whipple-Boyce, Emerine, Williams, Clein, Share, Koseck

Nays: Jeffares

**06-078-21**

**F. Study Session Items**

**1. Public Hearing – Solar Panel Regulations**

PD Ecker reviewed the item.

Mr. Koseck said he was uncomfortable moving the ordinance language forward given that they had not spoken with a third-party expert like they had done for glazing.

Chair Clein noted that in formulating the recommended changes staff had reviewed solar panel ordinances from municipalities across the country. He expressed support for the recommended changes.

**Motion by Mr. Williams**

**Seconded by Mr. Share to recommend to the City Commission amendments to Section 4.09 of the Zoning Ordinance to remove roof-mounted solar electric systems from that section and to also amend Section 4.88, regarding alternative energy, to add amended solar energy system requirements and to reorganize the wind energy requirements without changing them.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**2. Public Hearing – Glazing Standards**

PD Ecker reviewed the item. She noted that 'low iron content' in the change to Article 9, Section 9.02 – Definitions should be struck per previous Board discussions.

**Motion by Mr. Share**

**Seconded by Mr. Williams to recommend to the City Commission amendments to Sections 3.04, 4.90, and 9.02 of the Zoning Ordinance to change the definition of clear glazing and to amend the glazing standards as recommended by staff in the evening's agenda packet.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**06-079-21**

**G. Miscellaneous Business and Communications:**

**a. Communications**

**b. Administrative Approval Correspondence**

**c. Draft Agenda for next meeting**

**d. Other Business**

PD Ecker updated the Board about potentially moving from virtual to hybrid live-virtual meetings in the near future.

Brief informational replies regarding other Board member inquiries were also provided.

**06-080-21**

**H. Planning Division Action Items**

**a. Staff Report on Previous Requests**

**b. Additional Items from tonight's meeting**

**06-081-21**

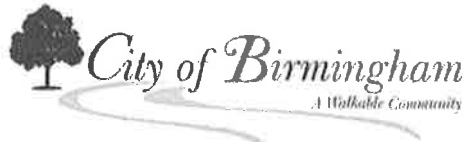
**I. Adjournment**

No further business being evident, the Chair adjourned the meeting at 9:10 p.m.

Jana L. Ecker  
Planning Director

DRAFT





## Special Land Use Permit Application - Bistro Planning Division

### 1. Applicant

Name: Eida Xhomaqi  
Address: 2415 Warwick Drive Troy, MI 48084  
Phone Number: \_\_\_\_\_  
Fax Number: 248-635-2554  
Email Address: vali2@ymail.com

### 2. Applicant's Attorney/Contact Person

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Email Address: \_\_\_\_\_

### 3. Required Attachments

- Warranty Deed with legal description of property
- Floor Plan of Bistro Operation
- Proof of ability to finance the proposed project
- Required fee (see Fee Schedule for applicable amount)
- Photographs of existing site and buildings
- Samples and/or specification sheets of all materials to be used
- Landscape Plan showing all existing and proposed elements
- Catalog sheets for all proposed lighting & outdoor furniture

### 4. Project Information

Address/Location of Property: 501 South Eton Street  
Name of Bistro: \_\_\_\_\_  
Sidwell #: 20-31-203-004  
Current Use: Restaurant (Assembly A-2)  
Proposed Use: Restaurant (Assembly A-2)  
Area in Acres: .26 acres - 11,311.75 sq. ft.  
Current Zoning: MX (Mixed-Use)  
Zoning of Adjacent Properties: \_\_\_\_\_  
Is there a current SLUP in effect for this site?: No

### Property Owner

Name: Whistle Stop Diner  
Address: 2415 Warwick Drive Troy, MI 48084  
Phone Number: 248-635-2554  
Fax Number: \_\_\_\_\_  
Email Address: vali2@ymail.com

### Project Designer/Developer

Name: Jawan Matti  
Address: \_\_\_\_\_  
Phone Number: 586-321-7727  
Fax Number: \_\_\_\_\_  
Email Address: jawanmatti@gmail.com

- Completed Checklist
- Certified Land Survey
- Signed Contract
- Fifteen (15) folded copies of plans including color elevations showing all materials and an itemized list of all changes for which approval is requested with the changes marked in color
- One (1) additional set of plans mounted on a foam board, including a color rendering of each elevation

### 5. Details of the Nature of Work Proposed (Site plan & design elements)

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## 6. Buildings and Structures existing on site

Number of Buildings on site: 1  
Height of Building & # of stories: 14' existing / 1 16' proposed / 1

Use of Buildings: Restaurant and adjacent space vacant  
Height of rooftop mechanical equipment: MUA-1 - 77"  
RTU-1 - 50"

## 7. Floor Use and Area (in square feet)

### Structures:

Restaurant Space: 2,553 s.f.  
Office space: \_\_\_\_\_  
Total floor area: \_\_\_\_\_

Retail space: 1,175 s.f.  
Number of Residential Units: \_\_\_\_\_  
Rental or Condominium: \_\_\_\_\_

## 8. Bistro Operation

Number of Indoor Seats: 65  
Number of Outdoor Seats: 28  
Entertainment Proposed: \_\_\_\_\_  
Years of Experience in Birmingham: 9  
Previous LCC Complaints? \_\_\_\_\_  
Tables provided along street façade: 8  
Required front setback: 0  
Required rear setback: 10'  
Required total side setback: 0

Type of Cuisine: American  
Bar Area? Yes  
Number of Seats at bar: 8  
Years of Experience outside of Birmingham: 10 years  
Full Service Kitchen? Yes  
Percentage of glazing proposed: added garage doors  
Proposed front setback: No change  
Proposed rear setback: No change  
Proposed total side setback: No change

## 9. Outdoor Dining Facility

Location (sidewalk right-of-way or on-street parking space): \_\_\_\_\_  
Eton Street 3 spaces, Hazel Street 2, and Palmer Street 3 - total 8  
Hours of operation: Mon - Sat, 7 am-3 pm and Sun, 8 am-3 pm  
Width of unobstructed sidewalk between door and café (5' required): \_\_\_\_\_  
Existing 5'-6"  
Platform proposed: 32'-0" x 14'-2"  
Trash receptacles: 1

Number of tables/chairs: 8 tables and 28 chairs  
Material of tables/chairs: Metal or aluminum  
Table umbrellas height and material: 2 umbrellas, 8'-5", sunbrella  
Number and location of parking spaces: 8 off street parking and 13 parking  
Screenwall material: Existing brick lot spaces - adjacent to building  
Enclosure material: \_\_\_\_\_

## 10. Required and Proposed Parking

Number of parking spaces: 21 spaces  
Location of off site parking: Eton Street, Hazel Street and Palmer  
Screenwall material: Existing brick

Location of parking spaces: Adjacent to building  
Shared Parking Agreement?: No  
Height of screenwall: 3'-0"

## 11. Landscaping

Location of landscape areas: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Proposed landscape material: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## 12. Streetscape

Sidewalk width: 6'-0"  
Number of benches: 0  
Number of planters: 0  
Number of existing street trees: 2  
Number of proposed street trees: 1  
Streetscape Plan submitted?: \_\_\_\_\_

Description of benches or planters: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Species of existing street trees: \_\_\_\_\_  
Species of proposed street trees: \_\_\_\_\_  
\_\_\_\_\_

### 13. Loading

Required number of loading spaces: \_\_\_\_\_  
Location of loading spaces on the site: \_\_\_\_\_

Proposed number of loading spaces: \_\_\_\_\_

### 14. Mechanical Equipment

#### Ground Mounted Mechanical Equipment:

Number of ground mounted units: \_\_\_\_\_  
Size of ground mounted units (LxWxH): \_\_\_\_\_

Location of all ground mounted units: \_\_\_\_\_

Screenwall material: \_\_\_\_\_

Height of screenwall: \_\_\_\_\_

#### Rooftop Mechanical Equipment:

Number of rooftop units: 4  
Type of rooftop units: (1) HVAC, (1) MAU, (2) Condensers

Location of all ground mounted units: \_\_\_\_\_

Size of rooftop units (LxWxH): \_\_\_\_\_

Screenwall material: Perforated metal panels - 5'-0" height of screenwall

Location of screenwalls: East

Height of screenwall: \_\_\_\_\_

Percentage of rooftop covered by mechanical units: \_\_\_\_\_

Distance from units to rooftop units to screenwall: \_\_\_\_\_

### 15. Lighting

Number of light standards on building: Please see attached photometric  
Size of light fixtures (LxWxH): \_\_\_\_\_

Type of light standards on building: \_\_\_\_\_

Height from grade: \_\_\_\_\_

Maximum wattage per fixture: \_\_\_\_\_

Parking lot lighting: \_\_\_\_\_

Proposed wattage per fixture: \_\_\_\_\_

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 or Special Land Use Permit. The undersigned further states that they have reviewed the procedures and guidelines for site plan review and Special Land Use Permits in Birmingham and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.

Signature of Owner: Valter Khomari

Date: 04/22/2021

Print Name: VALTER KHOMARI

Signature of Applicant: Elida Khomari

Date: 04/22/2021

Print Name: ELIDA KHOMARI

Signature of Architect: Jawan Matti

Date: 4/22/2021

Print Name: Jawan Matti

#### Office Use Only

Application #: \_\_\_\_\_ Date Received: \_\_\_\_\_ Fee: \_\_\_\_\_

Date of Approval: \_\_\_\_\_ Date of Denial: \_\_\_\_\_ Accepted by: \_\_\_\_\_

### 13. Loading

Required number of loading spaces: \_\_\_\_\_  
Location of loading spaces on the site: \_\_\_\_\_

Proposed number of loading spaces: \_\_\_\_\_

### 14. Mechanical Equipment

#### Ground Mounted Mechanical Equipment:

Number of ground mounted units: \_\_\_\_\_  
Size of ground mounted units (LxWxH): \_\_\_\_\_

Location of all ground mounted units: \_\_\_\_\_

Screenwall material: \_\_\_\_\_

Height of screenwall: \_\_\_\_\_

#### Rooftop Mechanical Equipment:

Number of rooftop units: 4  
Type of rooftop units: (1) HVAC, (1) MAU, (2) Condensers

Location of all ground mounted units: \_\_\_\_\_

Size of rooftop units (LxWxH): \_\_\_\_\_

Screenwall material: Perforated metal panels - 5'-0" height of screenwall

Location of screenwalls: East

Height of screenwall: \_\_\_\_\_

Percentage of rooftop covered by mechanical units: \_\_\_\_\_

Distance from units to rooftop units to screenwall: \_\_\_\_\_

### 15. Lighting

Number of light standards on building: Please see attached photometric  
Size of light fixtures (LxWxH): \_\_\_\_\_

Type of light standards on building: \_\_\_\_\_

Height from grade: \_\_\_\_\_

Maximum wattage per fixture: \_\_\_\_\_

Proposed wattage per fixture: \_\_\_\_\_

Parking lot lighting: \_\_\_\_\_

**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 or Special Land Use Permit. The undersigned further states that they have reviewed the procedures and guidelines for site plan review and Special Land Use Permits in Birmingham and have complied with same. The undersigned will be in attendance at the Planning Board meeting when this application will be discussed.**

Signature of Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature of Architect:  Date: 4/22/2021

Print Name: Jawan Matti

#### Office Use Only

Application #: \_\_\_\_\_ Date Received: \_\_\_\_\_ Fee: \_\_\_\_\_

Date of Approval: \_\_\_\_\_ Date of Denial: \_\_\_\_\_ Accepted by: \_\_\_\_\_



280 N. Old Woodward  
Suite 12  
Birmingham, MI 48009  
☎ 248.385.3112  
☎ 248.835.2068  
☎ 888.450.1682

jphowe@jphowe.com  
www.jphowe.com

April 23, 2021

**VIA HAND DELIVERY**

**Ms. Jana Ecker**  
**Planning Director**  
**City of Birmingham**  
151 Martin St.  
Birmingham, MI 48009

**Re: Special Land Use Permit Application to Operate a Bistro**  
**Applicant: Whistle Stop Diner, Inc.**  
**Address: 501 S. Eton St., Birmingham MI 48009**

Dear Ms. Ecker,

On behalf of Whistle Stop Diner, Inc. we hereby submit a Special Land Use Application for our client to convert its existing restaurant at 501 S. Eton Rd. into a "Bistro" (as defined in the Birmingham City Code). The Birmingham City Commission unanimously authorized Whistle Stop Diner to move forward with a formal Bistro Application on October 26, 2020. Our Client is applying to the Michigan Liquor Control Commission to transfer an existing Oakland County Class C liquor license to its restaurant; and simultaneous to this filing, we are filing a City of Birmingham Liquor License Application with the Birmingham Police Department.

A fully executed Special Land Use Permit Application and check payable to the City of Birmingham in the amount of \$2,800 to cover the application fee are enclosed herewith. We will be supplementing this filing with various architectural drawings, and a letter outlining: (i) our Client's concept for the Bistro, (ii) why our Client meets the standards for approving a Special Land Use Permit to operate a Bistro as set forth in Section 126, Article 7 of the Birmingham Zoning Ordinance, and (iii) why our Client meets the liquor license approval conditions set forth in the Birmingham City Code.

We would appreciate you initiating your review of this application, and placing this request on the next available Planning Board agenda. Thank you for your attention to this matter.

Very truly yours,

**JPHOWE, PLLC**

*J. Patrick Howe*

Enclosure

# SURVEY TECH

## CIVIL ENGINEERING LAND SURVEYING

Valter Xhomaqi  
501 S Eton St.  
Birmingham, MI 48009

RE: 501 S Eton St

Birmingham, MI 48009

**Time of completion:**

Topographic Survey 3 Weeks after authorization

**Maher Faik**

Date:

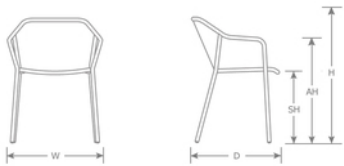
3253 Lynhurst Ct., Oakland, MI 48306

Ph. (248) 670-6556

E-mail: [surveyland@att.net](mailto:surveyland@att.net)



DETAILS



H	W	D	SH	AH	Lbs
30.5"	23.5"	21.5"	18"	27"	12.5

Download Collection Brochure [HERE](#)

Outdoor/Indoor Stacking Armchair

E-coated powder coat finish

Frame: Tubular Steel

Seat/Back: Extended Steel Mesh

Stackability: 8

SHIPPING

Master Pack Quantity:	4
Master Pack Dimensions:	36"x28"x25"
Master Pack Weight:	61 Lbs.
Master Cartons/Pallet:	6
Freight Class:	150
FOB:	PA 17042

Quick Ship Finishes:



23  
A/White



24 A/Black



37 A/Moss  
Grey  
LIMITED  
QTY



50  
A/Cherry



73  
A/Cement

Special Order Ship Finishes:



22 A/Iron



41 A/Bronze

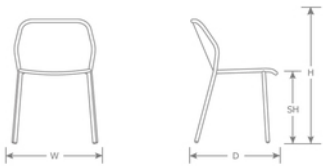


75 A/Dark Green





DETAILS



H	W	D	SH	Lbs
30.5"	21"	21.5"	18"	10.5

Download Collection Brochure [HERE](#)

Outdoor/Indoor Stacking Side Chair

E-coated powder coat finish

Frame: Steel

Seat/Back: Extended Steel Mesh

Stackability: 8

SHIPPING

Master Pack Quantity:	4
Master Pack Dimensions:	22"x27.5"x36"
Master Pack Weight:	52 Lbs.
Density:	4.13
Freight Class:	150
FOB:	PA 17042

Quick Ship Finishes:



23  
A/White



24 A/Black



37 A/Moss  
Grey  
LIMITED  
QTY



50  
A/Cherry



73  
A/Cement

Special Order Ship Finishes:



22 A/Iron



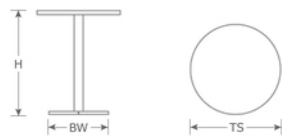
41 A/Bronze



75 A/Dark Green



DETAILS



H	TS	Lbs
29"	24" Dia"	26

Download Collection Brochure [HERE](#)

Outdoor/Indoor Tilt Top Nesting Table

E-Coated powder coat finish

Top Thickness: 3/4"

Top: Solid Steel

Base: Solid Steel

Assembly Required: Yes

SHIPPING

Master Pack Quantity: 1

Master Pack Dimensions: 6.5"x25"x25"

Master Pack Weight: 30 Lbs.

FOB: PA 17042

Quick Ship Finishes:

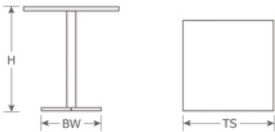


Special Order Ship Finishes:





DETAILS



H	BW	TS	Lbs
29"	20"	32" Sq"	35

Download Collection Brochure [HERE](#)

Outdoor/Indoor Tilt Top Nesting Table

E-Coated powder coat finish

Top Thickness: 3/4"

Top: Solid Steel

Base: Solid Steel

Assembly Required: Yes

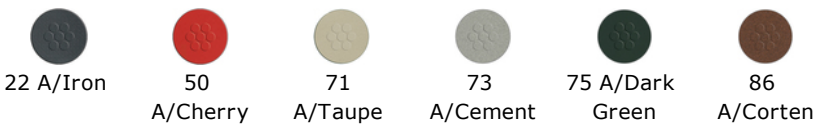
SHIPPING

Master Pack Quantity:	1
Master Pack Dimensions:	33"x5"x33"
Master Pack Weight:	40 Lbs.
Master Cartons/Pallet:	15
Freight Class:	70
FOB:	PA 17042

Quick Ship Finishes:



Special Order Ship Finishes:



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.



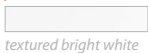
finish options

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

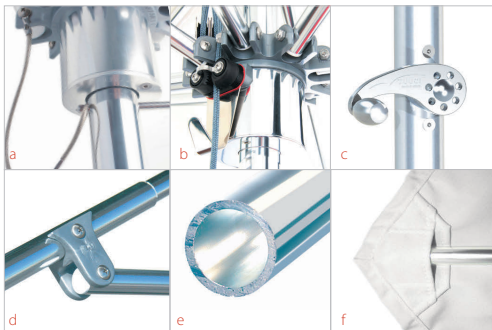
ft.	/	m.
auto-scope	/	
*8' x 12'	/	2.45 x 3.65

finial options



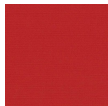
venice  
aluminum

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



8'x8'  
Sunbrella Color: Logo Red



### **City of Birmingham 2020 Bistro License Initial Application**

**Applicant:** Whistle Stop Diner (Existing Restaurant)

**Address:** 501 S. Eton, Birmingham, Michigan 48009

**Applicant's Representative:** Elda Xhomaqi, Owner  
ph. (248) 635-2554

**Applicant's Attorney:** JPHOWE, PLLC / J. Patrick Howe  
280 N. Old Woodward Ave., Suite 12, Birmingham, MI 48009  
ph. (248) 385-3112

**Applicant's Architect:** Jawan Matti  
ph. (586) 321-7727

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### **History of Whistle Stop Diner**

It all started in 1965 when the Whistle Stop Diner originally opened. It's name comes from the fact that the Diner is located right next to the old train station where you would hear the "whistle" of the train as it came by every day. Customers would stop in to enjoy a delicious breakfast before boarding the train, or picking up a friend or family member. As the years went by, the restaurant evolved into what it has become today, which is a popular breakfast, brunch and lunch staple in City's bustling rail district. We started working here in 1999. Elda as a waitress and Valter as a cook. In 2012, we were presented with the opportunity to become the owners of the Whistle Stop Diner, and we jumped at it. We have always tried to keep the same loving menu that includes the homemade bread, buttermilk pancakes made from scratch, fresh real turkey, and the delicious desserts. In 2015, we purchased the Whistle Stop Diner in Pleasant Ridge which included a Class C liquor license. That is when we became familiar with the demand for the service of alcoholic beverages. We have developed a plan to completely renovate the

Whistle Stop Diner, which ensures that the restaurant maintains its menu and hours of operation (7:00 AM – 3:00 PM), and offer the alcoholic beverages that are served at our Pleasant Ridge location. We believe that a Bistro license will allow us to meet our customer's demands, and bring the Whistle Stop Diner forward, while maintaining that traditional, family friendly atmosphere everyone has come to love. We are very appreciative of the opportunity to obtain a Bistro License from the City, and we look forward to working with the City to solidify The Whistle Stop Diner as a neighborhood Bistro in the City's rail district for many years to come.

### **Restaurant Experience**

The Whistle Stop Diner is owned and operated by husband and wife team of Elda and Valter Xhomaqi. They have each worked in the restaurant industry their entire lives, and are hands on, passionate operators. They currently own and operate another Whistle Stop Diner in Pleasant Ridge, Michigan, which holds a Class C liquor license. That establishment has an excellent operating record, and has not received any complaints from the City of Pleasant Ridge, or Michigan Liquor Control Commission. The Xhomaqi family will continue to be the face and the leaders of the reimagined Whistle Stop Diner. They will ensure that the proposed modified operations including the service of alcoholic beverages, are executed in a professional and responsible manner.

### **Concept for Bistro**

If approved to operate as a Bistro, The Whistle Stop Diner plans to undertake a major renovation of the entire premises, as shown on the floor plan and renderings included herewith. The restaurant will have 57 indoor seats, 8 counter stools for dining, and 26 seats on an outdoor patio in front of the restaurant on City sidewalk. The outdoor patio will be fully enclosed to meet all City and State requirements. All food and beverages will be served by wait staff to seated patrons. While there is a counter area where patrons can be served directly by staff behind the counter, this area will not function as a standard bar area, and patrons will not be served unless seated at a table or counter stool. The restaurant menu is included herewith, and there will be a limited menu of alcoholic beverages available for purchase with meals. It is the applicant's intention for alcoholic beverages to simply be offered as a compliment to its food service, and the diner will not function as a bar. In full compliance with the City of Birmingham Bistro ordinance, the Whistle Stop Dinner will:

1. Have 8 counter stools;
2. Not have any direct connection additional bar permits;
3. Only serve alcoholic beverages to seated patrons;
4. Not offering dancing or entertainment of any kind;
5. Provide tables along existing windows facing S. Eton; and
6. Provide a 26 seat outdoor patio on City sidewalk with enclosures that meet City and State requirements.



**Statement Regarding Impact Bistro Will Have on Mix of Commercial Uses in Birmingham**

The Whistle Stop Diner is a true family friendly restaurant. If converted to a Bistro, the same great food will be offered in an updated setting with outdoor dining. Alcoholic beverages will be served with meals during the hours of 7:00 AM to 3:00 PM seven (7) days per week. Converting the diner into a Bistro will attract additional guests, bring additional activity to the S. Eton corridor with a 26 seat outdoor patio, and increase commercial traffic for other businesses in the rail district.

**Sample Menu**

The Whistle Stop Diner offers a delicious assortment of offerings for breakfast, brunch and lunch. A sample menu is incorporated herein, which provides the limited assortment of alcoholic beverages that would be offered if the diner is converted to a Bistro.

**Hours of Operation**

There will be no changes to the operation of the diner if converted to a Bistro. The hours of operation would be:

Monday – Saturday 7:00 AM to 3:00 PM

Sunday 8:00 AM to 3:00 PM

Outdoor Patio will be open when weather permits from May 1<sup>st</sup> – October 31<sup>st</sup> each year

**Renovation Schedule**

The Whistle Stop Diner anticipates being closed for renovations from November 2020 through April 2021.

**Statement Regarding Ability to Finance, Construct & Operate Bistro**

The Whistle Stop Diner has an experienced team ready to renovate and convert the existing restaurant into a Bistro serving beer, wine and spirits. All renovations will be funded with cash on hand, and the proposed conversion of The Whistle Stop Diner to a Bistro is not contingent on obtaining financing of any kind. The Whistle Stop Diner has engaged a prominent local architect to assist with the design of the Bistro, and an experienced licensed contractor will be engaged to complete all renovations. With respect to restaurant operations, owners Elda and Valtar Xhomaqi bring a lifetime of experience to the operation of The Whistle Stop Diner, and their very experienced wait staff will ensure that the Bistro is operated in a safe and responsible manner. All employees involved in the sale and service of alcoholic beverages will be required to pass a server training course approved by the Michigan Liquor Control Commission.



## Whistle Stop Diner Menu

**Bloody Mary | \$9.95**  
Valentino Vodka & Our own Special Bloody Mary Mix.  
Garnished w/ a Celery Stick & a Razor of Applewood Bacon.

**Tequila Sunrise | \$9.95**  
Tequila w/ our Fresh Squeezed Orange Juice, Splash of Grenadine  
& Garnished w/ an Orange Slice.

**Mimosa | \$9.25**  
Sparkling Champagne & Fresh Squeezed Orange Juice.

**Spanish Coffee | \$10.25**  
Our Special Blend Coffee Flavored w/ a Touch of Tia Maria Liqueur, Orange Liqueur & Vanilla Ram.  
Topped w/ Whipped Cream, Garnished w/ an Orange & Served in a Flamed Cinnamon Sugar Glass.

**Irish Coffee | \$10.25**  
Our Special Blend of Coffee Flavored w/ Jameson Irish Whiskey, Bailey's  
Irish Cream, Topped w/ Whipped Cream & Drizzled w/ Chocolate.

**Madras | \$9.50**  
Valentino Vodka & Our Fresh Squeezed Orange Juice w/ a Touch of  
Cranberry Juice, Garnished w/ a Wedge of Lime.

**Screwdriver | \$9.00**  
Valentino Vodka & Our Fresh Squeezed Orange Juice,  
Garnished w/ an Orange Slice.

**Glass of Champagne | \$7.95**  
Garnished w. a Strawberry.

**DATE:** June 22<sup>nd</sup>, 2021

**TO:** Tom Markus, City Manager

**FROM:** Nicholas Dupuis, City Planner

**APPROVED:** Jana Ecker, Planning Director

**SUBJECT:** Set Public Hearings for Amendments to Section 3.04, 4.90 and 9.02 of Chapter 126, Zoning – Window and Glazing Standards

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### INTRODUCTION:

The City of Birmingham has engaged in designing ordinances to fulfill the goals of the Downtown Birmingham 2016 Master Plan with regards to encouraging walkability and a healthy retail setting to increase the pedestrian environment and economic vitality of the City. Included in the many ordinances adopted over time has been the recent adoption of ordinances regulating glazing on Birmingham's commercial buildings. Since adoption, City Staff have fielded inquiries from architects, developers, business owners and glass manufacturers about the standards, which have spilled over into several recent Planning Board Hearings (Lincoln Yard, Baldwin Library, Brooklyn Pizza).

The City of Birmingham currently regulates glazing in Article 4, Section 4.90 (A) of the Zoning Ordinance:

1. No less than 70% of a storefront/ground floor façade between 1 and 8 feet above grade shall be clear glazing.
2. Only Clear Glazing is permitted on storefront facades at the first floor. Lightly tinted glazing above the first floor may be permitted. Mirrored glass is prohibited.
3. Required window areas shall be either pedestrian entrances, windows that allow views into retail space, working areas or lobbies. Display windows set into the wall may be approved by the Planning Board.
4. Windows shall not be blocked with opaque materials or the back of shelving units or signs.
5. The bottom of the window shall be no more than 3 feet above the adjacent exterior grade.

On July 24th, 2017, in order to provide more clarity as to what determines "clear glazing", the City Commission approved the definition of Clear Glazing as follows:

- Glass and other transparent elements of building facades with a minimum visible light transmittance of 80%.

Before the adoption of the Clear Glazing definition, applicants were required to provide glass samples and specification sheets to the Planning Board at Site Plan Review to determine if the type of glass proposed was considered clear to the point that it met the spirit and the intent of

the Ordinance. Applicants are still required to provide samples and specification sheets, but the Clear Glazing definition leaves little variation in the types of glass available to utilize.

As alluded to, there has been some recent pushback by architects and developers citing the challenges they face meeting the energy standards as required by the Michigan Building Code while also meeting the City's Glazing Standards.

#### BACKGROUND:

On November 13<sup>th</sup>, 2019, the Planning Board discussed the potential for ordinance amendments encompassing the Window Standards outlined in Article 3, Section 3.04(E) and Article 4, Section 4.90 of the Zoning Ordinance. The Planning Board directed City Staff to (1) research any possible differences in the Visual Light Transmittance (VLT) figures between different manufacturers and (2), research other cities to determine what VLT figures are used.

On January 8<sup>th</sup>, 2020, the Planning Board discussed the glazing ordinance amendments again, and expressed interest in hearing from more professionals such as a mechanical engineer, a glass vendor or supplier, or a glass contractor or installer. At that time, the Planning Division was unable to find and secure any additional professionals or glass experts to add any new information to the conversation other than the professionals that were already involved up to that point.

On July 22<sup>nd</sup>, 2020, the Planning Board reviewed the proposed ordinance language alongside a glass professional from Guardian Glass, who offered expertise and clarity on the proposed amendments and what is available in the glass world, and what the effect is on energy codes. The Planning Board entertained ideas for including low iron glass to the definition and discussing other items such as shelving and merchandise in windows. Ultimately, the Planning Board directed City Staff to make a few minor changes including eliminating the bronze requirement from Section 3.04 (E)(4), and adding low iron glass and no tint to the definition of clear glazing for final consideration before the public hearing.

On April 14<sup>th</sup>, 2021, the Planning Board motioned to set a public hearing on May 12<sup>th</sup>, 2021 to amend the glazing standards, which was rescheduled to June 9<sup>th</sup>, 2021 due to Eid al-Fitr.

On June 9<sup>th</sup>, 2021, the Planning Board motioned to recommend approval to the City Commission amendments to Sections 3.04, 4.90 and 9.02 of the Zoning Ordinance to update the clarity requirements for storefront windows

#### LEGAL REVIEW:

The City Attorney has reviewed the documentation and has no concerns.

#### FISCAL IMPACT:

The proposed amendments do not have any direct fiscal impacts to the City.

#### PUBLIC COMMUNICATIONS:

As required for proposed Zoning Ordinance amendments, a legal ad was placed in a newspaper of local circulation to advertise the proposed amendments to the Zoning Ordinance in advance of the June 9<sup>th</sup>, 2021 Planning Board meeting. In addition, a second legal ad will be placed in a newspaper of local circulation to advertise the public hearings at the City Commission once the date has been set.

**SUMMARY:**

The Planning Board recommends that the City Commission consider ordinance amendments to Articles 3, 4 and 9 to amend the Window Standards and requirements for clear glazing. City staff recommends that the City Commission set public hearings for **July 26, 2021**.

**ATTACHMENTS:**

- Draft Ordinance language
- Planning Board Staff Reports
- Relevant Minutes

**SUGGESTED RESOLUTION:**

To set public hearings on July 26, 2021 to consider the following amendments to Chapter 126, Zoning:

1. Article 3, Section 3.04 (Specific Standards) to amend the Architectural Standards;
2. Article 4, Section 4.90 (Window Standards) to amend storefront window requirements;  
and
3. Article 9, Section 9.02 (Definitions) to redefine clear glazing and eliminate lightly tinted glazing.



**ORDINANCE NO. \_\_\_\_\_**

**THE CITY OF BIRMINGHAM ORDAINS:**

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

TO AMEND ARTICLE 3, SECTION 3.04(E), ARCHITECTURAL STANDARDS, TO AMEND ARTICLE 4, SECTION 4.90(A), WINDOW STANDARDS, AND TO AMEND ARTICLE 9, SECTION 9.02, DEFINITIONS TO REDFINE CLEAR GLAZING, AND TO ELIMINATE LIGHTLY TINTED GLAZING

**Article 3, Section 3.04**

E. Architectural standards. All buildings shall be subject to the following physical requirements:

1. ...
2. ...
3. ...
4. Storefronts shall be directly accessible from public sidewalks. Each storefront must have transparent areas, equal to 70% of its portion of the facade, between one and eight feet from the ground. The wood or metal armature (structural elements to support canopies or signage) of such storefronts shall be painted, ~~bronze~~, or powder-coated.
5. Storefronts shall have mullion systems, with doorways and signage integrally designed. Mullion systems shall be painted, powder-coated, or stained.
6. The glazed area of a facade above the first floor shall not exceed 35% of the total area, with each facade being calculated independently.
7. Clear glazing is required on the first floor. ~~Lightly tinted glazing is permitted on upper floors only~~ **storefront facade**. Windows shall not be blocked with opaque materials or the back of shelving units or signs.

**Article 4, Section 4.90 – Window Standards (WN)**

A. Storefront Windows: Ground floor facades shall be designed with storefronts that have windows, doorways and signage, which are integrally designed. The following standards apply:

1. No less than 70% of a storefront/ground floor façade between 1 and 8 feet above grade shall be clear glazing.
2. Only Clear glazing is permitted on storefront facades ~~at the first floor. Lightly tinted glazing above the first floor may be permitted~~. Mirrored glass is prohibited.
3. Required window areas shall be either pedestrian entrances, windows that allow views into retail space, working areas or lobbies. Display windows set into the wall may be approved by the Planning Board.
4. Windows shall not be blocked with opaque materials or the back of shelving units or signs.
5. The bottom of the window shall be no more than 3 feet above the adjacent exterior grade.

## Article 9, Section 9.02 – Definitions

Clear Glazing: Glass and other transparent elements of building facades with **no tint**, a minimum visible light transmittance of ~~80%~~ **66% and a reflectivity of 15% or less**.

~~Lightly Tinted Glazing: Glass and other transparent elements of building facades with a minimum visible light transmittance of 70%.~~

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2021 to become effective upon publication.

\_\_\_\_\_  
Pierre Boutros, Mayor

\_\_\_\_\_  
Alexandria Bingham, City Clerk

**DATE:** June 9<sup>th</sup>, 2021

**TO:** Jana Ecker, Planning Director

**FROM:** Nicholas Dupuis, City Planner

**SUBJECT:** Window Glazing Standards – Public Hearing

On November 13<sup>th</sup>, 2019, the Planning Board discussed the potential for ordinance amendments encompassing the Window Standards outlined in Article 3, Section 3.04(E) and Article 4, Section 4.90 of the Zoning Ordinance. The Planning Board directed City Staff to (1) research any possible differences in the Visual Light Transmittance (VLT) figures between different manufacturers and (2), research other cities to determine what VLT figures are used.

Upon contacting representatives at Guardian Glass, Midwest Glass Fabricators, Michigan Glass Coating, and Service Glass, it was apparent that there is no noticeable difference in glass between manufacturers. That is, all else being equal, a pane of glass with a low-e coating at 68% Visual Light Transmittance from manufacturer X will look the same as the same pane of glass from manufacturer Y. The results may differ based on what type of glass is used in the construction, whether the glass is single pane, double pane or laminated, whether a film is used or not, etc.

Additionally, the research done into the transparency requirements in other communities was confirmed and/or updated. The table below summarizes the confirmed VLT figure present in other Michigan communities, as well as some new figures:

Grand Rapids, MI	70% VLT minimum
Ferndale, MI	60% VLT minimum, 20% Reflectance
Muskegon, MI	70% VLT minimum
West Bloomfield, MI	75% VLT minimum
Rochester Hills, MI	65% VLT minimum
Pontiac, MI	Non reflective, non-tinted
Detroit, MI	70% VLT minimum
Kalamazoo, MI	Clear, non reflective

On January 8<sup>th</sup>, 2020, the Planning Board discussed the glazing ordinance amendments again, and expressed interest in hearing from more professionals such as a mechanical engineer, a glass vendor or supplier, or a glass contractor or installer. At that time, the Planning Division was unable to find and secure any additional professionals or glass experts to add any new information to the conversation other than the professionals that were already involved up to that point.

On July 22<sup>nd</sup>, 2020, the Planning Board reviewed the proposed ordinance language alongside a glass professional from Guardian Glass, who offered expertise and clarity on the proposed amendments and what is available in the glass world, and what the effect is on energy codes.

The Planning Board entertained ideas for including low iron glass to the definition and discussing other items such as shelving and merchandise in windows. Ultimately, the Planning Board directed City Staff to make a few minor changes including eliminating the bronze requirement from Section 3.04 (E)(4), and adding low iron glass and no tint to the definition of clear glazing for final consideration before the public hearing.

On April 14<sup>th</sup>, 2021, the Planning Board motioned to set a public hearing on May 12<sup>th</sup>, 2021 to amend the glazing standards, which was rescheduled to June 9<sup>th</sup>, 2021 due to Eid al-Fitr.

The following ordinance amendments have been updated to reflect the most recent research.



# MEMORANDUM

Planning Division

**DATE:** November 8, 2019

**TO:** Planning Board Members

**FROM:** Nicholas Dupuis, City Planner  
Brooks Cowan, City Planner

**APPROVED:** Jana Ecker, Planning Director

**SUBJECT:** Study Session – Window Glazing Standards

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The City of Birmingham has engaged in designing ordinances to fulfill the goals of the Downtown Birmingham 2016 Master Plan with regards to encouraging walkability and a healthy retail setting to increase the pedestrian environment and economic vitality of the City. Included in the many ordinances adopted over time has been the recent adoption of ordinances regulating glazing on Birmingham's commercial buildings. Since adoption, City Staff have fielded inquiries from architects, developers, business owners and glass manufacturers about the standards, which have spilled over into several recent Planning Board Hearings (Lincoln Yard, Baldwin Library, Brooklyn Pizza). The purpose of this memorandum is to present the Planning Divisions findings based on current ordinance, meetings with glass professionals, research into the science behind light and windows, and the conflicts that arise based on different regulations.

The City of Birmingham currently regulates glazing in Article 4, Section 4.90 (A) of the Zoning Ordinance:

1. No less than 70% of a storefront/ground floor façade between 1 and 8 feet above grade shall be clear glazing.
2. Only Clear Glazing is permitted on storefront facades at the first floor. Lightly tinted glazing above the first floor may be permitted. Mirrored glass is prohibited.
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4. Windows shall not be blocked with opaque materials or the back of shelving units or signs.
5. The bottom of the window shall be no more than 3 feet above the adjacent exterior grade.

On July 24th, 2017, in order to provide more clarity as to what determines "clear glazing", the City Commission approved the definition of Clear Glazing as follows:

- Glass and other transparent elements of building facades with a minimum visible light transmittance of 80%.

Before the adoption of the Clear Glazing definition, applicants were required to provide glass samples and specification sheets to the Planning Board at Site Plan Review to determine if the

type of glass proposed was considered clear to the point that it met the spirit and the intent of the Ordinance. Applicants are still required to provide samples and specification sheets, but the Clear Glazing definition leaves little variation in the types of glass available to utilize.

As alluded to, there has been some recent pushback by architects and developers citing the challenges they face meeting the energy standards as required by the Michigan Building Code while also meeting the City's Glazing Standards. Perhaps obviously, this is more of an issue for buildings being redeveloped or renovated as opposed to brand new buildings that are able to account for the 80% VLT glass as a part of an entire energy system strategy rather than working around existing conditions. This discussion gained prominence during the selection process for the glass at the Baldwin Library project, and has subsequently spilled over into several site plan reviews. To consider any changes to the current Window Standards, it is helpful to define several glass industry terms:

**Visible Light Transmittance** – The amount of light in the visible portion of the spectrum that passes through a glazing material.

**U-Factor** – A measure of thermal transmittance, through conduction, convection, and radiation; a measurement to quantify overall heat flow.

**R-Value** – The capacity of an insulating material to resist heat flow.

**Solar Heat Gain Coefficient (SHGC)** – The fraction of incident solar radiation admitted through a window, both directly transmitted and absorbed, and subsequently released inward.

**Reflectivity** – The reflecting of varying amounts of light and solar heat, away from a glazing unit/building.

**Absorptance** – Energy that is not transmitted through the glass or reflected off its surfaces.

**Low-E Coatings** – Coatings (sputtered or pyrolytic) that minimizes the amount of ultraviolet and infrared light that can pass through glass without compromising the amount of visible light that is transmitted.

**Window Tinting** – The process performed to glass for the purposes of absorbing a portion of the solar heat and blocking daylight for the purposes of reducing glare and the amount of solar energy transmitted through glass.

**Insulated Glass** – Glass manufactured with trapped air or gas between them, which provides cost saving benefits through controlling heat gain/loss and condensation.

**Laminated Glass** – Glass made of two or more layers of glass with one or more polymeric material layers bonded between the glass layers.

**Safety Glass** - A type of commercial glass specifically designed to withstand blunt force. It is covered with a film or laminate to help hold the glass together and prevent further



damage if it fractures, and the pane will break into many small “crumbs” instead of large shards.

The issue in Birmingham has generally revolved around the Visible Light Transmittance (VLT) value that is controlled through the Zoning Ordinance. As evident by the many different facets of building design and window manufacturing in modern times, the topic appears to be more complicated than simply controlling for VLT. In meeting with glass industry professionals, it became evident that Low-E Coatings (LEC) are very important in the approach to glazing, as LEC's contribute to less heat flow and increasing the R-Value, especially in areas with significant glazing. Utilizing LEC's can help building meet the required U-Factors in the Michigan Building Code.

Because the original intent of the glazing requirements in the Zoning Ordinance was to maintain storefronts that are active with the ability to see into buildings and the activity happening inside of them, the Ordinance was written to achieve those goals. However, according to research and glass professionals, there is another factor to consider when seeking clear glazing, which is reflectivity. Reflectivity becomes especially apparent during low light conditions. The surface on the brighter side acts like a mirror because the amount of light passing through the window from the darker side is less than the amount of light being reflected from the lighter side. This effect can be noticed from the outside during the day and from the inside during the night. This means that during a bright day outside, the reflectivity of a glazing unit may actually make the glass appear less clear. Special coatings, such as LEC's, can reduce this effect.

The important correlation between the VLT, LEC and reflectivity of glass is that LEC's reduce the VLT of a glazing unit, but also significantly reduce the reflectivity. In other words, although a LEC can make glass appear darker in reducing the VLT figure, adding the LEC reduces the reflectivity, which actually makes the glazing unit appear clearer. As described above, LEC's also increase R-Values and Reduce the U-factor, so it would appear that allowing LEC's (and subsequently lowering the VLT requirements) may prove beneficial towards both the energy and clarity issues that the City is concerned with. To quantify this concept, two glass samples were obtained by the Planning Division, and the properties are as follows:

	<b>Visible Light Transmittance</b>	<b>Reflectance</b>	<b>U-Factor</b>
Glass #1 (No LEC)	80%	15%	0.47
Glass #2 (LEC)	68%	11%	0.29

In applying the LEC, the glass sample's reflectivity was reduced by 25%, while the u-factor was decreased by almost 40%. With this information, it became evident that the City may benefit from relaxing its VLT standards to allow for LEC's, but in addition, adding regulations regarding the reflectivity of proposed glass. In regulating both, the City may be able to achieve the goals of clear glazing, while also having high performing buildings and reducing the environmental footprint of its developments. The City may also be able to take advantage of this information and readdress the concept of Window Tinting in the ordinance.

The following is an example of how the Ordinance language could read:

## ORDINANCE NO. \_\_\_\_\_

### THE CITY OF BIRMINGHAM ORDAINS:

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

TO AMEND ARTICLE 3, SECTION 3.04(E), ARCHITECTURAL STANDARDS, TO AMEND ARTICLE 4, SECTION 4.90(A), WINDOW STANDARDS, AND TO AMEND ARTICLE 9, SECTION 9.02, DEFINITIONS TO REDFINE CLEAR GLAZING, AND TO ELIMINATE LIGHTLY TINTED GLAZING

#### Article 3, Section 3.04

E. Architectural standards. All buildings shall be subject to the following physical requirements:

1. ...
2. ...
3. ...
4. Storefronts shall be directly accessible from public sidewalks. Each storefront must have transparent areas, equal to 70% of its portion of the facade, between one and eight feet from the ground. The wood or metal armature (structural elements to support canopies or signage) of such storefronts shall be painted, bronze, or powder-coated.
5. Storefronts shall have mullion systems, with doorways and signage integrally designed. Mullion systems shall be painted, powder-coated, or stained.
6. The glazed area of a facade above the first floor shall not exceed 35% of the total area, with each facade being calculated independently.
7. Clear glazing is required on the first floor. ~~Lightly tinted glazing is permitted on upper floors only~~ **storefront facade**. Windows shall not be blocked with opaque materials or the back of shelving units or signs.

#### Article 4, Section 4.90 – Window Standards (WN)

A. Storefront Windows: Ground floor facades shall be designed with storefronts that have windows, doorways and signage, which are integrally designed. The following standards apply:

1. No less than 70% of a storefront/ground floor façade between 1 and 8 feet above grade shall be clear glazing.
2. Only Clear glazing is permitted on storefront facades ~~at the first floor. Lightly tinted glazing above the first floor may be permitted.~~ Mirrored glass is prohibited.
3. Required window areas shall be either pedestrian entrances, windows that allow views into retail space, working areas or lobbies. Display windows set into the wall may be approved by the Planning Board.
4. Windows shall not be blocked with opaque materials or the back of shelving units or signs.
5. The bottom of the window shall be no more than 3 feet above the adjacent exterior grade.

## **Article 9, Section 9.02 – Definitions**

Clear Glazing: Glass and other transparent elements of building facades with a minimum visible light transmittance of 80%. **68% and a reflectivity of 15% or less.**

~~Lightly Tinted Glazing: Glass and other transparent elements of building facades with a minimum visible light transmittance of 70%.~~

ROLL CALL VOTE

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

Nays: None

**2. Public Hearing – Glazing Standards**

PD Ecker reviewed the item. She noted that 'low iron content' in the change to Article 9, Section 9.02 – Definitions should be struck per previous Board discussions.

**Motion by Mr. Share**

**Seconded by Mr. Williams to recommend to the City Commission amendments to Sections 3.04, 4.90, and 9.02 of the Zoning Ordinance to change the definition of clear glazing and to amend the glazing standards as recommended by staff in the evening's agenda packet.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**06-079-21**

**G. Miscellaneous Business and Communications:**

- a. Communications**
- b. Administrative Approval Correspondence**
- c. Draft Agenda for next meeting**
- d. Other Business**

PD Ecker updated the Board about potentially moving from virtual to hybrid live-virtual meetings in the near future.

Brief informational replies regarding other Board member inquiries were also provided.

**06-080-21**

**H. Planning Division Action Items**

- a. Staff Report on Previous Requests**
- b. Additional Items from tonight's meeting**

**06-081-21**

**I. Adjournment**

No further business being evident, the Chair adjourned the meeting at 9:10 p.m.

Chair Clein concurred with Mr. Jeffares' recommendation regarding wall- or facade-mounted solar panels.

Mr. Boyle asked if there was any near-future technology the ordinance should address.

Chair Clein said that strips of solar panels being used to line bicycle paths was being tried in Europe, but that wide-spread implementation would not be in the near future.

In reply to Mr. Share, CP Dupuis said he did not recommend screening for ancillary equipment because it would increase the difficulty of installation and maintenance. CP Dupuis noted this ordinance review was being conducted with an aim towards reducing the impediments to using solar panels in the City. He added that users of solar panels also needed quick access to disconnect features.

Mr. Share recommended that the ordinance states that users of solar panels are not exempt from screening otherwise required by the Zoning Ordinance.

CP Dupuis said he could update the recommended ordinance language with the Board's comments and have it ready for a public hearing on May 12, 2021.

**Motion by Mr. Boyle**

**Seconded by Mr. Jeffares to set a public hearing on solar panel regulations ordinance language for the regular Planning Board meeting of May 12, 2021.**

**Motion carried, 7-0.**

**ROLL CALL VOTE**

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

Nays: None

**2. Glazing Standards**

CP Dupuis summarized the item.

Mr. Share said he had recent occasion to purchase some low-iron glass, and that it added about 15% to the cost. He stated that he found the difference between low-iron and regular glass to be **visually** immaterial. He suggested that the low-iron requirement be removed from the recommended language, saying he thought it inappropriate to burden owners and developers with the extra cost.

Mr. Koseck and Ms. Whipple-Boyce, two other members of the Board familiar with glazing standards from their professions, did not dispute Mr. Share's recommendation when asked.

**Motion by Mr. Share**

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**Seconded by Ms. Whipple-Boyce to set a public hearing on Article 9, Section 9.02 Definition of Clear Glazing as presented without the reference to low-iron content for the regular Planning Board meeting of May 12, 2021.**

**Motion carried, 7-0.**

ROLL CALL VOTE

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

Nays: None

**04-053-21**

**G. Miscellaneous Business and Communications:  
a. Communications**

PD Ecker reminded the Board that the Commission would be holding a special meeting regarding the 2040 Master Plan on April 19, 2021 and that the Board had been asked to attend.

**b. Administrative Approval Correspondence**

CP Dupuis explained that the owner of EM Bistro wanted to change their outdoor dining chairs to sculptural, white ones constructed of polypropylene. CP Dupuis noted that while polypropylene would not usually be considered a high-enough quality material for outdoor bistro chairs, these chairs differed significantly from standard plastic seating.

Mr. Koseck said the ordinance's main concern regarding the materials for outdoor bistro seating is longevity. He said that these chairs would withstand the elements and would not likely have longevity issues.

The Board, with the exception of Chair Clein, endorsed allowing an administrative approval for the request. Chair Clein's dissent arose from a dislike of the chairs and concern regarding their recyclability.

CP Dupuis said he would proceed with an administrative approval of the request.

CP Dupuis then asked the Board how the matter of outdoor dining decks should be addressed once the Covid-19 guidelines for outdoor dining decks in the City expire.

Mr. Boyle said the City should decide on a more comprehensive approach to how outdoor dining should interact with the streetscape in Birmingham over the next five to ten years before specific design guidelines for outdoor dining should be created.

Mr. Jeffares noted that the Board would need to come up with an answer quickly in order to have recommendations ready for Fall 2021.

There were no changes to the agenda.

**07-89-20**

## **E. Study Session Items**

### **1. Glazing Requirements**

City Planner Dupuis reviewed the item and Kreg Hatfield, from Guardian Glass, was present to answer questions.

Mr. Hatfield explained that:

- All manufacturers calculate VLT and reflectivity percentages in the same way.
- Most people would be unlikely to notice the difference between 66% and 80% VLT.
- When glass gets into the range of 40-50% VLT it tends to begin to look less clear. Tinting would reduce the VLT even further.
- The glass make-up at the Brookside development and the glass make-up at the Daxton Hotel have identical coatings on the glass. The difference is that the Brookside development used a basic clear glass while the Daxton used a low iron glass. The Brookside glass has a VLT of 68% and the Daxton has a VLT of 70% because removing some iron makes glass a bit more clear.
- Glass can be rated in terms of reflectivity both from the inside-out and from the outside-in. It is important to keep those percentages about the same.
- For basic, first floor applications the ordinance should include language about prohibiting tinted glass. There would be no way for property owners to meet the proposed ordinance requirements if they have both tinted glass and low-e coating.
- There would likely be no need to mention low iron glass because it would meet ordinance requirements should a property owner choose to use it. Low iron glass tends to cost significantly more than regular clear glass. It also tends to be a bit more efficient in terms of retaining the heating and cooling of the building's interior.
- Clear glass tends to have a bit of a green hue versus low iron glass. For protection three coats of silver were added to the library windows' glass, and those layers of silver also add a bit of a greenish hue. If the library had used low iron glass with the same layers of silver the green tint would still be present but not as substantially.
- Low iron glass is widely enough available that no property owners would have a difficult time sourcing it should it be required by ordinance. Cost would be the biggest reason not to require low iron glass via ordinance.
- He has not heard of any municipality requiring low iron glass in their ordinances.
- Any glass sample from an architect submitted to the City should specify whether it is low iron glass.
- The Brookside development is the best example of what kind of glass would be permissible under the proposed ordinance language. Brookside's glass is regular clear glass and not low iron.

Mr. Share said the Board should probably not require low iron glass, especially in a time when the City is trying to help retailers weather the financial impacts of the Covid-19 pandemic.



In reply to Mr. Koseck, Planning Director Ecker stated that the ordinance does not specify how many feet from a window shelving must be placed. She said there could be some value in adding that to the ordinance.

City Planner Dupuis said it might also be worthwhile to consider a vertical height limit for shelving if a horizontal one is added.

Mr. Koseck suggested that some of the language could be clarified in Article 3, Section 3.04 of the ordinance. He said 'bronze' should probably be struck from that section.

Ms. Whipple-Boyce concurred with Mr. Koseck regarding removing the word 'bronze'. She said she agreed that it might be useful to have a horizontal distance requirement for how far shelving must be from a window. She said a typical aisle's width might be the appropriate distance. She said it would also be helpful to know the cost difference between low iron and clear glass.

City Planner Dupuis asked how the Board might want a horizontal distance requirement to deal with retail items displayed in a window.

Ms. Whipple-Boyce said that if retailers displayed their merchandise attractively in their windows she would be supportive of that.

Mr. Williams said the Board should come up with language regarding displaying merchandise in windows and shelving before it goes to a public hearing.

In reply to Chairman Clein, Planning Director Ecker said that the ordinance's current restrictions against shelving in the windows work well and are generally enforceable. She said that any examples that seem to be in egregious violation of that standard tend to have existed before the ordinance went into effect.

Mr. Jeffares recommended the Board conclude its discussion about glazing without trying to presently integrate new topics. He noted the Board had been studying glazing for months and had worked hard to prepare for the review, and thought the other topics being raised deserved a similar amount of thoroughness at a future date.

Mr. Koseck said he would be fine with Mr. Jeffares' recommendation that questions of shelving and merchandising in windows be discussed further at a later date.

The Board asked Planning Director Ecker to add 'no tint' and 'low iron glass' to the definition of clear glazing, with the understanding that 'low iron' could possibly be removed after discussion at the public hearing.

**Motion by Ms. Whipple-Boyce**

**Seconded by Mr. Koseck to set a public hearing on August 26, 2020 to consider Zoning Ordinance amendments to Article 3, Section 3.04(E), Article 4, Section 4.90(A) and Article 9, Section 9.02 to change the Clear Glazing standards and definition to require low iron glass, no tint, to relax the Visual Light Transmittance requirements and to add reflectivity requirements.**

**Mr. Share said he was in favor of moving the topic to a public hearing and not in favor of mandating low iron glass.**

**Motion carried, 6-1.**

ROLL CALL VOTE

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

Nays: Share

Mr. Boyle echoed Ms. Whipple-Boyce's previous statement that the Board should have comparative costs for low iron and clear glass to review. He said the Board should be aware how a low iron requirement might be layering on costs to development in the City.

Chairman Clein thanked Mr. Hatfield for sharing his expertise with the Board.

## **2. Solar Panel Review Process**

City Planner Dupuis reviewed the item.

Ms. Whipple-Boyce said she recently encountered a large solar battery in some work she was doing in another community, and cautioned that the Board might not want to allow any and all ancillary equipment for solar panels to be outside the home given the potential range of sizes.

Mr. Williams said he was fine with solar panels but might be less fine with ancillary equipment on the side of a home given that it might be more prominent in a neighbor's view.

City Planner Dupuis asked if Mr. Williams would prefer the ancillary equipment to be mounted only to the rear of the home, or to possibly be screened in some way.

Mr. Williams said he was not sure what the best approach would be. He said he thought it would depend on the house, the location of the neighboring properties, and the type of equipment.

Planning Director Ecker said that moving the equipment to the rear of a home would have the benefit of being further from a neighbor's yard because of the greater required setback. She noted that, in contrast, equipment on the side of a home might be only five feet from the property line.

Ms. Whipple-Boyce agreed that placement would depend on the size of the equipment. She said that a small electric meter or connection into the house to the battery need not be limited to the rear or interior of a home, whereas larger equipment should be. She said that the Board could likely specify appropriate locations with more information on the most commonly used kinds of equipment.

City Planner Dupuis said he could find pictures of the City's most recent solar panel approvals to provide the Board with a better sense of the size of the ancillary equipment.

- Ground mounted solar panels could enable residents who do not want to mount panels on their roof to still have access to some solar power. Ground mounted solar panels would also allow businesses to use solar-powered trash compactors.

Ms. Whipple-Boyce said that she did not yet know enough about ground-mounted solar panels, but that if the City proceeded toward allowing them she would prefer that their allowable yard coverage be calculated by percentage and not by a set amount. She also told City Planner Dupuis that there had been a conversation regarding wind energy facilities about ten years hence, and that if he could find the minutes from that conversation it might help provide some useful information on the topic.

Mr. Koseck said the Board might want to consider not allowing solar panels at grade because it could encourage residents to do away with any greenery that could get in the way of the panels. He also said that 40 square feet of solar panels on the ground might not be enough to generate a worthwhile amount of energy. Mr. Koseck added that solar panels are impervious which would also raise ordinance issues in terms of ground cover. Since most people would likely rather not install solar panels at grade anyways, Mr. Koseck said he would just as soon prohibit it to avoid these issues since the potential environmental gain would likely not be significant in those cases.

Mr. Jeffares echoed Mr. Koseck's concerns about ground mounted solar panels and said he would prefer to continue studying that possibility and whether it would be worthwhile.

Ms. Ramin noted that on page 625, in section G, the phrase "If a wind energy facility has not been removed within 30 days a deadline specified by the City" would need to be clarified.

Mr. Share noted that on page 621, Item F, the word should be 'complemented', not 'complimented'. He agreed with Mr. Koseck and Mr. Jeffares that ground mounted solar panels were likely not necessary to pursue at this time.

Chairman Clein expressed agreement with Mr. Koseck, Mr. Jeffares, and Mr. Share regarding ground mounted solar panels.

In reply to Chairman Clein, City Planner Dupuis said he would do more research on the benefits and drawbacks of the anti-reflective coating some other cities' ordinances require for solar panels.

#### **4. Glazing Standards**

City Planner Dupuis presented the item.

Mr. Koseck said he had a list of two or three people he would be reaching out to soon who might be able to contribute meaningfully to the glazing standards conversation. He said that once he had done that he would loop City Planner Dupuis in as appropriate.

Chairman Clein explained that in February 2020 and April 2020 there will only be one Planning Board meeting per each month and that both of those meetings are dedicated to master plan discussion. He suggested that Board members look at their calendars to see if a special meeting could be scheduled to wrap up some of these other study session topics. He added that even if

the Board moved forward with a resolution on this item during the present meeting, due to noticing requirements the public hearing would not occur until the second meeting in March 2020. Chairman Clein recommended the Board take the time to do adequate research, as a result, before moving further forward on this.

Mr. Emerine suggested it might be worthwhile to speak with glass contractors in addition to glass vendors in order to get more insight.

Planning Director Ecker said she would recommend reaching out to a mechanical engineer, a glass vendor or supplier, and a glass contractor or installer.

City Planner Dupuis confirmed he would reach out to people who work with glass regularly in architectural settings and would return to the Board with further information.

**01-06-20**

**G. Miscellaneous Business and Communications:**

**a. Communications**

**b. Administrative Approval Correspondence**

**c. Draft Agenda for the next Regular Planning Board Meeting (January 22, 2020)**

- Whistle Stop Design Review
- 35001 Woodward - Amended CIS and Amended Preliminary Site Plan
- Fred Lavery Porsche SLUP
- Two small solar panel items

**d. Other Business – Discuss amending Rules of Procedure for January 22, 2020 meeting**

**Motion by Ms. Whipple-Boyce**

**Seconded by Mr. Share to amend the Rules of Procedure for the Planning Board's January 22, 2020 meeting to allow for the review of the above items as described by Planning Director Ecker.**

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

Abstain: Emerine, Ramin

Planning Director Ecker told Mr. Arpin that the D5 study is available to the public in previous Planning Board agendas posted on the City's website.

In reply to a request by Mr. Arpin, Chairman Clein asked that the City Manager and City Commission consider whether it might be useful to provide the D5 study on thebirminghamplan.com website as well.

Mr. Arpin shared his gratitude for the Board's thoroughness when discussing a CIS, and expressed concern that, in his opinion, the Board was not proceeding as thoroughly when discussing potential zoning changes that would impact a three or four block area of the City.

Chairman Clein thanked Mr. Arpin for his comments.

Patrick Howe, attorney representing the Birmingham Place Condo Association, spoke. He reviewed the minutes from the February 13, 2017 City Commission meeting minutes in order to highlight the original intent of the D5 ordinance. Mr. Howe argued that the only piece of property that was both abutting and adjacent was the south strip next to the 555 Building. He noted that the entire transcript of the D5 portion of the February 13, 2017 City Commission meeting was 18 minutes long, and echoed Mr. Arpin's assertion that more discussion is merited before an amendment to the D5 ordinance is considered.

**Motion by Mr. Share**

**Seconded by Mr. Williams to set a public hearing for December 11, 2019 for the two proposed ordinance amendments to Article 3, section 3.04 (A) and Article 9, Definitions, Section 9.02 as presented on pages 132 and 133 of the Board's November 13, 2019 agenda.**

Duraid Markus, owner of 469-479 S. Old Woodward, asked whether an adjacent building's height would be calculated from the height of the closest point of a building, which could be five stories, for example, or from the highest part of a building as a whole, which could extend to nine stories on the far side of a building.

Planning Director Ecker confirmed for Mr. Markus and for Michele Prentiss that a building's height is calculated based off of a building's overall height, and not just the height of the closest part of the building.

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

**2. Glazing Standards**

City Planner Dupuis presented the item.

Ms. Whipple-Boyce confirmed based on her research that the 80% VLT glass required in the City's ordinance causes much more heat loss and gain depending on the seasons, increases the cost of heating and cooling the building, could change the capacity of the HVAC to make up for that gain and loss, and that those facts will remain true as long as 80% VLT is required. She said that people in the industry she spoke with advised that if the VLT requirement is lowered to 68% those issues could be mitigated. She said determining how to accommodate low-e glass will have environmental benefits in addition to the benefits it would bring developers and builders.

Mr. Share and Ms. Whipple-Boyce both wondered about possible differences between one manufacturer's 68% VLT glass and another's.

City Planner Dupuis and Planning Director Ecker said they would return with more information on the topic for the Board's next meeting.

In reply to Mr. Boyle, City Planner Dupuis explained glass professionals advised staff that only the VLT and the reflectivity affect the transparency of glass, which is why the recommended wording only mentions those two criteria.

In reply to Chairman Clein, City Planner Dupuis said he could do further research on what other Michigan cities require for VLT since the table with VLT figures included in this item was produced sometime in 2017.

In reply to Chairman Clein, Planning Director Ecker said she would try to find someone who could provide the City with more insight into the various considerations at play in this discussion.

Ms. Whipple-Boyce stressed the environmental impact of this decision and said the decision should move towards the highest VLT glass that does not lead to negative environmental results.

### **3. Master Plan Review**

Planning Director Ecker presented the item.

Chairman Clein thanked Planning Director for putting together the proposed schedule.

Subsequent to discussion, Board consensus was that they would schedule the master plan discussions for regular study session meetings beginning in January 2020 and running through May 2020. Notes would be provided to DPZ after each study session. The Board agreed to start those study session meetings at 7 p.m. instead of 7:30 p.m.

Planning Director Ecker noted that a member of the public could always provide their feedback on a previous meeting's topic as well.

Ms. Whipple-Boyce recommended creating an insert with the schedule of these meetings to mail out to all Birmingham residents in the City's 2020 calendar. She advocated for allowing staff to determine the most appropriate division of the master plan topics over the four or five study sessions.



## MEMORANDUM

Planning Division

**DATE:** June 22<sup>nd</sup>, 2021

**TO:** Tom Markus, City Manager

**FROM:** Nicholas Dupuis, City Planner

**APPROVED:** Jana Ecker, Planning Director

**SUBJECT:** Set Public Hearings for Zoning Amendments to Sections 4.09 and 4.88 of Chapter 126, Zoning – Solar Electric Systems

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### INTRODUCTION:

In 2009, the City Commission adopted ordinance language permitting solar panels on structure roofs in all zoning districts throughout the City. Since its adoption, there have been many solar panels installed across the City, and several in the process of being approved by the Planning Board and/or Planning Division.

### BACKGROUND:

On May 22<sup>nd</sup>, 2019, the Planning Board discussed the evolution of solar panels and their perception that aesthetics are no longer an issue that should require a full Design Review by the Planning Board. The Board members also revisited a suggestion that was discussed in 2009, which was to waive fees for solar panel applications to encourage alternative energy use and sustainability.

On June 17<sup>th</sup>, 2019, the Planning Board and City Commission discussed the potential for ordinance amendments to simplify the review process for solar panels. During the meeting, a consensus was reached that the City's solar ordinance was in need of an update.

On January 8<sup>th</sup>, 2020, the Planning Board reviewed revised ordinance language and directed staff to make a few minor revisions and clarifications which involved the removal of ground mounted solar facility standards and adding language for anti-reflective coatings.

On July 15<sup>th</sup>, 2020, the Planning Board reviewed the revised language a second time and made a request to learn more about ancillary equipment and what types of such may be placed on a home, and where it may be commonly placed.

On April 14<sup>th</sup>, 2021, the Planning Board motioned to set a public hearing on May 12<sup>th</sup>, 2021 to amend the alternative energy ordinance, which was rescheduled to June 9<sup>th</sup>, 2021 due to Eid al-Fitr. The Planning Board also requested that language be added to preclude wall of façade-mounted solar panels due to the potential issues with aesthetics and neighboring properties.



On June 9<sup>th</sup>, 2021, the Planning Board motioned to recommend approval to the City Commission amendments to Section 4.09 of the Zoning Ordinance to remove roof-mounted solar electric systems from that section and to also amend Section 4.88, regarding alternative energy, to add amended solar energy system requirements and to reorganize the wind energy requirements without changing them.

**LEGAL REVIEW:**

The City Attorney has reviewed the documentation and has no concerns.

**FISCAL IMPACT:**

The proposed amendments do not have any direct fiscal impacts to the City.

**PUBLIC COMMUNICATIONS:**

As required for proposed Zoning Ordinance amendments, a legal ad was placed in a newspaper of local circulation to advertise the proposed amendments to the Zoning Ordinance in advance of the June 9<sup>th</sup>, 2021 Planning Board meeting. A second legal ad will also be placed in a newspaper of local circulation to advertise the public hearings at the City Commission once the date has been set.

**SUMMARY:**

The Planning Board recommends that the City Commission consider ordinance amendments to Article 4 to amend the Roof Mounted Solar Electric System standards. City staff recommends that the City Commission set public hearings for **July 26, 2021**.

**ATTACHMENTS:**

- Draft Ordinance language
- Planning Board Staff Reports
- Relevant Minutes

**SUGGESTED RESOLUTION:**

To set public hearings for July 26, 2021 to consider the following amendments to Chapter 126, Zoning:

1. Article 4, Section 4.09 (Essential Services) to remove Roof Mounted Solar Electric Systems; and
2. Article 4, Section 4.88 (Alternative Energy) to add amended Roof Mounted Solar Electric Systems language.

CITY OF BIRMINGHAM

ORDINANCE NO. \_\_\_\_\_

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND THE SIGN ORDINANCE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 4, SECTION 4.09, ESSENTIAL SERVICES, TO REMOVE ROOF-MOUNTED SOLAR ELECTRIC SYSTEMS

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4.09 ES-01

This Essential Services Standards section applies to the following districts:

B1 B2 B2B B2C B3 B4 MX 01 02 P PP R1 R1A R2 R3 R4 R5 R6 R7 R8 TZ1 **TZ2** TZ3

The following essential services standard applies:

- A. Essential Services: Essential services shall be permitted as authorized and regulated by law and other ordinances of the city and are exempt from the application of the Zoning Ordinance.
- B. Roof-Mounted Solar Electric Systems:
- ~~1. Roof-mounted solar panels are permitted on buildings and structures in all zoning districts and may include integrated solar panels as the surface layer of the roof structure with no additional apparent change in relief or projection, or separate flush mounted solar panels attached to the roof;~~
  - ~~2. Separate, non-integrated flush-mounted solar panels shall be located on a rear- or side-facing roof, which do not front any street, unless such installation is proven to be ineffective or impractical. If installation is not practical on a rear- or side-facing roof, any other placement in all zoning districts shall be subject to a Design Review by either the Planning Board (non-historic properties) or the Historic District Commission (historic properties);~~
  - ~~3. Separate flush-mounted solar panels installed on a building or structure with a sloped roof surface shall not project vertically above the peak of the roof to which it is attached, or project vertically more than five (5) feet above a flat roof installation; and~~
  - ~~4. No solar panels shall ever project higher than the permitted building height in any zoning district.~~

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2021 to become effective upon publication.

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Pierre Boutros, Mayor

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Alexandria Bingham, City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. \_\_\_\_\_

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND THE SIGN ORDINANCE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 4, SECTION 4.88, ALTERNATIVE ENERGY, TO ADD AMENDED SOLAR ENERGY SYSTEMS REQUIREMENTS

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~~4.88 UT-01: Alternative Energy~~

~~This Utility Standards section applies to the following districts:~~

~~B1 B2 B2B B2C B3 B4 MX 01 02 P TZ3~~

~~The following utility standards applies:~~

- ~~A. Purpose and Intent: The purpose and intent of the city is to balance the need for clean and renewable energy resources with the necessity to protect the public health, safety and welfare of the city, as well as to preserve the integrity, character, property values, and aesthetic quality of the community at large. The city shall allow as an accessory use, with review by the Planning Board and/or Historic District Commission, the construction and operation of wind energy facilities and to provide standards for the placement, design, construction, monitoring, modification and removal of wind facilities that address public safety, minimize impacts on scenic, natural and historic resources without significantly increasing the cost or decreasing the efficiency of such systems.~~
- ~~B. Applicability: This section applies to all on-site wind energy facilities. Any physical modification to existing wind energy facilities that materially alters the type, increases the size, or increases the adverse impact on surrounding properties, shall require a review by the Planning Board and/or Historic District Commission.~~
- ~~C. Planning Approval Required:~~
  - ~~1. Wind energy facilities shall be limited to the average needs of the structure on the same parcel and shall be a permitted accessory use, subject to the required standards of this section provided they are incidental and secondary to a permitted principal use on the same parcel. The rated capacity of wind energy facilities must correlate with consumption.~~
  - ~~2. Wind energy facilities may be connected to the electrical grid when a parcel on which the system is installed also receives electrical power supplied by a utility~~

~~company. If a parcel on which a system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company in accordance with applicable state and federal law.~~

- ~~3. Wind monitoring (anemometer) towers are permitted in all non-residential zoning districts subject to the issuance of a temporary use permit and a building permit. Permanent anemometer towers shall be subject to review and approval in conjunction with wind energy facility.~~
- ~~4. No wind energy facility shall be erected, constructed, installed or modified as provided in this section without first obtaining approval from the Planning Board and/or Historic District Commission. The construction of a wind energy facility shall be permitted in non-residential zoning districts as an accessory use subject to the approval of the Planning Board and/or Historic District Commission and provided that the use complies with all requirements set forth in this section.~~

~~The Planning Board and/or the Historic District Commission have the discretion to deny plans based on aesthetics of the wind energy system. All such wind energy facilities shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts. No approval of any board or commission shall be granted unless it is found that:~~

- ~~a. The specific site is an appropriate location for such use;~~
  - ~~b. The use is not expected to adversely affect the area;~~
  - ~~c. There is not expected to be any serious hazard to people, property or animals from the use;~~
  - ~~d. No nuisance is expected to be created by the use; and~~
  - ~~e. Adequate and appropriate facilities will be provided for the proper operation of the use.~~
- ~~5. Approvals may also impose reasonable conditions, safeguards and limitations and require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the wind energy facility, should they occur.~~
  - ~~6. Multiple wind energy facilities may be permitted provided they meet all requirements specified in the Zoning Ordinance and their number and placement is appropriate for the site and is architecturally and visually compatible with the surrounding area.~~

D. General Site Standards:

- ~~1. *Height.* No wind energy facility may exceed the maximum permitted or actual legal non-conforming building height by more than 20 ft. in any district~~

2. ~~Noise:~~ Except during short-term events including utility outages and severe wind storms, wind energy facilities shall be designed, installed and operated so that noise generated by the system shall be the lesser of 60 dB as measured at any closest inhabited dwelling or 55 dB at the boundary of any adjacent property line.
3. ~~Location:~~
  - a. The center of a wind energy facility turbine tower shall be set back no less than 5 feet from all lot lines and rights-of-way or no less than one-half the diameter of the rotor and blades, whichever is greater.
  - b. The swept area of wind energy facilities must be set back at least 3 feet from any lot line.
  - c. Wind energy facilities may not be located between the front lot line and the front wall of the principal use.
  - d. No portion of any wind energy facility's exposed moving parts shall extend to within 20 feet of the ground, or to within 10 feet of any overhead utility lines, or as determined by a utility company.
4. ~~Screening:~~ Screening of ground-mounted mechanical equipment is required in accordance with Article 4, Section 4.54 SC-01 Screening of the Zoning Ordinance, in order to mitigate aesthetic impacts upon the neighborhood.
5. ~~Shadow Flicker:~~ Wind energy facilities shall be sited in a manner that minimizes shadowing or flicker on adjacent properties. The applicant has the burden of proving that this effect does not have significant adverse impacts on neighboring or adjacent uses through siting or mitigation.
6. ~~Access and Safety:~~
  - a. Wind energy facilities shall be designed and installed so as to prevent unauthorized access to electrical and mechanical components and shall be secured or locked at all times when service personnel are not present.
  - b. Climbing apparatus shall be located in a place that is in accordance with MIOSHA standards as to prevent climbing.
7. ~~Removal:~~ Any wind energy facility that has not been used in 180 days, or has otherwise been determined abandoned, shall be removed by the owner and/or operator of the facility. If a wind energy facility has not been removed within 30 days a deadline specified by the City, the City of Birmingham may remove or secure the removal of the facility at the owner/operator's sole expense. All equipment associated with the facility shall be removed at the same time.

E. Design Standards:

1. ~~*Color and Finish:*~~ The Planning Board shall have discretion over the turbine color, although a neutral, non-reflective exterior color designed to blend with the surrounding environment is encouraged. If the site is located within a historic district, the Historic District Commission will have discretion over the turbine color.
2. ~~*Lighting:*~~ Wind Energy Facilities may be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the wind energy facility, or related structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. If lighting is necessary a photometric plan is required.
3. ~~*Signage:*~~ Signs on the wind energy facility shall comply with the requirements of the City of Birmingham's Sign Ordinance, and shall be limited to:

~~Wind energy facilities shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.~~

- a. ~~Those necessary to identify the owner, provide a 24-hour emergency contact phone number, and warn of any danger; and~~
  - b. ~~Educational signs providing information about the facility and the benefits of renewable energy~~
4. ~~*Utility Connections:*~~ All utility connections for and from the wind energy facility shall be located under ground. Electrical transformers for utility interconnections may be above ground if required by utility provider but must be screened according to the Zoning Ordinance.
5. ~~*Related Structures:*~~ All related structures to wind energy facilities shall be subject to regulations concerning bulk and height of accessory structures as well as all other development standards. All related structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and adjacent buildings and shall be contained within the turbine tower whenever technically feasible. Structures shall only be used for housing equipment for this particular site.

F. ~~Submittal Requirements:~~

1. ~~Wind energy facilities are subject to Site Plan Review or Design Review by the Planning Board and/or the Historic District Commission.~~
2. ~~All wind energy facilities shall obtain a building permit, along with any other permits required by federal, state and local agencies, prior to erecting a system.~~



3. ~~Proof of Liability Insurance: The applicant shall be required to provide evidence of liability insurance in an amount and for a duration sufficient to cover loss or damage to persons and structures should there be a failure of the wind energy facility.~~
4. ~~Site Control: At the time of application for a Site Plan Review, the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean legal authority to prevent the use or construction of any structure for human habitation within the setback areas.~~
5. ~~Site Plan:~~
  - a. ~~A site plan signed and sealed by a licensed engineer, of the subject property and all properties within 200 feet showing existing buildings and structures, utility lines and poles, landscaping and all other items which may effect the placement of the wind energy facility.~~
  - b. ~~An elevation drawing of the proposed location of the wind energy facility.~~
  - c. ~~Color photographs and an elevation drawing with the wind energy facility and all necessary equipment superimposed in the proposed location.~~
  - d. ~~Specification sheets for all equipment, identifying all parts of the system, including, but not limited to, the manufacturer and model, turbine, tower height and type, rotor diameter, foundation, any accessory equipment, and the manufacturers electrical plans and specifications.~~
  - e. ~~Any other information or evidence required by City Officials.~~

#### **4.88 UT-01: Alternative Energy**

**This Utility Standards section applies to the following districts:**

**R1 R1A R2 R3 R4 R5 R6 R7 R8 B1 B2 B2B B2C B3 B4 MX 01 02 P TZ1 TZ2 TZ3**

**The following utility standards applies:**

- A. **Purpose and Intent:** The purpose and intent of the city is to balance the need for clean and renewable energy resources with the necessity to protect the public health, safety and welfare of the city, as well as to preserve the integrity, character, property values, and aesthetic quality of the community at large.

- B. Solar Energy Facilities:** The city shall allow the construction and operation of solar energy facilities and shall provide standards for the placement, design, construction, modification and removal of solar energy facilities that address public safety, minimize impacts on scenic, natural and historic resources without significantly increasing the cost or decreasing the efficiency of such systems.

**1. Roof-Mounted Solar Electric Systems:**

- a. Roof-mounted solar panels are permitted on buildings and structures in all zoning districts and may include integrated solar panels as the surface layer of the roof structure with no additional apparent change in relief or projection, separate flush mounted solar panels attached to the roof, associated electrical equipment such as meters, charge controllers, inverters, storage batteries, or similar ancillary equipment, or solar photovoltaic shingles;
- b. Separate, non-integrated flush-mounted solar panels shall be located on a rear- or side-facing roof, which do not front any street, unless such installation is proven to be ineffective or impractical. If installation is not practical on a rear- or side-facing roof, any other placement in all zoning districts shall be subject to review by the Planning Division. Wall or façade-mounted solar panels are not permitted;
- c. Any roof-mounted solar electric systems proposed on a historic building, or on a building or structure in an established historic district are subject to a Design Review by the Historic District Commission;
- d. Separate flush-mounted solar panels installed on a building or structure with a sloped roof surface shall not project vertically above the peak of the roof to which it is attached, or project vertically more than five (5) feet above a flat roof installation;
- e. No solar panels shall ever project higher than the permitted building height in any Zoning District;
- f. All solar electric systems proposed on the roof of a building shall be uniform in color and match or complement the color of the roof material. All frames (internal and external) shall match the color of the collector surface and all solar panels must have anti-reflective coatings to prevent glare; and

- g. All ancillary equipment installed in conjunction with roof-mounted solar electric systems is permitted on the side or rear building facades only. Storage batteries shall be installed in the interior of the building only.

2. Ground-Mounted Solar Electric Systems:

- a. Ground-mounted solar electric systems, including standard and pole mounted arrays, are not permitted.

4.89 UT-01: Alternative Energy

This Utility Standards section applies to the following districts:

R4 R5 R6 R7 R8 B1 B2 B2B B2C B3 B4 MX 01 02 P PP TZ2 TZ3

- A. Purpose and Intent: The purpose and intent of the city is to balance the need for clean and renewable energy resources with the necessity to protect the public health, safety and welfare of the city, as well as to preserve the integrity, character, property values, and aesthetic quality of the community at large.
- B. Wind Energy Facilities: The city shall allow as an accessory use, with review by the Planning Board and/or Historic District Commission, the construction and operation of wind energy facilities and to provide standards for the placement, design, construction, monitoring, modification and removal of wind facilities that address public safety, minimize impacts on scenic, natural and historic resources without significantly increasing the cost or decreasing the efficiency of such systems.
  - 1. Applicability: This section applies to all on-site wind energy facilities. Any physical modification to existing wind energy facilities that materially alters the type, increases the size, or increases the adverse impact on surrounding properties, shall require a review by the Planning Board and/or Historic District Commission.
  - 2. Planning Approval Required:
    - a. Wind energy facilities shall be limited to the average needs of the structure on the same parcel and shall be a permitted accessory use; subject to the required standards of this section provided they are incidental and secondary to a permitted principal use on the same parcel. The rated capacity of wind energy facilities must correlate with consumption.

- b. Wind energy facilities may be connected to the electrical grid when a parcel on which the system is installed also receives electrical power supplied by a utility company. If a parcel on which a system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company in accordance with applicable state and federal law.
- c. Wind monitoring (anemometer) towers are permitted in all non-residential zoning districts subject to the issuance of a temporary use permit and a building permit. Permanent anemometer towers shall be subject to review and approval in conjunction with wind energy facility.
- d. No wind energy facility shall be erected, constructed, installed or modified as provided in this section without first obtaining approval from the Planning Board and/or Historic District Commission. The construction of a wind energy facility shall be permitted in non-residential zoning districts as an accessory use subject to the approval of the Planning Board and/or Historic District Commission and provided that the use complies with all requirements set forth in this section.

The Planning Board and/or the Historic District Commission have the discretion to deny plans based on aesthetics of the wind energy system.

All such wind energy facilities shall be constructed and operated in a manner that minimizes any adverse visual, safety, and environmental impacts. No approval of any board or commission shall be granted unless it is found that:

- i. The specific site is an appropriate location for such use;
  - ii. The use is not expected to adversely affect the area;
  - iii. There is not expected to be any serious hazard to people, property or animals from the use;
  - iv. No nuisance is expected to be created by the use; and
  - v. Adequate and appropriate facilities will be provided for the proper operation of the use.
- e. Approvals may also impose reasonable conditions, safeguards and limitations and require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the wind energy facility, should they occur.

- f. Multiple wind energy facilities may be permitted provided they meet all requirements specified in the Zoning Ordinance and their number and placement is appropriate for the site and is architecturally and visually compatible with the surrounding area.

3. **General Site Standards:**

- a. **Height:** No wind energy facility may exceed the maximum permitted or actual legal non-conforming building height by more than 20 ft. in any district
- b. **Noise:** Except during short-term events including utility outages and severe wind storms, wind energy facilities shall be designed, installed and operated so that noise generated by the system shall be the lesser of 60 dB as measured at any closest inhabited dwelling or 55 dB at the boundary of any adjacent property line.
- c. **Location:**
  - i. The center of a wind energy facility turbine tower shall be set back no less than 5 feet from all lot lines and rights-of-way or no less than one-half the diameter of the rotor and blades, whichever is greater.
  - ii. The swept area of wind energy facilities must be set back at least 3 feet from any lot line.
  - iii. Wind energy facilities may not be located between the front lot line and the front wall of the principal use.
  - iv. No portion of any wind energy facility's exposed moving parts shall extend to within 20 feet of the ground, or to within 10 feet of any overhead utility lines, or as determined by a utility company.
- d. **Screening:** Screening of ground mounted mechanical equipment is required in accordance with Article 4, Section 4.54 SC-01 Screening of the Zoning Ordinance, in order to mitigate aesthetic impacts upon the neighborhood.
- e. **Shadow Flicker:** Wind energy facilities shall be sited in a manner that minimizes shadowing or flicker on adjacent properties. The applicant has the burden of proving that this effect does not have significant adverse impacts on neighboring or adjacent uses through siting or mitigation.
- f. **Access and Safety:**

- i. Wind energy facilities shall be designed and installed so as to prevent unauthorized access to electrical and mechanical components and shall be secured or locked at all times when service personnel are not present.
  - ii. Climbing apparatus shall be located in a place that is in accordance with MIOSHA standards as to prevent climbing.
- g. Removal: Any wind energy facility that has not been used in 180 days, or has otherwise been determined abandoned, shall be removed by the owner and/or operator of the facility. If a wind energy facility has not been removed within 30 days of a deadline specified by the City, the City of Birmingham may remove or secure the removal of the facility at the owner/operator's sole expense. All equipment associated with the facility shall be removed at the same time.

#### 4. Design Standards:

- a. Color and Finish: The Planning Board shall have discretion over the turbine color, although a neutral, non-reflective exterior color designed to blend with the surrounding environment is encouraged. If the site is located within a historic district, the Historic District Commission will have discretion over the turbine color.
- b. Lighting: Wind Energy Facilities may be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the wind energy facility, or related structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. If lighting is necessary a photometric plan is required.
- c. Signage: Signs on the wind energy facility shall comply with the requirements of the City of Birmingham's Sign Ordinance, and shall be limited to:
  - i. Wind energy facilities shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the wind energy facility.
  - ii. Those necessary to identify the owner, provide a 24-hour emergency contact phone number, and warn of any danger; and
  - iii. Educational signs providing information about the facility and the benefits of renewable energy

- d. **Utility Connections:** All utility connections for and from the wind energy facility shall be located under- ground. Electrical transformers for utility interconnections may be above ground if required by utility provider but must be screened according to the Zoning Ordinance.
- e. **Related Structures:** All related structures to wind energy facilities shall be subject to regulations concerning bulk and height of accessory structures as well as all other development standards. All related structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and adjacent buildings and shall be contained within the turbine tower whenever technically feasible. Structures shall only be used for housing equipment for this particular site.

5. **Submittal Requirements:**

- a. Wind energy facilities are subject to Site Plan Review or Design Review by the Planning Board and/or the Historic District Commission.
- b. All wind energy facilities shall obtain a building permit, along with any other permits required by federal, state and local agencies, prior to erecting a system.
- c. **Proof of Liability Insurance:** The applicant shall be required to provide evidence of liability insurance in an amount and for a duration sufficient to cover loss or damage to persons and structures should there be a failure of the wind energy facility.
- d. **Site Control:** At the time of application for a Site Plan Review, the applicant shall submit documentation of actual or prospective control of the project site sufficient to allow for installation and use of the pro- posed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean legal authority to prevent the use or construction of any structure for human habitation within the setback areas.
- e. **Site Plan:**
  - i. A site plan signed and sealed by a licensed engineer, of the subject property and all properties within 200 feet showing existing buildings and structures, utility lines and poles,



landscaping and all other items which may effect the placement of the wind energy facility.

- ii. An elevation drawing of the proposed location of the wind energy facility.
- iii. Color photographs and an elevation drawing with the wind energy facility and all necessary equipment superimposed in the proposed location.
- iv. Specification sheets for all equipment, identifying all parts of the system, including, but not limited to, the manufacturer and model, turbine, tower height and type, rotor diameter, foundation, any accessory equipment, and the manufacturers electrical plans and specifications.
- v. Any other information or evidence required by City Officials.

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2021 to become effective upon publication.

\_\_\_\_\_  
Pierre Boutros, Mayor

\_\_\_\_\_  
Alexandria Bingham, City Clerk



## MEMORANDUM

Planning Division

**DATE:** June 9<sup>th</sup>, 2021

**TO:** Jana Ecker, Planning Director

**FROM:** Nicholas Dupuis, City Planner

**SUBJECT:** Solar Panel Requirements – Public Hearing

In 2009, the City Commission adopted ordinance language permitting solar panels on structure roofs in all zoning districts throughout the City. Since its adoption, there have been many solar panels installed across the City, and several in the process of being approved by the Planning Board and/or Planning Division.

On May 22<sup>nd</sup>, 2019, the Planning Board discussed the evolution of solar panels and their perception that aesthetics are no longer an issue that should require a full Design Review by the Planning Board. The Board members also revisited a suggestion that was discussed in 2009, which was to waive fees for solar panel applications to encourage alternative energy use and sustainability.

On June 17<sup>th</sup>, 2019, the Planning Board and City Commission discussed the potential for ordinance amendments to simplify the review process for solar panels. During the meeting, a consensus was reached that the City's solar ordinance was in need of an update.

On January 8<sup>th</sup>, 2020, the Planning Board reviewed revised ordinance language and directed staff to make a few minor revisions and clarifications which involved the removal of ground mounted solar facility standards and adding language for anti-reflective coatings.

On July 15<sup>th</sup>, 2020, the Planning Board reviewed the revised language a second time and made a request to learn more about ancillary equipment and what types of such may be placed on a home, and where it may be commonly placed. The Planning Division has reached out to several solar power companies, and has researched previous solar panel proposals to get a better sense of what ancillary equipment is commonly used, and general reasons why:

Equipment	Description
Large Single-Unit Inverter	Changes DC current from panel to usable AC current. Typically located near utility meter.
Micro Inverter	Changes DC current from panel to usable AC current. Micro Inverters are located on the rear of each panel, eliminating the need for one larger single-unit inverter. More common.
Sub Panels	Dedicated circuits to power specific household items (ex. fridge, laundry, etc.) Located inside adjacent to main panel.

Storage Battery	Stores excess energy collected for later use. Rated for indoor/outdoor placement, but most commonly placed inside.
Battery Disconnects	Functions as a disconnect and one-way circuit to prevent energy backflow out of storage battery. Usually located close to battery inside or outside.
Disconnect Switches	Switches that stop the flow of power. Could be more than one, and is required to be located no more than 5 ft. from the utility meter.
Junction Box	Serves as a monitoring system that detect production. Can be located inside or outside. Optional, not necessarily required.
Metal Conduit	Houses all wiring from solar panels, through ancillary equipment, and into the home.

In reviewing several of the plans for solar installations in the last two years, the information provided above appears to be confirmed by the locations of ancillary equipment on the plans, which in general is always located on the side or rear of the house near the utility meter.

On April 14<sup>th</sup>, 2021, the Planning Board motioned to set a public hearing on May 12<sup>th</sup>, 2021 to amend the alternative energy ordinance, which was rescheduled to June 9<sup>th</sup>, 2021 due to Eid al-Fitr. The Planning Board also requested that language be added to preclude wall of façade-mounted solar panels due to the potential issues with aesthetics and neighboring properties.

As the Zoning Ordinance currently reads, roof-mounted solar electric systems are permitted in all Zoning Districts, with any proposals for front, street oriented systems required to come before the Planning Board or Historic District Commission for a Design Review. The attached language offers an update to this language based on the feedback of the Planning Board and City Commission eliminating the Design Review Requirement for *non-historic homes only*. In addition, it was important for City Staff (while the subject of solar panels is active) to address and update the entire section of ordinance to remove barriers to the use of alternative energy solutions and encourage viable sustainability efforts. The proposed updates add requirements for new and emerging technologies such as solar shingles and solar energy storage, as well as address different options and that were not included in the original language, such as ground-mounted solar electric systems.

**Note:** The decision was made to move the language for solar panels from the Essential Services section to the Alternative Energy section of the ordinance, as it is a much better fit. In order to edit the ordinance properly, it was easiest to “delete” all of the existing ordinance language in Section 4.88 and create an entirely “new” Section 4.88. The language for wind energy facilities in the “new” Section 4.88 is EXACTLY the same, it is merely organized in a slightly different way. Please be advised, however, of the changes made in **bold blue** that apply to the wind energy facility language, which are changes to the Zoning Districts in which Section 4.88 apply.

**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

**04-052-21**

## **F. Study Session Items**

### **1. Solar Panel Regulations**

CP Dupuis summarized the item.

Mr. Jeffares recommended the City enlist an expert in solar panels to review the ordinance proposal in order to avoid potentially having to re-do or update the ordinance earlier than necessary. Mr. Jeffares also recommended that the ordinance language specifically preclude wall- or facade-mounted solar panels, stating that it is aesthetically displeasing and could cause issues with neighboring properties.

Chair Clein concurred with Mr. Jeffares' recommendation regarding wall- or facade-mounted solar panels.

Mr. Boyle asked if there was any near-future technology the ordinance should address.

Chair Clein said that strips of solar panels being used to line bicycle paths was being tried in Europe, but that wide-spread implementation would not be in the near future.

In reply to Mr. Share, CP Dupuis said he did not recommend screening for ancillary equipment because it would increase the difficulty of installation and maintenance. CP Dupuis noted this ordinance review was being conducted with an aim towards reducing the impediments to using solar panels in the City. He added that users of solar panels also needed quick access to disconnect features.

Mr. Share recommended that the ordinance states that users of solar panels are not exempt from screening otherwise required by the Zoning Ordinance.

CP Dupuis said he could update the recommended ordinance language with the Board's comments and have it ready for a public hearing on May 12, 2021.

**Motion by Mr. Boyle**

**Seconded by Mr. Jeffares to set a public hearing on solar panel regulations ordinance language for the regular Planning Board meeting of May 12, 2021.**

**Motion carried, 7-0.**

**ROLL CALL VOTE**

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

Nays: None

**2. Glazing Standards**

CP Dupuis summarized the item.

Mr. Share said he had recent occasion to purchase some low-iron glass, and that it added about 15% to the cost. He stated that he found the difference between low-iron and regular glass to be **visually** immaterial. He suggested that the low-iron requirement be removed from the recommended language, saying he thought it inappropriate to burden owners and developers with the extra cost.

Mr. Koseck and Ms. Whipple-Boyce, two other members of the Board familiar with glazing standards from their professions, did not dispute Mr. Share's recommendation when asked.

**Motion by Mr. Share**

**Mr. Share said he was in favor of moving the topic to a public hearing and not in favor of mandating low iron glass.**

**Motion carried, 6-1.**

ROLL CALL VOTE

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

Nays: Share

Mr. Boyle echoed Ms. Whipple-Boyce's previous statement that the Board should have comparative costs for low iron and clear glass to review. He said the Board should be aware how a low iron requirement might be layering on costs to development in the City.

Chairman Clein thanked Mr. Hatfield for sharing his expertise with the Board.

## **2. Solar Panel Review Process**

City Planner Dupuis reviewed the item.

Ms. Whipple-Boyce said she recently encountered a large solar battery in some work she was doing in another community, and cautioned that the Board might not want to allow any and all ancillary equipment for solar panels to be outside the home given the potential range of sizes.

Mr. Williams said he was fine with solar panels but might be less fine with ancillary equipment on the side of a home given that it might be more prominent in a neighbor's view.

City Planner Dupuis asked if Mr. Williams would prefer the ancillary equipment to be mounted only to the rear of the home, or to possibly be screened in some way.

Mr. Williams said he was not sure what the best approach would be. He said he thought it would depend on the house, the location of the neighboring properties, and the type of equipment.

Planning Director Ecker said that moving the equipment to the rear of a home would have the benefit of being further from a neighbor's yard because of the greater required setback. She noted that, in contrast, equipment on the side of a home might be only five feet from the property line.

Ms. Whipple-Boyce agreed that placement would depend on the size of the equipment. She said that a small electric meter or connection into the house to the battery need not be limited to the rear or interior of a home, whereas larger equipment should be. She said that the Board could likely specify appropriate locations with more information on the most commonly used kinds of equipment.

City Planner Dupuis said he could find pictures of the City's most recent solar panel approvals to provide the Board with a better sense of the size of the ancillary equipment.

Mr. Jeffares noted how helpful it was to have Mr. Hatfield consulting the Board during their glazing discussion, and said it would be equally helpful to find someone as well-versed in solar power technologies. He observed that the Board was doing some guesswork in the current discussion and thought it would be better to get more specific answers. He said that consulting with someone knowledgeable in the field would have the additional benefit of informing the Board on how the technology is trending, so they could factor those considerations into the ordinance language as well.

Mr. Williams agreed with Mr. Jeffares. He said that the proposed language regarding ancillary equipment was likely too vague and should be clarified before being advanced to a public hearing.

Ms. Whipple-Boyce said she could email City Planner Dupuis some contact information for someone who might know more about solar power technology.

**07-90-20**

**F. Miscellaneous Business and Communications:**

**a. Communications**

**b. Administrative Approval Correspondence**

City Planner Dupuis explained that the owners of 266 Elm Street wanted to remove the patio in the rear of their building, to replace it with exposed aggregate, to add eight planters, and to replace the rear fence. He noted that the exposed aggregate would go all the way to the rear fence which would result in the removal of some amount of landscaped area.

Consensus of the Board was to grant administrative approval for the plans.

**c. Draft Agenda for the next Regular Planning Board Meeting (August 12, 2020)**

- **Master Plan Draft Review**

**d. Other Business**

**07-91-20**

**H. Planning Division Action Items**

**a. Staff Report on Previous Requests**

**b. Additional Items from tonight's meeting**

**07-92-20**

**I. Adjournment**



## **2. Master Plan Review Process Update**

Planning Director Ecker presented the item. She explained that the City Commission approved the proposal as submitted with the exception that the schedule would start in February 2020, and not January 2020. She stated that in December 2019 the City Commission approved the expenditure of up to \$28,600 for additional public engagement activities. That figure included the potential for two different round-table discussions, a drop-in clinic, and two additional short surveys. Should the Board want to pursue any of those options, they would make a recommendation to the City Manager who would disburse the requisite funds should he approve of the recommendation.

Planning Director Ecker said the scheduled Planning Board master plan discussions would be publicized on the City's website, the Master Plan website, and all City social media channels. Sarah Traxler, one of the local members of the Master Plan team, would likely be attending each meeting and giving a presentation of the evening's master planning topic. Those presentations would also be included in the Planning Board's agenda packets the Friday before their Wednesday meetings in order to afford both the public and the Board members time to review the topic. Robert Gibbs, another local member of the Master Plan team, would likely also be present at the meetings.

Planning Director Ecker said that between sessions she would collect any master plan comments submitted to the Planning Department and include them in the agenda packet for the next scheduled master plan meeting so that the Board would have an opportunity to review those as well.

## **3. Solar Panel Review Process**

City Planner Dupuis presented the item.

Mr. Emerine noted that on page 620 of the Planning Board's agenda packet, 4.88 B said 'wind' when it should read 'solar'.

City Planner Dupuis agreed and said he would make the change. He further explained:

- Ancillary solar panel equipment is very small and would be mounted to the wall of whatever building is using it. He said it would be visually unobtrusive and that he had not come across any information on undue noise production by the equipment. He said he would bring the spec sheets for the ancillary equipment to a public hearing once scheduled which would provide both the Board and the public with more information on the items.
- He would clarify the suggested language to explain that the 40 square foot limit on a solar panel system counts all connected panels as part of one system. Since the average solar panel is three-and-a-half feet by five feet, he recommended the 40 square foot limit in order to allow two average-sized solar panels. City Planner Dupuis said he provided the 40 square feet to begin the conversation, and also proposed the number because he was unsure whether it would be appropriate in a residential setting to have more than 40 square feet of solar panels. He noted that some other cities restrict solar panels to occupying no more than a certain percentage of a given lot.

- Ground mounted solar panels could enable residents who do not want to mount panels on their roof to still have access to some solar power. Ground mounted solar panels would also allow businesses to use solar-powered trash compactors.

Ms. Whipple-Boyce said that she did not yet know enough about ground-mounted solar panels, but that if the City proceeded toward allowing them she would prefer that their allowable yard coverage be calculated by percentage and not by a set amount. She also told City Planner Dupuis that there had been a conversation regarding wind energy facilities about ten years hence, and that if he could find the minutes from that conversation it might help provide some useful information on the topic.

Mr. Koseck said the Board might want to consider not allowing solar panels at grade because it could encourage residents to do away with any greenery that could get in the way of the panels. He also said that 40 square feet of solar panels on the ground might not be enough to generate a worthwhile amount of energy. Mr. Koseck added that solar panels are impervious which would also raise ordinance issues in terms of ground cover. Since most people would likely rather not install solar panels at grade anyways, Mr. Koseck said he would just as soon prohibit it to avoid these issues since the potential environmental gain would likely not be significant in those cases.

Mr. Jeffares echoed Mr. Koseck's concerns about ground mounted solar panels and said he would prefer to continue studying that possibility and whether it would be worthwhile.

Ms. Ramin noted that on page 625, in section G, the phrase "If a wind energy facility has not been removed within 30 days a deadline specified by the City" would need to be clarified.

Mr. Share noted that on page 621, Item F, the word should be 'complemented', not 'complimented'. He agreed with Mr. Koseck and Mr. Jeffares that ground mounted solar panels were likely not necessary to pursue at this time.

Chairman Clein expressed agreement with Mr. Koseck, Mr. Jeffares, and Mr. Share regarding ground mounted solar panels.

In reply to Chairman Clein, City Planner Dupuis said he would do more research on the benefits and drawbacks of the anti-reflective coating some other cities' ordinances require for solar panels.

#### **4. Glazing Standards**

City Planner Dupuis presented the item.

Mr. Koseck said he had a list of two or three people he would be reaching out to soon who might be able to contribute meaningfully to the glazing standards conversation. He said that once he had done that he would loop City Planner Dupuis in as appropriate.

Chairman Clein explained that in February 2020 and April 2020 there will only be one Planning Board meeting per each month and that both of those meetings are dedicated to master plan discussion. He suggested that Board members look at their calendars to see if a special meeting could be scheduled to wrap up some of these other study session topics. He added that even if

**BIRMINGHAM CITY COMMISSION /  
PLANNING BOARD JOINT WORKSHOP SESSION  
JUNE 17, 2019  
DPS FACILITY, 851 SOUTH ETON  
7:30 P.M.**

**I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Patty Bordman called the meeting to order at 7:30 PM.

**II. ROLL CALL**

Commission

ROLL CALL:

Present:

Mayor Bordman  
Commissioner DeWeese  
Commissioner Harris  
Commissioner Hoff  
Commissioner Nickita  
Commissioner Sherman

Absent:

Mayor Pro Tem Boutros

Planning Board

ROLL CALL:

Present:

Chairman Scott Clein  
Robin Boyle  
Stuart Jeffares  
Nasseem Ramin, alternate  
Daniel Share  
Janelle Whipple-Boyce  
J. Bryan Williams

Absent:

Jason Emerine, alternate  
Bert Koseck  
Sophia Trimble, student representative  
John Utley, student representative

Administration: City Manager Valentine, Deputy City Clerk Arft, Planning Director Ecker, Building Official Johnson, City Planner Cowan

**III. ITEMS FOR DISCUSSION**

City Manager Valentine said the objective tonight was to provide discussion items in order to clarify how the City should move forward on the following issues.

A. Current Issues:

**1. Discussion on solar panel regulations**

Planning Director Ecker reviewed the item. She emphasized that solar panel can now be integrated, so that aesthetics are not as big an issue. In reply to Commissioner Hoff, Planning Director Ecker stated that in the past six months there have been eight requests for solar panels. Residents have been paying a fee of \$400 for design review plus a sign bond of \$100 if the solar

panels are going to be installed on the front of their homes, and have been paying \$100 for an administrative review if the solar panels are to be installed on the back of their homes.

Planning Director Ecker confirmed for Commissioner DeWeese that comments from the public have been positive.

Commissioner Nickita stated his only concern would be obtrusive-looking solar panels, which he said would be caught by staff during administrative review. He suggested that those examples could be brought to the Planning Board for review, while the more subtle installations could be administratively approved.

Mr. Jeffares said solar panels are part of the future of ecologically-sustainable building, and that Birmingham should be doing whatever it can within reason to encourage their use. He also mentioned that currently the shingle model of solar panels are twice as expensive as the panel models and are one-third less effective. He said he anticipates the shingle model of solar panels will become more efficient over time.

Seeing no public comment, Mayor Bordman acknowledged consensus that the Planning Board should re-study the issue.

Chairman Clein asked whether the Planning Board should be studying the application process for solar panels or the design standards.

City Manager Valentine said the Commission would be formally amending the Planning Board action list in the near future to provide specific direction on any recommended study items from this meeting.

Mayor Bordman expressed appreciation for Chairman Clein's clarifying question, and said she would personally like to see both topics studied though the final study direction would come from the Commission as a whole.

## **2. Discussion on enclosing balconies, patios and terraces**

Planning Director Ecker presented the item. She clarified for Commissioner Hoff that some of these situations are being enclosed as three-season rooms and some are not.

Commissioner Hoff observed that the changes being made to these buildings were reasonably significant as they resulted in a change of the building footprint.

In reply to Commissioner Harris, Planning Director Ecker stated the President of the Crosswinds association has called the Planning Department multiple times to express his displeasure with these enclosures. She noted that despite the President's displeasure the same association did vote to allow these enclosures on their building. She stated this has been the only contact the City has received from the public on the matter.

Commissioner Nickita said while these examples happen to be high-quality, if the City allows enclosures in general the results could also be of lower quality. He said the City must create appropriate design standards for these enclosures, must consider the footprint expansion these

any proposed signage; 7) Applicant comply with the requests of all City Departments; 8) Applicant obtain approval of a lease agreement by the City Commission for all projections and /or encroachments on City property; 9) Applicant revise plan sheets as necessary to ensure all sheets are consistent and show the required property lines and clearly note all projections / encroachments across property lines; and 10) At Final Site Plan Review, the applicant must provide the Special Event Operations Plan for the said hotel.

**Motion carried, 7-0.**

VOICE VOTE

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

Nays: None

**05-077-19**

**F. Request for Design Review**

**1. 1986 Northlawn – Private Residence – Request for design review and approval of the installation of eight solar panels on the front (street) facing portion of the roof of a private single family residence.**

City Planner Dupuis presented the item.

Mr. Williams asked why the ordinance did not allow solar panels on the front of homes without Planning Board approval.

Planning Director Ecker said she was unsure as to the exact reason, but it is likely aesthetics.

Mr. Jeffares said that traditional solar panels can be aesthetically obtrusive, and noted that several manufacturers have recently started producing solar panels which resemble roofing shingles. While he stated that he was unsure if there were other reasons that the smaller solar panels could not be used, for instance cost or output, he said they are generally nicer to look at than traditional solar panels.

Ms. Whipple-Boyce reminded the PB that they granted a similar front-of-roof solar panel installation for a home on Lincoln a few years prior, and that it yielded a fine result.

Mr. Boyle asked how much the City charged for this review.

City Planner Dupuis said it was \$500 total.

Mr. Boyle said granting this resident request would be the easiest thing in the world to do to encourage ecological sustainability. He suggested that residents adding solar panels to their houses should incur no design review fee and a simple approval process.

Planning Director Ecker stated that the Planning Department could allow solar panel installations through administrative approval for \$100 if the Planning Board no longer wants to review the majority of such requests.

Chairman Clein said the Planning Board could ask the City Manager for permission to further consider the benefits of Mr. Boyle's proposal.

Ms. Whipple-Boyce assented to that idea.

**Motion by Mr. Williams**

**Seconded by Ms. Whipple-Boyce to move to approve the design plan for 1986 Northlawn.**

**Motion carried, 7-0.**

**VOICE VOTE**

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

Nays: None

**05-078-19**

**G. Miscellaneous Business and Communications:**

**a. Communications**

Planning Director Ecker stated that the City Commission stated a public hearing date in June 2019 for Rojo/Sidecar, trash enclosures, screening, and railings.

The Bates Street development is on the meeting agenda for the second meeting in June 2019. City Manager Valentine will provide the Board with more specific direction on its obligations.

Mr. Williams reiterated his request for an opinion from City Attorney Currier on the Board's obligations vis-a-vis the Bates Street development as well.

Pernoi will be back to the PB on June 12, 2019 for bistro consideration. Brooklyn Pizza has not yet submitted.

The Board decided to continue discussion of aging in place, with staff providing information on what other urban communities have done in order to inform the conversation.

**b. Administrative Approval Correspondence**

City Planner Dupuis explained that the Old Woodward reconstruction removed the outdoor dining space for Mad Hatter Bistro, which is required by ordinance to retain its bistro license. Randy Dickow of Mad Hatter Bistro has negotiated with the next door property owner to use 50% of his frontage, which is permitted by ordinance as long as the next door property is vacant. The remaining issue is that the proposed location of the outdoor dining would cause it to abut a City-

**Public Comment**

Mr. Schmier asked that the public comments provided during the item's discussion be included in the documentation sent to the Commission to demonstrate the shared concerns of both Eton One and Eton Two.

Chair Clein confirmed that would occur.

**Motion carried, 6-1.**

ROLL CALL VOTE

Yeas: Whipple-Boyce, Emerine, Williams, Clein, Share, Koseck

Nays: Jeffares

**Motion by Ms. Whipple-Boyce**

**Seconded by Mr. Emerine to recommend approval to the City Commission of the Special Land Use Permit for 501 S. Eton – Whistle Stop – subject to the conditions of Final Site Plan & Design Review approval.**

**Motion carried, 6-1.**

ROLL CALL VOTE

Yeas: Whipple-Boyce, Emerine, Williams, Clein, Share, Koseck

Nays: Jeffares

**06-078-21**

**F. Study Session Items**

**1. Public Hearing – Solar Panel Regulations**

PD Ecker reviewed the item.

Mr. Koseck said he was uncomfortable moving the ordinance language forward given that they had not spoken with a third-party expert like they had done for glazing.

Chair Clein noted that in formulating the recommended changes staff had reviewed solar panel ordinances from municipalities across the country. He expressed support for the recommended changes.

**Motion by Mr. Williams**

**Seconded by Mr. Share to recommend to the City Commission amendments to Section 4.09 of the Zoning Ordinance to remove roof-mounted solar electric systems from that section and to also amend Section 4.88, regarding alternative energy, to add amended solar energy system requirements and to reorganize the wind energy requirements without changing them.**

**Motion carried, 7-0.**





## MEMORANDUM

Engineering Dept.

**DATE:** June 24, 2021

**TO:** Thomas M. Markus, City Manager

**FROM:** James J. Surhigh, Consulting City Engineer

**SUBJECT:** Townsend & Peabody Street Paving Project  
Sewer & Water Lateral Special Assessment District

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The Engineering Dept. is planning a project for reconstructing the pavement, along with completing certain sewer and water main improvements, on Townsend Street between Southfield Road to S. Chester Street, and Peabody Street between E. Brown Street to E. Maple Avenue.

In accordance with current City policy established to protect the public investment being made when reconstructing roadways, as part of the project, we intend to replace all older sewer laterals located underneath the new proposed pavement, as well as all water services less than 1 inch diameter, which will be replaced with a new 1 inch diameter service. Additionally, in accordance with recently modified rules from the Michigan Dept. of Environmental, Great Lakes, and Energy (EGLE) requiring the complete removal of lead water services from the water main to the water meter on private property, any such water service will also be replaced as part of the project. Per EGLE, the City is not allowed to charge a homeowner for costs associated with replacement of an existing lead water service. The parcels that may be potentially subject to the Sewer & Water Lateral Special Assessment are highlighted on the attached maps.

The Townsend & Peabody Street Paving Project is still being designed, and a final list of parcels that would be subject to the special assessment have not been determined at this time. The specific list of parcels that would be subject to this special assessment will be provided as part of the report for the Public Hearing of Necessity being scheduled for a future date.

Total estimated costs that would be assessed to property owners for completion of the sewer and water service replacements generally average \$2,500 to \$3,500 for a 6 inch sewer service, and \$2,000 to \$3,000 for a 1 inch water service. A more precise estimate will accompany the report for the Public Hearing of Necessity being scheduled for a future date.

It is recommended that a Public Hearing of Necessity for the replacement of sewer and water services be scheduled at the Monday, July 26, 2021 City Commission meeting. It is further recommended that the Public Hearing on Confirmation of the Roll be held on Monday, August 9, 2021.

SUGGESTED ACTION:

To adopt a resolution for the City Commission to meet on Monday, July 26, 2021, at 7:30 P.M., for the purpose of conducting a Public Hearing of Necessity for the replacement of sewer and water services within the Townsend & Peabody Street Paving project areas.

Be it further RESOLVED, that the City Commission meet on Monday, August 9, 2021 at 7:30 P.M. for the purpose of conducting a Public Hearing on Confirmation of the Roll for the replacement of sewer and water services in the Townsend & Peabody Street Paving project areas.

**Townsend Street Paving Project #6-21(P)**

**Parcels Potentially within Sewer & Water Lateral Replacement SAD (final list not determined at this time)**

**Parcels Potentially within Sewer & Water Lateral Replacement SAD (final list not determined at this time)**

Map details include streets: W Merril St, Townsend St, W Brown St, Southfield Rd, W Maple, Woodland Vill, and Hill Ln. Buildings shown include Baldwin Public Library, The Community House, Birmingham Schools, and various residential lots with addresses. A scale bar indicates distances from 0.00 to 0.06 miles. A north arrow is present in the top right corner.

Parcels Potentially within  
Sewer & Water Lateral  
Replacement SAD (final list  
not determined at this time)

Peabody Street Paving Project #6-21(P)

Parcels Potentially within Sewer & Water Lateral Replacement SAD (final list not determined at this time)

Parcels Potentially within Sewer & Water Lateral Replacement SAD (final list not determined at this time)

Scale: 0.00 0.015 0.03 0.045 0.06 Miles

Parcels Potentially within  
Sewer & Water Lateral  
Replacement SAD (final list  
not determined at this time)





## MEMORANDUM

Finance Department

**DATE:** June 11, 2021

**TO:** Thomas M. Markus, City Manager

**FROM:** Mark Gerber, Director of Finance/Treasurer

**SUBJECT:** American Rescue Plan Act

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### INTRODUCTION:

The City will be eligible to receive approximately \$2M of Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) from the American Rescue Plan Act (ARPA). The State of Michigan will be making these funds available soon, so the City needs to decide on how these funds will be spent.

### BACKGROUND:

The American Rescue Plan Act (ARPA), signed into law in March 2021, provides \$350 billion in Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) to states and local governments to combat the continued impact of the COVID-19 pandemic. The City's portion of these funds is estimated to be approximately \$2 million.

Eligible uses of the CSLFRF fall into four broad categories:

#### Public health & economic impacts

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.

#### Premium pay

Premium pay can be provided to eligible workers performing essential work during the COVID-19 public health emergency.

#### Revenue loss

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 revenue loss will be calculated in aggregate rather than on a source by source basis.

#### Investments in water, sewer, or broadband infrastructure

Investments in infrastructure category allows 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 services. 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.

According to the Act, 50% of the funds will be made available to the state for distribution immediately, with the remaining 50% distributed 1 year later. The funds must be obligated by December 31, 2024 and those obligated funds must be spent by December 31, 2026.

The City Manager is recommending that these funds be used to expedite the replacing of lead service lines as required by state law.

**LEGAL REVIEW:**

No legal review is necessary at this time.

**FISCAL IMPACT:**

The City has approximately 700 lead service lines that need replacing. The total cost of replacing all the lines is estimated to be approximately \$4-\$5 million dollars. In fiscal year 2020-2021, the City budgeted \$800,000 for replacement of lead service lines and has budgeted another \$900,000 for fiscal year 2021-2022. This project is being funded by \$500,000 in property taxes per year with the remaining amount being funded from reserves.

Assuming that the City continues to fund approximately \$900,000 in subsequent years, the City should be able to replace all the lead lines in 5-6 years. By using the CSLFRF funds, the City should be able to complete this project in 3-4 years assuming contractor availability and cooperation of the homeowner.

**SUMMARY:**

Replacing lead service lines using CSLFRF is an eligible expense, reduces the time necessary to replace all the lines, and eliminates a property tax funded obligation in the future.

**ATTACHMENTS:**

1. Article from Plante & Moran "The American Rescue Plan Act: Identifying eligible uses by governments"

**SUGGESTED RESOLUTION:**

To authorize the City Manager to use the City's allocation of Coronavirus State and Local Fiscal Recovery Funds towards lead service line replacement.



# 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



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, contract 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.

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.

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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## MEMORANDUM

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**DATE:** June 24, 2021

**TO:** Thomas M. Markus, City Manager and City Commission

**FROM:** Mary M. Kucharek

**SUBJECT:** Request for Direction Regarding Pending Litigation

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### 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:

- As a result of a 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, the Commission needs to direct counsel regarding entering a consent judgment in this case.

### FISCAL IMPACT:

- As discussed on June 14, 2021.

### ATTACHMENTS:

- Resolution.

### RECOMMENDED RESOLUTION:

- Enter into a Consent Judgment in connection with the pending litigation entitled *Birmingham Wine Shop, LLC, et al v City of Birmingham, et al; Oakland County Circuit Court Case No.: 2021-186823-AA*.

**CITY OF BIRMINGHAM**  
**A RESOLUTION OF THE CITY COMMISSION AUTHORIZING**  
**BEIER HOWLETT, P.C. TO ENTER INTO A CONSENT**  
**JUDGMENT REGARDING PENDING LITIGATION**

At a meeting of the City Commission of the City of Birmingham, Oakland County, Michigan, held on the \_\_\_\_ day of \_\_\_\_\_, 2021, at City Hall, 151 Martin Street, Birmingham, MI, 48009.

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

**WHEREAS**, there is pending litigation entitled *Birmingham Wine Shop, LLC, et al v City of Birmingham, et al; Oakland County Circuit Court Case No.: 2021-186823-AA*; and,

**WHEREAS**, the City Commission went into closed session on June 14, 2021 to discuss the pending litigation; and,

**WHEREAS**, all parties involved in the litigation are desirous of entering into a Consent Judgment.

**THEREFORE, BE IT RESOLVED**, that attorneys for the City of Birmingham, Beier Howlett, P.C., are hereby authorized to enter into a Consent Judgment in connection with the pending litigation entitled *Birmingham Wine Shop, LLC, et al v City of Birmingham, et al; Oakland County Circuit Court Case No.: 2021-186823-AA*.

Passed, adopted and approved this \_\_\_\_ day of \_\_\_\_\_, 2021.

AYES: \_\_\_\_\_  
\_\_\_\_\_

NAYS: \_\_\_\_\_  
\_\_\_\_\_

PRESENT: \_\_\_\_\_  
\_\_\_\_\_

ABSENT: \_\_\_\_\_  
\_\_\_\_\_

**CERTIFICATION**

I, Alexandria D. Bingham, being the duly appointed and qualified Clerk of the City of Birmingham, Oakland County, Michigan, do hereby certify and declare that the foregoing is a true

and correct copy of Resolution, the original of which is on file in my office, adopted by the City of Birmingham Commission at a regular meeting held on \_\_\_\_\_, 2021.

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Alexandria D. Bingham, City Clerk





## MEMORANDUM

Planning Division

**DATE:** June 14<sup>th</sup>, 2021

**TO:** Thomas Markus, City Manager

**FROM:** Jana L. Ecker, Planning Director

**SUBJECT:** Food Trucks (Vendors and Peddlers)

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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

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**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

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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:

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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

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**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

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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 Nemerkaizer 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

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**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

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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\*

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**\*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.

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#### 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.~~**

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- ~~(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 1<sup>st</sup> 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 1<sup>st</sup> 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.

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Laura M. Broski, City Clerk

Approved:

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Robert J. Bruner, Jr., City Manager  
(Approved as to substance)

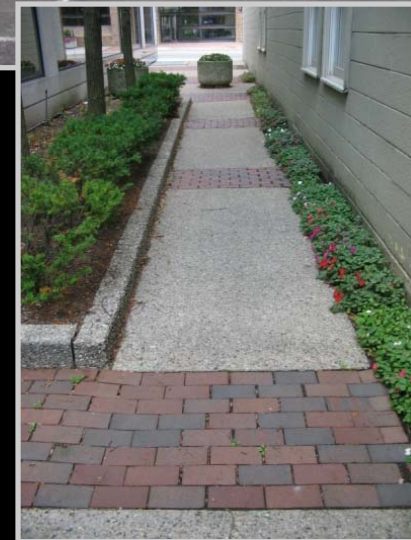
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Timothy J. Currier, City Attorney  
(Approved as to form)



# Invigorating Birmingham's Public Spaces

# Daines passage

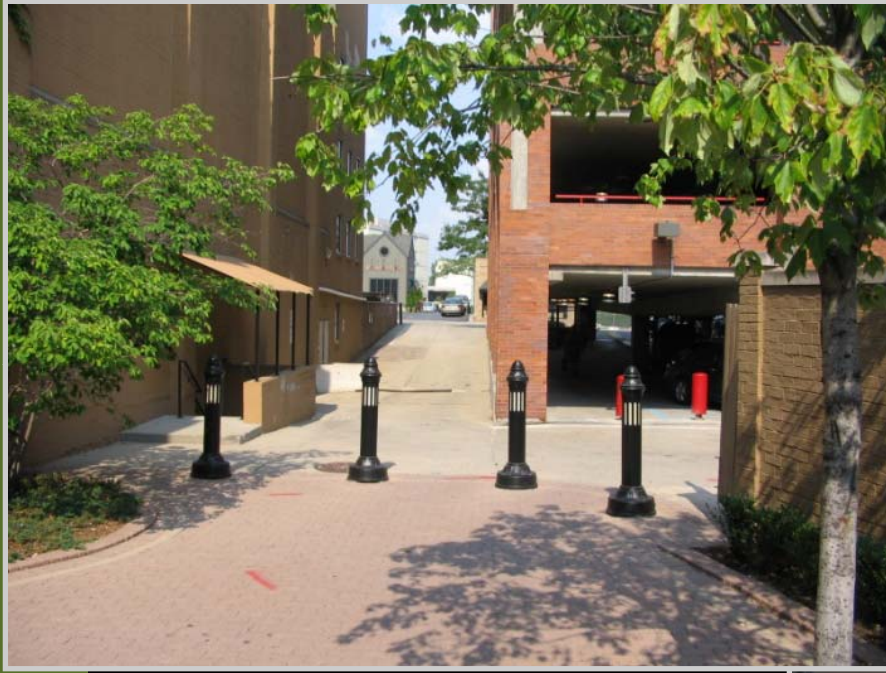




# CafeVia Passage



# Peabody Alley





# Willits Alley



# Willits passage



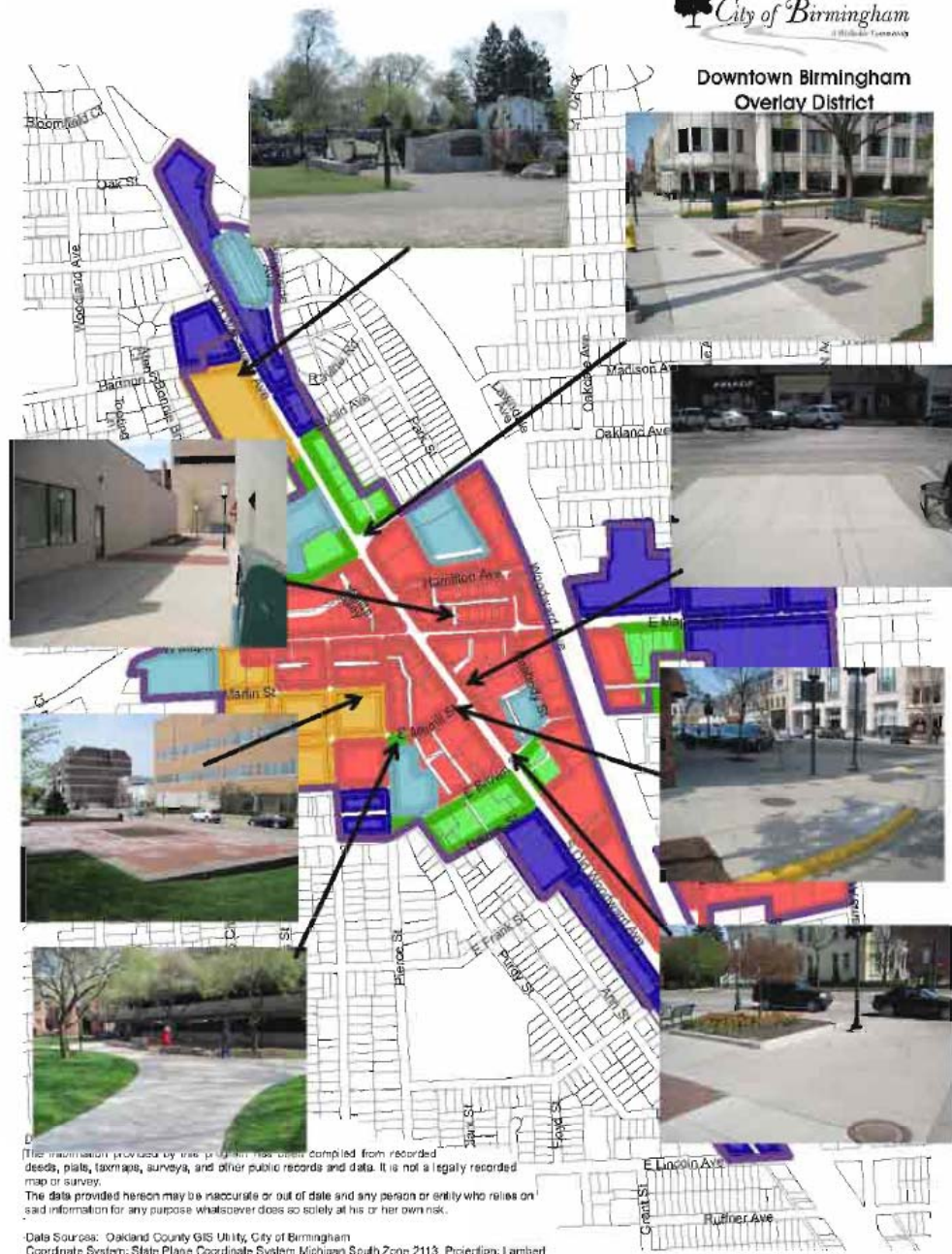


# Tokyo Sushi passage





## 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



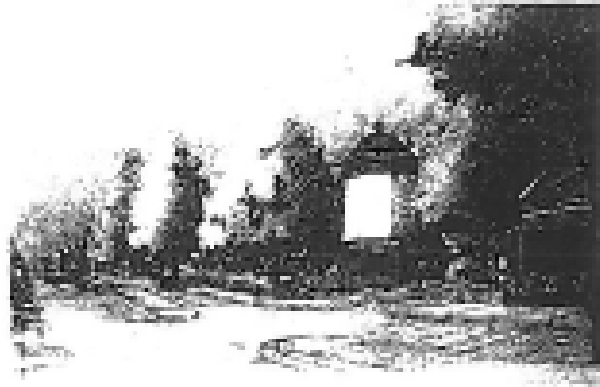


# Shain Park





# 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**

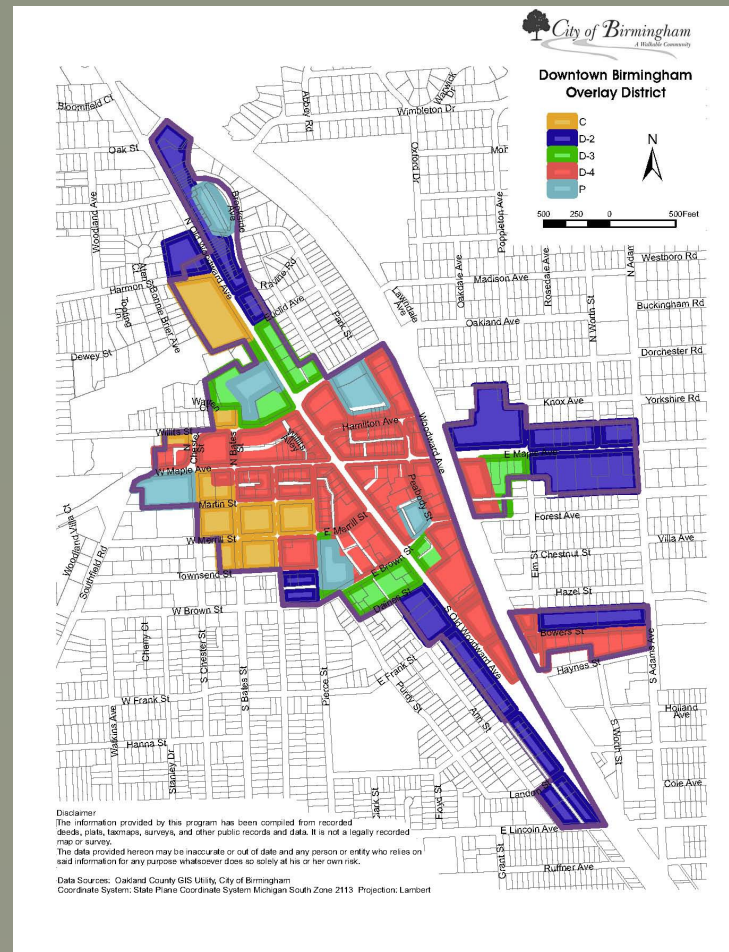
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# Potential Vendor Locations

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

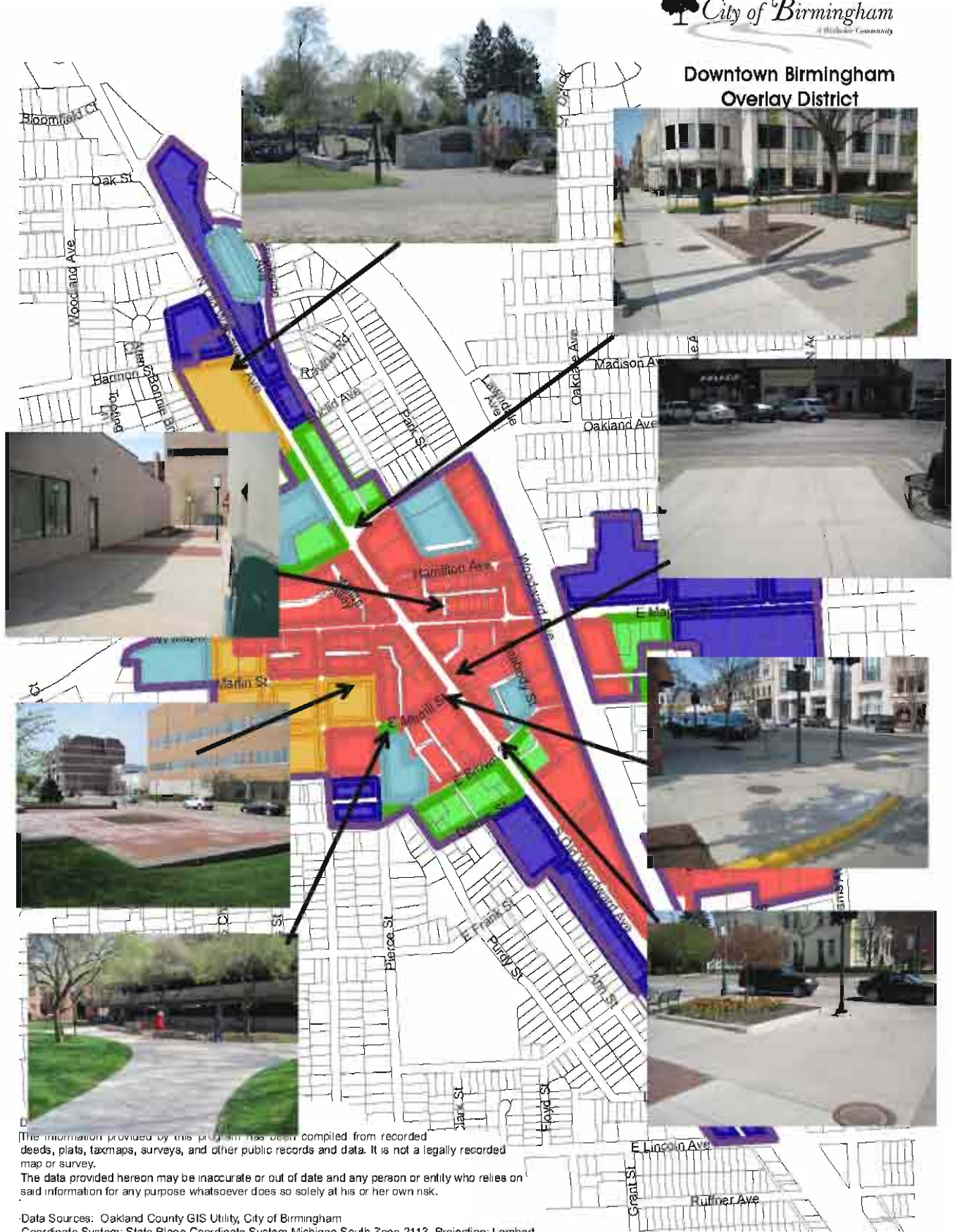


# Library





## Downtown Birmingham Overlay District



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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.

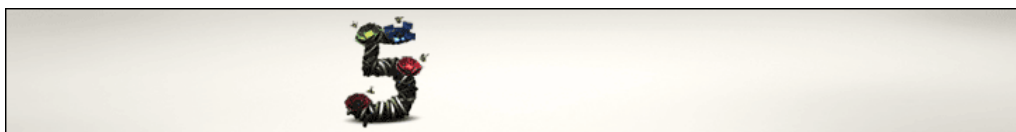
Edward Nemerkaizer expressed support of the park vendor concept.

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.



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## DINING OUT

ENTERTAINMENT MAIN: MUSIC | MOVIES | RESTAURANTS | CELEBRITIES | CITY GUIDE

POSTED: OCT. 6, 2010

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# 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://www.jacquestacos.com)

<http://twitter.com/jacquestacos>

[www.facebook.com/pages/Canton-MI/Jacques-Tacos/136211289746042](https://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

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4. MSU practices with Denard Robinson stand-in
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



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**Pistons sale to Ilitch could boost Detroit**  
The Red Wings and Tigers owner is negotiating for the Palace Sports & Entertainment empire.



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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?

- What Food Trucks Say About Ferndale
- Density Vs. Transit
- Editor's Pick: Maker Faire
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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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**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): \_\_\_\_\_

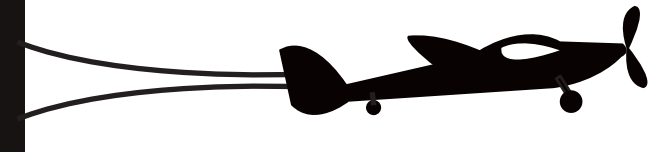
By: \_\_\_\_\_ Title: \_\_\_\_\_

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.

### START-UP COSTS TO VEND

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  
50% 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.

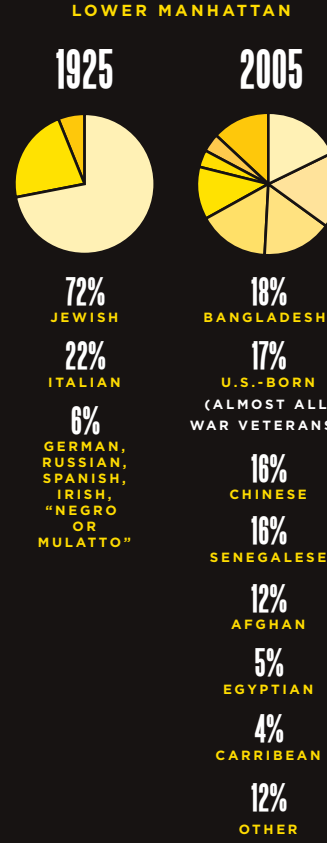
### 1927

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



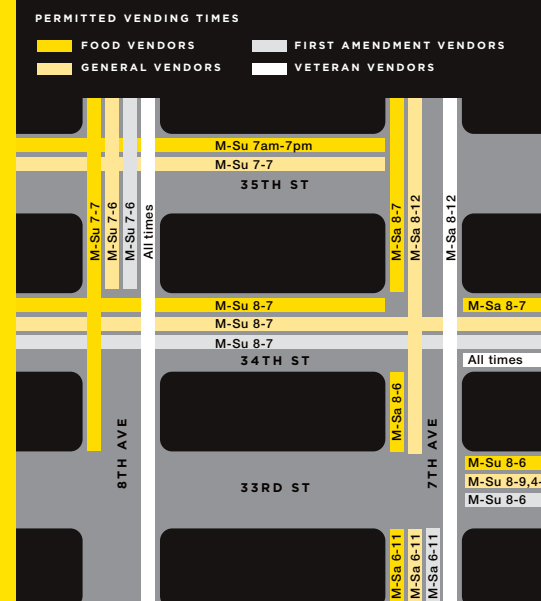
## 1. LIFT THE CAPS

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



### 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.



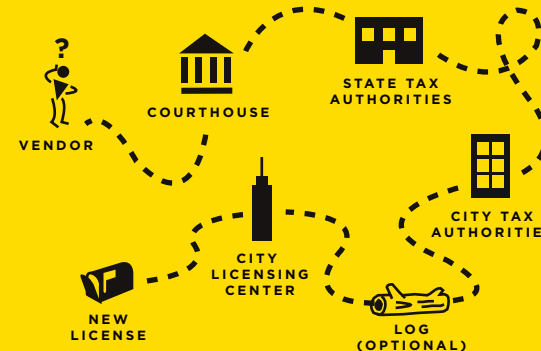
## 3. REDUCE THE FINES

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.; 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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. to 6 p.m.; East 758th Street to East 761st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 761st Street to East 764th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 764th Street to East 767th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 767th Street to East 770th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 770th Street to East 773rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 773rd Street to East 776th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 776th Street to East 779th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 779th Street to East 782nd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 782nd Street to East 785th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 785th Street to East 788th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 788th Street to East 791st Street, Monday through Friday, 8 a.m. to 6 p.m.; East 791st Street to East 794th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 794th Street to East 797th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 797th Street to East 800th Street, Monday through Friday, 8 a.m. to 6 p.m.; East 800th Street to East 803rd Street, Monday through Friday, 8 a.m. to 6 p.m.; East 803rd Street to East 806th Street, Monday through Friday, 8 a.m. to 6



# MEMORANDUM

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**DATE:** June 23, 2021  
**TO:** City Commission and Thomas M. Markus  
**FROM:** Mary M. Kucharek  
**SUBJECT:** Performance Evaluation of City Manager

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## INTRODUCTION AND BACKGROUND:

- An Employment Agreement was reached between Thomas M. Markus and the Birmingham City Commission on November 25, 2020, with a commencement date of January 1, 2021. Pursuant to paragraph 1 of the Agreement, the Employee, Thomas M. Markus, requests a review by the City Commission to determine if the City Manager is fulfilling the expectations of the City Commission.

## LEGAL REVIEW:

- The Employee is requesting his performance evaluation to be conducted in a closed session, which is permissible under MCL §15.268(a):  
  
    " (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."

## FISCAL IMPACT:

- NONE

## SUMMARY:

- The City Manager is requesting a performance evaluation to be conducted in a closed session as allowable pursuant to the OMA.

## ATTACHMENTS:

- NONE

SUGGESTED RESOLUTION:

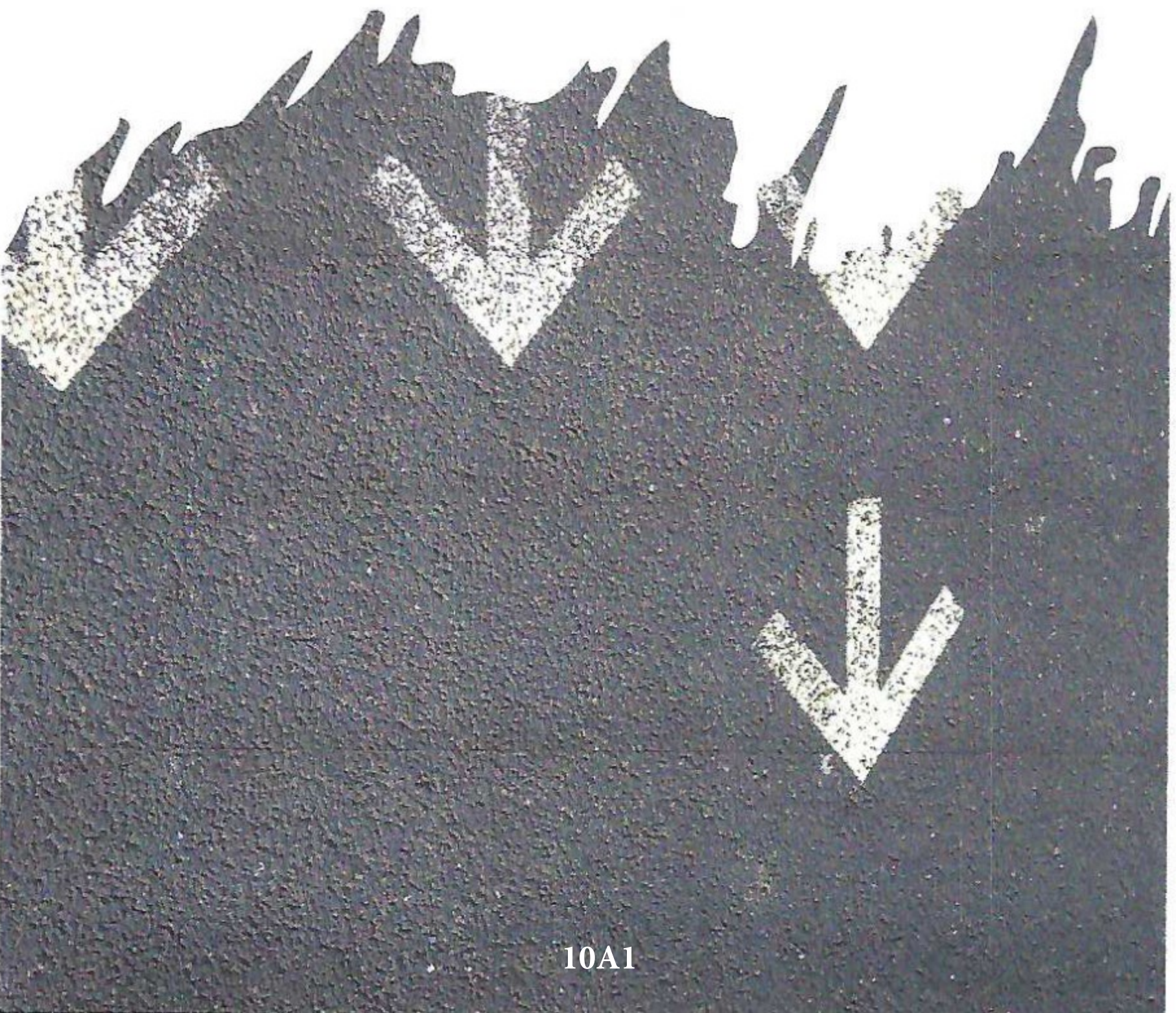
- It is, therefore, RESOLVED the City Commission shall meet in closed session pursuant to the OMA at MCL §15.268(a) for a performance evaluation of Mr. Markus at Mr. Markus' request that such performance evaluation be held in closed session.



# New Construction Demands on Parking Space

## Pierce & Peabody Decks Totally Consumed

Submitted by Brad Host





# Three Construction Projects Place Heavy Demand Parking on Peabody and Pierce Decks

## 298 S Old Woodward

Floor	Parking Requirement (Without PAD)
1st Floor	229
Mezzanine	9
2nd-4th Floor	131
5th Floor	23
<b>Total</b>	<b>392</b>
Provided Onsite	56
Demand	336
% of Pierce <sup>1</sup>	48%
% after Monthly Permits	91%
% of Peabody <sup>1</sup>	77%
% after Monthly Permits	150%
% Pierce + Peabody	29%
% after Monthly Permits	62%

## 300 & 394 S. Old Woodward 294 E. Brown

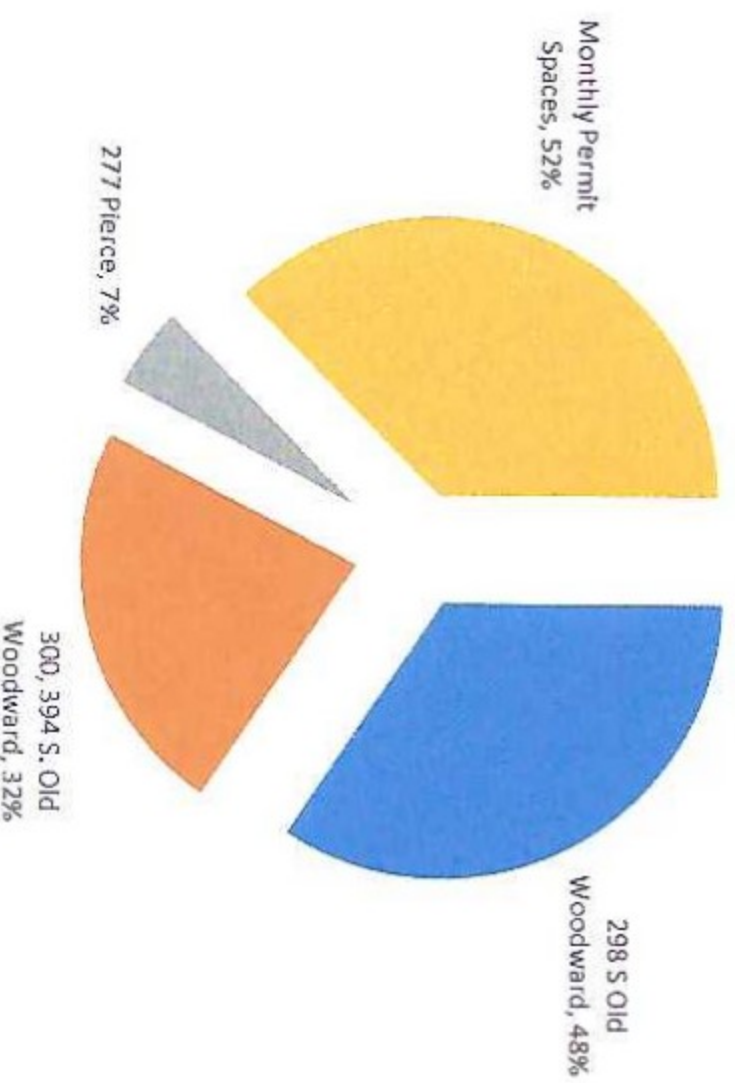
Floor	Parking Requirement (Without PAD)
1st Floor	34
2nd Floor	34
3rd Floor	34
4th Floor	34
5th Floor	114
<b>Total</b>	<b>251</b>
Provided Onsite	24
Demand	227
% of Pierce	32%
% after Monthly Permits	62%
% of Peabody	52%
% after Monthly Permits	101%
% Pierce + Peabody	20%
% after Monthly Permits	42%

## 277 Pierce

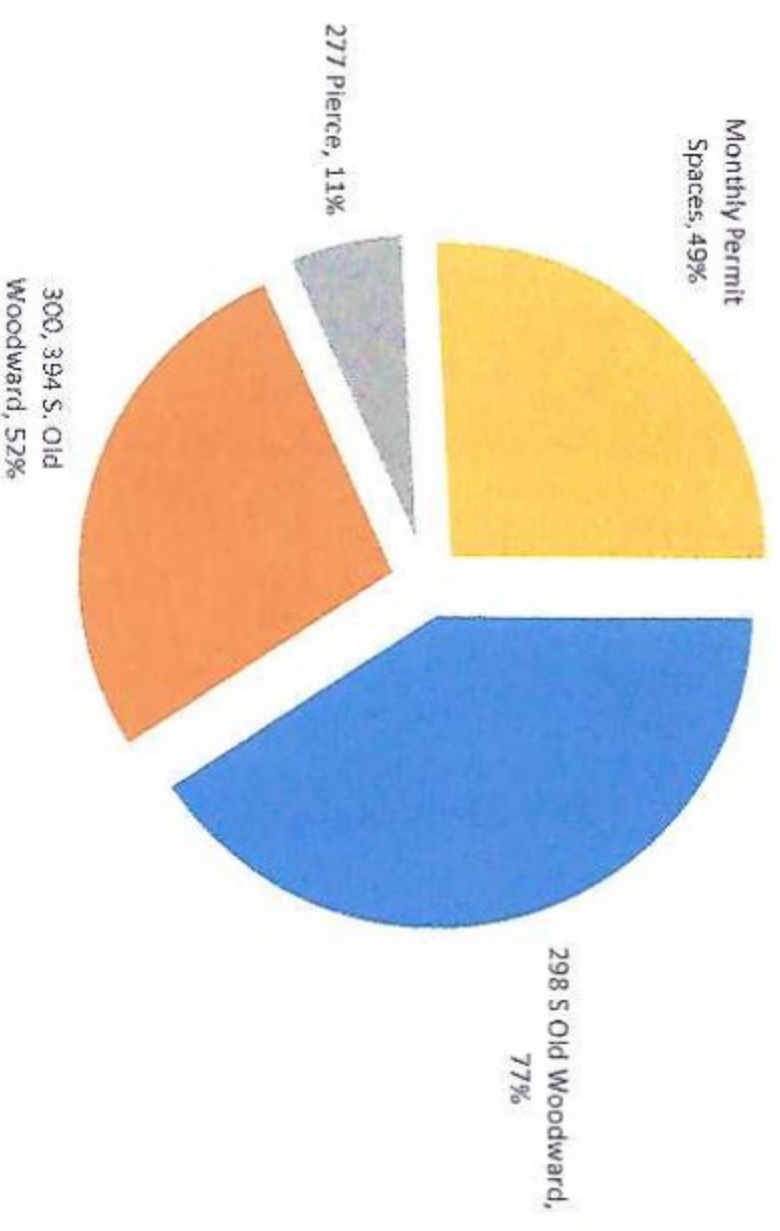
Floor	Parking Requirement (Without PAD)
1st Floor	10
2nd Floor	13
3rd Floor	13
4th Floor	13
5th Floor	2
<b>Total</b>	<b>51</b>
Provided Onsite	2
Demand	49
% of Pierce	7%
% after Monthly Permits	13%
% of Peabody	11%
% after Monthly Permits	22%
% Pierce + Peabody	4%
% after Monthly Permits	9%

# Pierce & Peabody Parking Space Consumed by New Construction

**PERCENTAGE OF DECK SPACES CONSUMED:  
PIERCE**  
(percentages sum to > 100%)



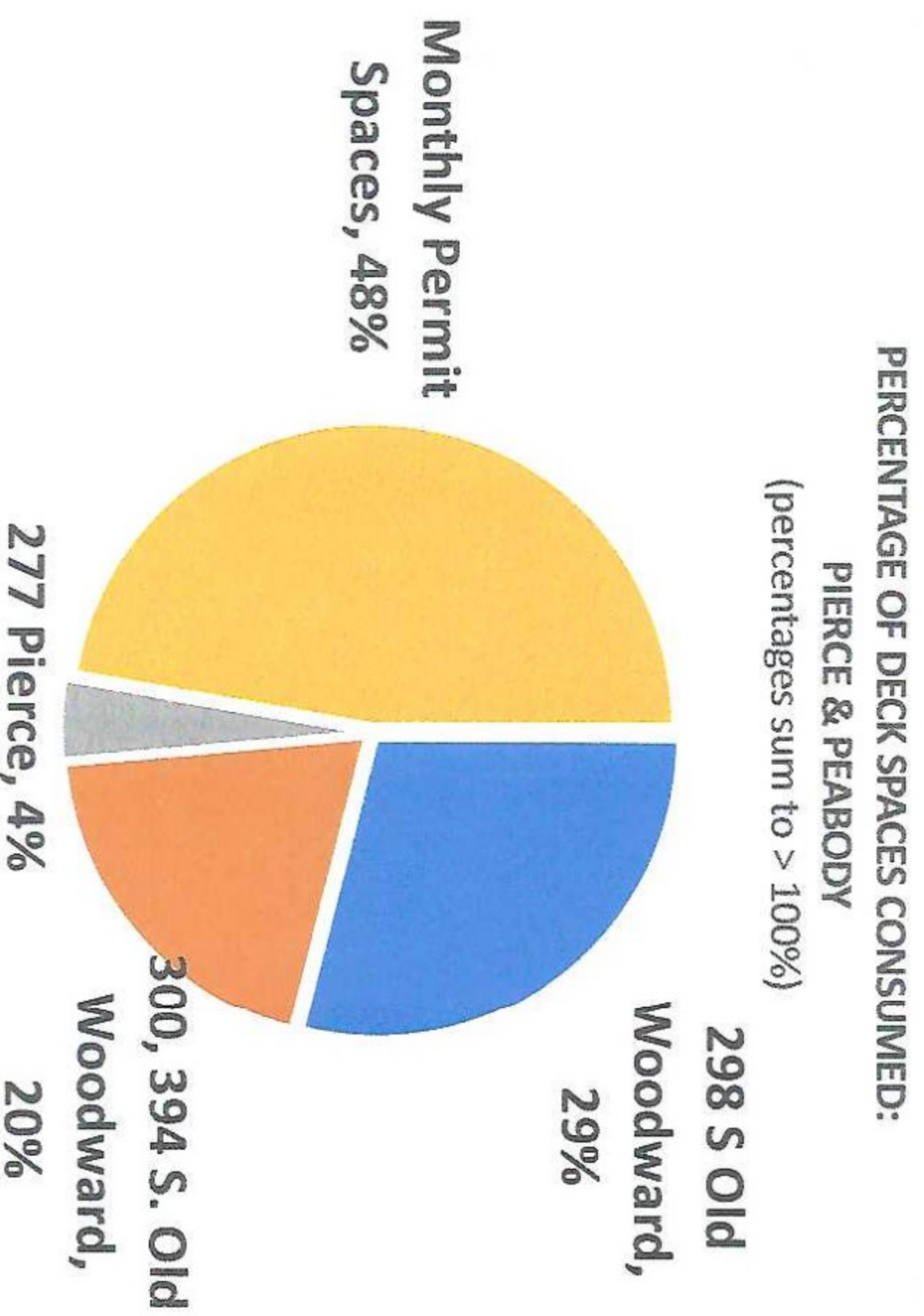
**PERCENTAGE OF DECK SPACES CONSUMED:  
PEABODY**  
(percentages sum to > 100%)





# New Construction Demands Are Greater Than Existing Space In Pierce & Peabody Decks Demand = 101%

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# MONTHLY PARKING PERMIT REPORT

For the month of: August 2020  
Data Compiled: September 14, 2020

	Pine	Pack	Peabody	N. Oak Wood	Chandler	Lot #2710	Lot #2710	South Side	Lot #	35001 Woodward	Lot #2	Total
1. Total Spaces	706	611	437	745	880	174	78	8	40	40	150	4070
2. Daily Spaces	370	348	224	359	425	N/A	N/A	N/A	N/A	N/A	N/A	1726
3. Monthly Spaces	336	463	213	366	560	174	79	8	30	40	150	2439
4. Monthly Permits Authorized	676	846	466	661	1218	177	40	8	30	50	225	4036
5. Permits - end of previous month	674	750	475	799	1140	172	40	8	14	50	220	4342
6. Permits - end of month	671	750	475	797	1139	172	40	8	14	50	220	4336
7. Permits - available at end of month	8	108	11	86	5	5	0	0	16	0	5	245
8. Permits issued in month includes permits effective 1st of month	0	0	0	0	0	0	0	0	0	0	0	0
9. Permits given up in month	3	0	0	2	0	0	0	0	0	0	0	5
10. Net Change	-3	0	0	-2	0	0	0	0	2	0	5	-8
11. On List - end of month* **On List-Unique Individuals	1196	1539	1160	1126	1020	0	0	0	0	22	0	6659
12. Added to list in month	0	1	7	1	4	0	0	0	0	0	0	19
13. Withdrawn from list in month (w/o permit)	0	0	0	0	0	0	0	0	0	0	0	0
14. Average # of weeks on list for permits issued in month	143	82	141	126	87	0	0	0	0	0	0	646
15. Transient parker occupied	N/A***	N/A***	N/A***	N/A***	N/A***	N/A	N/A	N/A	N/A	N/A	N/A	0
16. Monthly parker occupied	N/A***	N/A***	N/A***	N/A***	N/A***	N/A	N/A	N/A	N/A	N/A	N/A	0
17. Total parker occupied	N/A***	N/A***	N/A***	N/A***	N/A***	N/A	N/A	N/A	N/A	N/A	N/A	0
18. Total spaces available at:	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	0
19. "All Day" parkers paying 5 hrs or more	N/A*	N/A*	N/A*	N/A*	N/A*	N/A	N/A	N/A	N/A	N/A	N/A	0
A. Weekly average	N/A***	N/A***	N/A***	N/A***	N/A***	N/A	N/A	N/A	N/A	N/A	N/A	0
B. Maximum day	N/A***	N/A***	N/A***	N/A***	N/A***	N/A	N/A	N/A	N/A	N/A	N/A	0
20. Utilization by long term parkers	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	NO/NOI

(1) Lot #6 does not have gate control, therefore no transient count available

Screenshot

**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

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It is anticipated that current MDHHS orders that restrict indoor capacities to 50% will be lifted on July 1<sup>st</sup>, 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 22<sup>nd</sup>, 2021 Commission meeting. With the emergency declaration expiring, all City Commission and Board members must meet in person beginning July 1<sup>st</sup>, 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

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**DATE:** June 7, 2021

**TO:** Thomas M. Markus, City Manager and City Commission

**FROM:** Mary M. Kucharek

**SUBJECT:** Public Comment During City Meetings

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### 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.

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**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:

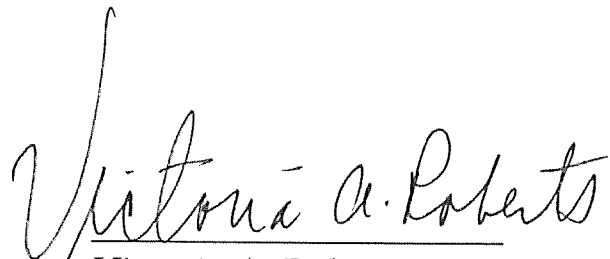


1. During the "Citizen Participation" portions of Birmingham City Commission meetings, as defined in the Commission's Rules of Procedure, the City (1) will not stop the cable broadcast of Commission meetings if a speaker engages in political advocacy; and (2) will allow speakers to engage in political 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.**

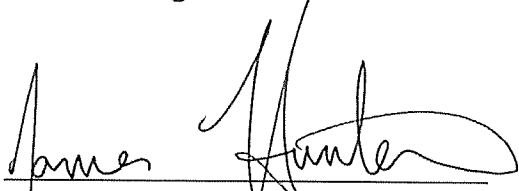
Dated: OCT 01 2019

  
Victoria A. Roberts  
United States District Judge

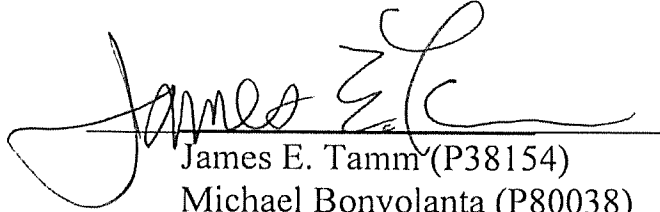
Counsel approves this for entry on behalf of the parties:



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Law Office of  
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Attorney for Plaintiffs  
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jetamm@odtlegal.com  
mjbonvolanta@odtlegal.com

# MEMORANDUM

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**DATE:** June 23, 2021

**TO:** City Commission and Thomas M. Markus

**FROM:** Mary M. Kucharek

**SUBJECT:** City Commission Vote Revisited

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## INTRODUCTION:

- The question is whether a motion that was made, seconded and voted upon by the City Commission may be revisited and changed at a later date.

## LEGAL REVIEW:

- In general, there are three (3) ways for the Commission to change a decision made in the past. Generally speaking, there are three (3) different motions according to Roberts Rules to accomplish such a change:
  - I. **Reconsider.** A motion to reconsider must be made on the same day as the meeting on which the motion was decided and has to be made by a person who voted on the prevailing side. This prevents someone on the losing side from bringing up a motion over and over just to annoy.
  - II. **Motion to Rescind.** A motion to rescind is used to cancel a previous motion altogether. Without prior notice on an agenda, a motion to rescind (cancel a motion) requires two-thirds of the Commission to vote in the affirmative to pass a motion to rescind. However, if notice is given, that is named on an agenda, so that all parties are aware the issue may be discussed again, then a simple majority is needed to rescind a prior motion. The way it would work is that someone would make a motion to rescind the prior motion, then it must be seconded, and then a vote taken. If the super majority agree, then the prior motion is canceled.
  - III. **Motion to amend something previously adopted.** This motion is used to make a change to a motion by either making a simple verbiage change or substituting something else in its place. This motion must be seconded, debatable and requires two-thirds of the Commission to vote in the affirmative to pass.

FISCAL IMPACT:

- None

SUMMARY:

- If a complete change from a prior motion is desired, the appropriate motion will be a motion to **rescind** with a two-third majority vote to pass.

ATTACHMENTS:

- None



# CITY OF BIRMINGHAM FIRE DEPARTMENT

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572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 FAX 248.530.1950

## Temporary COVID Structures

220 Merrill Restaurant

220 Merrill

Attn: Mr. Bradford Egan

Last year the City of Birmingham allowed the construction and installation of temporary outdoor structures to be utilized for businesses in the hospitality industry. This allowance was due to the COVID-19 pandemic and enabled businesses to overcome strict guidelines for limited seating of guests indoors by allowing more expansive outdoor dining options, beyond the original standard for outdoor dining allowed by ordinance.

Due to the extreme nature of the pandemic, the Fire Department allowed these COVID temporary structures to be constructed and be permitted to exist past the allowable 180 days allowed per the International Fire Code, **Section 3103.5 IFC '15 ed.**

These expanded structures were intended to be allowed only for temporary use during the winter months and then allowance was extended once until June 30<sup>th</sup>, 2021. Regardless of any new City resolution that may allow another extension of your structure, you must either remove the structure by Thursday July, 8<sup>th</sup> 2021 or have the structure updated with proper fire suppression system, along with satisfying all other fire codes and agreements you have made with the City for erection of your structure. Installation of fire suppression will be required pursuant to **Section 903.2.1 Group A IFC '15 ed.** These structures are considered an extension of your building and fire suppression will be required. Materials used in these structures as well as contents are considered combustible and shall be protected by fire suppression for A-2 occupancies.

Sprinklers, egress pathways, lighting, exit signage will be required to be installed and inspected. A copy of the inspection report will be emailed to you today. This letter along with the inspection report will be shared with the City of Birmingham Commission.

Jack D. Peshia

Fire Marshal

Birmingham Fire Department

# Birmingham Fire Department

572 South Adams Road  
Birmingham, MI 48009  
Office (248) 530-1906 Fax (248) 530-1950

**Occupant Name:** 220 Restaurant  
**Address:** 220 East Merrill  
**Suite:**  
**Inspection Date:** 6/23/2021  
**Inspection Type:** Target/ Hazard Inspection  
**Inspected By:** Jack Pesha

Insp. Result	Location	Code Set	Code
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<b>Fail</b>	Floor 1	IFC 2015 SECTION 903 AUTOMATIC SPRINKLER SYSTEMS	903.2.1 - Group A.
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**Inspector Comments:** These expanded structures were intended to be allowed only for temporary use during the winter months and then allowance was extended once until June 30th, 2021. Regardless of any new City resolution that may allow another extension of your structure, you must either remove the structure by Thursday July, 8th 2021 or have the structure updated with proper fire suppression system, along with satisfying all other fire codes and agreements you have made with the City for erection of your structure. Installation of fire suppression will be required pursuant to Section 903.2.1 Group A IFC 2015 ed. These structures are considered an extension of your building and fire suppression will be required. Materials used in these structures as well as contents are considered combustible and shall be protected by fire suppression for A-2 occupancies.

<b>Fail</b>	Floor 1	IFC 2015 SECTION 1013 EXIT SIGNS	1013.6 - Externally illuminated exit signs.
<b>Fail</b>	Floor 1	IFC 2015 Chapter 10 Means of Egress	1008.2 - Illumination required.
<b>Pass</b>	Floor 1	IFC 2015 Chapter 5 Fire Service Features	505.1 - Address identification.

UNLESS OTHER ARRANGEMENTS ARE MADE, AN INSPECTOR WILL RETURN ON 7/1/2021 FOR RE-INSPECTION. YOUR CO-OPERATION IN TAKING CARE OF THE MATTERS LISTED IS APPRECIATED.

Thank you for your cooperation in keeping your business and our community safe!

**Company Representative:**

  
Signature valid only in mobile-app documents  
Jack D. Pesha, Fire Marshal  
6/23/2021

Ref: 40736





# CITY OF BIRMINGHAM FIRE DEPARTMENT

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572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 FAX 248.530.1950

## Temporary COVID Structures

Bistro Joe's

34244 Woodward

Attn: Mr. Tony Curtis

Last year the City of Birmingham allowed the construction and installation of temporary outdoor structures to be utilized for businesses in the hospitality industry. This allowance was due to the COVID-19 pandemic and enabled businesses to overcome strict guidelines for limited seating of guests indoors by allowing more expansive outdoor dining options, beyond the original standard for outdoor dining allowed by ordinance.

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Jack D. Pesho

Fire Marshal

Birmingham Fire Department

# Birmingham Fire Department

572 South Adams Road  
Birmingham, MI 48009  
Office (248) 530-1906 Fax (248) 530-1950

**Occupant Name:**

Bistro Jones

**Inspection Date:**

6/23/2021

**Address:**

34244 Woodward

**Inspection Type:**

Target/ Hazard Inspection

**Suite:****Inspected By:**

Jack Pesha

Insp.  
Result Location

Code Set

Code

**Fail** Floor 1

IFC 2015  
SECTION 903 AUTOMATIC SPRINKLER SYSTEMS

903.2.1 - Group A.

**Inspector Comments:** These expanded structures were intended to be allowed only for temporary use during the winter months and then allowance was extended once until June 30th, 2021. Regardless of any new City resolution that may allow another extension of your structure, you must either remove the structure by Thursday July, 8th 2021 or have the structure updated with proper fire suppression system, along with satisfying all other fire codes and agreements you have made with the City for erection of your structure. Installation of fire suppression will be required pursuant to Section 903.2.1 Group A IFC '15 ed. These structures are considered an extension of your building and fire suppression will be required. Materials used in these structures as well as contents are considered combustible and shall be protected by fire suppression for A-2 occupancies.

**Fail** Floor 1

IFC 2015  
SECTION 1013 EXIT SIGNS

1013.6 - Externally illuminated exit signs.

**Fail** Floor 1

IFC 2015  
Chapter 10 Means of Egress

1008.2 - Illumination required.

**Pass** Floor 1

IFC 2015  
Chapter 5 Fire Service Features

505.1 - Address identification.

**Inspector Comments:** These expanded structures were intended to be allowed only for temporary use during the winter months and then allowance was extended once until June 30th, 2021. Regardless of any new City resolution that may allow another extension of your structure, you must either remove the structure by Thursday July, 8th 2021 or have the structure updated with proper fire suppression system, along with satisfying all other fire codes and agreements you have made with the City for erection of your structure. Installation of fire suppression will be required pursuant to Section 903.2.1 Group A IFC '15 ed. These structures are considered an extension of your building and fire suppression will be required. Materials used in these structures as well as contents are considered combustible and shall be protected by fire suppression for A-2 occupancies.

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Thank you for your cooperation in keeping your business and our community safe!

**Company  
Representative:**

  
Signature valid only in Mobile-Eyes documents  
40746  
6/23/2021 3:40:23 PM  
Jack D. Pesh, Fire Marshal  
6/23/2021

Ref: 40746



# CITY OF BIRMINGHAM FIRE DEPARTMENT

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572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 FAX 248.530.1950

## Temporary COVID Structures

Birmingham Roast

525 East Brown

Attn: Mr. Jesse Dhillon

Last year the City of Birmingham allowed the construction and installation of temporary outdoor structures to be utilized for businesses in the hospitality industry. This allowance was due to the COVID-19 pandemic and enabled businesses to overcome strict guidelines for limited seating of guests indoors by allowing more expansive outdoor dining options, beyond the original standard for outdoor dining allowed by ordinance.

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Jack D. Pesha

Fire Marshal

Birmingham Fire Department

# Birmingham Fire Department

572 South Adams Road  
Birmingham, MI 48009  
Office (248) 530-1906 Fax (248) 530-1950

**Occupant Name:**

Birmingham Roast

**Inspection Date:**

6/23/2021

**Address:**

525 East Brown

**Inspection Type:**

Target/ Hazard Inspection

**Suite:**

**Inspected By:**

Jack Pasha

**Insp. Result**

**Location**

**Code Set**

**Fail** Floor 1

IFC 2015  
SECTION 903 AUTOMATIC SPRINKLER SYSTEMS

903.2.1 - Group A.

**Inspector Comments:** These expanded structures were intended to be allowed only for temporary use during the winter months and then allowance was extended once until June 30th, 2021. Regardless of any new City resolution that may allow another extension of your structure, you must either remove the structure by Thursday July, 8th 2021 or have the structure updated with proper fire suppression system, along with satisfying all other fire codes and agreements you have made with the City for erection of your structure. Installation of fire suppression will be required pursuant to Section 903.2.1 Group A IFC '15 ed. These structures are considered an extension of your building and fire suppression will be required. Materials used in these structures as well as contents are considered combustible and shall be protected by fire suppression for A-2 occupancies.

**Fail** Floor 1  
IFC 2015  
Chapter 10 Means of Egress

1013.6.3 - Exit Sign Illumination

**Fail** Floor 1  
IFC 2015  
Chapter 10 Means of Egress

1008.2 - Illumination required.

**Pass** Floor 1  
IFC 2015  
Chapter 5 Fire Service Features

505.1 - Address identification.

**Inspector Comments:** These expanded structures were intended to be allowed only for temporary use during the winter months and then allowance was extended once until June 30th, 2021. Regardless of any new City resolution that may allow another extension of your structure, you must either remove the structure by Thursday July, 8th 2021 or have the structure updated with proper fire suppression system, along with satisfying all other fire codes and agreements you have made with the City for erection of your structure. Installation of fire suppression will be required pursuant to Section 903.2.1 Group A IFC '15 ed. These structures are considered an extension of your building and fire suppression will be required. Materials used in these structures as well as contents are considered combustible and shall be protected by fire suppression for A-2 occupancies.

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Thank you for your cooperation in keeping your business and our community safe!

**Company  
Representative:**

A handwritten signature in black ink, appearing to read "Jack D. Peshha". The signature is written over a faint, repeating background pattern of the text "Jack D. Peshha, Fire Marshal".

Signature valid only in mobile eyes documents.  
Jack D. Peshha, Fire Marshal  
6/23/2021

Ref: 40747





## MEMORANDUM

Finance Department

**DATE:** June 16, 2021

**TO:** Thomas M. Markus, City Manager

**FROM:** Mark Gerber, Director of Finance/Treasurer

**SUBJECT:** Parking Structure Debt

---

Per your directive regarding how the City's 5 decks were financed, below is a summary of what I was able to find.

N. Old Woodward – Revenue Bonds  
Pierce – General Obligation Bonds  
Park – General Obligation Bonds  
Peabody – General Obligation Bonds  
Chester – General Obligation Bonds

When it comes to financing a parking structure there are 3 options available: General Obligation – Unlimited Tax, General Obligation Limited Tax, and Revenue.

Both types of general obligation bonds pledge a City's full-faith and credit to repay the bond. With unlimited tax general obligation bonds, the City may levy taxes up to 100% of the annual debt service to pay the bonds without statutory limits (debt levy). These bonds must be approved by the voters. With limited tax general obligation bonds, the City may levy taxes up to its statutory limit to repay the bonds (operating levy) and doesn't need the approval of the voters. In both cases, taxes don't have to be levied if there are sufficient other revenue streams to pay for the debt service.

Revenue bonds are pledged by the revenue generated by a particular source of income. In this particular case, it would be revenues of the parking system. There would be bond covenants which would require the City to set aside assets in escrow to ensure that the annual debt service will be paid.

When the bonds are sold in the market, the interest rate of the bonds is determined by the credit rating of the City and the type of bond it is. Safer bonds, such as general obligation bonds which pledge tax revenue, will have a lower interest rate than revenue bonds which are pledged by revenues. Even among revenue bonds there will generally be a difference in interest rates between safer essential service revenue bonds such as water and sewer bonds and non-essential revenues bonds such as parking improvement bonds.

The City has chosen to use general obligations bonds in the past (except for N. Old Woodward) in order to get the lowest interest rate. I'm not aware of any situation where the City had to ever levy property taxes to pay for the annual debt service of any general obligation parking improvement bond.



## **CITY MANAGER'S REPORT**

June 2021

### **Baldwin Public Library**

The Library is open for Curbside Pickup and visits of any length, seven days a week. Virtual programs for all ages are ongoing. Room rentals will resume July 19. Baldwin's annual summer reading program is running now through August 8. Library patrons can now check out free day passes to the Oakland County MetroParks; visit [www.baldwinlib.org/michigan](http://www.baldwinlib.org/michigan) to check out and download the pass. At the Library Board meeting on June 21, the Library Board voted to approve a new policy that will eliminate all overdue fines for patrons. Director Rebekah Craft will be issuing an RFP for architectural services for Phase 3 of the Library's Building project on June 22 via MITN. All library staff are undergoing performance evaluations with their supervisors during the month of June. Staff will receive merit-based pay increases on July 1.

### **The Birmingham Museum**

With the easing of the pandemic, the museum has developed a phased approach to reopening. As of July 1, the museum's Allen and Hunter Houses will be open to the public Tuesday through Friday from 1 to 4 p.m. The museum's 2020 exhibit, "Beyond Suffrage: Empowering the Women of Birmingham" will be extended through 2021 due to its premature closure last year. This exhibit explores some of the groundbreaking women who have contributed to Birmingham's story and to the larger community, including early pioneer sisters, suffragists and activists, politicians, aviators and even an astronaut, among many others. The Friday Porch Pop Ups will continue through September 30 and are free to the public. After Labor Day, the museum will return to its normal operating hours of Tuesday through Saturday from 1 to 4 p.m., and first Thursday of the month until 8 p.m.

### **Birmingham Shopping District**

- The Birmingham Shopping District would like to welcome the following new businesses that have opened in the last eight weeks: Mandy Rose Makeup, the Birmingham Pub, Area Rugs, the Claymore Shop (new ownership), Beauty Fusion Aesthetics and the Daxton Hotel! The BSD continues to work hard to attract new businesses and innovative concepts to our downtown.
- We are pleased to welcome Alex Pedersen as the new Market Manager of the Birmingham Farmers Market and Claire Galli as the new Office and Events Assistant.

- Movie nights are returning to Booth Park. The next Movie Night will feature the movie Elf on the evening of Friday, July 16<sup>th</sup> at 7:30 p.m. The movie Cars will be featured on Friday August 13<sup>th</sup> at 7:30 p.m. in Booth Park.
- Day on the Town, Birmingham's biggest annual retail event, is scheduled for Saturday, July 31<sup>st</sup> from 9:00 a.m. to 6:00 p.m. The deadline for businesses to register to participate is July 9<sup>th</sup>. Registration forms can be found at [allinbirmingham.com](http://allinbirmingham.com).

## **Building Department**

- The [Building Department's monthly report](#) provides an update on the following construction activity: building permits issued, building inspections conducted, trades permits issued and trades inspections conducted.
- Andrew Erickson was just appointed to the Zoning Board of Appeals by the City of Beverly Hills.
- Patty Curtis, Code Assistance Officer, received her International Code Council Property Maintenance and Housing Inspector Certification!
- In our continuing efforts to improve construction site safety and address concerns from the public, the Building Department has implemented a new policy regarding construction inspections. Inspectors will no longer conduct inspections on a project if their site is not in compliance. For example, if a site is determined to have construction fencing violations, the inspection will be cancelled and Code Assistance will be notified.
- In May we processed 365 online permit applications, bringing our total to 1,819 online permits for 2021.

## **City Clerk's Office**

### **Recognition of Staff**

The City Clerk's Office would like to welcome our newly appointed Deputy Clerk Jessica Schaffner. Jessica comes to Birmingham after serving in the clerk's offices of Shelby Charter Township and the City of Eastpointe for the past 13 years. Jessica is passionate about election administration and keeping records organized.

### **Elections**

Candidate filing packets for the November 2, 2021 election are available at the Clerk's office for anyone who is interested in running for City Commission or the Library Board. The Clerk's office will send confirmation letters to past election inspectors in August, recruit additional workers in September, and train all election inspectors in October in preparation for the election on November 2, 2021.

### **Greenwood Cemetery**

#### **Future Agenda Topics for Greenwood Cemetery Advisory Board**

July 9 - Meeting in-person at City Hall

- Continued discussion on updating the rules and regulations for Greenwood Cemetery

August 6 - Meeting in-person at City Hall

- Selection of chair and co-chair
- Draft annual report for Greenwood Cemetery
- Continued discussion on updating the rules and regulations for Greenwood Cemetery

### **Board Vacancies & Upcoming Appointments**

There are upcoming board appointments in July and August for the following Boards:

- Historic District Study Committee
- Hearing Officer
- Retirement Board
- Museum Board
- Greenwood Cemetery Board

## **City Manager's Office**

### **Communications**

#### **Summer Newsletter**

Residents will receive the newly reformatted summer newsletter in their mailboxes this week. We are happy to announce the newsletter has been renamed "The Birmingham Beat" following a survey on Engage Birmingham in which more than 150 people participated. This edition features information about the upcoming election, fireworks ordinance, Mental Health Co-Responder Program, the 2020 Consumers Annual Report on Water Quality, summer property tax reminders, upcoming events and more.

### **Human Resources**

#### **Assistant City Manager**

This week the Human Resources Department has been conducting phase one interviewing of qualified candidates for the Assistant City Manager position. At the completion of these interviews early next week, a recommendation will be made to the City Manager who will review the recorded Zoom interviews and decide on who he will move forward.

#### **Human Resources Generalist**

Sarah Mistretta began working as Human Resources (HR) Generalist for the City's HR Department on June 14. Sarah most recently worked for Redford Township and the City of Centerline, both within their Human Resources departments, where she handled all aspects. Highly educated, Sarah has completed her SHRM-CP, designating herself as a professional in the field of HR. Outside of work, Sarah carries many other responsibilities including the care of her children and Firefighter, as well as working with multiple volunteering efforts and non-profit organizations.

#### **Parking System Manager and Elevator Services**

The City created an RFP for elevator services and three bidders submitted proposals. There were significant differences in these bids which will require a greater level of due diligence

by staff to assure that we are going to get the level of service and response times that we expect. With that being said, the City is currently advertising for a [Parking System Manager](#) who will oversee the City's five (5) municipal parking systems, three (3) surface lots, and numerous metered parking spaces. Therefore, it makes sense to have the experience of this new hire to conduct this due diligence, and the fact that the bids are good for 120 days, we will continue to use the current provider, KONE Inc. on a monthly basis until the bid is awarded by the end of September. The Parking System Manager position has been advertised in the appropriate publications to recruit for this specialized position. The closing date is July 2 and interviews will begin immediately. Once that person is hired they will focus immediately on the review of License Plate Recognition technology and plan for bidding, purchasing, installation and implementation.

## **Miscellaneous**

### **Request for Qualifications for Legal Services**

A [Request for Qualifications \(RFQ\) for legal services](#) will be issued on July 7, 2021. Proposals will be solicited for the purpose of entering into a retainer agreement for full service legal representation covering the entire scope of the city's municipal affairs including prosecution in District Court with the exception of labor relations and bond counsel.

### **South Oakland County Mayors Association Meetings**

The South Oakland County Mayors Association (SOCMA) will resume its monthly dinner meetings in September 2021. The first meeting will be hosted by Troy on September 15, 2021. Birmingham will host SOCMA's January 12, 2022 meeting along with Berkley, Beverly Hills, Lathrup Village, and Royal Oak Township. A complete list of meeting dates can be [found here](#).

### **MIDC Compliance Plan and Cost Analysis Renewal - FY 2022**

The City recently received the following letter regarding the approval of the Michigan Indigent Defense Commission (MIDC) Compliance Plan and Cost Analysis.

06/21/2021

City of Birmingham  
152 Martin Street  
2nd Floor  
Birmingham, MI 48009

Dear Stephanie Achenbach,

Please be advised that the Michigan Indigent Defense Commission (MIDC) has reviewed the compliance plan and cost analysis submitted by your system. This letter shall serve as official notice that the plan and cost analysis submitted by your system has been approved by the MIDC.

We are in the process of submitting financial estimates and related information to the Department of Licensing and Regulatory Affairs and the State Budget Office to secure funding to distribute through a grant for the approved cost analysis. See MCL 780.993(7).

After your system receives funding it will have 180 days to comply with the MIDC's standards pursuant to the terms of the approval plan, cost analysis, and grant provisions. See MCL 780.993(10); 780.997.

The legislative budget process for FY2022 is ongoing. Upon approval of a final budget by the legislature and Governor, we will advise regarding distribution of a grant to your system. In the meantime, if you have any questions, please feel free to contact your Regional Manager, Nicole Smithson at (586) 638-6546 or by email at SmithsonN@michigan.gov.

Thank you very much for your cooperation with this process.

Sincerely,

Loren E. Khogali  
Executive Director

## **Department of Public Services**

### **Barnum Park Trees**

Over the last 2-3 growing seasons, we have lost 41 trees at Barnum Park. A total tree count of 384 trees were inventoried at Barnum in 2016. While 41 dead trees does appear to be a significant loss, it computes to about a 5% per year loss if you figure 20-21 trees per year over 2 years. Still, it is significant compared to previous years, and we have been investigating why this may be the case. We did not remove the 20 or so from last year, as the arborist's initial assessment was frost damage and that the trees may recover.

Upon review this season by City Staff, the City's contract arborist, a plant health care technician from JH Hart, and the invasive species removal contractor Cardno, I provide the following information. The dead trees are from various planting periods and are scattered throughout different areas of the 9-acre park. Some contributing factors are the result of no irrigation in some areas, frost damage during prime leaf bud season, some herbicide damage in the native prairie areas and bad soil conditions in parts of the park areas.

The good news is since the plant health care professionals and certified arborists have actively been involved with this, a plan is in place. The action plan will include amending the soil with micronutrients twice a year for the new trees and existing tree locations where needed. We will start to remove the dead trees as soon as feasible and spend time on improving the soils. New plantings will occur as part of the fall planting program, as this is the next best-recommended time to plant trees.

### **Kenning Park**

Birmingham Little League (BLL) approached the City requesting we start working on the improvements to the remaining two (2) fields at Kenning Park during 2022. BLL heard they would be hosting the 2023 Michigan Little League Minors State Tournament at Kenning Park. The 2019 Parks and Recreation project priority list took into account all capital projects from community outreach, polls/surveys including the 2018-2022 Parks and from Recreation Master Plan. The project line-up is based on a variety of variables including whether concept plans



were prepared for various parks, the age of equipment at parks and other areas needs in order to determine sequencing of community-wide projects.

The Kenning Park capital projects listed in the Parks and Recreation Master Plan includes a phased implementation of the ball fields, which occurred during 2019 and 2020. The remaining two ball fields and other elements of the concept plan will be in the later phase of the Parks and Recreation Bond issue.

Projects listed in Schedule 1 of the bond issue are either underway or will be planned, designed and/or developed during 2021 – 2024. These include the Birmingham Ice Arena, Adams Park, Pickleball Court selection, Rouge River Trail Improvements and the Booth Park Corner Feature.

We do, however, anticipate beginning design, preparing specifications and bidding out projects before the Schedule 2 bond issuance occurs. This way we will be able to hit the ground running with the expected projects for the projected period of 2024 – 2027.

Therefore, we informed BLL these fields are not scheduled at this time, nor did the City anticipate returning to Kenning Park for additional improvements before other projects were completed or got off the ground. The Donation Agreement between the City and BLL from 2017 applied only to the two newly constructed fields at Kenning Park.

#### **Ice Arena Project Budget and Change Order (adds and credits) Status**

The Commission approved the \$5,797,606.00 Ice Arena Renovation/Addition Project Budget on 4-12-21. This figure included the following items:

1. The General Contracting award to C.E. Gleeson Constructors, Inc. for \$4,891,200.00.
2. Professional fees/soft cost budget for \$515,110.00 (Note: included in this approved budget is a \$391,296.00 owner-controlled contingency)

Plante Moran Cresa and the Project Team budgeted and procured contracts outside of the C.E. Gleeson's engagement for civil engineering, material testing, technology/PA/sound, environmental consulting and abatement. This will allow for a reduced project cost and create independence with their engagement. As these engagements have been "bought out", adjustments have been made from budgeted to actual costs. It is important to note that all of these engagements were part of the Commissioner approved professional fees/soft cost budget listed above.

With input from the design and engineering professionals, Plante Moran Cresa and the Project Team have been pursuing several value-engineering items to help reduce overall project cost without jeopardizing quality. As of June 22, 2021, there have been thirteen change order adds and credits that have been executed all within the approved budget. These changes are a result of unforeseen conditions or value added adjustments. DTE is requiring the City to change the primary electrical line servicing the arena from their existing shorter, older utility pole to their newer higher pole installed by DTE approximately three years ago. Boring a new underground primary to connect to the new DTE pole located on Lincoln will cost \$73,079.09. The current primary line is original and was installed when the arena was built

in 1972. This primary is housed in galvanized conduit and is only +/-18" below grade. The new primary will be installed in 4" PVC conduit at a depth of at least 36" below grade to meet current DTE requirements.

The party room addition in the front of the Ice Arena (northwest corner) needed to shift westerly due to the existing water main running beneath the easterly edge of the proposed new room. A change order for Andrus Architecture to make document adjustments for this was for \$7,800.00.

The Project Team also decided to have new bleachers installed rather than modify the existing bleachers which will provide the following benefits: 1) meet current ADA requirements for wheelchair viewing areas, 2) eliminate issues with modifying the existing bleacher system to conform with the new configuration, 3) color code the new bleachers with the proposed arena paint scheme 4) reduce project schedule risk.

The forecasted remaining project contingency items include a mechanical equipment credit, exterior painting and budgeted G2 material testing. This will provide an owner controlled contingency balance of \$264,940. See the current [Ice Sports Arena Renovations/Additions project budget](#).

The Project Team, with the help of Plante Moran Cresa, is doing everything possible to stay on time and under budget. Unused contingency will be returned to the City for other Parks and Recreation project initiatives. Adjustments have been made to address supply change issues due to the COVID pandemic that have affected this renovation project. Value engineering and budget adjustments will continue during the construction process to account for material availability and delivery issues the General Contractor is encountering during this project build.

## **Engineering Department**

The 2020 Drinking Water Consumer Confidence Report is being distributed with the summer newsletter, and can be found online at [www.bhamgov.org/waterqualityreport](http://www.bhamgov.org/waterqualityreport). The City's engineering consultant, HRC, will be completing road condition ratings in the upcoming weeks for all City streets, including those considered to be unimproved. Look for an update on conditions and preliminary findings later this summer.

## **Finance Department**

### **Retirement Investment Consultant**

At a special meeting of the Birmingham Retirement Board and Retiree Health Care Investment Committee on June 23rd, the respective boards decided unanimously to award the investment consultant contract to Captrust Financial Advisors.

This decision culminates a process which took over nine months to complete and several meetings of the Retirement Investment Committee to develop the RFP, review responses, interview candidates and make a recommendation all while working under COVID restrictions.

Captrust Financial Advisors was selected because of their approach to managing portfolios like Birmingham's. As one of the largest independent investment advisory firms in the country, they

bring extensive knowledge of managing portfolios with the size and characteristics of Birmingham's. After identifying Captrust Financial Advisors as the preferred contractor, we were able to successfully negotiate a fee from \$115,000 originally down to \$90,000 (\$60,000 for retirement and \$30,000 for retiree health care). This is approximately the same amount we are currently paying and less than what we would have paid in fiscal year 2021-2022. This fee is fixed for three years with an inflationary increase after that.

### **Fire Department**

The Fire Department would like to thank Alexis and James Goldberg for donating their house on Shirley Drive for training. The Fire Department will be able to perform simulated fire and rescue operations at the home prior to demolition. Artificial training smoke will be used to create a realistic, yet safe, atmosphere. In the last three months, the Fire Department has hired five new Firefighters and this wonderful donation provides a unique training opportunity that will aid in growing their competencies.

### **Planning Department**

Birmingham is fortunate to have many residents actively engaged in the activities and issues that we face as a community, including volunteer participation on our numerous boards and committees. This commitment to serve the community comes with the responsibility to serve the community in an inclusive, respectful and considerate manner in all dealings with applicants, residents and the general public. All volunteers represent the City, and are encouraged to be mindful of their words and actions while engaged in public service, and to continuously strive to educate themselves on inclusivity, sensitivity and ethical matters. To assist in these efforts, the [attached letter](#) will be distributed to all volunteers serving on a City board or commission.

### **Police Department**

#### **Great Lakes, High Stakes Campaign**

For the past two weeks, the police department participated in the "Great Lakes, High Stakes" traffic enforcement campaign. There has been a dramatic rise in speeds as well as fatal crashes since the pandemic began more than a year ago. State wide, preliminary crash data indicates 1,083 people died from crashes on Michigan roads in 2020, a ten percent increase over 2019, with 985 deaths reported. The Office of Highway Safety Planning (OHSP) and the National Highway Traffic Safety Administrations Region 5 Office are partnering in a regional traffic safety campaign this summer called "Great Lakes, High Stakes". Speed enforcement was emphasized between June 19 and 27, 2021.

#### **Michigan Association of Chiefs of Police Department Accreditation Board**

The police department will go before the Michigan Association of Chiefs of Police Department Accreditation Board on Monday, June 28, 2021 for their final interview. Chief Clemence will call me on Monday with the results of that hearing.

### **Future Agenda Items**

Download a summary of [future agenda items](#).

### **Future Workshop Items**

Download a summary of [future workshop items](#).



Alex Bingham <[abingham@bhamgov.org](mailto:abingham@bhamgov.org)>

## Township must pay \$140K in legal fees on \$500 verdict

4 messages

**Brad Host** <bhost@bhamgov.org>

Sun, Jun 20, 2021 at 8:48 AM

To: Pierre Boutros <[pboutros@bhamgov.org](mailto:pboutros@bhamgov.org)>, Tom Markus <[tmarkus@bhamgov.org](mailto:tmarkus@bhamgov.org)>, City Commission <[city-commission@bhamgov.org](mailto:city-commission@bhamgov.org)>

FYI

<https://www.detroitnews.com/story/news/local/michigan/2021/06/18/township-must-pay-140-k-legal-fees-500-verdict/7749530002/>

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**Brad Host** <bhost@bhamgov.org>

Sun, Jun 20, 2021 at 6:54 PM

To: City Commission <city-commission@bhamgov.org>

FYI

<https://www.detroitnews.com/story/news/local/michigan/2021/06/18/township-must-pay-140-k-legal-fees-500-verdict/7749530002/>

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**Tom Markus** <tmarkus@bhamgov.org>

Mon, Jun 21, 2021 at 9:16 AM

To: Alex Bingham <[abingham@bhamgov.org](mailto:abingham@bhamgov.org)>

Cc: City Commission <city-commission@bhamgov.org>, DepartmentHeads <departmentheads@bhamgov.org>

Alex: Please add to next info only

[Quoted text hidden]

**Clinton Baller** <clinton@baller4bham.com>

Mon, Jun 21, 2021 at 9:43 AM

To: Tom Markus <tmarkus@bhamgov.org>

Cc: Alex Bingham <[abingham@bhamgov.org](mailto:abingham@bhamgov.org)>

Tom,

Some context is appropriate. In this case, the details of the Brawl at City Hall are entertaining as well as enlightening.

Link and attachment are identical. I think.

[https://casetext.com/case/cook-v-greenleaf-twp-2?PHONE\\_NUMBER\\_GROUP=P](https://casetext.com/case/cook-v-greenleaf-twp-2?PHONE_NUMBER_GROUP=P)

cb

[Quoted text hidden]

[Quoted text hidden]

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## MICHIGAN

### Township must pay \$140K in legal fees on \$500 verdict

Associated Press

Published 6:39 p.m. ET Jun. 18, 2021

[View Comments](#)



*Greenleaf Township* — A tiny community in Michigan's Thumb region has a large legal bill.

Greenleaf Township, population 740, must pay roughly \$140,000 in legal fees to a resident who won a \$500 verdict in a dispute over Michigan's open meetings law, an appeals court said.

The amount is greater than the township's annual budget, Greenleaf Clerk Judy Keller said.

The township argued that the fees were excessive when compared to the small amount awarded to Christina Gibbard. But the court noted that state law grants "actual" legal fees to the winning side in an open meetings claim, not "reasonable."

"We thus must affirm the award," the 6th U.S. Circuit Court of Appeals said Tuesday, describing it as "gargantuan."

Gibbard and Shelly Cook, watchdogs in the Sanilac County township, sued Greenleaf officials over open meetings violations as well as First Amendment retaliation and other allegations. A jury in 2018 awarded \$500 to Gibbard on the open meetings claim.

U.S. District Judge Mark Goldsmith said time spent on the case by Gibbard's attorneys was rooted in the open meetings dispute, even if some was technically related to non-meeting claims.

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## Cook v. Greenleaf Twp.

Decided Sep 17, 2019

Case No. 16-14060

09-17-2019

SHELLY COOK and CHRISTINA GIBBARD,  
Plaintiffs, v. GREENLEAF TOWNSHIP, et al.,  
Defendants.

---

HON. MARK A. GOLDSMITH

**OPINION & ORDER GRANTING IN PART  
CHRISTINA GIBBARD'S MOTION FOR  
ATTORNEY FEES (Dkt. 94) AND DENYING  
DEFENDANTS' MOTION FOR ATTORNEY  
FEES (Dkt. 96).**

This matter is before the Court on Plaintiff Christina Gibbard's motion for attorney fees (Dkt. 94) and Defendants Judy Keller, Randall Schuette, and Rosie Quinn's motion for attorney fees (Dkt. 96). This case was tried in December 2018 on Plaintiffs Shelly Cook's and Christina Gibbard's claims of First Amendment retaliation, assault and battery, and violations of Michigan's Open Meetings Act ("OMA"). The jury found in Plaintiffs' favor on the battery claims and in Gibbard's favor on the OMA claim. For the reasons discussed below, Gibbard's motion is granted in part and Defendants' motion is denied.

### I. BACKGROUND

The relevant background is set forth in full in this Court's prior opinion. See 5/15/2018 Op. & Order (Dkt. 45) (denying Defendants' motion for partial summary judgment). In brief summary, since 2015, Cook and Gibbard have attended nearly every Greenleaf Township board meeting and planning commission meeting that has been held.

They have videotaped each meeting and have provided public comment on issues and proposals that are before the township. Keller \*2 and Schuette took actions against Cook and Gibbard that gave rise to claims under the First Amendment and the OMA. The matter proceeded to trial, and a jury found that Keller and Schuette did not retaliate against Cook and Gibbard in violation of the First Amendment, but that they did violate Gibbard's rights under the OMA. The jury awarded Gibbard \$250 in damages against Keller and Schuette respectively, for a total of \$500. The parties have filed cross motions for attorney fees—Keller and Schuette because they prevailed on the First Amendment claims, and Gibbard because she prevailed on the OMA claim.

### II. LEGAL STANDARD

In the United States, under the "American Rule," each side in legal proceeding pays for its own attorney fees. Hensley v. Eckerhart, 461 U.S. 424, 429 (1983). The American Rule, however, has numerous statutory exceptions, some, if not most, of which Congress has enacted to encourage private litigation to implement public policy. Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 263 (1975). This private-attorney-general concept is often found in civil rights statutes. For example, in civil rights actions brought under 42 U.S.C. § 1983, courts are authorized to allow "the prevailing party" reasonable attorney fees as part of the costs. 42 U.S.C. § 1988(b). "The touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in

the fee statute." Texas State Teachers Ass'n v. Garland Indep. Sch. Dist., 489 U.S. 782, 792-793 (1989).

### III. DISCUSSION

There is no dispute that Defendants are the prevailing parties on the First Amendment claims and that Gibbard is the prevailing party on her OMA claims. However, as explained below, simply being a prevailing party does not necessarily allow for attorney fees. Gibbard is entitled to attorney fees; Defendants are not. \*3

#### A. Defendants' Motion (Dkt. 96)

Defendants argue that as the prevailing parties on the First Amendment retaliation claims, they should be awarded attorney fees under § 1988. But awarding attorney fees to prevailing defendants is rare and reserved for particularly egregious cases, which this case is not.

Section 1988 does not distinguish between prevailing plaintiffs and prevailing defendants. Nonetheless, courts recognize that there is a dual standard. A prevailing plaintiff should "ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." Newman v. Piggie Park Enters., Inc., 390 U.S. 400, 402 (1968). This is so because "[i]f successful plaintiffs were routinely forced to bear their own attorneys' fees, few aggrieved parties would be in a position to advance the public interest." Id. "Congress therefore enacted the provision for counsel fees—not simply to penalize litigants who deliberately advance arguments they know to be untenable but, more broadly, to encourage individuals" to bring civil rights cases. Id. <sup>1</sup>

<sup>1</sup> Cases that interpret an attorney fees provision of one civil rights statute generally apply to the attorney fees provisions of all civil rights statutes, as they are all generally modeled on the fee-shifting provisions of the Civil Rights Act of 1964. The Supreme Court has noted

"that fee-shifting statutes' similar language is a 'strong indication' that they are to be interpreted alike." Indep. Fed'n of Flight Attendants v. Zipes, 491 U.S. 754, 758 n.2 (1989).

These same policy considerations, however, are not present for the prevailing defendant. Christiansburg Garment Co. v. Equal Emp't Opportunity Comm'n, 434 U.S. 412, 419 (1978). Prevailing defendants should recover fees only upon a finding that "plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith." Id. at 421; accord Wayne v. Village of Sebring, 36 F.3d 517, 530 (6th Cir. 1994). While Congress wanted to clear the way for civil rights actions, it also wanted to protect defendants from frivolous \*4 litigation having no legal or factual basis. Christiansburg, 434 U.S. at 420. Accordingly, "[a]n award of attorney fees against a losing plaintiff in a civil rights action 'is an extreme sanction, and must be limited to truly egregious cases of misconduct.'" Riddle v. Egenberger, 266 F.3d 542, 547 (6th Cir. 2001) (quoting Jones v. Cont'l Corp., 789 F.2d 1225, 1232 (6th Cir. 1986)).

Defendants argue that Gibbard's and Cook's First Amendment claims are textbook examples of frivolous, unreasonable, or without-foundation claims. Mot. at 9. They rely heavily on Wolfe v. Perry, 412 F.3d 707 (6th Cir. 2005), a case in which the Sixth Circuit upheld the award of attorney fees to the prevailing defendant. The Court finds the case inapposite.

In Wolfe, the plaintiff knew from the outset of the case that his Fourth Amendment claim that police had illegally searched his home was frivolous, because he neither owned nor resided at the home that was searched. Id. at 721. Even after the plaintiff admitted at his deposition that he neither owned nor resided at the home, he continued with his claim, which ultimately failed when the court granted defendants' motion for summary judgment. The Sixth Circuit found that the

plaintiff's claim "was clearly defective at the outset of the case" and was the type of egregious claim warranting an attorney fees award to the prevailing defendant. That is not the case here.

Gibbard's and Cook's First Amendment retaliation claims had merit at the outset of this case. A retaliation claim against a person acting under state law has three elements: "(1) the plaintiff engaged in protected conduct; (2) an adverse action was taken against the plaintiff that would deter a person of ordinary firmness from continuing to engage in that conduct; and (3) there is a causal connection between elements one and two—that is, the adverse action was motivated at least in part by the plaintiff's protected conduct." Thaddeus-X v. Blatter, 175 F.3d 378, 394 (6th Cir.

5 1999). \*5

Here, Gibbard and Cook engaged in protected conduct by filming board meetings and making public comments. They provided testimony and video evidence that established that Quinn and Keller attempted to stop Gibbard from videotaping after the October 18, 2016 meeting. Trial Tr., Vol. 2, 77:6-8, Dec. 14, 2018 (Dkt. 100); see also 10/18/2016 Board Meeting Video, Pl. Trial Ex. 1; Trial Tr., Vol. 1, 82:19-20, 83:7, Dec. 13, 2018 (Dkt. 99). Shortly thereafter, Keller charged across the meeting hall and attempted to hit Cook's camera out of her hands. See 10/18/2016 Board Meeting Video, Pl. Trial Ex. 3. A few days later, Schuette physically intimidated Gibbard during a township meeting, 10/20/2016 Board Meeting Video, Pl. Trial Ex. 6, and both Keller and Schuette regularly prevented Gibbard from making public comments during board meetings. 8/15/2016 Board Meeting Video, Pl. Trial Ex. 9, at 19:55-20:15; 10/24/2016 Board Meeting Video, Pl. Trial Ex. 8. This is sufficient evidence from which to infer that Gibbard's and Cook's protected conduct motivated the adverse actions.

Gibbard and Cook did not ultimately persuade a jury that these actions amounted to First Amendment retaliation, but that does not mean

that the claims were frivolous, unreasonable, or without foundation. Indeed, the Sixth Circuit has cautioned district courts to resist engaging in post hoc reasoning by concluding that "because a plaintiff did not ultimately prevail, h[er] action must have been unreasonable or without foundation." Christiansburg, 434 U.S. at 422. "This kind of hindsight logic could discourage all but the most airtight claims, for seldom can a prospective plaintiff be sure of ultimate success." Id. Gibbard's and Cook's First Amendment retaliation claims were not clearly defective at the outset of the case, after depositions, or even after trial. Their claims are not the type of egregious claims that warrant an attorney fees award to the prevailing defendant. Accordingly, Defendants' motion for attorney fees is denied. \*6

## B. Gibbard's Motion (Dkt. 94)

Gibbard is seeking \$142,695.50 in attorney fees and \$4,717.06 in costs on her successful OMA claims. Defendants agree that Gibbard is entitled to attorney fees and costs under the OMA. They also agree that Plaintiffs' attorneys, Julie A. Gafkay and David A. Dobreff, are experienced and "formidable" attorneys, and that their respective hourly rates are reasonable. Defendants take issue, however, with the amount of the attorney fees requested in relation to the size of the recovery. They argue that attorney fees that are 284 times greater than the amount awarded is excessive.

Defendants make four arguments in opposition to Gibbard's motion: (i) the attorney fees request is unconstitutional; (ii) the fee request is disproportionate to the amount of the recovery under state law; (iii) Gibbard is seeking fees not related to her OMA claim, including fees related to Cook's unsuccessful claims; and (iv) Gibbard's bill of costs is excessive. The Court will take the arguments in turn.

### 1. Disproportionate Fees Under the Fourteenth Amendment

Defendants argue that Supreme Court precedent counsels against awarding attorney fees that are "exponentially" greater than the damage award. Resp. at 12-13 (citing BMW of N. Am. v. Gore, 517 U.S. 559, 583 (1996), State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408 (2003)). Defendants' argument misses the mark.

Gore involved a dispute between an automobile purchaser and BMW. A state jury awarded the plaintiff \$4,000 in compensatory damages—and \$4,000,000 in punitive damages—later reduced to \$2,000,000 by the court. Id. at 564-567. The Supreme Court held that the punitive damages award (which was 500 times greater than the compensatory damages award) exceeded the constitutional limits of the Fourteenth Amendment's Due Process Clause, which prohibits states from imposing "grossly excessive" punishment on a tortfeasor. Id. at 562. The Supreme Court was concerned with the "notions of fairness enshrined in our constitutional jurisprudence [that] dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty . . . ." Id. at 574. Because BMW did not receive adequate notice of the "magnitude of the sanction" it was facing, the Court found the punitive damages award grossly excessive. Id. at 572-575. In a subsequent case, the Supreme Court declined to impose a bright-line ratio, but observed that "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 425 (2003).

In reliance on Gore and State Farm, Defendants argue that a 5 to 1 ratio between attorney fees and compensatory damages would be reasonable. Resp. at 14. However, the Supreme Court's concerns in Gore and State Farm are not raised in the attorney fees context. Unlike some punitive damage awards, attorney fees are generally predictable and, in this case, specifically authorized by Michigan statute and subject to

well-defined rules. Attorney fees are calculated by multiplying an attorney's hourly rate by the hours spent litigating a case. Defendants concede that Plaintiffs' counsels' hourly rates are reasonable, and even though they dispute which hours should be included in the fee calculation, they do not dispute that the number of hours spent litigating this case was reasonable. After more than two years of litigation—including discovery, dispositive motions, motions in limine, a full jury trial, and post-judgment motions—the magnitude of the attorney fees Defendants were facing should not have come as a surprise. Therefore, there are no due process concerns raised by the fees sought in this case.

Additionally, even before Gore and State Farm, the Supreme Court refused to adopt a rule that attorney fees under civil rights statutes be proportionate to the underlying damages award. \*8 City of Riverside v. Rivera, 477 U.S. 561, 581 (1986) (plurality).<sup>2</sup> As the Sixth Circuit has explained, "the value of the rights vindicated goes beyond the actual monetary award, and the amount of the actual award is not controlling." McHenry v. Chadwick, 896 F.2d 184, 189 (6th Cir. 1990); see also Bldg. Serv. Local 47 Cleaning Contractors Pension Plan v. Grandview Raceway, 46 F.3d 1392, 1401 (6th Cir. 1995) (noting that "there is no requirement that the amount of an award of attorneys' fees be proportional to the amount of the underlying award of damages"). Sixth Circuit "precedents establish that an attorney fee award in a civil rights case is not unreasonable merely because it is greater than the damages awarded to the plaintiff." Waldo v. Consumers Energy Co., 726 F.3d 802, 824 n.5 (6th Cir. 2013). Accordingly, contrary to Defendants' position, Supreme Court (and Sixth Circuit) precedent counsels against reducing attorney fees because they are disproportionate to the underlying damages award.

<sup>2</sup> Although Justice Powell concurred only in the Court's judgment, he also rejected a proportionality rule with respect to attorney



fees. Id. at 585.

## 2. Clearly Excessive Fees Under Michigan Law

Defendants also argue that the attorney fees request is excessive in light of the limited success Gibbard obtained on her OMA claim. Resp. at 16.<sup>3</sup> They note that at the beginning of trial, Gibbard sought over \$600,000 in damages, but she obtained merely \$500 from the claims with attorney fee provisions. Id. at 17. But Defendants needlessly conflate the relief sought. Gibbard may have sought a total of \$600,000 in relief on all of her claims, but for the OMA claim, \*9 she sought only the statutory maximum of \$500 from Keller and Schuette. The question is simply, how successful was she on that recovery? There is some confusion on that matter.

<sup>3</sup> Gibbard argues that under the statutory language, she may be entitled to attorney fees for "bringing this action," Mich. Comp. Laws § 15.273(1), "which includes all claims, not just the OMA claim," Mot. at 2. This argument is obviously flawed. The OMA is not a universal vehicle that can be used to recover attorney fees under theories of liability where neither the state nor federal government has authorized such fees. "[T]he fees charged by a successful litigant under the OMA must be for that action and cannot be unrelated to the OMA claims." Speicher v. Columbia Twp. Bd. of Election Comm'rs, 832 N.W.2d 392, 399 (Mich. Ct. App. 2012).

The OMA provides that a public official who intentionally violates the OMA shall be personally liable in a civil action for damages of "not more than \$500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action." Mich. Comp. Laws § 15.273(1). Although the imposition of "actual attorney fees" under the OMA is mandatory, Speicher v. Columbia Twp. Bd. of Election Comm'rs, 832 N.W.2d 392, 395 (Mich. Ct. App. 2012), Michigan Rule of Professional Conduct 1.5 gives courts the discretion to reduce attorney fees

where attorneys are charging "illegal or clearly excessive fee[s]," Zoran v. Twp. of Cottrellville, 913 N.W.2d 359, 362 (Mich. Ct. App. 2017), appeal denied, 919 N.W.2d 403 (Mich. 2018). "A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee." MRPC 1.5(a). "Because of the high standard contained within MRPC 1.5(a), which is essentially an articulation of the clear-and-convincing-evidence burden of proof, a fee that is slightly—or even moderately—above a reasonable fee cannot be 'clearly excessive.'" Id. at 363 (emphasis in original). Rule 1.5(a) sets forth eight factors for courts to consider in deciding if a fee is clearly excessive, of which Defendants address only the fourth factor—"the amount involved and the results obtained."

Defendants assert that Gibbard recovered only half of what was allowed under the OMA, because she recovered only \$250 from Keller and Schuette, respectively. Resp. at 6. Gibbard maintains that she made a full recovery because the jury instructions and verdict form arguably only allowed for a total of \$500 and the jury awarded \$500. Reply at 8-9. Although this is not a \*10 challenge to the jury instruction—which all parties had approved—Gibbard asserts there is some ambiguity in both the instructions and the verdict form.

The jury instructions said that "[t]he total damages may not exceed \$500 per Plaintiff, under Plaintiffs' Open Meeting Act claim." The verdict form directed the jury to "enter an actual damages award not to exceed \$500 on the appropriate line for any injury giving rise to actual damages." There were separate lines where the jury could award damages for Keller and Schuette immediately below the directions. The jury entered \$250 on each line, for a total of \$500. Gibbard asserts that, arguably, the jury awarded full relief to her. On the other hand, it may be that the jury awarded half of what was allowed. Nonetheless, where a statute allows no more than

\$500 for even the most egregious violations of the OMA, even a \$250 recovery against each Defendant is significant.

Defendants disagree and revisit their proportionality argument by arguing that, based on Gibbard's level of recovery, the attorney fees should be no more than five times the total damage award. Resp. at 17. Defendants again rely on federal law to support their position that this Court should view this dispute in terms of proportionality. *Id.* at 16-17. They are mistaken. The federal cases all involve civil rights claims and determining "reasonable attorney fees" through the so-called "lodestar" method.<sup>4</sup> The OMA, unlike civil rights statutes, allows for "actual attorney fees." The term "actual attorney fees" in the OMA creates a mandatory fee, while the term "reasonable attorney fees" in analogous federal statutes creates a discretionary fee scheme. *Omdahl v. W. Iron Cty. Bd. of Educ.*, 733 N.W.2d 380, 390 (Mich. 2007). Despite the fact that the

11 OMA is often \*11 read in harmony with federal statutes, "the statutory fee schemes are different and should be interpreted distinctly." *Id.* Therefore, the federal cases cited by Defendants are not persuasive.

<sup>4</sup> Courts calculate the "lodestar" fee by multiplying the reasonable number of hours expended on the case by the reasonable hourly rates for the participating lawyers and then adjusting that number up or down based on the unique aspects of the case. *Miller v. Caudill*, ---F.3d---, 2019 WL 3979593, at \*7 (6th Cir. Aug. 23, 2019). ---

Turning to state law, Defendants rely on *Speicher*. But that case does not help them as it explains why their proportionality argument is fatally flawed. In *Speicher*, the court explained that the OMA, as it was enacted in 1968, was largely ineffective due to a lack of enforcement mechanisms and penalties. 832 N.W.2d at 398; *see also Booth Newspapers, Inc. v. Univ. of Mich. Bd. of Regents*, 507 N.W.2d 422, 427 (Mich. 1993)

(same). To remedy the problem, Michigan's Legislature repealed the OMA and reenacted it in 1976 with new provisions that allowed successful parties to recover court costs and actual attorney fees. *Omdahl*, 733 N.W.2d at 383; *see also Speicher*, 832 N.W.2d at 398 (noting the same language in section 15.271(4)). Defendants' proportionality argument seeks once again to make the OMA ineffective by capping attorney fees at no more than \$2,500. Arbitrarily limiting the actual attorney fees award to no more than five times the recovery is contrary to the plain text of the OMA, the intent of Michigan's legislature, and the private-attorney-general concept upon which statutes like the OMA rely to encourage private litigation to implement public policy.

Accordingly, Gibbard's attorney fees request is not clearly excessive on the theory that they are disproportionate to her recovery. The Court is satisfied that both the amount of recovery and the level of results obtained in this matter are sufficient to warrant full recovery of applicable attorney fees. A lawyer of ordinary prudence would be left with a definite and firm conviction that the requested fees (with deduction for fees unrelated to the OMA claims, as discussed below) in the light of more than two years of litigation are

12 reasonable. \*12

### 3. Fees Unrelated to the OMA Claim

Defendants also argue that Gibbard's fee request is clearly excessive, because she seeks fees related to claims other than her OMA claims. Resp. at 14. They note that Plaintiffs' counsels' billing records do not distinguish between the various claims brought in this case. *Id.* at 15. They further argue that Gibbard is seeking fees related to Cook's unsuccessful OMA claims. *Id.* at 16. Gibbard argues that her claims are interrelated and largely involve a common core of facts, namely the events occurring after the October 18, 2016 meeting. Reply at 11. Gibbard has the better part of the argument.



It is difficult to divide attorney time spent on a claim-by-claim basis where, as here, a case arises from a common core of facts. See Hensley, 461 U.S. at 435. The events that transpired on October 18, 2016 certainly gave rise to all of the claims that were presented at trial. Nonetheless, there were events that occurred outside of that night and that were also part of each Plaintiffs' OMA claims. There were also claims brought against other individuals, such as Dave Keller and Ken Brown. Fees for unrelated claims are not available under the OMA. Speicher, 832 N.W.2d at 400. OMA fees are also not available for legal research of unrelated claims. Id. The fees requested in this case are clearly excessive to the extent they include inquiry into areas that fall outside of the common core of facts and legal research unrelated to the OMA claims. Therefore, the Court finds, after reviewing the record, that "a lawyer of ordinary prudence would be left with a definite and firm conviction that the requested fee is in excess of a reasonable fee," to the extent the fees sought are for matters unrelated to Gibbard's OMA claims. See MRPC 1.5(a). Accordingly, Plaintiffs' counsel is directed to review their billing records and make a good faith effort to omit fees unrelated to Gibbard's OMA claims. \*13

#### 4. Costs

Finally, Gibbard seeks \$4,214.56 in costs. Mot. at 4. Defendants argue that Gibbard's bill of costs is excessive because it includes costs for witnesses who either did not testify at trial or did not testify in relation to Gibbard's OMA claims. Resp. at 18-19. Defendants further argue that the costs should be cut in half, because they should not be responsible for Cook's costs. Id. at 19. They propose that \$2,040.49 is a reasonable amount of costs. Id. Gibbard concedes that costs related to one witness, Grant Toner, should be excluded. Reply at 12. Gibbard revised her bill of costs to exclude fees related to Toner, but she also added the cost of ordering trial transcripts to defend against Defendants' Rule 50(b) motion. See

Gibbard's 2d Bill of Costs, Ex. 2 to Reply (Dkt. 107-1). She now seeks costs totaling \$4,717.06. Id.

The award and allocation of costs in federal courts are controlled by 28 U.S.C. § 1920 and Rule 54(d). Sales v. Marshall, 873 F.2d 115, 122 (6th Cir. 1989). Rule 54 allows the prevailing party to recover costs. Fed. R. Civ. P. 54(d)(1). As noted above, Gibbard is the prevailing party on her OMA claims and, therefore, entitled to costs.

Defendants argue that costs related to trial witness Jeff Talaski should be omitted because he testified as to Shelly Cook only. Resp. at 18. Gibbard does not dispute this point. After reviewing the trial transcript, the Court agrees with Defendants that Talaski's costs should not be awarded, because Talaski's testimony was unrelated to Gibbard's claims.

Defendants argue as to the rest of the witnesses that they testified as to the First Amendment claims and not the OMA claims. Id. at 18-19. However, Defendants do not explain how the testimony on the First Amendment claims and the OMA claims differ in some meaningful way. Based on the Court's review of the bill of costs, Gibbard seeks to recover the filing fee, service of

14 \*14 process fees, transcript fees, and witness fees. Id. at PageID.2663. These fees are all allowed under § 1920. Accordingly, Gibbard is awarded costs in the amount of \$4,558.04.

## IV. CONCLUSION

For the reasons stated above, Keller and Schuette's motion for attorney fees (Dkt. 96) is denied and Gibbard's motion for attorney fees (Dkt. 94) is granted in part. Gibbard is entitled to \$4,558.04 in costs and most, but not all, of the attorney fees requested. Counsel for the parties are directed to meet and confer and to make a good faith effort to remove billing for matters unrelated to Gibbard's OMA claims. If the parties come to agreement on the matter, they must submit to chambers a proposed stipulated order reflecting that agreement by September 23, 2019. If agreement is

not reached, Plaintiffs' counsel must file their revised calculations and supporting documentation with the Court by September 30, 2019, and Defendants may file objections by October 7, 2019.

SO ORDERED. Dated: September 17, 2019

Detroit, Michigan

s/Mark A. Goldsmith

MARK A. GOLDSMITH

United States District Judge

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**STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION  
NOTICE OF HEARING  
FOR THE ELECTRIC CUSTOMERS OF  
DTE ELECTRIC COMPANY  
CASE NO. U-21089**

- DTE Electric Company requests the Michigan Public Service Commission for an administrative determination regarding the proper classification of certain facilities and to submit findings to the Federal Energy Regulatory Commission.
- The information below describes how a person may participate in this case.
- You may call or write DTE Electric Company, One Energy Plaza, 570 SB, Detroit, MI 48226, (800) 477-4747 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:** Wednesday, July 7, 2021 at 9:00 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](mailto: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 May 28, 2021 application for an administrative determination regarding the proper classification of a 120kV single-circuit radial line and associated equipment ("Croswell Interconnection"), running approximately 7.5 miles from an existing International Transmission Company, LLC, dba ITC Transmission "ITCT" substation to a proposed new substation to be built by the City of Croswell, Michigan "Croswell" as distribution under the Federal Energy Regulatory Commission's "FERC" seven-factor test for classifying a facility as transmission or distribution. The

**INFORMATION ONLY**

Croswell Interconnection consists of a 120 kV breaker with disconnects at the Lee substation, 7.5 miles of new radial 120 kV circuit connecting the Lee substation to a new substation that will be constructed by Croswell. The current total estimated cost for the Croswell Interconnection is \$8.6 million. The expected in-service date for the project is December 31, 2021. ITCT intends to roll the costs of the Croswell Interconnection into its Attachment O rates.

All documents filed in this case shall be submitted electronically through the Commission's E-Dockets website at: [michigan.gov/mpscedockets](http://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](mailto: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](mailto: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 June 30, 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, Lauren D. Donofrio, 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-21089**. Statements may be emailed to: [mpscedockets@michigan.gov](mailto: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](http://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.; 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.

U-21089