Navigating through the agenda:

- Use the bookmarks on the left to navigate through the agenda.

- **Tablet Users:** Tap the screen for available options, select “Open in”, select “Adobe Reader”. The agenda will open in Adobe Reader. Scroll through the bookmarks to navigate through the agenda.

  *(The Adobe Reader application is required to download the agenda and view the bookmarks. This free application is available through the App Store on your tablet device.)*
I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE
   Mark Nickita, Mayor

II. ROLL CALL
   J. Cherilynn Mynsberge, City Clerk

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

   Announcements:
   - On Monday, November 13, from 7:00 to 8:30 p.m. in the Library, a community forum will be held about the initial design phase of a proposed expansion and renovation of the Baldwin Library’s Youth Services wing. Parents, caregivers, children, residents, and other community members are welcome to attend. People wishing to comment on the Youth Services expansion and renovation, but unable to attend the community forum on November 13, may send their thoughts to Director Doug Koschik.
   - Tuesday, November 7th is Election Day in Birmingham. Polls will be open from 7:00 AM to 8:00 PM. Complete election information is available at www.Michigan.gov/VOTE. The City Clerk’s Office will be open on Saturday, November 4th from 9:00 AM to 2:00 PM for issuing Absent Voter ballots.
   - Celebrate the 90th anniversary of the Baldwin Public Library at a speakeasy-themed fundraiser on Friday, November 10th from 6:00 until 9:00 PM. Proceeds will be used for an expansion and renovation of the Youth Room. Tickets can be purchased at www.baldwinlib.org, or by calling 248.554.4683.
   - The Veterans Day wreath laying ceremony is at 11:00 AM on Saturday, November 11th in Shain Park. The ceremony is sponsored by the Piety Hill Chapter of the D.A.R.

IV. 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. Approval of City Commission minutes of October 16, 2017
   B. Approval of warrant list, including Automated Clearing House payments, of October 18, 2017 in the amount of $1,678,786.55.
   C. Approval of warrant list, including Automated Clearing House payments, of October 25, 2017 in the amount of $350,282.57.
   D. Resolution approving a request from the Birmingham Bloomfield Art Center to hold Art Birmingham in Shain Park and on the surrounding streets on May 11 – 13, 2018 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
E. Resolution accepting the resignation of Scott Weller from the Cablecasting Board, thanking him for his service, and directing the City Clerk to begin the process of filling the vacancy.

F. Resolution authorizing the expenditure of $25,000 from the Automobile Parking System fund promotion account (Account No. 585-538.001-901.0300) to assist the BSD in creating their proposed 2017 holiday promotional TV campaign.

G. Resolution approving the purchase and planting of 134 trees from KLM Landscape for the 2017 fall tree purchase and planting project for a total project cost not to exceed $43,280.00. Funds are available from the Local Streets Fund-Forestry Service Contract account #203-449.005-819.0000, the Major Streets Fund-Forestry Service Contract account #202-449.005-819.0000, the Local Streets Fund-Operating Supplies account #203-449.005-729.0000 and the Major Streets Fund-Operating Supplies account #202-449.005-729.0000 for these services. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.

H. Resolution approving the contract with Gardiner C. Vose, Inc., in the amount of $13,065.00 to replace the Wall Partition System in conference rooms 202 and 203. Further, directing the Mayor and City Clerk to sign the agreement on behalf of the City.

I. Resolution setting Monday, November 20, 2017 at 7:30 PM for a Public Hearing to consider ordinance amendments to allow the use of Economic Development Liquor Licenses in an expanded area.

J. Resolution setting Monday, November 20, 2017 at 7:30 PM for a Public Hearing to consider the proposed lot combination of 412 & 420 E. Frank as well as the small strip of parking that abuts 420 E. Frank on the east.

V. UNFINISHED BUSINESS

A. Resolution setting Monday, November 13, 2017 at 7:30 PM for a public hearing to consider an amendment to Article 9, section 9.02 to add a definition for personal services to the Zoning Ordinance.

VI. NEW BUSINESS

A. Resolution approving a request from Hot Works, LLC Fine Art & Fine Craft Shows to hold Hot Works Birmingham Fine Art Show in Shain Park, on August 24th, 25th, and 26th, 2018, contingent upon compliance with all permit and insurance requirements and payment of all fees, and further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

B. Ordinance amending Part II of the City Code, Chapter 110 Transportation Systems, Article III Michigan Vehicle Code, to add section 110-67 Interference with Normal Flow of Traffic, and authorizing the Mayor and City Clerk to sign the ordinance on behalf of the city.

C. Ordinance amending Part II of the City Code, Chapter 74 Offenses, Article VII Offenses Against Public Morals, Division 5 Controlled Substances, Subdivision III. Alcoholic Liquors Generally, Section 74-324 with attached ordinance effective January 1, 2018, and authorizing the Mayor and City Clerk to sign the ordinance on behalf of the city.

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

IX. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA
X. REPORTS

A. Commissioner Reports
   1. Notice of Intent to Appoint a member to the Cablecasting Board on December 4, 2017 at 7:30 PM

B. Commissioner Comments

C. Advisory Boards, Committees, Commissions’ Reports and Agendas

D. Legislation

E. City Staff
   1. Seaway Painting Update, submitted by DPS Director Wood
   2. September 2017 Investment Report, submitted by Finance Director Gerber

XI. ADJOURN

INFORMATION ONLY

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 por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).
I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Mark Nickita called the meeting to order at 7:30 p.m.

II. ROLL CALL

ROLL CALL: Present, Mayor Nickita, Mayor Pro Tem Harris, Commissioner Bordman, Commissioner Boutros, Commissioner DeWeese, Commissioner Hoff, Commissioner Sherman. Absent, None.

Administration: City Manager Valentine, Senior City Planner Baka, IT Director Brunk, Communications Director Byrne, Police Chief Clemence, Fire Chief Connaughton, City Attorney Currier, City Planner Ecker, City Clerk Mynsberge, City Engineer O’Meara, Building Official Johnson, BSD Director Tighe, DPS Director Wood.

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

Mayor Nickita announced:

- The last of the 2017 Farmers Market events will be on Sunday, October 22nd and October 29th from 9:00 AM to 2:00 PM in Municipal Parking Lot #6. On October 29th, special activities will include hayrides, Trick-or-Treating, corn shelling, live music, children’s pumpkin crafts, and pumpkin carving demonstrations. For more information, visit www.enjoybirmingham.com or call 248.530.1200.
- The annual Halloween Parade and Pumpkin Patch happens on Sunday, October 29th. The Pumpkin Patch opens at 1:00 PM in Shain Park, followed by the Parade at 4:00 PM. For more information visit www.bbcc.com, or call 248.430.7668 or 248.644.3163.
- Tuesday, November 7th is Election Day in Birmingham. Polls will be open from 7:00 AM to 8:00 PM. Complete election information is available at www.Michigan.gov/VOTE. The City Clerk’s Office will be open on Saturday, November 4th from 9:00 AM to 2:00 PM for issuing Absent Voter ballots.
- Celebrate the 90th anniversary of the Baldwin Public Library at a speakeasy-themed fundraiser on Friday, November 10th from 6:00 until 9:00 PM. Proceeds will be used for an expansion and renovation of the Youth Room. Tickets can be purchased at www.baldwinlib.org, or by calling 248.554.4683.
- The Veterans Day wreath laying ceremony is at 11:00 AM on Saturday, November 11th in Shain Park. The ceremony is sponsored by the Piety Hill Chapter of the D.A.R.

Mayor Nickita introduced the City’s new Communications Director, Kevin Byrnes.

October 16, 2017
Mayor Nickita introduced Representative Mike McCready who provided a legislative update on changes to No-Fault Insurance happening in Lansing. Representative McCready spoke briefly about legislation aimed at regulating short term rentals.

Commissioner Sherman’s birthday was celebrated.

IV. 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.

10-266-17 APPROVAL OF CONSENT AGENDA
The following items were removed from the Consent Agenda:

- Commissioner Boutros: Item O
- Commissioner Bordman: Items J and P

MOTION: Motion by Commissioner Boutros, seconded by Commissioner DeWeese:
To approve the Consent Agenda, with Items J, O, and P removed, the abstention of Commissioner Bordman on Item B noted, and the abstention of Commissioner Sherman on Item N based on conversation with the City Attorney noted.

ROLL CALL VOTE: Yeas, Commissioner Bordman
Commissioner Boutros
Commissioner DeWeese
Mayor Pro Tem Harris
Commissioner Hoff
Mayor Nickita
Commissioner Sherman

Nays, None
Absent, None

A. Approval of City Commission minutes of September 25, 2017
B. Approval of warrant list, including Automated Clearing House payments, of September 27, 2017 in the amount of $1,095,419.23.
C. Approval of warrant list, including Automated Clearing House payments, of October 4, 2017 in the amount of $2,985,815.30.
D. Approval of warrant list, including Automated Clearing House payments, of October 11, 2017 in the amount of $1,005,737.68.
E. Resolution authorizing the City Manager to cast a vote, on the City’s behalf, for the four incumbent members of the Michigan Municipal League Liability and Property Pool Board of Directors for three year terms, beginning January 1, 2018.
F. Resolution approving the appointment of election inspectors, absentee voter counting board inspectors, receiving board inspectors and other election officials as recommended by the City Clerk for the November 7, 2017 Election pursuant to MCL 168.674(1) and granting the City Clerk authority to make emergency appointments of qualified candidates should circumstances warrant to maintain adequate staffing in the various precincts, counting boards and receiving boards.
G. Resolution approving the amendment to the professional services agreement with McKenna Associates, Inc. to provide for the use of a City vehicle by the Consultant’s employees performing construction site code enforcement duties.

H. Resolution approving the federal funds in the amount of $20,310.00 for the 2017 Emergency Management Performance Grant period of 10/1/2016 to 9/30/2017. Further, directing the Mayor to sign the agreement on behalf of the City.

I. Resolution authorizing the IT department to purchase 95 block hours of GIS support from Geographic Information Services, Inc. 2100 Riverchase Center, Suite 105, Birmingham, AL 35244, the total purchase not to exceed $15,000.00. Funds are available in the IT GIS fund account # 636-228.000-973.0500.

K. Resolution approving a request submitted by the Birmingham Jewish Connection to display a Menorah in Shain Park from December 12, 2017 – December 20, 2017, and to hold a lighting ceremony on December 14, 2017, contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

L. Resolution setting Monday, November 13, 2017 at 7:30 PM for a Public Hearing to consider the proposed lot combination of 607 & 635 S. Bates.

M. Resolution setting Monday, November 13, 2017 at 7:30 PM for a public hearing to consider the Final Site Plan and Special Land Use Permit Amendment for 505 N. Old Woodward to allow interior and exterior changes to the existing Salvatore Scallopini bistro at 505 N. Old Woodward.

N. Resolution authorizing the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and approving the liquor license transfer for Whole Foods that requests a transfer of Class C License issued under MCL 436.1521(A)(1)(B) to be located at 2100 East Maple Rd., Suite B, Birmingham, Oakland County, MI 48009. Furthermore, pursuant to Birmingham City Ordinance, authorizing the City Clerk to complete the Local Approval Notice at the request of Whole Foods approving the liquor license transfer request of Whole Foods for the transfer of a Class C License to be issued under MCL 436.1521 (A) (1) (B) located at 2100 East Maple Rd, Suite B, Birmingham, Oakland County, MI 48009.

Q. Resolution designating City Manager Valentine, Communications Director Byrnes, City Planner Ecker, Finance Director Gerber, Police Commander Grewe, City Engineer O’Meara, and BSD Director Tighe as representatives for Election Commission members Mayor Nickita, Mayor Pro Tem Harris, and Commissioners Bordman, Boutros, DeWeese, Hoff and Sherman for the purpose of conducting the Public Accuracy Test of the electronic tabulating equipment which will be used to count votes cast at the November 7, 2017 Election.

V. UNFINISHED BUSINESS

There was no unfinished business.

VI. NEW BUSINESS

10-267-17 PUBLIC HEARING TO CONSIDER THE REZONING OF 191 N. CHESTER FROM TZ1 TO TZ2

From City Planner Ecker’s staff report to City Manager Valentine dated October 6, 2017:

The property owner of 191 N. Chester (The First Church of Christ, Scientist), is requesting the rezoning of the property from TZ-1 (Transitional Zone 1) to TZ-2 (Transitional Zone 2) to allow office use.
The subject site is located on the west side of N. Chester, with single family homes to the north and office/commercial buildings to the south (Integra Building) and east (McCann Worldgroup Building). The subject property is currently zoned TZ1 (Transitional Zoning), as well as C - Community Use in the Downtown Overlay District, due to its former use as a Church.

On September 13, 2017, the Planning Board conducted a public hearing to consider the requested rezoning. After much discussion, the Planning Board voted to recommend approval of the proposed rezoning to the City Commission.

The applicant has submitted a letter voluntarily offering to limit the use of the property at 191 N. Chester to office use only should the rezoning to TZ2 be approved. The applicant has also submitted numerous letters of support from the surrounding property owners.

City Planner Ecker continued:

- In 2015, the Commission created TZ1 and TZ3. TZ2 was added in the past year.
- 191 N. Chester was previously zoned as R4 - Residential, and then it was re-zoned to TZ1. TZ3 allowed too many uses on the site.
- Applicant would now like the property re-zoned to TZ2. TZ2 allows uses beyond residential, which are the only uses permitted by TZ1.
- Applicant is looking to keep the exterior of the building, and to re-build the inside as office space.
- A TZ1 designation is residential, and allows for three stories and a height of thirty-five feet. A TZ2 designation allows for more uses, but it only allows for two stories and a height of thirty feet.
- When an applicant applies for re-zoning, they must submit the following information:
  - An explanation of why the re-zoning is necessary for the preservation and enjoyments of the rights of usage commonly associated with property ownership;
  - An explanation of why the existing zoning classification is no longer appropriate;
  - An explanation of why the proposed re-zoning will not be detrimental to the surrounding properties;
  - A land survey.
- The current applicant explained that:
  - The building was determined not to be of interest to any religious institution, and also not tenable for residential adaptation.
  - Re-zoning the building for office use would preserve the current building, does not change the character of the neighborhood, and creates less traffic than a possible residential re-use.
- Planning staff performed a review of the application’s adherence to existing zoning and Master Planning requirements for the site, an analysis of existing uses of the property within the general area, the suitability of the property in question to the uses permitted under the existing zoning classification, and the general trend of development in the area of the property in question, including any changes that have taken place in the zoning classification.
  - This area is considered part of a commercial piece on the edge of downtown, which according to the 1980 Master Plan “should be restricted to office and low-intensity commercial use” whenever possible. The currently submitted application is in line with this goal.
  - This area is also zoned according to the Downtown Birmingham 2016 Plan as C -
Community, which requires the City to retain and enhance the character and vitality of downtown, and make sure new architecture is compatible with old. Keeping the exterior of the building, as proposed in the application, is also in line with this goal.

- The Zoning Ordinance states that “the purpose of the Zoning Ordinance is to guide the growth and development of the City, in accordance with the goals, objectives, and strategies stated within the Birmingham Future Land Use Plan and the 2016 Plan.” The adaptive re-use proposed by the applicant supports the City’s growth, development, and re-use, and maintains the character of the neighborhood.
- Since there is a four-story office building to the south, the McCann Building to the east, and single family residential homes to the north and west, this proposed zoning change could be considered transitional between the high-density commercial business district on one side and the single-family low-density residential on the other side.
- With the current TZ1 zoning, the building in question could not be used for a religious institution without a use variance, since it is restricted to residential use.
- Several changes have occurred to office buildings in the area, and the only rezoning in the area was the change of this building’s zoning designation from R4 to TZ1.

- Upon review of the aforementioned information, the Planning Department and the Planning Board recommended that 151 N. Chester be re-zoned from TZ1 to TZ2. The Commission should also consider whether to accept the applicant’s offer to restrict the use to office and commercial use only.

City Planner Ecker confirmed for Commissioner Hoff that 151 N. Chester is historical, but is not a historically-designated building, and that the parking would be built out into the basement of the building. City Planner Ecker also confirmed that if this re-zoning is granted, a much larger building could be built in this building’s stead later on.

Mayor Nickita explained that conditional zoning is a possibility in order to address concerns of what would be allowed, although the Commission has not taken that route before.

City Attorney Currier confirmed for Commissioner DeWeese that if any further construction were to occur in the future after this re-zoning, the construction would still need to adhere to both the greater zoning and whatever conditional zoning the Commission may apply.

City Planner Ecker confirmed for Mayor Pro Tem Harris that a Special Land Use Permit (SLUP) would be required for this use, and City Attorney Currier confirmed that if the building were to change hands, the conditions of the SLUP would have to be followed or they would need to be amended by the Commission at the request of the new owner.

Mayor Nickita opened the public hearing at 8:12 p.m.

Sam Surnow of the Surnow Company (320 Martin Street) explained that while many possibilities for the building were explored, the conclusion was that the building would need to be torn down in order to adhere to TZ1. The Surnow Company met with the building’s neighbors in March to solicit feedback, and the neighborhood overwhelmingly expressed its desire to keep the building.
Mr. Surnow explained that:
- Of the 16,000 sq. ft., an estimated 3,000 and 4,000 sq. ft. will be used for parking while the rest of the building is maintained;
- The Surnow Company would be willing to restrict traffic exiting the building so that employees could only make a right onto Chester;
- Fire suppression would be included in the parking lot, the building would be made wheelchair-accessible, and it would be brought up to code.

Mr. Biddison, the architect on this project from Biddison Architecture, explained:
- That the main floor would be maintained as public space, with former mechanical spaces being repurposed as storage for office users;
- The trusses may be changed from the inside into an additional useable level;
- An elevator would be added;
- Some stairs would be re-configured;
- And the windows would be maintained, but the floors would be re-positioned so the windows are at an appropriate height.

Mr. Biddison confirmed for Commissioner DeWeese that the parking lot would include about twelve spaces.

City Planner Ecker confirmed for Commissioner Hoff that:
- The Surnow Company can keep the existing roof lines within TZ2 because the building is grandfathered in, even if they decide to build up into the trusses to create a level.
- If the conditional zoning is not accepted, either a church or food and drink establishment could go into the building with a SLUP.
- The Surnow Company is considering permanent offices, not bistro offices similar to an application submitted by a previous group.

Lauren Stein spoke in support of the proposed project and re-zoning by the Surnow Company.

Susan Martin wholly supported renovating the existing building with the conditional zoning for business use only.

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

City Planner Ecker explained to Commissioner Hoff that information on traffic pattern changes will not be available until after re-zoning is approved.

**MOTION:** Motion by Commissioner DeWeese, seconded by Commissioner Bordman:
To approve the rezoning of 191 N. Chester from TZ1 (Transitional Zoning) to TZ2 (Transitional Zoning) as recommended by the Planning Board on September 13, 2017 with the conditions as outlined in the letter dated October 5, 2017 from Chester Street Partners, LLC, A Surnow Company.

Mayor Nickita clarified that Birmingham does not usually re-zone in response to developer requests, but that this is a unique situation because:
- The requested zoning designation did not exist at the original time of zoning;
- To maintain the current zoning would essentially require the demolition of the current building and the construction of a higher density space, which is counter to Birmingham’s goals, and;
• The Surnow Company offered to take on additional conditional zoning in order to maintain the intended use category long-term.

VOTE: Yeas, 7
Nays, 0
Absent, 0

10-268-17 298 S. OLD WOODWARD AVE. PERMANENT REMOVAL OF ON-STREET PARKING

From City Engineer O'Meara’s staff report to City Manager Valentine dated October 5, 2017:

In June, the Planning Board issued preliminary site plan approval to the owner of the above property (owned by Lorient Capital, LLC), located at the NW corner of Brown St. The applicant has proposed the construction of a five-story hotel, containing 126 rooms, 17 long-term stay apartments, as well as banquet, restaurant, and lounge facilities on the first floor. Due to the nature of the business, Lorient has designed the plan to include 24-hour a day valet service at the front door, located on the S. Old Woodward Ave. frontage. The valet loading zone will occupy space that is currently used for on-street metered parking. Therefore, the valet operation will require the permanent removal of metered public parking.

On August 2, 2017 the Advisory Parking Committee voted to recommend to the City Commission the removal of eight on-street parking spaces at 298 S. Old Woodward Ave. to allow for the operation of a valet service by the adjacent property owner, in exchange for an annual payment of $24,000 (at $3,000 per meter) to be charged annually once the adjacent hotel is open for business.

City Engineer O'Meara added that:
• While the removal of metered parking is usually inappropriate within a systems viewpoint, Lorient took the proposal very seriously and considered the interests of adjacent businesses regarding the proposal.
• The Townsend Hotel’s similar arrangement with the City serves as a precedent.
• The proposal includes an exit from the planned two-level basement garage.
• The applicant proposes building 56 parking spaces, and if additional spaces are required cars may need to be parked off-site.
• As this corner and the corner of Maple Road may be reconstructed in the near future following the City’s three-phase reconstruction plan for downtown, if these eight spaces are removed the City will have a total loss of fifteen spaces.

City Engineer O’Meara confirmed:
• For Commissioner Boutros that the applicant believes they will need all eight meter-spaces across the frontage in order to run the valet;
• For Mayor Nickita that the amount of frontage being discussed is a little over 100 feet;
• For Commissioner Hoff that the driveway is a critical part of the plan; and,
• For Commissioner Bordman that the Townsend Hotel took seven spaces off Merrill Street for their valet, and an estimated three spaces for the front door of the original hotel.

City Planner Ecker explained:
• To Commissioner Hoff that 1¼ spaces of parking per unit are required if there are three or more room units available, and that as long as the applicant provides parking for residential units, they are not required to provide any additional spaces since they are in
the parking assessment district. The applicant is offering to provide 33 additional spaces that are not required.

- To Commissioner Bordman that the Parking Committee looked into finding parking alternatives to Old Woodward, but it was determined that using Old Woodward is the best option in order to maintain the speed and efficiency of the valet during high-traffic times.
- To Commissioner DeWeese that Brown Street was discussed extensively and did not receive favorable reviews from the Parking Committee as an alternative.

Commissioner Hoff stated that the eight metered spaces being discussed seem to hold a lot of value, and that the proposed building does not have a lot of parking.

Commissioner DeWeese explained that for every space of on-street parking removed the City will need to provide garage parking, and that the City is not getting a sufficient amount back for the use of public space. He continued that:

- The number of spaces removed should be considered carefully.
- While the applicant may want this much street space, they may not need this much space.
- The compensation estimates are based on an assumption that the meters would not be utilized full-time, which Commissioner DeWeese questions.

Commissioner Sherman offered that the amounts being considered are consistent with the application for parking while utilizing meters on the street, and requested that Chief Clemence come forward and explain the methodology for calculating the costs.

Chief Clemence clarified that the amounts represent the amount of revenue the City would make per year if there were metered parking there, and that these numbers represent the number of spaces that would have been available on Old Woodward after the re-design.

Mayor Nickita stated that the issue is whether the current standard of compensation is appropriate going forward, and that the Commission can direct the Advisory Parking Committee to take a look at that. He continued that a move to revise standards at this time, however, is not pertinent to the current proposal before the Commission.

Richard Rattner, developer, explained that:

- The biggest focus over many months of study was the maintenance of efficient traffic flow outside of the hotel.
- Both Birmingham’s traffic consultants and Lorient put immense effort into making sure that the hotel would not stop traffic on Old Woodward. Adding a second level of underground parking to keep the valet process expedient and to keep the flow moving by having enough spaces on the street that lead to the underground garage are two of the ways the issue will be addressed.
- He believes Lorient’s architects included a separate entrance and egress to promote internal traffic flow within the garage.
- The development will have as many valets as needed.

City Engineer O’Meara explained to Mayor Pro Tem Harris that the only spaces being removed are the ones needed to keep the driveway operating safely.
Commissioner Bordman stated concern that there would not be sufficient parking for the number of people the 4,823 sq. ft banquet room could contain.

Mr. Rattner explained that if there were a large event, the cars would be brought underground by a valet and then moved from the underground parking to a different parking facility off-site as necessary. This allows Old Woodward to be unobstructed.

Commissioner Sherman said Lorient should not need eight metered spots - or 110 ft. - cleared, when hotels in other cities are able provide valet service with fewer. He continued that requesting eight spots for valet, instead of one or two, is unnecessary and an attempt to plan for the occasional large event instead of the hotel’s day-to-day operations.

Commissioner Bordman explained that while the goal of maintaining traffic flow on Old Woodward is commendable, the Commission is also tasked with looking out for the interests of pedestrians and retailers, both of whom may be negatively impacted by the loss of eight metered spots.

Mr. Rattner expressed understanding and stated he would not want to make a change to the number of spaces in his request until he can re-consult with the City's traffic engineers.

Commissioner Hoff suggested to Mr. Rattner that he revisit the project with an eye towards addressing the Commission's concerns, specifically:

- Increasing walkability, which is challenged with cars coming in and out on Old Woodward, and;
- The location of the valet entrance and exit from the garage.

Mayor Nickita added that the Commission can only grant what is necessary in the way of a request like this, and not what is desired. He suggested that the option of Brown Street be reconsidered. He finished that while the Commission seeks to prevent traffic congestion, they need to protect other City interests as well.

The Commission took no action.

10-269-17 ORDI NANCE AMENDMENT FOR HISTORIC DESIGNATION OF 927 PURDY

From Senior Planner Baka's staff report to City Manager Valentine dated October 10, 2017:

In March of 2016 the owner of the house located at 927 Purdy, Luis Barrio, requested that the City Commission consider designating his home as a historic structure within the City of Birmingham. In accordance with this request, the City Commission passed a resolution directing the Historic District Study Committee to prepare a study committee report evaluating the home for historic designation as outlined in section 127-4 of the City Code, Establishing additional, modifying, or eliminating historic districts.

The committee has prepared a final report with its recommendations which is now ready for consideration by the City Commission for the establishment of a new historic district.

Senior Planner Baka provided history of the house and the owners. He then confirmed for Commissioner Hoff that while the house had aluminum siding at one time, wood siding has been restored on the home.
Mr. Barrio explained that upon purchase of his house he was not planning to request historical designation, but decided to pursue it once he learned of the house’s history.

Commissioners DeWeese, Hoff, and Bordman spoke in support of the designation.

**MOTION:** Motion by Commissioner DeWeese, seconded by Commissioner Hoff:

To establish the home at 927 Purdy as a non-contiguous historic district in accordance with the requirements of section 127 of the Birmingham City code by amending Chapter 127, section 25 (20) to add 927 Purdy as a Historic District in the City of Birmingham. (*Appended to these minutes as Attachment A*).

**VOTE:**
- **Yeas:** 7
- **Nays:** 0
- **Absent:** 0

**10-270 -17 GLYPHOSATE REVIEW AND RECOMMENDATION**

From DPS Director Wood’s staff report to City Manager Valentine dated October 9, 2017:

In July 25, 2016 City Commission banned the use of glyphosate citywide on municipal properties.

This past year, while reviewing and evaluating the effects and impact of not using glyphosate and trying alternative products to care for the expanse of parks and public property we provide the following analysis and recommendations for future weed control.

**August-October 2016:** City staff tried 5% Vinegar mixed with salt and soap. We had very poor results. It took several applications and a drenching of the target weed. We explored the use of torching/burning the weeds in the limestone pathway at Barnum Park. We hired a contractor to perform weed control in an area along the railroad tracks using Imazapyr.

**May 2017:** City staff hand pulled, weed whipped, and scraped the weeds in the sidewalk areas in the downtown and parking lot areas, and landscape beds. We gave up on the 5% Vinegar solution. We struggled to keep up, and complaints from residents and businesses started coming in.

**June-July 2017:** More mechanical control by City staff. We just do not have enough people to pull weeds. We hired a contractor to perform invasive species control at Quarton Lake using Triclopyr, Garlon 3A. This works well for woody invasive plants, but not so well on the grasses and sedges that are found mixed in with other weeds in sidewalk cracks.

**August 2017-Today:** We came across another vinegar solution using a 30% Horticultural vinegar, Orange oil and soap. We tried it in select locations and it was successful. It burned the weed immediately, but requires more frequent applications as it is more of a contact burn, not systemic. The oil residue was hard on the spray equipment, clogging it, making it more labor intensive, with rinsing and washing required often. It is also very expensive. Staff continued using mechanical methods such as hand pulling in landscape beds.
How does the City use Glyphosate?:
Unlike crops for consumption, the City never mass applies this product. It is never applied to lawn areas, as it would kill the entire lawn.

City Staff that applies Glyphosate or any other chemical for weed control is certified through the State of Michigan as a Commercial Pesticide Applicator. Glyphosate is applied as a spot treatment application only, typically only in areas where it dries very quickly, such as parking lots, sidewalk cracks or walking paths. Once dry this chemical poses no risk of harm through the skin. Glyphosate is the most effective product for our uses in the City of Birmingham. It is applied in the wee hours of the morning (4:00 AM) to avoid foot traffic in the busy downtown area and to reduce any exposure to the public. The typical application for the entire downtown is approximately 15 cups. The carcinogen risk of glyphosate is linked to the eating of food that has been treated with glyphosate, not from uses by certified applicators treating very limited and specific locations.

Administration wishes to introduce glyphosate back into the City’s program as a means of control for invasive plants, and for weed control in landscape beds, in parks where applicable, and sidewalk cracks and parking lots.

DPS Director Wood introduced Carrie Laird, a trained pesticide applicator and technical advisor for the City of Birmingham, and confirmed for Commissioner Hoff and Mayor Nickita that DPS’ goal is to re-incorporate glyphosate as an option for controlling weeds and invasive species.

DPS Director Wood continued to Mayor Pro Tem Harris that the carcinogenic effects of glyphosate come from either ingestion or long-term exposure to the freshly applied pesticide. She reiterated that according to the report provided spot treatments performed with ample protection for trained city personnel applicators are unlikely to pose carcinogenic risk.

Commissioner Boutros:
- Commended DPS Director Wood on her report;
- Stated he prefers natural and organic weed control when possible, and;
- Expressed support for allowing the City the option of using glyphosate as a spot treatment.

DPS Director Wood told Commissioner Boutros that glyphosate takes between five and thirty minutes to dry, depending on the weather. She added that treatments would be applied in the warm months when the plant is actively growing.

Commissioner Bordman expressed appreciation of City staff who undertook the trial of weed control alternatives at her behest. She acknowledged that the use of glyphosate is controversial, and then she continued with an overview of her independent research on glyphosate:
- Glyphosate is used under other brand names, but is often known as Round Up.
- It is an herbicide, which means it kills any plant it touches.
- Glyphosate is often mixed with inert ingredients such as polyethoxylated tallow amine (POEA), a surfactant/detergent which allows the glyphosate to enter the plant because it lowers water’s surface tension, allowing the plant to absorb the chemical more easily.
- The EPA does not list glyphosate as a carcinogen, but the European Food Safety Authority and the European Chemicals Agency note that glyphosate can cause eye damage and toxicity to aquatic life with long-lasting effects.
• The European Commission has permitted the use of glyphosate, but the European Parliament banned it.
• The International Agency for Research on Cancer, an independent branch of the World Health Organization (WHO), has classified glyphosate as a probable carcinogen, but the WHO does not classify glyphosate as a carcinogen.
• California banned the sale of glyphosate within the state, and local communities have banned it from their properties.
• Malta, Sri Lanka, the Netherlands, Argentina, Belgium and France have also banned the use of glyphosate.
• Scientific American published a study of POEA, and specified that its inclusion with glyphosate can amplify the likelihood of damage on human cells, even in the residual amounts found on lawns and gardens.
• Another study of POEA used Monsanto’s recommended dose in ponds filled with tadpoles, and by the end of two weeks several of the tadpole species experienced mortality rates between 50 and 100 percent.

Commissioner Bordman concluded that, while much of the information is contradictory, she needs to prioritize health over convenience and safety, so she will not be supporting this motion.

Commissioner Boutros explained:
• That as a chemist he deals with hazardous materials every day and that appropriate preparation and precautions matter most.
• There is likely no danger to the public; the trained, certified technicians applying the glyphosate face most of the risk, which is minimal when using caution and following standard operating procedures.
• Without factoring in labor costs, alternative weed removal methods have proven to be about ten times costlier than the application of glyphosate.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Harris:
To allow the use of glyphosate as a means of control for invasive plants, weeds, and other nuisance vegetation in limited areas by trained and certified applicators in accordance with regulated application standards.

Commissioner DeWeese stated that he wants additional safety standards applied, including not leaving the area of application until the glyphosate has dried. He considers it under review, and supports the motion, but barely.

VOTE: Yeas, 6
      Nays, 1 (Bordman)
      Absent, 0

10-271-17 RESOLUTION TO MEET IN CLOSED SESSION TO DISCUSS ATTORNEY-CLIENT PRIVILEGE COMMUNICATION IN ACCORDANCE WITH SECTION 8(H) OF THE OPEN MEETINGS ACT
(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.)

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To meet in closed session to discuss an attorney-client privileged communication in accordance with Section 8(H) of the Open Meetings Act.

ROLL CALL VOTE: Yeas, Commissioner Bordman
Commissioner Boutros
Commissioner DeWeese
Mayor Pro Tem Harris
Commissioner Hoff
Mayor Nickita
Commissioner Sherman

Nays, None
Absent, None

VII. REMOVED FROM CONSENT AGENDA

10-272-17  WEST MAPLE ROAD POLE PAINTING PROJECT (ITEM J)
DPS Director Wood explained to Commissioner Bordman that several variables accounted for Seaway Painting, LLC requesting $66 more for the painting of each pole than they did for a previous City project in 2014.

DPS Director Wood said she would be willing to try negotiating the price down.

Commissioner Hoff also questioned whether the poles on the Woodward median, which had been painted for $188 per pole in 2014, were larger than the currently discussed poles on West Maple, which Seaway Painting LLC proposes to paint for $254 per pole.

DPS Director Wood stated that she would account for variables in pricing more concretely in her next report.

City Manager Valentine explained that the Commission has the option of waiting for more information from Seaway Painting, LLC, but any further delay on the project will push its completion into spring 2018.

DPS Director Wood clarified City Manager Valentine’s comment by explaining that if Seaway Painting, LLC began now and worked weekends, the project would be done mid-November, after which the weather becomes prohibitive for pole painting until the spring.

Commissioner Hoff suggested the Commission proceed with the motion, and reiterated that DPS Director Wood should speak with the contractor.

DPS Director Wood confirmed for Commissioner Boutros that fall is a great time of year for pole painting.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Boutros:
To approve the purchase for the painting of 72 light poles and traffic signal poles on West Maple Road with Seaway Painting, LLC in the amount not to exceed $18,280.00. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances. Funds are available in the Street Lighting Maintenance Account #202-449.003-937.0500. In addition, waiving the normal bidding requirements because Seaway is a DTE selected contractor.
10-273 -17  MERRILL STREET LIGHTING AGREEMENTS (ITEM O)
Commissioner Boutros stated he would like the lights put up for the holidays on Merrill Street to be kept year-round for the purposes of beautification of the street. He continued that he seeks input from the City, the Birmingham Shopping District, the managers and the owners of the buildings that will be affected.

Commissioner Hoff agreed that it is a good idea, but that the Birmingham Shopping District will need to perform and present research on the ramifications of this proposal before it is implemented.

BSD Director Tighe explained to Mayor Nickita that to her knowledge permanent lighting as such has not been previously discussed, but that BSD will look into the City and BSD budgets, and speak to business owners about potential interest.

Mayor Nickita added that if the lights are to remain for more than a few months, the proposal may call for a different system of lighting, which should be looked into.

City Manager Valentine explained that liability, issues of mounting, types of lighting, and questions of infrastructure would all need to be looked into as well.

**MOTION:** Motion by Commissioner Boutros, seconded by Commissioner Hoff:
To approve the Lighting Agreements with Essco of Birmingham and Merrillwood Collection, granting permission for the City for said lighting to be placed over Merrill Street during the 2017 holiday season, and further directing the Mayor to sign the agreement on behalf of the City.

VOTE: Yeas, 7
Nays, 0
Absent, 0

10-274-17  2017 SEWER LINING PROGRAM AWARD (ITEM P)
City Engineer O’Meara laid out the downtown areas in question for Commissioner Bordman, then explained that:
- The downtown work is expected to take less than a week, while the work for the entire contract will likely last until January.
- The contractor will avoid working on the busier nights of the week and wait to begin work until 10 PM so as not to impede customers of food service establishments.
- The plan had originally been to complete the Quarton Lake area between November and January, and the downtown areas during summer 2018. Due to a cost-saving opportunity through a direct bid to a lighting contractor, however, the schedule for completing the downtown aspect of the project has been moved up.
- Quarton Lake residents will not be notified until the project is approved, and the first aspect of the project entails cleaning and inspecting the sewers, which is very minimally disruptive.
- The odor associated with the work will only last as long as the manholes are open, and the more expensive odorless lining has been selected for the downtown area.
City Manager Valentine clarified that the Quarton Lake Homeowner's Association is aware of the pending project, and that once the project is approved by the Commission a letter with details will be immediately released to the residents.

Commissioner Hoff commended City Engineer O'Meara on getting easement approvals from the majority of blocks.

City Engineer O'Meara explained that there has been a focus in the last year on getting the rest of the approvals, and that there are still a number of easements not yet granted south of Oak.

City Manager Valentine described the City's efforts towards gaining the easements through:

- The neighborhood association;
- A letter writing campaign;
- Notification cards, and;
- Explanations as to why the easements are necessary to proceed.

Mayor Pro Tem Harris specified that the neighborhood association being referenced includes homes both north and south of Oak, and suggested that the communication could inform homeowners south of Oak about the importance of the easements so they can also receive infrastructure improvements like the homes north of Oak.

Commissioner Sherman referenced the Commission's previous study of the issue, and explained that only two manhole covers will be open at opposite ends of the downtown, thus limiting the impact of the project.

**MOTION:** Motion by Commissioner Bordman, seconded by Commissioner DeWeese:
To award the 2017 Sewer Lining Program, Contract #8-17(S), to Lanzo Lining Technologies North, of Roseville, MI in the amount of $786,997.00, to be charged to the Sewer Fund as follows:

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Further, granting a waiver of Section 50-74(b)(2) of the Birmingham City Code to Lanzo Lining Technologies North pertaining to the sewer lining proposed in the downtown area, which will allow the work to be done at those times of day that traffic demands are relatively light, and building occupancy is low.

**VOTE:**
- Yeas, 7
- Nays, 0
- Absent, 0

**VIII. COMMUNICATIONS**

10-275-17
Dennis and Jenny Hodges stated that if there is money left in the parks budget this year, they hope Adams Park beautification will be given priority.

**IX. OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA**

None.
10-276 -17 COMMISSIONER REPORTS
The Commission will appoint alternate members to the Planning Board, and regular members to the Birmingham Shopping District Board on November 20, 2017.

The Commission will appoint members to the Ad Hoc Unimproved Street Study Committee on December 4, 2017.

10-277-17 CITY STAFF REPORTS
The Commission received the Parking Utilization Report, submitted by City Engineer O’Meara.

Commissioner Bordman talked about the NEXT report, and commented it reflects well on money the City expends there.

XII ADJOURN
Mayor Nickita adjourned the meeting into closed session at 10:54 PM, and stated no action was expected following the closed session.

The regular meeting was reconvened at 11:28 PM.

The regular meeting was adjourned at 11:28 PM.

J. Cherilynn Mynsberge, City Clerk
ORDINANCE NO. 2249

THE CITY OF BIRMINGHAM ORDAINS:
AN ORDINANCE TO AMEND CHAPTER 127, HISTORIC DISTRICTS, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND CHAPTER 127, SECTION 127-25, HISTORIC DISTRICT BOUNDARIES, TO ESTABLISH A NEW NON-CONTIGUOUS HISTORIC DISTRICT.

Sec. 127-25. – Historic district boundaries.

The boundaries of the Shain Park historic district, the central business historic district, and the Bates Street historic district are as shown on the maps which are on file in the city clerk’s office. Such maps with all notations, references, and other information shown thereon are incorporated and are a part of this chapter.

Unless otherwise shown or noted in the following descriptions, the boundaries of all districts shall be lot lines and/or centerlines of streets or alleys or such lines extended.

(1) – (19) Unchanged

(20) Almeron Whitehead House Historic District (927 Purdy):

T2N, R10E, SEC 36 BUELL’S ADD LOT 41, ALSO W ½ OF VAC ALLEY ADJ TO SAME

ORDAINED this 16th day of October, 2017 to become effective 7 days after publication.

I, J. Cherilynn Mynsberge, 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 October 16, 2017, and that a summary was published in the Observer & Eccentric newspaper on October 29, 2017.

_____________________________
J. Cherilynn Mynsberge, City Clerk

October 16, 2017
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Sub Total Checks: $1,246,222.94
Sub Total ACH: $432,563.61
Grand Total: $1,678,786.55

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
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### City of Birmingham

#### Warrant List Dated 10/25/2017

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<tr>
<th>Check Number</th>
<th>Early Release</th>
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<th>Amount</th>
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<td>PEPSI COLA</td>
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<td>MATT PESTA</td>
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<td>*</td>
<td>006887</td>
<td>LESLIE PIELACK</td>
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<td>PROGRESSIVE IRRIGATION, INC</td>
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<td>RNA FACILITIES MANAGEMENT</td>
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<td>001369</td>
<td>SPEEDWAY LLC</td>
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<td>UNEMPLOYMENT INS AGENCY</td>
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<td>004497</td>
<td>WATERFORD REGIONAL FIRE DEPT.</td>
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<td>004672</td>
<td>WEST MARINE PRO</td>
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<tr>
<td>253838</td>
<td></td>
<td>001262</td>
<td>WICKLANDER-ZULAWSKI &amp; ASSOC.</td>
<td>795.00</td>
</tr>
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**Sub Total Checks:** $305,561.22  
**Sub Total ACH:** $44,721.35  
**Grand Total:** $350,282.57

---

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  
ACH Warrant List Dated 10/25/2017

<table>
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<tr>
<th>Vendor Name</th>
<th>Transfer Date</th>
<th>Transfer Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automated Benefit Services, Inc.</td>
<td>10/24/2017</td>
<td>40,928.93</td>
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<tr>
<td>Cutwater Asset Management-September</td>
<td>**</td>
<td>3,792.42</td>
</tr>
<tr>
<td>**TOTAL</td>
<td></td>
<td>44,721.35</td>
</tr>
</tbody>
</table>

**Awaiting approval from Commission.  
Cutwater Asset Management provides advisory and reporting services for the City's general investments. It was acquired by Bank of New York Mellon, N.A. in January 2015. As a result of the acquisition, they no longer accept checks as payment for services. Once the Commission approves this warrant list, the City will electronically transmit payment. These invoices will appear once a month on the ACH Warrant List.
Attached is a special event application submitted by the Birmingham Bloomfield Art Center to hold Art Birmingham in Shain Park and on the surrounding streets on May 11 – 13, 2018. The application has been circulated to the affected departments and approvals and comments have been noted.

The following events have either been approved by the Commission or are planned to be held in May and have not yet submitted an application. These events do not pose a conflict with the proposed event.

<table>
<thead>
<tr>
<th>Event Name</th>
<th>Date</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farmers Market</td>
<td>Sundays</td>
<td>Lot 6</td>
</tr>
<tr>
<td>Celebrate Birmingham Hometown Parade</td>
<td>May 20</td>
<td>Shain Park</td>
</tr>
<tr>
<td>Lungevity 5K Run/Walk</td>
<td>TBD</td>
<td>Booth Park area</td>
</tr>
</tbody>
</table>

SUGGESTED RESOLUTION:
To approve a request from the Birmingham Bloomfield Art Center to hold Art Birmingham in Shain Park and on the surrounding streets on May 11 – 13, 2018 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
CITY OF BIRMINGHAM
APPLICATION FOR SPECIAL EVENT PERMIT
PARKS AND PUBLIC SPACES

I. EVENT DETAILS

- Incomplete applications will not be accepted.
- Changes in this information must be submitted to the City Clerk, in writing, at least three weeks prior to the event

FEES:
FIRST TIME EVENT: $200.00
ANNUAL APPLICATION FEE: $165.00

(Please print clearly or type)

Date of Application August 16, 2017

Name of Event 37th Annual Art Birmingham

Detailed Description of Event (attach additional sheet if necessary)
Fine art fair featuring approximately 180 professional, jury selected artists, art demonstrations and entertaining art activities for all ages. The event is an annual fundraiser for the Birmingham Bloomfield Art Center.

Location In Shain Park and on the streets surrounding the park. (Event map included)

Date(s) of Event May 12 & 13, 2018 Hours of Event Sat. 10am-6pm; Sun. 10am-5pm
Date(s) of Set-up May 11, 2018 Hours of Set-up 5pm - 10pm
Date(s) of Tear-down May 13, 2018 Hours of Tear-down 5pm - 9pm

Organization Sponsoring Event Birmingham Bloomfield Art Center
Organization Address 1516 Cranbrook Road, Birmingham, MI 48009
Organization Phone 248.644.0866
Contact Person Annie VanGelder, President and CEO
Contact Phone 248.644.0866 ext. 108
Contact Email annievangelder@bbartcenter.org
II. EVENT INFORMATION

1. Organization Type Non-profit
   (city, non-profit, community group, etc.)

2. Additional Sponsors or Participants (Provide name, address, contact person, status, etc. for all additional organizations sponsoring your event.)
   The Guild of Artists & Artisans, 118 N. Fourth Avenue, Ann Arbor, MI 48104;
   Karen Delhey, Executive Director, 734.662.3382 ext 303; karen@theguild.org

3. Is the event a fundraiser? [YES][NO]
   List beneficiary Birmingham Bloomfield Art Center
   List expected income $30,000
   Attach information about the beneficiary.

4. First time event in Birmingham? [YES][NO]
   If no, describe
   This will be the 37th Annual Art Birmingham presented by the Birmingham Bloomfield Art Center

5. Total number of people expected to attend per day 35,000+

6. The event will be held on the following City property: (Please list)
   [ ] Street(s) Martin, Bates, Henrietta
   [ ] Sidewalk(s)
   [ ] Park(s) Shain Park

7. Will street closures be required? [YES][NO]

8. What parking arrangements will be necessary to accommodate attendance? Exhibitors and attendees will use city parking structures and lots.
9. Will staff be provided to assist with safety, security and maintenance? **YES** **NO**
   Trained staff and temporary workers are on site from move-in through move-out to ensure safety and provide maintenance, professional security is contracted for the event and provides overnight security on Friday and Saturday.

10. Will the event require safety personnel (police, fire, paramedics)? **YES** **NO**
    Describe: **Police and Paramedics**

11. Will alcoholic beverages be served? **YES** **NO**
    If yes, additional approval by the City Commission is required, as well as the Michigan Liquor Control Commission.

12. Will music be provided? **YES** **NO**
    ✔ Live □ Amplification □ Recorded □ Loudspeakers
    Time music will begin: 12:00 pm each day
    Time music will end: 5:00 pm each day
    Location of live band, DJ, loudspeakers, equipment must be shown on the layout map.

13. Will there be signage in the area of the event? **YES** **NO**
    Number of signs/banners: Approximately 10 portable A-frames
    Size of signs/banners: 21" x 36"
    Submit a photo/drawing of the sign(s). A sign permit is required.

14. Will food/beverages/merchandise be sold? **YES** **NO**
    • Peddler/vendor permits must be submitted to the Clerk’s Office, at least two weeks prior to the event.
    • All food/beverage vendors must have Oakland County Health Department approval.
    • Attach copy of Health Dept approval.
    • There is a $50.00 application fee for all vendors and peddlers, in addition to the $10.00 daily fee, per location. A background check must be submitted for each employee participating at the event.
# LIST OF VENDORS/PEDDLERS
(attach additional sheet if necessary)

<table>
<thead>
<tr>
<th>VENDOR NAME</th>
<th>GOODS TO BE SOLD</th>
<th>WATER HOOK-UP REQUIRED?</th>
<th>ELECTRIC REQUIRED?</th>
</tr>
</thead>
<tbody>
<tr>
<td>TBD</td>
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</tbody>
</table>
III. EVENT LAYOUT

- Include a map showing the park set up, street closures, and location of each item listed in this section.
- Include a map and written description of run/walk route and the start/finish area

1. Will the event require the use of any of the following municipal equipment? *(show location of each on map)*

<table>
<thead>
<tr>
<th>EQUIPMENT</th>
<th>QUANTITY</th>
<th>COST</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Picnic Tables</td>
<td></td>
<td>6 for $200.00</td>
<td>A request for more than six tables will be evaluated based on availability.</td>
</tr>
<tr>
<td>Trash Receptacles</td>
<td>33</td>
<td>$4.00 each</td>
<td>Trash box placement and removal of trash is the responsibility of the event. Additional cost could occur if DPS is to perform this work.</td>
</tr>
<tr>
<td>Dumpsters</td>
<td>4</td>
<td>$200.00 per day</td>
<td>Includes emptying the dumpster one time per day. The City may determine the need for additional dumpsters based on event requirements.</td>
</tr>
<tr>
<td>Utilities (electric)</td>
<td></td>
<td>Varies</td>
<td>Charges according to final requirements of event.</td>
</tr>
<tr>
<td>Water/Fire Hydrant</td>
<td></td>
<td>Contact the Fire Department.</td>
<td>Applicant must supply their own means of disposal for all sanitary waste water. Waste water is NOT allowed to be poured into the street or on the grass.</td>
</tr>
<tr>
<td>Audio System</td>
<td></td>
<td>$200.00 per day</td>
<td>Must meet with City representative.</td>
</tr>
<tr>
<td>Meter Bags / Traffic Cones / Barricades</td>
<td></td>
<td># to be determined by the Police Department.</td>
<td></td>
</tr>
</tbody>
</table>

2. Will the following be constructed or located in the area of the event □YES□NO *(show location of each on map)* NOTE: Stakes are not allowed.

<table>
<thead>
<tr>
<th>TYPE</th>
<th>QUANTITY</th>
<th>SIZE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tents/Canopies/Awnings (A permit is required for tents over 120 sq ft)</td>
<td>160</td>
<td>10'x10'</td>
</tr>
<tr>
<td>Portable Toilets</td>
<td>10</td>
<td></td>
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<tr>
<td>Rides</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Displays</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vendors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Temporary Structure (must attach a photo)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (describe)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The Birmingham City Commission shall have sole and complete discretion in deciding whether to issue a permit. Nothing contained in the City Code shall be construed to require the City Commission to issue a permit to an applicant and no applicant shall have any interest or right to receive a permit merely because the applicant has received a permit in the past.

As the authorized agent of the sponsoring organization, I hereby agree that this organization shall abide by all conditions and restrictions specific to this special event as determined by the City administration and will comply with all local, state and federal rules, regulations and laws.

Signature  
Date

IV. SAMPLE LETTER TO NOTIFY ANY AFFECTED PROPERTY/BUSINESS OWNERS

- Organizer must notify all potentially affected residential property and business owners of the date and time this application will be considered by the City Commission.  (Sample letter attached to this application.)

- Attach a copy of the proposed letter to this application. The letter will be reviewed and approved by the Clerk's Office. The letter must be distributed at least two weeks prior to the Commission meeting.

- A copy of the letter and the distribution list must be submitted to the Clerk's Office at least two weeks prior to the Commission meeting.

- If street closures are necessary, a map must be included with the letter to the affected property/business owners.
SPECIAL EVENT REQUEST
NOTIFICATION LETTER

DATE: September 26, 2017

TO: Principal Shopping District Members, Downtown Birmingham Residents,
    Interested Parties and Property Owners

The Birmingham City Code requires that we receive approval from the Birmingham City Commission
to hold the following special event. The code further requires that we notify any property owners or
business owners that may be affected by the special event of the date and time that the city
commission will consider our request so that an opportunity exists for comments prior to this
approval.

EVENT INFORMATION

NAME OF EVENT: 37th Annual Art Birmingham
LOCATION: In and around Shain Park (layout enclosed)
DATES/TIMES OF EVENT: Saturday, May 12, 2018, 10am – 6pm and
Sunday, May 13, 2018, 10am – 5pm

BRIEF DESCRIPTION OF EVENT/ACTIVITY: A fine art fair featuring the handmade artwork of
approximately 160 jury-selected artists. Now in its 37th year, the fair is a key annual fundraiser for
the highly respected Birmingham Bloomfield Art Center (BBAC) whose "Art for All" vision delivers arts
education and exhibitions to the community it serves. If you experience any issues during the
event, please contact the Birmingham Police Department at 248.530.1889.

DATES/TIMES OF SET UP: Friday, May 11, 2018, meters bagged at 3pm with street
closings at 5pm and move-in completed by 9pm

DATES/TIMES OF TEAR DOWN: Sunday, May, 13, 2018, from 5pm to 9pm

DATE/TIME OF CITY COMMISSION MEETING: Monday, October 16, 2017

The city commission meets in room 205 of the Municipal Building at 151 Martin at 7:30PM. A
complete copy of the application to hold this special event is available for your review at the city
clerk’s office (248.530.1880). To receive updates on special events held in the city log on to
www.bhamgov.org/enotify.

EVENT ORGANIZER: Birmingham Bloomfield Art Center
ADDRESS: 1516 S. Cranbrook, Birmingham, MI 48009
PHONE: 248.644.0866
For Questions on day of Event, Contact: Karen Delhey (734)646-8431

Attachment: Art Birmingham layout/map
The Birmingham Bloomfield Art Center has been providing “art for all” since 1957 and is a regional non-profit art center committed to promoting the visual arts. The BBAC’s mission is “to connect people of all ages and abilities with visual arts education, exhibitions, and other creative experiences.” Each year more than 500 classes are offered for all skill levels and ages, preschool to senior citizens. Throughout the year, more than 9,000 individuals are served by classes, workshops, art camps, ArtAccess programs, special events and exhibitions (that are free and open to the public). The BBAC also supports hundreds of artists each year, with opportunities to teach, exhibit and sell their work.

EDUCATION
More than 500 classes and workshops are offered each year at the BBAC for adults and youth as young as three years old. Curriculum includes painting, drawing, ceramics, jewelry and metalsmithing, printmaking, sculpture, weaving, book arts, and more, and student artists range from the novice to the notable. There are always introductory or sampler classes for those with artistic desire who may not know exactly what they want to pursue.

EXHIBITIONS
- There are five distinct gallery spaces at the BBAC, each with a new exhibit about every eight weeks, and all are free and open to the public. Exhibiting artists range from “master” to emerging, and media includes painting, sculpture, fiber, and more. The BBAC is committed to providing its students with authentic exhibiting experience, and dedicates one gallery to adult student shows. The newest and fifth gallery is expressly dedicated to the work of ArtAccess participants and the youngest student artists.

OUTREACH
Since 2008, BBAC ArtAccess programs support the art center’s vision of “art for all” by striving to provide the transformative power of art to those who may have limited access, bringing meaningful hands-on experiences to those otherwise lacking the means to create and connect to the world of visual arts.
- **Meet Me @ the BBAC** – In 2013, the BBAC launched a new access program based on *Meet Me at MoMA*, created by The Museum of Modern Art (NYC), offering interactive gallery and art-making sessions for individuals with early- and mid-stage Alzheimer’s or dementia along with their caregivers.
- **Art of Caregiving** – New in 2016, the BBAC’s latest community outreach program offers a series of art workshops for caregivers of the elderly and people with Alzheimer’s/dementia – all free.
- **ArtBridge: Bridging High School to College to Careers in Visual Arts** – Aiming to help young people realize their educational and artistic career aspirations, ArtBridge is a comprehensive program that prepares motivated students by confirming and building their skills, making sure art fundamentals are well covered, providing college selection guidance and mentoring, and assisting with digital portfolio preparation. Thanks to funding from the JPMorgan Chase Foundation, each year dozens of motivated Detroit students considering art as a career participate in this program for no cost.
- **ArtBridge in Detroit: MacDowell Preparatory Academy** – In 2016, the BBAC adopted a Detroit middle school which had to eliminate all arts from its curriculum in 2010. We provide weekly art classes for all grades, including professional instructor and materials, plus a weekly after-school gathering to create art – all at no cost to the school or students.
- **Studio 1** – Addresses visual art education for special needs populations of all ages including historically underserved individuals and groups with unique physical, emotional, or developmental needs. By working with partner organizations, those who serve people with special needs of many kinds, the BBAC promotes multiple levels and cross-sectors of collaboration.
- **Sundays @ the Center** - Focusing on multi-generational programming, we offer monthly drop-in workshops, with two options for authentic art-making, led by an artist instructor. The cost is nominal and all materials are provided.
- **Seniors @ the Center** - Also offered monthly are drop-in visual art workshops that correspond to this age group, designed to teach a genuine art project each time. The cost per person is nominal, and participants range from individuals to groups from assisted living facilities.
2018 Art Birmingham Participating Artist,

This letter is to inform you that artist parking is restricted to Parking Structures and Oversize Lots ONLY. Any artist vehicles that are found parked at street meters will be ticketed and towed. Those artists will also be unable to participate in future Birmingham Art Fairs.

Maps are included within your packet to indicate available parking structures and lots.

We thank you for your cooperation.

Sincerely,
Hold Harmless Agreement

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

Annie VanGelder
President & CEO, Birmingham Bloomfield Art Center

Date: September 26, 2017
October 19, 2017

MEMORANDUM

TO: Mayor Mark Nickita
    Mayor Pro Tem Andrew Harris
    Commissioner Patty Bordman
    Commissioner Pierre Boutros
    Commissioner Carroll DeWeese
    Commissioner Rackeline Hoff
    Commissioner Stuart Sherman

CC: Joseph A. Valentine, Birmingham City Manager

FROM: Annie VanGelder, BBAC President & CEO

Fifty-seven years ago, in what is certainly one of the earliest cases of adaptive reuse in the U.S., members of the Bloomfield Art Association approached the City of Birmingham with a proposal to transform the abandoned waste water treatment facility at the intersection of 14 Mile and Cranbrook Roads into a community art center. The rest is, indeed, history: The Birmingham Bloomfield Art Center has become a vibrant resource for Birmingham citizens and their neighbors in surrounding communities, undergoing several major renovation phases to become this gathering place for visual arts education and creative experiences.

In 2017, the BBAC is celebrating its 60th anniversary! As always, the year holds four terms of classes for youth and adults, 20 exhibitions free and open to the public, programs designed for underserved individuals, and special events.

The Birmingham Bloomfield Art Center will appear before the City Commission on October 30 to request approval for our 37th annual fine art fair Art Birmingham in Shain Park the weekend of May 12-13, 2018.

As you consider your vote on this matter, we wanted to remind you of the important work we are accomplishing in the southwest corner of Birmingham.
In 2017, art mattered to:

- Tens of thousands who attended Art Birmingham
- 1,900 adults & youth taking classes
- 1,500 people who visited exhibits that are free and open to the public
- 615 children who enjoyed free art activities at community events
- 575 youth – grades PreK through high school – who attended summer art camps
- 370 students at the BBAC’s adopted MacDowell Middle School in Detroit experiencing art classes for the first time in five years with a BBAC instructor & weekly programs at no charge to the school or students
- 260 cognitively and/or physically challenged adults from human service organizations like JARC and Friendship Club who attended special art classes
- 243 participants in Sundays @ the Center and Seniors @ the Center, low-cost monthly drop-in workshops
- 194 people with Alzheimer’s or dementia, along with their caregivers, participating in Meet Me @ the BBAC
- Hundreds of local artists who earn a living by teaching and/or selling their work in exhibits and/or the Gallery Shop/Holiday Shop
- 93 Michigan artists juried in to the BBAC’s annual Michigan Fine Arts Competition
- 67 children in Planet Lori Art Camp, a week of art adventures designed for kids who have a parent or close relative with cancer
- 280 participants in the cost-fee Art of Caregiving who enjoyed respite from caring for elderly individuals and people with Alzheimer’s/dementia
- 39 high school students who are members of the BBAC’s Teen Arts Board (TAB)
- 20 cognitively challenged adults from Angels’ Place group homes who, for the third year, enjoyed bi-weekly art class sessions and celebrated with 90 friends and family who attended their one-night exhibit
- 14 high school students from underserved schools in Detroit, Southfield, Oak Park, and Pontiac who spent the year with free classes, portfolio mentoring and college preparatory guidance
- 8 physically, intellectually and/or emotionally challenged individuals from FAR Therapeutic Arts and Recreation who benefitted from art lessons
- 5 fulltime and 11 part-time staff members who work diligently to make all of the above happen

Not only is the BBAC well-established in Birmingham, we also draw students and visitors from more than 100 regional communities. Our ArtAccess programs have propelled us to a seat at the local and national tables of the field of arts in healthcare. And the BBAC contributes more than $900,000 into the economy annually with our payments to artists and arts workers.
We are proud to play a vital role in the rich life of Birmingham, Michigan, and plan to continue and expand our cultural efforts for many years to come. We hope you agree that the BBAC is a valuable resource and will vote positively to support our plans for Art Birmingham in 2018.

Sincerely,

[Signature]

Annie VanGelderren
President & CEO
<table>
<thead>
<tr>
<th>DEPARTMENT</th>
<th>APPROVED</th>
<th>COMMENTS</th>
<th>PERMITS REQUIRED (Must be obtained directly from individual departments)</th>
<th>ESTIMATED COSTS (Must be paid two weeks prior to the event. License will not be issued if unpaid.)</th>
<th>ACTUAL COSTS (Event will be invoiced by the Clerk's office after the event)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLANNING</td>
<td>SC</td>
<td>No comments.</td>
<td></td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>BUILDING</td>
<td></td>
<td></td>
<td></td>
<td>$166.11</td>
<td></td>
</tr>
<tr>
<td>FIRE</td>
<td>JMC</td>
<td></td>
<td></td>
<td>$80</td>
<td></td>
</tr>
</tbody>
</table>
weather conditions, no stakes allowed.
5. Clear Fire Department access of 12 foot aisles must be maintained, no tents, canopies or other obstructions in the access aisle unless approved by the Fire Marshal.
6. Pre-event site inspection required.
7. A prescheduled inspection is required for food vendors through the Bldg. dept. prior to opening.
8. All food vendors are required to have an approved 5lbs. multi-purpose (ABC) fire extinguisher on site and accessible.
9. Cords, hoses, etc. shall be matted to prevent trip hazards.
10. Exits must be clearly marked in tents/structures with an occupant load over 50 people.
11. Paramedics will respond from the fire station as needed. Dial 911 for fire/rescue/medical emergencies.
13. Do Not obstruct fire hydrants or fire sprinkler connections on buildings.
14. Provide protective barriers between hot surfaces and the public.
15. All cooking hood systems that capture grease laden vapors must have an approved suppression system and a K fire extinguisher in addition to the ABC Extinguisher.
16. Suppression systems shall be
inspected, tested, and properly tagged prior to the event. All Sprinkler heads shall be of the 155 degree Quick Response type unless serving an area of high heat and approved by the Fire Marshal. The suppression system shall have a continuous water supply as well as a secondary back up supply. Activation of the suppression system will shut down the ride and cause illumination of the exits.

<table>
<thead>
<tr>
<th><strong>POLICE</strong></th>
<th><strong>SG</strong></th>
<th>Barricades and officers to patrol area.</th>
<th><strong>$1500</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PUBLIC SERVICES</strong></td>
<td>Carrie Laird 9/18/2017</td>
<td>Trash boxes, set-up, barricade placement, dumpsters</td>
<td><strong>$2,000</strong></td>
</tr>
<tr>
<td><strong>ENGINEERING</strong></td>
<td>A.F.</td>
<td>It should be noted that Old Woodward will likely be under construction during this time. Maintain 5’ clearance on all sidewalks for pedestrian access route. No pavement damage allowed for tents or other structures.</td>
<td><strong>None</strong></td>
</tr>
<tr>
<td><strong>SP+ PARKING</strong></td>
<td>A.F.</td>
<td>Emailed information to SP+ on 09/18/17</td>
<td><strong>None</strong></td>
</tr>
<tr>
<td><strong>INSURANCE</strong></td>
<td>CA</td>
<td>Must provide by 4/27/18</td>
<td><strong>None</strong></td>
</tr>
<tr>
<td><strong>CLERK</strong></td>
<td></td>
<td>Notification letters mailed by applicant on 9/20/17. Notification addresses on file in the Clerk's Office. Evidence of required insurance must be on file with the Clerk's Office no later than 4/27/18. Applications for vendor's license must be submitted no later than 4/27/18.</td>
<td><strong>$165 pd</strong></td>
</tr>
<tr>
<td>TOTAL DEPOSIT REQUIRED</td>
<td>ACTUAL COST</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------------------------</td>
<td>-------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$3,746.11</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**FOR CLERK’S OFFICE USE**

- Deposit paid __________
- Actual Cost __________
- Due/Refund__________

Rev. 10/19/17
h:\shared\special events\- general information\approval page.doc
Fwd: BACB Weller Resignation

1 message

From: Scott Weller <scott.d.weller@gmail.com>
Date: Mon, Oct 16, 2017 at 10:36 AM
Subject: BACB Weller Resignation
To: cheryl arft <carft@bhamgov.org>

Hi Cheryl -

Although I have enjoyed the privilege of serving on the Birmingham area cable board, I am writing to you to let you know that I can no longer serve on the board due to a new job which has not allowed for participation on the regular board meetings. I have let both Elaine and Cathy know.

Thank you again for the opportunity and please do not hesitate to reach out if I can ever be of assistance.

Best,
Scott

Scott Weller
scott.d.weller@gmail.com

SUGGESTED RESOLUTION:
To accept the resignation of Scott Weller from the Cablecasting Board, to thank him for his service, and to direct the City Clerk to begin the process of filling the vacancy.
Hi everyone: The meeting packet has been finalized a bit early this week and is now available. Just a reminder to access via the public portion of our website by clicking on "About Cable Board", then "Meeting Schedule/Agendas", then "2016 Schedule/Agendas" and then click on "packet" for Dec 21, 2016. The meeting schedule for 2017 has been posted on the website and comes up first, so be sure to scroll down so that you are in the section for the 2016 meetings. The packets will be mailed today to those who normally receive them via US mail (Jeff B-per your request, I will also mail one to you). Let me know if you have any difficulty accessing the materials. See you next week!

Cathy White
Executive Director of BACB
P.O.Box 165
Birmingham, MI 48012
248-336-9445
For the past several years the APC has been approached by the BSD to participate in the funding to help cover the cost of their holiday season promotional advertising campaign, which includes print and television ads. The Parking System budget has a line item for activities that promote the parking system that has been used to assist the BSD in their promotional activities. In addition to highlighting local businesses, the advertisements will include a message about the City’s first two hours of free parking in the parking structures. Previous contributions to the BSD have ranged from $15,000 to $25,000.

For 2017, the BSD would like to help create an extra successful holiday shopping season, to help the business community to help them prepare for the upcoming downtown construction planned. The BSD has requested that the APC to participate in the planned upcoming advertising campaign at the $25,000 level. The approved budget for the current fiscal year for the parking system includes a line item of $25,000 for promotion of the City’s parking system. The APC considered this request at their regular meeting on October 4, 2017, and the following recommendation was passed:

To recommend to the City Commission the expenditure of $25,000 from the Automobile Parking System fund promotion account (Account No. 585-538.001-901.0300) to assist the BSD in creating their proposed 2017 holiday promotional TV campaign.

Additional detail regarding the proposed advertising campaign is provided on the attachments to this report.

SUGGESTED RESOLUTION:

To authorize the expenditure of $25,000 from the Automobile Parking System fund promotion account (Account No. 585-538.001-901.0300) to assist the BSD in creating their proposed 2017 holiday promotional TV campaign.
DATE:         September 29, 2017
TO:           Advisory Parking Committee
FROM:         Paul T. O’Meara, City Engineer
SUBJECT:      BSD Holiday Parking

The Birmingham Shopping District (BSD) has approached the Engineering Department regarding the attached proposal for participation in the 2017 Holiday TV Campaign. They think it will be very advantageous to the downtown merchants and to the City’s parking system to promote a convenient parking message during the busy shopping season. In the past, the APC has participated in similar campaigns with support ranging from $15,000 to $25,000. This year, the BSD is requesting $25,000 from the parking system. The details of this request are attached.

The City’s approved budget for the FY2017/2018 has allocated $25,000 in the Automobile Parking Fund for promotion of the City’s Parking System. To date, none of the budgeted funds have been spent.

A suggested resolution is given below if the Committee is inclined to recommend approval of the suggested expenditure.

SUGGESTED RECOMMENDATION:

To recommend to the City Commission the expenditure of $25,000 from the Automobile Parking System fund promotion account (Account No. 585-538.001-901.0300) to assist the BSD in creating their proposed 2017 holiday promotional TV campaign.
Once again this year, the Birmingham Shopping District will air a holiday television advertising
campaign on WXYZ TV Channel 7 and on local Comcast cable channels.

Our ads will highlight the downtown shopping, dining and spa experience. Each of the ads will
promote the popular “2 Hours Free Parking in the Decks” program, as they have in years past. The
goal of the ads is to drive traffic to downtown Birmingham, benefitting merchants and the
parking system.

This year the Birmingham Shopping District is committing a total of $55,000 for this campaign. We
are requesting the Advisory Parking Committee to approve a $25,000 commitment from the
parking fund for the campaign. This would be the fifth year of a financial commitment from the
APC.

The advertising vignettes will provide a strong push for the parking system, as the host will
close out every segment with a strong statement about parking in Birmingham. These 30
second ads will feature a graphic at the end of the spot highlighting “2 Hours Free Parking in
the Decks” incorporating the parking logo for the shopping district.

We request that the Advisory Parking Committee to recommend this expenditure in support of
the BSD holiday television campaign.
DATE: October 16, 2017

TO: Joseph A. Valentine, City Manager

FROM: Lauren A. Wood, Director of Public Services

SUBJECT: 2017 Fall Tree Purchase and Planting Project

Sealed bids were opened on Thursday, October 12, 2017 for the cost to provide and plant 129 (3”-3.5” caliper), and 5 (2”-2.5” caliper) for a total of 134 trees. The request for proposals was entered into the Michigan Inter-governmental Trade Network (MITN) purchasing system. The trees to be planted will be placed on various street rights-of-way and parks during the fall of 2017. Three bidders responded. The result of the sealed bids follows in the table below.

<table>
<thead>
<tr>
<th>Bidder</th>
<th>Base Bid</th>
<th>Complete Bid</th>
</tr>
</thead>
<tbody>
<tr>
<td>KLM Landscape</td>
<td>$43,280.00</td>
<td>Yes</td>
</tr>
<tr>
<td>Agroscapeing, Inc.</td>
<td>$43,880.00</td>
<td>No</td>
</tr>
<tr>
<td>Greg Davis Landscape</td>
<td>$44,650.00</td>
<td>Yes</td>
</tr>
</tbody>
</table>

This purchase will include providing all trees, planting, topsoil, pruning and necessary watering. The trees also come with a two year warranty. The bulk of the planting will occur in the right of way on various residential streets. The Department of Public Services recommends awarding the fall 2017 tree purchase and planting project to KLM Landscape. We have awarded planting projects to KLM Landscape in previous seasons and have been completely satisfied with the service provided. KLM has provided a competitive quote as the cost of trees has been increasing tremendously due to high demand. The average cost per tree planted will be $322.99. The spring 2017 tree purchase and planting project was for 106 trees and the total bid amount was $32,550.00, an average of $307.08 per tree. Last year’s fall plant consisted of 100 trees and the total bid amount was $30,325.00, an average of $303.25 per tree planted. Money has been allocated in the 2017-2018 budget from various accounts for this service.

SUGGESTED RESOLUTION:
To approve the purchase and planting of 134 trees from KLM Landscape for the 2017 fall tree purchase and planting project for a total project cost not to exceed $43,280.00. Funds are available from the Local Streets Fund-Forestry Service Contract account #203-449.005-819.0000, the Major Streets Fund-Forestry Service Contract account #202-449.005-819.0000, the Local Streets Fund-Operating Supplies account #203-449.005-729.0000 and the Major Streets Fund-Operating Supplies account #202-449.005-729.0000 for these services. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.
ATTACHMENT A - AGREEMENT
For Fall 2017 Tree Purchase and Planting Project

This AGREEMENT, made this _______ day of ___________, 2017, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and __KLM Landscape___, Inc., having its principal office at _70570 Powell, Armada, MI 48005_ (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City of Birmingham, through its Public Services Department, is desirous of having work completed to supply and install trees in the right of ways, and parks in the City of Birmingham.

WHEREAS, the City has heretofore advertised for bids for the procurement and performance of services required to perform tree supply and planting of (129) one-hundred and twenty-nine 3"-3 ½" caliper B&B trees and (5) five 2"-2.5" caliper B&B trees, a total of (134) one-hundred and thirty-four trees, and in connection therewith has prepared a request for sealed proposals ("RFP"), which includes certain instructions to bidders, specifications, terms and conditions.

WHEREAS, the Contractor has professional qualifications that meet the project requirements and has made a bid in accordance with such request for cost proposals to perform tree supply and planting.

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

1. It is mutually agreed by and between the parties that the documents consisting of the Request for Proposal to perform tree supply and planting and the Contractor's cost proposal dated __October 10__, 2017 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the RFP.

2. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed $43,280.00, as set forth in the Contractor's __October 10__, 2017 cost proposal.

3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Proposals.

4. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.
5. The Contractor and the City agree that the Contractor is acting as an independent Contractor with respect to the Contractor’s role in providing services to the City pursuant to this Agreement, and as such, shall be liable for its own actions and neither the Contractor nor its employees shall be construed as employees of the City. Nothing contained in this Agreement shall be construed to imply a joint venture or partnership and neither party, by virtue of this Agreement, shall have any right, power or authority to act or create any obligation, express or implied, on behalf of the other party, except as specifically outlined herein. Neither the City nor the Contractor shall be considered or construed to be the agent of the other, nor shall either have the right to bind the other in any manner whatsoever, except as specifically provided in this Agreement, and this Agreement shall not be construed as a contract of agency. The Contractor shall not be entitled or eligible to participate in any benefits or privileges given or extended by the City, or be deemed an employee of the City for purposes of federal or state withholding taxes, FICA taxes, unemployment, workers’ compensation or any other employer contributions on behalf of the City.

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

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

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

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

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

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

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

A. **Workers' Compensation Insurance**: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

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

C. **Motor Vehicle Liability**: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than $1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

D. **Additional Insured**: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be **Additional Insureds**: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.

E. **Professional Liability**: Professional liability insurance with limits of not less than $1,000,000 per claim if Contractor will provide service that are customarily subject to this type of coverage.
F. **Pollution Liability Insurance:** Contractor shall procure and maintain during the life of this Agreement Pollution Liability Insurance, with limits of liability of not less than $1,000,000, per occurrence preferred, but claims made accepted.

G. **Owners Contractors Protective Liability:** The Contractor shall procure and maintain during the life of this contract, an Owners Contractors Protective Liability Policy with limits of liability not less than $3,000,000 per occurrence, combined single limit, Personal Injury, Bodily Injury and Property Damage. The City of Birmingham shall be “Name Insured” on said coverage. Thirty (30) days Notice of Cancellation shall apply to this policy.

H. **Cancellation Notice:** Workers' Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance (and Professional Liability Insurance, if applicable), as described above, shall include an endorsement stating the following: "Thirty (30) days advance written notice of Cancellation or Non-Renewal, shall be sent to: Finance Director, City of Birmingham, PO Box 3001, 151 Martin Street, Birmingham, MI 48012-3001.

I. **Proof of Insurance Coverage:** Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.

1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;

2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;

3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;

4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance;

5) If so requested, Certified Copies of all policies mentioned above will be furnished.

J. **Coverage Expiration:** If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.

K. **Maintaining Insurance:** Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such coverage from the Agreement amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

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

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

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

4. All notices required to be sent pursuant to this Agreement shall be mailed to the following addresses:
   City of Birmingham
   Attn: Lauren Wood, Director of Public Services
   851 South Eton
   Birmingham, MI 48009

5. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled either by commencement of a suit in Oakland County Circuit Court, the 48th District Court or by arbitration. If both parties elect to have the dispute resolved by arbitration, it shall be settled pursuant to Chapter 50 of the Revised Judicature Act for the State of Michigan and administered by the American Arbitration Association with one arbitrator being used, or three arbitrators in the event any party's claim exceeds $1,000,000. Each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Such arbitration shall qualify as statutory arbitration pursuant to MCL§600.5001 et. seq., and the Oakland County Circuit Court or any court having jurisdiction shall render judgment upon the award of the arbitrator made pursuant to this Agreement. The laws of the State of Michigan shall govern this Agreement, and the arbitration shall take place in Oakland County, Michigan. In the event that the parties elect not to have the matter in dispute arbitrated, any dispute between the parties may be resolved by the filing of a suit in the Oakland County Circuit Court or the 48th District Court.
6. **FAIR PROCUREMENT OPPORTUNITY:** Procurement for the City of Birmingham will be handled in a manner providing fair opportunity for all businesses. This will be accomplished without abrogation or sacrifice of quality and as determined to be in the best interest of the City of Birmingham.
IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed as of the date and year above written.

WITNESSES:

____________________________

____________________________

____________________________

CONTRACTOR

By: _________________________

Its: _________________________

Kirk Knobloch

CITY OF BIRMINGHAM

By: _________________________

Mark Nickita

Its: Mayor

By: _________________________

J. Cherilynn Mynsberge

Its: City Clerk

Approved:

Lauren A. Wood, Director of Public Services
(Approved as to substance)

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

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

Joseph A. Valentine, City Manager
(Approved as to substance)
**CERTIFICATE OF LIABILITY INSURANCE**

**PRODUCER**
The Whimsy Insurance Agency  
322 Main Street  
Suite 200  
Rochester, MI 48307

**INSURED**
KLM Scape & Snow LLC, DBA: KLM Landscape  
70570 Powell Road  
Armada, MI 48005

**COVERAGE**

<table>
<thead>
<tr>
<th>TYPE OF INSURANCE</th>
<th>POLICY NUMBER</th>
<th>LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMMERCIAL GENERAL LIABILITY</td>
<td>5056776</td>
<td>EACH OCCURRENCE: $1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>DAMAGE TO RENTED PREMISES (EA occurrence): $500,000</td>
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<td></td>
<td></td>
<td>MED EXP (Any one person): $10,000</td>
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<td></td>
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<td>PERSONAL &amp; ADV INJURY: $1,000,000</td>
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<td>AUTOBILE LIABILITY</td>
<td>5858776</td>
<td>EACH OCCURRENCE: $1,000,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>BODY INJURY (Per person): $500,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PROPERTY DAMAGE (Per accident): $500,000</td>
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<tr>
<td>UMBRELLA LIABILITY</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>AGGREGATE: $10,000,000</td>
</tr>
</tbody>
</table>

**CERTIFICATE HOLDER**
klaird@bhamgov.org

**CANCELLATION**
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**
Eric Putman/COMM

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101)**
Coverage as defined in policies. 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 are included as Additional Insureds on the General Liability policy and automobile Liability for services performed by KLM Landscape as their interest may appear, if required by written contract with the named insured subject to the terms and conditions of the policies. Umbrella coverages are following form. 30 day Notice of Cancellation applies.
ATTACHMENT B - BIDDER'S AGREEMENT
For Fall 2017 Tree Purchase and Planting Project

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

1. They have carefully examined the specifications, terms and Agreement of the Request for Proposal and all other provisions of this document and understand the meaning, intent, and requirement of it.

2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

Kirk Knobloch                                10.10.17
BID PREPARED BY                              DATE
(Print Name)
Owner

TITLE                                      DATE

AUTHORIZED SIGNATURE                        E-MAIL ADDRESS

KLM Scape & Snow LLC d/b/a KLM Landscape
COMPANY

70570 Powell Armada, MI 48005              586.752.5562
ADDRESS                                   PHONE

N/A
NAME OF PARENT COMPANY                     PHONE

ADDRESS
ATTACHMENT C - COST PROPOSAL
For Fall 2017 Tree Purchase and Planting Project

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

Attach technical specifications for all proposed materials as outlined in the Contractor’s Responsibilities section of the RFP (p. 6)

<table>
<thead>
<tr>
<th>ITEM</th>
<th>QUANTITY</th>
<th>BID AMOUNT</th>
<th>WITH 2 YEAR WARRANTY</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARMSTRONG MAPLE</td>
<td>13@ 3’-3.5&quot;</td>
<td>$390.00</td>
<td>$ 5,070.00</td>
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<tr>
<td>DAWN REDWOOD</td>
<td>17 @ 3’-3.5&quot;</td>
<td>$320.00</td>
<td>$ 5,440.00</td>
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</tr>
<tr>
<td>DISEASE RESISTANT ELM &quot;FRONTIER&quot;</td>
<td>50 @ 3’-3.5&quot;</td>
<td>$320.00</td>
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<tr>
<td>HONEY LOCUST</td>
<td>21 @ 3’-3.5&quot;</td>
<td>$320.00</td>
<td>$ 6,720.00</td>
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</tr>
<tr>
<td>HONEY LOCUST</td>
<td>5 @ 2’-2.5&quot;</td>
<td>$270.00</td>
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<tr>
<td>HORNBEAM</td>
<td>3 @ 3’-3.5&quot;</td>
<td>$320.00</td>
<td>$ 960.00</td>
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</tr>
<tr>
<td>IVORY SILK LILAC</td>
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<td>$320.00</td>
<td>$ 5,440.00</td>
<td></td>
</tr>
<tr>
<td>KATSURA</td>
<td>1 @ 3’-3.5&quot;</td>
<td>$320.00</td>
<td>$ 320.00</td>
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</tr>
<tr>
<td>RIVERBIRCH</td>
<td>2 @ 3’-3.5&quot;</td>
<td>$190.00</td>
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<td>SWEETGUM</td>
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<td>$ 1,280.00</td>
<td></td>
</tr>
<tr>
<td>ZELKOVA</td>
<td>1 @ 3’-3.5&quot;</td>
<td>$320.00</td>
<td>$ 320.00</td>
<td></td>
</tr>
</tbody>
</table>

TOTAL PROJECT COST: $ 43,280.00

Tree stock, related planting materials and installation (per specifications).

The minimum order which shall be accepted on a delivered price is $ 320.00.

In the event an order of less than the delivered price noted above is requested by the City, an additional delivery cost of $ 100.00 may be charged to the City.
ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM
For Fall 2017 Tree Purchase and Planting Project

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

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

Kirk Knobloch 10.10.17
PREPARED BY DATE
(Print Name)

Owner
TITLE DATE

AUTHORIZED SIGNATURE E-MAIL ADDRESS

KLM Scape & Snow LLC d/b/a KLM Landscape
COMPANY

70570 Powell Armada, MI 48005 586.752.5562
ADDRESS PHONE

N/A
NAME OF PARENT COMPANY PHONE

ADDRESS

38-3304871
TAXPAYER I.D. #
DATE: October 25, 2017

TO: Joseph A. Valentine, City Manager

FROM: Carlos Jorge, Building Superintendent
       Bruce R. Johnson, Building Official

SUBJECT: Replacement of Conference Room Divider Partition System

The divider partition between conference rooms 202 and 203 on the second floor of City Hall has reached the end of its useful life and needs to be replaced. This accordion style partition is a divider between the two individual conference rooms and can be opened when necessary for larger meetings. These rooms are located across from Community Development and utilized frequently for meetings with builders, architects and development teams. The rooms are also used by plan examiners for additional space when reviewing construction documents. The Building Department has expressed functionality concerns with the existing partition and that it no longer provides necessary sound separation between the rooms.

The Facilities maintenance Department has been monitoring the wall over the past year in an attempt to keep it functional. However, we have determined that parts required to properly maintain the wall are no longer available and repairing it to meet the needs of Community Development is impossible. The department then researched and selected a replacement divider partition and prepared bid specifications for removing and replacing the existing wall.

The Facilities Department submitted a Request for Proposals (RFP) on September 5, 2017, to MITN (Michigan Inter-Governmental Trade Network) for professional firms to submit bids for removing the existing wall partition system and installing a new wall partition system for the Conference Rooms 202-203. Interested firms were required to register to attend a mandatory pre-bid meeting. The pre-bid meeting was held on September 18, 2017 to review, tour the facility, and answer any questions regarding the request for proposal. Two Firms attended the pre-bid meeting and the City received proposals from each on the bid due date of October 12, 2017. The firms and proposal amounts are as follows:

<table>
<thead>
<tr>
<th>COMPANY NAME</th>
<th>BID AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cross Renovation, Inc.</td>
<td>$20,801.00</td>
</tr>
<tr>
<td>Gardiner C. Vose, Inc.</td>
<td>$13,065.00</td>
</tr>
</tbody>
</table>
The Facilities Maintenance and Building Departments reviewed the two proposals for compliance with the City’s request for proposal (RFP) and determined that the low bidder meet the requirements outlined in the RFP. Both Departments recommend awarding the contract for the Replacement of Wall Partition System at City Hall to Gardiner C. Vose, Inc., for $13,065.00 consistent with the bid specifications. Funds were budgeted in the current Fiscal Year 2017-18 for this project in the Building Department Furniture account. Account Number 101-371.000-972.0000.

SUGGESTED RESOLUTION:
To approve the contract with Gardiner C. Vose, Inc., in the amount of $13,065.00 to replace the Wall Partition System in conference rooms 202 and 203. Further, to direct the Mayor and City Clerk to sign the agreement on behalf of the City.
REQUEST FOR PROPOSALS
For Replacement of Wall Partition System at City of Birmingham

Sealed proposals endorsed “New Partition for Conference Room”, will be received at the Office of the City Clerk, 151 Martin Street, PO Box 3001, Birmingham, Michigan, 48012; Thursday October 12, 2017 until 2:00 p.m. after which time bids will be publicly opened and read.

Bidders will be required to attend a mandatory pre-bid meeting on September 18, 2017 at 9:00 a.m., at the Birmingham Municipal Building at the Conference Rooms 202/203. Bidders must register for the pre-bid meeting by September 15, 2017 by contacting Carlos Jorge at 248-530-1882.

The City of Birmingham, Michigan is accepting sealed bid proposals from qualified professional firms to furnish a New Partition System, all labor, materials, and equipment required for the installation for a New Partition System for the Conference Rooms 202/203 at the Municipal Building located at 151 Martin Street, Birmingham, MI 48009. This work must be performed as specified accordance with the specifications contained in the Request for Proposals (RFP).

The RFP, including the Specifications, may be obtained online from the Michigan Inter-governmental Trade Network at http://www.mitn.info or at the City of Birmingham, 151 Martin St., Birmingham, Michigan 48009 and ATTENTION: Carlos Jorge.

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

Submitted to MITN: September 5, 2017
Mandatory Pre-Bid Meeting: September 18, 2017 at 9:00 a.m.
Birmingham Municipal Building
151 Martin Street, Birmingham, MI 48009
Conference Rooms 202/203

Deadline for Submissions: Thursday October 12, 2017 until 2:00 p.m.
Contact Person: Carlos Jorge
P.O. Box 3001, 151 Martin Street
Birmingham, MI 48012-3001
Phone: 248.530.1882
Email: Cjorge@bhamgov.org
REQUEST FOR PROPOSALS
For Replacement of New Partition System at City of Birmingham

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INTRODUCTION
For purposes of this request for proposals the City of Birmingham will hereby be referred to as “City” and the private firm will hereby be referred to as “Contractor.”

The City of Birmingham, Michigan is accepting sealed bid proposals from qualified professional firms to furnish a New Partition System, all labor, materials, and equipment required for the installation for a New Partition System for the Conference Rooms 202/203 at the Municipal Building located at 151 Martin Street, Birmingham, MI 48009. This work must be performed as specified accordance with the specifications outlined by the Scope of Work contained in this Request for Proposals (RFP).

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

It is anticipated the selection of a firm will be completed by October 20, 2017. An Agreement for services will be required with the selected Contractor. A copy of the Agreement is contained herein for reference. Contract services will commence upon execution of the service agreement by the City.

REQUEST FOR PROPOSALS (RFP)
The purpose of this RFP is to request sealed bid proposals from qualified parties presenting their qualifications, capabilities and cost to furnish a New Partition System, all labor, materials, and equipment required for the installation for a New Partition System for the Conference Rooms 202/203 at the Municipal Building located at 151 Martin Street, Birmingham, MI 48009.

MANDATORY PRE-BID MEETING
Prior to submitting a bid, interested firms are required to attend a pre-bid meeting to conduct an on-site visit of the location and access to the project location to make inquiries about the RFP. Bidders will be required to attend a mandatory pre-bid meeting on September 18, 2016 at 9:00 a.m., at the Birmingham Municipal Building Conference Rooms 202/203. Bidders must register for the pre-bid meeting by September 14, 2017 by contacting Carlos Jorge at 248-530-1882 or cjorge@bhamgov.org

INVITATION TO SUBMIT A PROPOSAL
Proposals shall be submitted no later than Thursday October 12, 2017 until 2:00 p.m. to:

City of Birmingham
Attn: City Clerk
151 Martin Street
Birmingham, Michigan 48009
One (1) original and one (1) copy of the proposal shall be submitted. The proposal should be firmly sealed in an envelope, which shall be clearly marked on the outside, “New Partition for the Conference Room”. Any proposal received after the due date cannot be accepted and will be rejected and returned, unopened, to the proposer. Proposer may submit more than one proposal provided each proposal meets the functional requirements.

INSTRUCTIONS TO BIDDERS

1. Any and all forms requesting information from the bidder must be completed on the attached forms contained herein (see Contractor’s Responsibilities). If more than one bid is submitted, a separate bid proposal form must be used for each.

2. Any request for clarification of this RFP shall be made in writing and delivered to: Carlos Jorge, 248-530-1882, Cjorge@Bhamgov.org, 151 Martin Street, Birmingham MI., 48009. Such request for clarification shall be delivered, in writing, no later than 5 days prior to the deadline for submissions.

3. All proposals must be submitted following the RFP format as stated in this document and shall be subject to all requirements of this document including the instruction to respondents and general information sections. All proposals must be regular in every respect and no interlineations, excisions, or special conditions shall be made or included in the RFP format by the respondent.

4. The contract will be awarded by the City of Birmingham to the most responsive and responsible bidder with the lowest price and the contract will require the completion of the work pursuant to these documents.

5. Each respondent shall include in his or her proposal, in the format requested, the cost of performing the work. Municipalities are exempt from Michigan State Sales and Federal Excise taxes. Do not include such taxes in the proposal figure. The City will furnish the successful company with tax exemption information when requested.

6. Each respondent shall include in their proposal the following information: Firm name, address, city, state, zip code, telephone number, and fax number. The company shall also provide the name, address, telephone number and email address of an individual in their organization to whom notices and inquiries by the City should be directed as part of their proposal.
EVALUATION PROCEDURE AND CRITERIA
The evaluation panel will consist of City staff and any other person(s) designated by the City who will evaluate the proposals based on, but not limited to, the following criteria:

1. Ability to provide services as outlined.
2. Related experience with similar projects, Contractor background, and personnel qualifications.
3. Quality of materials proposed.
4. Overall Costs.
5. References.

TERMS AND CONDITIONS
1. The City reserves the right to reject any or all proposals received, waive informalities, or accept any proposal, in whole or in part, it deems best. The City reserves the right to award the contract to the next most qualified Contractor if the successful Contractor does not execute a contract within ten (10) days after the award of the proposal.

2. The City reserves the right to request clarification of information submitted and to request additional information of one or more Contractors.

3. The City reserves the right to terminate the contract at its discretion should it be determined that the services provided do not meet the specifications contained herein. The City may terminate this Agreement at any point in the process upon notice to Contractor sufficient to indicate the City's desire to do so. In the case of such a stoppage, the City agrees to pay Contractor for services rendered to the time of notice, subject to the contract maximum amount.

4. Any proposal may be withdrawn up until the date and time set above for the opening of the proposals. Any proposals not so withdrawn shall constitute an irrevocable offer, for a period of ninety (90) days, to provide the services set forth in the proposal.

5. The cost of preparing and submitting a proposal is the responsibility of the Contractor and shall not be chargeable in any manner to the City.

6. The successful bidder will be required to furnish a Performance Bond in an amount not less than 100% of the contract price in favor of the City of Birmingham, conditioned upon the faithful performance of the contract, and completion on or before the date specified.

7. Payment will be made within thirty (30) days after invoice. Acceptance by the City is defined as authorization by the designated City representative to this project that all the criteria requested under the Scope of Work contained herein have been provided. Invoices are to be rendered each month following the date of execution of an Agreement with the City.
8. The Contractor will not exceed the timelines established for the completion of this project.

9. The successful bidder shall enter into and will execute the contract as set forth and attached as Attachment A.

**CONTRACTOR’S RESPONSIBILITIES**

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

1. Complete and sign all forms requested for completion within this RFP.
   a. Agreement (Attachment A – p. 10 – **only if selected by the City**).
   c. Cost Proposal (Attachment C - p. 17).
   d. Iran Sanctions Act Vendor Certification Form (Attachment D - p. 18).

2. Provide a description of completed projects that demonstrate the firm’s ability to complete projects of similar scope, size, and purpose, and in a timely manner, and within budget.

3. Provide a written plan detailing the anticipated timeline for completion of the tasks set forth in the Scope of Work (p. 9).

4. The Contractor will be responsible for any changes necessary for the plans to be approved by the City of Birmingham.

5. Provide a description of the firm, including resumes and professional qualifications of the principals involved in administering the project.

6. Provide a list of sub-contractors and their qualifications, if applicable.

7. Provide three (3) client references from past projects, include current phone numbers. At least two (2) of the client references should be for projects utilizing the same materials included in the Contractor’s proposal.

8. The Contractor will be responsible for the disposal of all material and any damages which occur as a result of any of employees or subcontractors of the Contractor during this project.

9. The contractor will be responsible for getting the building and parking permits at no cost to the contractor.

10. The successful bidder shall provide a Performance Bond in an amount not less than 100% of the contract price in favor of the City of Birmingham, conditioned upon the faithful performance of the contract, and completion on or before the date specified.
11. Provide a project timeline addressing each section within the Scope of Work and a description of the overall project approach. Include a statement that the Contractor will be available according to the proposed timeline.

12. The contractor will be responsible for acquiring a building permit and call for the inspection from the City of Birmingham at no cost to the contractor, if applicable.

CITY RESPONSIBILITY
1. The City will provide a designated representative to work with the Contractor to coordinate both the City’s and Contractor’s efforts and to inspect and verify any work performed by the Contractor.

2. The City will provide access to the City of Birmingham during regular business hours or during nights and weekends as approved by the City’s designated representative.

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

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

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

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

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

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

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

**PROJECT TIMELINE**
It is expected that the work for this project will be completed no later than December 2017.

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

**PARTITION TO BE USED**
The new Partition System will be based on Modernfold Acoustic-seal model 932 manual operated, operable partition with a sound rating of 50 STC include 2" crank down bottom seals, fabric finish selected from Modernfold standard selector and expanding closure panel, or City approved equal.
ARCHITECTURAL DRAWINGS
Architectural drawing is included as Attachment E. The contractor shall perform services included in the drawings, detailed specifications, demolition and complete scope of work as specified in this RFP for the removal and installation of the new partition for the conference room 202 – 203 and noted below; except the note on Sheet No. 1 of 4 listing the color of the panels as white with a non-porous writing surface.

1. Sheet No. 1 of 4; Panel Layout.
2. Sheet No. 2 of 4; Elevation.
3. Sheet No. 3 of 4; Detail Sheet.
4. Sheet No. 4 of 4: Track layout.

SCOPE OF WORK
The Contractor shall provide and perform the following services in accordance with the requirements as defined on the written plan detailing the scope of work and noted herein:

1. Remove and dispose of the existing accordion partition and track.
2. Remove gypsum and install hanger rods as specified on Sheet No. 3 of 4 of the architectural drawings.
3. Install new track as specified on Sheet No. 4 of 4 of the architectural drawings and verify overhead support.
4. Repair soffit framing and install new drywall as necessary.
5. Finish and Patch all drywall and soffit.
6. The Contractor shall provide a panel color chart for the City to approve.
7. The Contractor shall be responsible for the disposal of all materials in a safe and legal manner.
8. The Contractor shall operate in a safe manner and will observe all MIOSHA guidelines.
9. The Contractor shall provide any and all manuals and/or warranty information related to this project to the City upon completion of the project.
10. This section and referenced documents shall constitute the Scope of Work for this project and as such all requirements must be met.
ATTACHMENT A - AGREEMENT
For Replacement of New Partition System at City of Birmingham

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

WITNESSETH:

WHEREAS, the City of Birmingham, through its Maintenance Department, is desirous of having work completed to remove and replace an existing flat roof system at the Baldwin Public Library in the City of Birmingham.

WHEREAS, the City has heretofore advertised for bids for the procurement and performance of services required to furnish a New Partition System, all labor, materials, and equipment required for the installation for a New Partition System for the Conference Rooms 202/203 at the Municipal Building located at 151 Martin Street, Birmingham, MI 48009., and in connection therewith has prepared a request for sealed proposals ("RFP"), which includes certain instructions to bidders, specifications, terms and conditions.

WHEREAS, the Contractor has professional qualifications that meet the project requirements and has made a bid in accordance with such request for cost proposals to furnish a New Partition System, all labor, materials, and equipment required for the installation for a New Partition System for the Conference Rooms 202/203 at the Municipal Building located at 151 Martin Street, Birmingham, MI 48009.

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

1. It is mutually agreed by and between the parties that the documents consisting of the Request for Proposal to furnish a New Partition System, all labor, materials, and equipment required for the installation for a New Partition System for the Conference Rooms 202/203 at the Municipal Building located at 151 Martin Street, Birmingham, MI 48009., and the Contractor’s cost proposal dated ______________, 2017 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the RFP.

2. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed ______________, as set forth in the Contractor’s ______________, 2017 cost proposal.
3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Proposals.

4. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

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

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

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

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

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

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

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

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

   A. **Workers' Compensation Insurance**: Contractor shall procure and maintain during the life of this Agreement, Workers’ Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

   B. **Commercial General Liability Insurance**: Contractor shall procure and maintain during the life of this Agreement, Commercial General Liability Insurance on an “Occurrence Basis” with limits of liability not less than $1,000,000 per occurrence combined single limit, Personal Injury, Bodily Injury and Property Damage. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse and Underground (XCU) Exclusions, if applicable.

   C. **Motor Vehicle Liability**: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than $1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

   D. **Additional Insured**: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be Additional Insureds: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that
may be available to the additional insured, whether any other available coverage by primary, contributing or excess.

E. **Professional Liability:** Professional liability insurance with limits of not less than $1,000,000 per claim if Contractor will provide service that are customarily subject to this type of coverage.

F. **Pollution Liability Insurance:** Contractor shall procure and maintain during the life of this Agreement Pollution Liability Insurance, with limits of liability of not less than $1,000,000, per occurrence preferred, but claims made accepted.

G. **Owners Contractors Protective Liability:** The Contractor shall procure and maintain during the life of this contract, an Owners Contractors Protective Liability Policy with limits of liability not less than $3,000,000 per occurrence, combined single limit, Personal Injury, Bodily Injury and Property Damage. The City of Birmingham shall be “Name Insured” on said coverage. Thirty (30) day’s Notice of Cancellation shall apply to this policy.

H. **Cancellation Notice:** Workers’ Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance (and Professional Liability Insurance, if applicable), as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal, shall be sent to: Finance Director, City of Birmingham, PO Box 3001, 151 Martin Street, Birmingham, MI 48012-3001.

I. **Proof of Insurance Coverage:** Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.

   1) Two (2) copies of Certificate of Insurance for Workers' Compensation Insurance;
   2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
   3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
   4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance;
   5) If so requested, Certified Copies of all policies mentioned above will be furnished.

J. **Coverage Expiration:** If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.

K. **Maintaining Insurance:** Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such
coverage from the Agreement amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

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

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

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

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

   City of Birmingham
   Attn: Carlos Jorge
   151 Martin Street
   Birmingham, MI 48009
   248.530.1882

   CONTRACTOR
   (Insert Contractor Information)

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

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

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

WITNESSES:

_______________________________

By:_____________________________

Its:

_______________________________

CITY OF BIRMINGHAM

By:

Andrew Harris
Its: Mayor

_______________________________

By:

Cherilynn Brown
Its: City Clerk

Approved:

_______________________________

Carlos Jorge, Building Superintendent
(Approved as to substance)

_______________________________

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

_______________________________

Mark Gerber, Director of Finance
(Approved as to financial obligation)
ATTACHMENT B - BIDDER’S AGREEMENT
For Replacement of New Partition System at City of Birmingham

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

1. They have carefully examined the specifications, terms and Agreement of the Request for Proposal and all other provisions of this document and understand the meaning, intent, and requirement of it.

2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.
In order for the bid to be considered valid, this form must be completed in its entirety. The cost for the Scope of Work as stated in the Request for Proposal documents shall be a lump sum, as follows:

*Attach technical specifications for all proposed materials as outlined in the Contractor's Responsibilities section of the RFP (p. 6)*

<table>
<thead>
<tr>
<th>ITEM</th>
<th>BID AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Modernfold model 932 manual operated partition with a sound rating of 50 STC or City approved equal</td>
<td></td>
</tr>
<tr>
<td>Materials &amp; Equipment</td>
<td>$</td>
</tr>
<tr>
<td>Labor</td>
<td>$</td>
</tr>
<tr>
<td>Miscellaneous (Attach Detailed Description)</td>
<td>$</td>
</tr>
<tr>
<td><strong>TOTAL BID AMOUNT</strong></td>
<td>$</td>
</tr>
</tbody>
</table>

**ADDITIONAL BID ITEMS**

<p>| | |</p>
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<td></td>
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</table>

**GRANDTOTAL AMOUNT**

|                                                                 | $         |

**UNIT COST BID ITEMS**

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<th>$</th>
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<tbody>
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<td></td>
<td>per</td>
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</table>

Firm Name

Authorized signature___________________________________________ Date________________
ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM
For Replacement of New Partition System at City of Birmingham

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

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

<table>
<thead>
<tr>
<th>PREPARED BY</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Print Name)</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>TITLE</th>
<th>DATE</th>
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</table>

<table>
<thead>
<tr>
<th>AUTHORIZED SIGNATURE</th>
<th>E-MAIL ADDRESS</th>
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<table>
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<tr>
<th>COMPANY</th>
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<table>
<thead>
<tr>
<th>ADDRESS</th>
<th>PHONE</th>
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<table>
<thead>
<tr>
<th>NAME OF PARENT COMPANY</th>
<th>PHONE</th>
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</table>

<table>
<thead>
<tr>
<th>ADDRESS</th>
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<table>
<thead>
<tr>
<th>TAXPAYER I.D.#</th>
</tr>
</thead>
</table>
ATTACHMENT E – ARCHITECTUAL DRAWING
ARCHITECT / GENERAL CONTRACTOR NOTES

1. MINIMUM DIMENSIONS PROVIDE FOR CLEARANCE FROM ALL ADJACENT CONSTRUCTION/FACILITIES FOR ADJUSTMENT, OPERATION, AND SAFETY.
2. GENERAL CONTRACTOR SHALL BE RESPONSIBLE FOR ALL STRUCTURAL SUPPORT, ADJOINING CONSTRUCTION AND TRIM.
3. WALL CONSTRUCTION AT JAMBS MUST BE ADEQUATE FOR SECURING JAMBS AND WITHSTANDING FORCE EXERTED BY THE EXPANDABLE PANEL.
4. ALL INDICATES ADJUSTABLE FIXED SEALS.
   - T INDICATES OPERABLE PANEL ACCESS HOLE.
   - Y INDICATES BOTTOM SEAL OPERATOR HANDLE.
5. HINGE POINTS ARE SHOWN FOR DIAGRAMATIC PURPOSES ONLY.

WALL COVERING:

<table>
<thead>
<tr>
<th>PANEL FINISH</th>
<th>MARKERBOARD - STANDARD</th>
<th>MARKERBOARD - STANDARD</th>
</tr>
</thead>
<tbody>
<tr>
<td>SELECTION</td>
<td>WHITE</td>
<td>WHITE</td>
</tr>
<tr>
<td>EXP NOSE FINISH</td>
<td>MARKERBOARD - STANDARD</td>
<td>MARKERBOARD - STANDARD</td>
</tr>
<tr>
<td>SELECTION</td>
<td>WHITE</td>
<td>WHITE</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>PANEL SCHEDULE</th>
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<tbody>
<tr>
<td>PANEL</td>
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<tr>
<td>-------</td>
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<td>2</td>
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<tr>
<td>3</td>
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<tr>
<td>4</td>
</tr>
</tbody>
</table>

11'-8" INSTALLATION WIDTH

PANEL PLAN
ARCHITECT / GENERAL CONTRACTOR NOTES

1. REFER TO MODERNFOLD ASCE7 DESIGN GUIDE FOR SEISMIC BRACING REQUIREMENTS

EXPANDABLE PANEL WITH BULB SEAL

HINGED PANEL JOINT

BULB SEAL

CRANK OPERATED BOTTOM SEAL PROVIDES 2" OPERATING CLEARANCE (+.50" / -.50")

FINISHED CEILING

FINISHED FLOOR

FINISHED OPENING HEIGHT

FABRICATION HEIGHT
NOTES:

1. PUNCH OR DRILL .44" DIA. HOLES, 1.25" EACH SIDE OF CENTERLINE, 2.50" GAGE, AT ALL LOCATIONS, AS NOTED.

2. OMIT RODS AND NUTS

BRACKET REQUIREMENTS (EXCEPT AS NOTED):

- BRACKETS IN STACK: HEAVY DUTY
- BRACKETS IN RUN: HEAVY DUTY
ATTACHMENT B - BIDDER'S AGREEMENT
For Replacement of New Partition System at City of Birmingham

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

1. They have carefully examined the specifications, terms and Agreement of the Request for Proposal and all other provisions of this document and understand the meaning, intent, and requirement of it.

2. They will enter into a written contract and furnish the item or items in the time specified in conformance with the specifications and conditions contained therein for the price quoted by the proponent on this proposal.

Tim DeVoor 10-12-17
PREPARED BY DATE
(Print Name)
VICE PRESIDENT 10-12-17
TITLE DATE

Tim DeVoor
AUTHORIZED SIGNATURE
E-MAIL ADDRESS
tdevoor@gardinervose.com

GARDINER C. VOSE INC

832 CRESTVIEW, BLOOMFIELD HILLS, MI 48302
ADDRESS PHONE

SAME AS ABOVE 248 332-7000
NAME OF PARENT COMPANY PHONE

ADDRESS
ATTACHMENT C - COST PROPOSAL
For Replacement of New Partition System at City of Birmingham

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

Attach technical specifications for all proposed materials as outlined in the Contractor's Responsibilities section of the RFP (p. 6)

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<thead>
<tr>
<th>COST PROPOSAL</th>
<th>BID AMOUNT</th>
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<table>
<thead>
<tr>
<th>ADDITIONAL BID ITEMS</th>
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</tr>
</thead>
<tbody>
<tr>
<td>PAND P BOND</td>
<td>$ 175.00</td>
</tr>
<tr>
<td></td>
<td>$</td>
</tr>
<tr>
<td>GRAND TOTAL AMOUNT</td>
<td>$ 13,065.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>UNIT COST BID ITEMS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

Firm Name: GARDINER C. VOSE INC

Authorized signature: [Signature]
Date: 10-12-17
ATTACHMENT D - IRAN SANCTIONS ACT VENDOR CERTIFICATION FORM
For Replacement of New Partition System at City of Birmingham

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

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

John M. Furlong
PREPARED BY
(Print Name)

DATE
10/10/17

TITLE
John M. Furlong

DATE
10/10/17

AUTHORIZED SIGNATURE

E-MAIL ADDRESS

Gardiner C. Vose Inc

COMPANY

ADDRESS

PHONE

N/A

N/A

38-1548259 (Gardiner C. Vose Inc)

TAXPAYER I.D.#
ATTACHMENT A - AGREEMENT
For Replacement of New Partition System at City of Birmingham

This AGREEMENT, made this ______ day of _________, 2017, by and between CITY OF BIRMINGHAM, having its principal municipal office at 151 Martin Street, Birmingham, MI (hereinafter sometimes called "City"), and Gardiner C. Vose, Inc., having its principal office at 832 Crestview Avenue, Bloomfield Hills, MI 48302 (hereinafter called "Contractor"), provides as follows:

WITNESSETH:

WHEREAS, the City of Birmingham, through its Maintenance Department, is desirous of having work completed to remove and replace an existing Wall Partitions System for the Conference Rooms 202-203 at the Municipal Building in the City of Birmingham.

WHEREAS, the City has heretofore advertised for bids for the procurement and performance of services required to furnish a New Partition System, all labor, materials, and equipment required for the installation for a New Partition System for the Conference Rooms 202/203 at the Municipal Building located at 151 Martin Street, Birmingham, MI 48009., and in connection therewith has prepared a request for sealed proposals ("RFP"), which includes certain instructions to bidders, specifications, terms and conditions.

WHEREAS, the Contractor has professional qualifications that meet the project requirements and has made a bid in accordance with such request for cost proposals to furnish a New Partition System, all labor, materials, and equipment required for the installation for a New Partition System for the Conference Rooms 202/203 at the Municipal Building located at 151 Martin Street, Birmingham, MI 48009.

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

1. It is mutually agreed by and between the parties that the documents consisting of the Request for Proposal to furnish a New Partition System, all labor, materials, and equipment required for the installation for a New Partition System for the Conference Rooms 202/203 at the Municipal Building located at 151 Martin Street, Birmingham, MI 48009., and the Contractor’s cost proposal dated October 12, 2017 shall be incorporated herein by reference and shall become a part of this Agreement, and shall be binding upon both parties hereto. If any of the documents are in conflict with one another, this Agreement shall take precedence, then the RFP.

2. The City shall pay the Contractor for the performance of this Agreement in an amount not to exceed $13,065.00, as set forth in the Contractor’s October 12, 2017 cost proposal.
3. This Agreement shall commence upon execution by both parties, unless the City exercises its option to terminate the Agreement in accordance with the Request for Proposals.

4. The Contractor shall employ personnel of good moral character and fitness in performing all services under this Agreement.

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

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

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

8. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be severed from this Agreement and all other provisions shall remain in full force and effect.
9. This Agreement shall be binding upon the successors and assigns of the parties hereto, but no such assignment shall be made by the Contractor without the prior written consent of the City. Any attempt at assignment without prior written consent shall be void and of no effect.

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

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

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

   A. **Workers' Compensation Insurance**: Contractor shall procure and maintain during the life of this Agreement, Workers' Compensation Insurance, including Employers Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

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

   C. **Motor Vehicle Liability**: Contractor shall procure and maintain during the life of this Agreement Motor Vehicle Liability Insurance, including all applicable no-fault coverages, with limits of liability of not less than $1,000,000 per occurrence combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

   D. **Additional Insured**: Commercial General Liability and Motor Vehicle Liability Insurance, as described above, shall include an endorsement stating the following shall be **Additional Insureds**: The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards,
commissions and/or authorities and board members, including employees and volunteers thereof. This coverage shall be primary to any other coverage that may be available to the additional insured, whether any other available coverage by primary, contributing or excess.

E. Professional Liability: Professional liability insurance with limits of not less than $1,000,000 per claim if Contractor will provide service that are customarily subject to this type of coverage.

F. Pollution Liability Insurance: Contractor shall procure and maintain during the life of this Agreement Pollution Liability Insurance, with limits of liability of not less than $1,000,000, per occurrence preferred, but claims made accepted.

G. Owners Contractors Protective Liability: The Contractor shall procure and maintain during the life of this contract, an Owners Contractors Protective Liability Policy with limits of liability not less than $3,000,000 per occurrence, combined single limit, Personal Injury, Bodily Injury and Property Damage. The City of Birmingham shall be “Name Insured” on said coverage. Thirty (30) day’s Notice of Cancellation shall apply to this policy.

H. Cancellation Notice: Workers’ Compensation Insurance, Commercial General Liability Insurance and Motor Vehicle Liability Insurance (and Professional Liability Insurance, if applicable), as described above, shall include an endorsement stating the following: "Thirty (30) days Advance Written Notice of Cancellation or Non-Renewal, shall be sent to: Finance Director, City of Birmingham, PO Box 3001, 151 Martin Street, Birmingham, MI 48012-3001.

I. Proof of Insurance Coverage: Contractor shall provide the City of Birmingham at the time the Agreement is returned for execution, Certificates of Insurance and/or policies, acceptable to the City of Birmingham, as listed below.
   1) Two (2) copies of Certificate of Insurance for Workers’ Compensation Insurance;
   2) Two (2) copies of Certificate of Insurance for Commercial General Liability Insurance;
   3) Two (2) copies of Certificate of Insurance for Vehicle Liability Insurance;
   4) Two (2) copies of Certificate of Insurance for Professional Liability Insurance;
   5) If so requested, Certified Copies of all policies mentioned above will be furnished.

J. Coverage Expiration: If any of the above coverages expire during the term of this Agreement, Contractor shall deliver renewal certificates and/or policies to the City of Birmingham at least (10) days prior to the expiration date.

K. Maintaining Insurance: Upon failure of the Contractor to obtain or maintain such insurance coverage for the term of the Agreement, the City of Birmingham may, at its option, purchase such coverage and subtract the cost of obtaining such
coverage from the Agreement amount. In obtaining such coverage, the City of Birmingham shall have no obligation to procure the most cost-effective coverage but may contract with any insurer for such coverage.

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

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

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

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

<table>
<thead>
<tr>
<th>City of Birmingham</th>
<th>Gardiner C. Vose, Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attn: Carlos Jorge</td>
<td>Attn: Tim DeVooggd</td>
</tr>
<tr>
<td>151 Martin Street</td>
<td>832 Crestview Avenue</td>
</tr>
<tr>
<td>Birmingham, MI 48009</td>
<td>Bloomfield Hills, MI 48302</td>
</tr>
<tr>
<td>248.530.1882</td>
<td>248.332.7000</td>
</tr>
</tbody>
</table>

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

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

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

WITNESSES:

CONTRACTOR
By: ____________________________
Tim DeVoogd
Its: Project Manager

CITY OF BIRMINGHAM
By: ____________________________
Its: Mayor

By: ____________________________
Cherilynn Brown
Its: City Clerk

Approved:

Carlos Jorge, Building Superintendent
(Approved as to substance)

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

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

Joseph A. Valentine, City Manager
(Approved as to substance)
**CERTIFICATE OF LIABILITY INSURANCE**

**PRODUCER**
Capital Insurance Group
1263 West Square Lake Road
Bloomfield Hills MI 48302

**CONTACT NAME**
Billy-Jo Jordan
PHONE (M.S. No. Ext.): 243-333-3250
FAX (M.S. No.): 243-333-2904
E-MAIL ADDRESS: bjordan@cap-ins.com

**INSCRIBER(S) AFFORDING COVERAGE**

<table>
<thead>
<tr>
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<th>NORAC #</th>
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<tbody>
<tr>
<td>Gardiner C. Vose Inc</td>
<td>10677</td>
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<tr>
<td>832 Crestview Ave.</td>
<td>10166</td>
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<tr>
<td>Bloomfield Hills MI 48302</td>
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**COVERAGE**

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<thead>
<tr>
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<tr>
<td>A COMMERCIAL GENERAL LIABILITY</td>
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<td>CLAIMS-MADE</td>
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<td>EACH OCCURRENCE</td>
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<td>DAMAGE TO REMITTED PREMISES (Ea occurrence)</td>
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<td>MED EXP (Any one person)</td>
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<td>PERSONAL &amp; ADV INJURY</td>
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<tr>
<td>GENERAL AGGREGATE</td>
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<td>BODILY INJURY (Per accident)</td>
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<td>PROPERTY DAMAGE (Per accident)</td>
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<td>CLAIMS-MADE</td>
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<td>A INSTALLATION</td>
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<td>5/31/2017</td>
<td>5/31/2018</td>
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<td>Jobsite</td>
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</tr>
<tr>
<td>Unnamed</td>
<td>100,000</td>
</tr>
</tbody>
</table>

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES**

(ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project Location:
Birmingham, MI

Additional Insured:
The City of Birmingham, including all elected and appointed officials, all employee and volunteers, all boards, commissions and/or authorities and board members, including employees and volunteers thereof.

**CERTIFICATE HOLDER**
The City of Birmingham
131 Martin Street
Birmingham MI 48009

**CANCELLATION**

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**

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**THE CINCINNATI INSURANCE COMPANY**

**Performance Bond**

**CONTRACTOR** (Name, legal status and address):
Gardiner C. Vose, Inc.
832 Crestview
Bloomfield Hills, MI 48302

**SURETY** (Name, legal status and principal place of business):
THE CINCINNATI INSURANCE COMPANY
6200 S. GILMORE ROAD
FAIRFIELD, OHIO 45014-5141

**OWNER** (Name, legal status and address):
CITY OF BIRMINGHAM
151 MARTIN ST
BIRMINGHAM, MI 48009

**CONSTRUCTION CONTRACT**
Date: October 12, 2017
Amount: $13,065.00

Description (Name and location):
Furnish and Install Modernfold Operable Partition System

**BOND**
Date (Not earlier than Construction Contract Date): October 12, 2017
Amount: $13,065.00

Modifications to this Bond: □ None □ See Section 16

**CONTRACTOR AS PRINCIPAL**
Company: Gardiner C. Vose, Inc.
Signature: [Signature]
Name and Title: [Name and Title]

**SURETY**
Company: THE CINCINNATI INSURANCE COMPANY
Corporate Seal: [Corporate Seal]
Signature: [Signature]
Name and Title: Jane M. Haller, Attorney-in-fact

(Any additional signatures appear on the last page of this Performance Bond.)

**AGENT or BROKER:**
Capital Insurance Group
1263 W Square Lake Rd Ste 101
Bloomfield Hills, MI

**OWNER'S REPRESENTATIVE** (Architect, Engineer or other party):
1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

   .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

   .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

   .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

   5.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract;

   5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

   5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

   5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

       .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

       .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

.2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and

.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which the signature appears.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14 Definitions

14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract. The agreement between the Owner and the Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

**CONTRACTOR AS PRINCIPAL**

Company: 
Gardiner C. Vose, Inc.

Signature: ____________________________

Name and Title: 
Address: 

**SURETY**

Company: (Corporate Seal)

Signature: ____________________________

Name and Title: 
Address: 

The Company executing this bond vouches that this document conforms to American Institute of Architects Document A312, 2010 Edition.
THE CINCINNATI INSURANCE COMPANY

Payment Bond

CONTRACTOR (Name, legal status and address):
Gardiner C. Vose, Inc.
832 Crestview
Bloomfield Hills, MI 48302

OWNER (Name, legal status and address):
CITY OF BIRMINGHAM
151 MARTIN ST
BIRMINGHAM, MI 48009

CONSTRUCTION CONTRACT
Date: October 12, 2017
Amount: $13,065.00
Description (Name and location):
Furnish and Install Modernfold Operable Partition System

SURETY (Name, legal status and principal place of business):
THE CINCINNATI INSURANCE COMPANY
6200 S. GILMORE ROAD
FAIRFIELD, OHIO 45014-5141

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.
Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.
AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form.
This is not a single combined Performance and Payment Bond.

BOND
Date (Not earlier than Construction Contract Date): October 12, 2017
Amount: $13,065.00
Modifications to this Bond: □ None □ See Section 18

CONTRACTOR AS PRINCIPAL
Company: Gardiner C. Vose, Inc.
Signature: [Signature]
Name and Title: John M. Fultens VP

SURETY
Company: THE CINCINNATI INSURANCE COMPANY
Corporate Seal:
Signature: [Signature]
Name and Title: Jane M. Haller, Attorney-in-fact

(Any additional signatures appear on the last page of this Payment Bond.)

AGENT or BROKER:
Capital Insurance Group
1263 W Square Lake Rd Ste 101
Bloomfield Hills, MI

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

The Company executing this bond vouches that this document conforms to American Institute of Architects Document A312, 2010 Edition.
S-2150-AIA-A312 (11/10) PAYMENT BOND
1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

5.1 Claimants, who do not have a direct contract with the Contractor,

1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and

2. have sent a Claim to the Surety (at the address described in Section 13).

5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

7.2 Pay or arrange for payment of any undisputed amounts.

7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contractor or to related subcontracts, purchase orders and other obligations.

12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

15. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1 Claim. A written statement by the Claimant including at a minimum:

   .1 the name of the Claimant;

   .2 the name of the person for whom the labor was done, or materials or equipment furnished;

   .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;

   .4 a brief description of the labor, materials or equipment furnished;

   .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;

   .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;

   .7 the total amount of previous payments received by the Claimant; and

   .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

16.3 Construction Contract. The agreement between the Owner and the Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

The Company executing this bond vouches that this document conforms to American Institute of Architects Document A312, 2010 Edition.
16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company: Gardiner C. Yuse, Inc.  (Corporate Seal)

Signature: ____________________________
Name and Title: ____________________________
Address: ____________________________

SURETY
Company:  (Corporate Seal)

Signature: ____________________________
Name and Title: ____________________________
Address: ____________________________
THE CINCINNATI INSURANCE COMPANY
Fairfield, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY, a corporation organized under the laws of the State of Ohio, and having its principal office in the City of Fairfield, Ohio, does hereby constitute and appoint

Robert F. Moglia, Jr.; Thomas Moglia; Donn Johnson; Edmund M. George; Jane M. Haller; Lori A. Powell; Casey D. Lopez; Natalie A. Hein and/or Ashley LaPard

of Bloomfield Hills, Michigan its true and lawful Attorney(s)-in-Fact to sign, execute, seal and deliver on its behalf as Surety, and as its act and deed, any and all bonds, policies, undertakings, or other like instruments, as follows:

Any such obligations in the United States, up to Twenty Five Million and No/100 Dollars ($25,000,000.00).

This appointment is made under and by authority of the following resolution passed by the Board of Directors of said Company at a meeting held in the principal office of the Company, a quorum being present and voting, on the 6th day of December, 1958, which resolution is still in effect:

"RESOLVED, that the President or any Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company."

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company at a meeting duly called and held on the 7th day of December, 1973.

"RESOLVED, that the signature of the President or a Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary or Assistant Secretary and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company."

IN WITNESS WHEREOF, THE CINCINNATI INSURANCE COMPANY has caused these presents to be sealed with its corporate seal, duly attested by its Vice President this 1st day of October, 2015.

THE CINCINNATI INSURANCE COMPANY

\[Signature\]
Vice President

STATE OF OHIO \(\infty\) ss:
COUNTY OF BUTLER \(\infty\)

On this 1st day of October, 2015, before me came the above-named Vice President of THE CINCINNATI INSURANCE COMPANY, to me personally known to be the officer described herein, and acknowledged that the seal affixed to the preceding instrument is the corporate seal of said Company and the corporate seal and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporation.

\[Signature\]
MARK J. HULLER, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date. Section 147.03 O.R.C.

I, the undersigned Secretary or Assistant Secretary of THE CINCINNATI INSURANCE COMPANY, hereby certify that the above is a true and correct copy of the Original Power of Attorney issued by said Company, and do hereby further certify that the said Power of Attorney is still in full force and effect.

GIVEN under my hand and seal of said Company at Fairfield, Ohio.

12th day of October, 2017

\[Signature\]
Scott R. Elder
Secretary

BN-1065 (10/15)
On June 19th, 2017 the City held a joint workshop session with the Planning Board and City Commission to discuss current planning issues. One of the issues discussed was the City Commission’s desire for the Planning Board to study the economic development liquor license boundaries, and consider a possible expansion of the areas in which such a license may be permitted.

Accordingly, the Planning Board has been discussing this issue, and on October 25, 2017, the Planning Board voted unanimously to recommend expansion of the area in which economic development liquor licenses are permitted to include additional areas in the Triangle District, the Rail District (with the exception of the Crosswinds development), and the southwest corner of Woodward and Quarton.

Thus, the Planning Division requests that the City Commission set a public hearing date of November 20, 2017 to consider ordinance amendments to the Zoning Ordinance as follows:

a) Article 2, Section 2.27, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the B1 (Neighborhood Business) zone district;

b) Article 2, Section 2.29, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the B2 (General Business) zone district;

c) Article 2, Section 2.31, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the B2B (General Business) zone district;

d) Article 2, Section 2.39, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the MX (Mixed Use) zone district;

e) Article 3, Section 3.08, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the MU-3, MU-5 and MU-7 (Mixed Use) zone districts; and

f) Appendix C, Exhibit 1, Economic Development Licenses Map to expand the number of
parcels which may qualify for the use of an Economic Development Liquor License.

SUGGESTED ACTION:

To set a public hearing date of November 20, 2017 to consider the following ordinance amendments to allow the use of Economic Development Liquor Licenses in an expanded area as shown on the attached map:

- **g)** Article 2, Section 2.27, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the B1 (Neighborhood Business) zone district;
- **h)** Article 2, Section 2.29, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the B2 (General Business) zone district;
- **i)** Article 2, Section 2.31, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the B2B (General Business) zone district;
- **j)** Article 2, Section 2.39, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the MX (Mixed Use) zone district;
- **k)** Article 3, Section 3.08, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the MU-3, MU-5 and MU-7 (Mixed Use) zone districts; and
- **l)** Appendix C, Exhibit 1, Economic Development Licenses Map to expand the number of parcels which may qualify for the use of an Economic Development Liquor License.
D. ECONOMIC DEVELOPMENT LICENSE BOUNDARY REVIEW

Ms. Ecker explained that this issue came up over the past year. The Economic Development License boundary includes mostly properties along the Woodward corridor that the Commission at the time felt were the properties that needed a push forward in order to see some redevelopment occur. The area also now includes Maple Road just to the east of Woodward. The Stand and Triple Nickel have been developed as a result of the district. We have had interest from others who do not fall in the district at this point. She asked if there is interest in changing the boundaries for this district or not. Ms. Ecker added the benefit of being included in the district is the ability to transfer a liquor license from another municipality.

Mr. Jeffares is in favor of looking at this.

Commissioner Hoff said the Economic Development license does not have as many restrictions as the Bistro license, and because of that, she is not in favor of expanding the Economic Development license boundary. By expanding the area, it would bring it closer to residential, areas she feels would be better suited for a Bistro license.

Commissioner DeWeese feels we need more control of it. Currently, we are seeing Bistros getting out of hand. He agrees with Commissioner Hoff, and suggested there maybe is an intermediate step.

Commissioner Sherman said the City does have control, as a Special Land Use Permit is required. This may be another tool to encourage something that would not otherwise be done.

Commissioner DeWeese clarified that his concern is about size, scale, and appropriateness.

Mayor Pro Tem Harris asked how challenging is it for a business to obtain a liquor license if it is not in an area for a Bistro license or economic development license. Ms. Ecker does not have the specifics on that, but the owner would have to obtain an existing quota license, which are rarely for sale, and are expensive.

City Manager Valentine clarified that the investment triggers the ability to obtain the license, then the applicant must purchase the license.

Commissioner Boutros said he thinks it is worth consideration.

Mayor Nickita suggested that a revision is in need of further review to see if it has merit. There are areas in the Triangle District that could use some incentive for development.
City Commission Minutes
July 10, 2017

07-196-17 2017 – 2018 PLANNING BOARD ACTION LIST

City Planner Ecker presented the Draft Planning Board Action List for 2017-2018 based on the June 19, 2017 Joint Planning Board/City Commission Meeting. Each Commissioner noted their preference for priority projects, taking into account how quickly an item could be completed, which items might bog down progress because they will require more effort, input and time, and which items are issues the Commission is currently facing.

City Planner Ecker explained the Planning Board addresses 5 study items at each study session, so that 5 issues are being worked on concurrently. She estimated any zoning ordinance amendment takes a minimum of 3 - 6 months to go through the planning and public hearing process to reach the point of adoption.

A change in wording of the Specific Direction/Problem Definition for Definition of Retail – Short Term Study was requested to be consistent with City Manager Valentine’s June 30, 2017 memo to the Planning Board: “review the Redline Retail Area as prescribed by the Downtown Birmingham 2016 Report for background on the intent for retail in the downtown”.

With regard to the issue of renting properties, which City Planner Ecker noted is not within the scope of the Planning Board, City Manager Valentine indicated he presented the issue at the joint meeting as something to keep an eye on. He believes it important to monitor pending legislation and plan for appropriate language in case the legislation doesn’t pass.

The Commission requested that City Planner Ecker provide more clarity and detail for 2 items: (1) “Consider looking at principal uses allowed and add flexibility ("and other similar uses")” and (2) “Potential residential zoning changes; MF & MX garage doors”.

Mayor Nickita asked for a timely update on the Planning Board’s progress, and City Manager Valentine suggested a progress report be given at the next Joint Planning Board/City Commission Meeting.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese:

To approve the Planning Board 2017 Action List as amended:
1. Definition of Retail – Short Term Study
2. Bistro Parameters
3. Economic Development License Boundary Review
4. Renovation of Commercial Properties
5. Commercial Projections onto Public Property / Architectural Allowances
6. Definition of Retail – Long Term Study
7. Shared Parking
8. Consider looking at principal uses allowed and add flexibility (“and other similar uses”)”
9. Potential residential zoning changes; MF & MX garage doors
10. Rail District Boundary Review
11. Sustainable Urbanism (Green building standards, pervious surfaces, geothermal, native
12. Additional Items to be Considered during Master Plan Process

VOTE: Yeas, 7
Nays, 0
Absent, 0
3. Economic Development Liquor License Boundaries

Ms. Ecker recalled that in 2009, the City Commission approved the creation of an Economic Development Liquor License as an incentive to encourage development in certain areas of the City. The properties that are eligible for this incentive are predominately located on or near Woodward Ave.

On February 13, 2017, the owners of the Whole Foods property at 2100 E. Maple Rd. requested that the City either expand the Rail District boundary to include the Whole Foods property so that a Bistro License could be approved, or expand the boundaries of the Economic Development License area along Woodward Ave. to allow Whole Foods to qualify for an Economic Development Liquor License. The City Commission reviewed both options, and voted to include Whole Foods within the Rail District to allow the operation of a bistro, and decided not to expand the Economic Development boundaries at that time.

On June 19, 2017 at the joint meeting, both the City Commission and the Planning Board discussed the expansion of the Economic Development License area to include a larger area of the City, perhaps including the Triangle District and/or the Rail District. On July 10, 2017, the City Commission amended the Planning Board’s Action List to include a review of the Economic Development License boundaries as the third priority.

Draft ordinance language is presented that expands the boundaries established in Exhibit 1 of Appendix C to include all of the Rail District, and the remainder of the Triangle District, with the exception of the single-family residential area (zoned R-2, Single-Family Residential, and ASF-3, Attached Single-Family Residential).

Mr. Williams did not think the Crosswinds project in the Rail District should be on the Economic Development License map. It was discussed that the Economic Development License is already allowed on numerous parcels in the Triangle District. Ms. Ecker suggested cutting out sites that are immediately adjacent to residential and potentially include sites perhaps along Adams that do not abut single-family residential.

The Chairman called for public comments at 10:35 p.m.

Ms. Catherine Abhound, said she is a resident at 367 Suffield; a property owner of 2125 E. Lincoln and 2159 E. Lincoln; and also a business owner of Armstrong White which is the tenant at 2159 E. Lincoln. Ms. Abhound observed there has not been an enormous amount of economic development in the Rail District. So she feels that expanding the Economic Development into the Rail District would foster development. Everything in that area is moving and it is ripe for economic development.

This matter will come to the board one more time with revised draft ordinance language before going to a public hearing.
STUDY SESSIONS

1. Economic Development Liquor License Boundaries

Ms. Ecker recalled that in 2009 the City Commission approved the creation of an Economic Development Liquor License as an incentive to encourage development in certain areas of the City. The properties that are eligible for this incentive are predominantly located on or near Woodward Ave.

On July 10, 2017, the City Commission amended the Planning Board’s Action List to include a review of the Economic Development License boundaries as the third priority. Accordingly, the Planning Board began discussions again regarding the expansion of the Economic Development Liquor License areas to include the Triangle and/or Rail District(s) or other areas of the City.

On August 9, 2017, the Planning Board discussed the expansion of the Economic Liquor License areas, specifically to expand the opportunities in the Triangle District, and to allow such licenses in the Rail District. Board members discussed several options, and ultimately directed staff to come back to the board with revised ordinance language and a revised map to include all of the Triangle District, with the exception of the single-family residential area at the north end; all of the Rail District with the exception of the Crosswinds development; and parcels along the east side of Adams adjacent to the Triangle District which do not abut single-family residential zoned parcels.

Board members made the following changes to the Economic Development License boundaries that were depicted on the revised map that was provided:

- Take out the parcel behind All Seasons because it butts up to single-family even though it is zoned O-1.
- Include two parcels to the west of Elm between Holland and Lincoln in the Triangle District. Exclude the two parcels east of Elm;
- Continue to leave Baker’s Square out.

With regard to the southwest corner of Quarton and Woodward Ave., Ms. Ecker said there is a judgment on record which has established the terms for future development.

Chairman Clein called for comments from the audience at 9:07 p.m.

Mr. Rick Rattner, 380 N. Old Woodward Ave., stated there are 39 liquor licenses in the City and all of them except four are in the Downtown Development Overlay District. He submitted that the whole Downtown District should be part of the Economic Development License Boundary map. Developers are spending incredible amounts of money along Woodward Ave. and Old Woodward Ave. and that area is the engine of this community. The developers should be allowed to apply for a Special Land Use Permit and then go about getting the license as economically as possible.

Secondly, the piece of property at Quarton and Woodward Ave. belongs to his client. It has
been vacant since 1989 when a gas station was torn down and they had a lawsuit with the City. The property was too small to do anything with until the Road Commission for Oakland County abandoned 33 ft. of the right-of-way. On the other side is a very small DTE station. In the back is a public alley, and then Gasow Veterinary to the south. So it is a very good buildable piece and he doesn't know why it hasn't sold.

Mr. Williams thought that a rather limited area of the Rail District could use a big investment. Mr. Koseck noted his sense is that the intention of the Economic Development Liquor License was to shift attention to areas that are under developed. He is happy with the map as the board has amended it. Mr. Williams was also in favor of the map. The Downtown area currently has a lot of places to get a drink so he thinks this tool should go east because both of those districts are underdeveloped in terms of $10 million type of developments. From the City's standpoint those are the two areas this group sees as being ripe for such development.

The group agreed as to the expansion into the Triangle area and the Rail District as modified tonight.

**Motion by Mr. Williams**
**Seconded by Mr. Boyle to set a public hearing for October 25, 2017 to expand the boundaries of the Economic Development Liquor License to include the south end of the Triangle District and from Holland south in the Rail District.**

There were no comments from the public on that motion at 9:34 p.m.

**Motion carried, 6-0.**

**VOICE VOTE**
Yeas: Williams, Boyle, Jeffares, Clein, Koseck, Lazar
Nays: None
Absent: Whipple-Boyce

**Motion by Mr. Jeffares**
**Seconded by Mr. Williams to include in the boundaries of the Economic Development Liquor License map the one parcel at the SW corner Woodward Ave. and Quarton.**

There were no comments from members of the public on the motion.

**Motion carried, 4-2.**

**ROLLCALL VOTE**
Yeas: Jeffares, Williams, Koseck, Lazar
Nays: Boyle, Clein
Absent: Whipple-Boyce
DATE: October 19, 2017

TO: Planning Board

FROM: Jana L. Ecker, Planning Director

SUBJECT: Economic Development Liquor License Boundaries

In 2009, the City Commission approved the creation of an Economic Development Liquor License as an incentive to encourage development in certain areas of the City. The properties that are eligible for this incentive are identified on the map in Exhibit 1 of Appendix C of the Zoning Ordinance. These properties are predominately located on or near Woodward Avenue.

On February 13th, 2017, the owners of the Whole Foods property at 2100 E. Maple requested that the City either expand the Rail District boundary to include the Whole Foods property so that a bistro license could be approved or expand the boundaries of the Economic Development License area along Woodward to allow Whole Foods to qualify for an Economic Development Liquor License. The City Commission reviewed both options, and voted to include Whole Foods within the Rail District to allow use of a bistro license, and decided not to expand the Economic Development Boundaries at that time.

On June 19, 2017 at the joint meeting, both the City Commission and the Planning Board discussed the expansion of the Economic Development License area to include a larger area of the City, perhaps including the Triangle District and/or the Rail District.

On July 10, 2017, the City Commission amended the Planning Board’s Action List to include a review of the Economic Development License boundaries as the third priority. Accordingly, the Planning Board began discussions again regarding the expansion of the Economic Development Liquor License areas to include the Triangle and/or Rail District(s) or other areas of the City.

On August 9, 2017, the Planning Board discussed the expansion of the Economic Liquor License areas, specifically to expand the opportunities in the Triangle District, and to allow such licenses in the Rail District. Board members discussed several options, and ultimately directed staff to come back to the board with revised ordinance language and a revised map to include all of the Triangle District, with the exception of the single family residential area at the north end, all of the Rail District, with the exception of the Crosswinds development, and parcels along the east side of Adams adjacent to the Triangle District which do not abut single family residential zoned parcels.
On September 13, 2017, the Planning Board reviewed draft ordinance language that expands the boundaries established in Exhibit 1 of Appendix C to include all of the Rail District, with the exception of the Crosswinds development, and the remainder of the Triangle District, with the exception of the single family residential area (zoned R2, single family residential, and ASF-3, attached single family residential). The Board voted unanimously to set a public hearing for October 25, 2017 to consider the required ordinance amendments and map changes to expand the use of Economic Development Liquor Licenses in Birmingham. The parcels previously discussed on the east side of Adams adjacent to the Triangle District which do not abut single family residential zoned properties were removed based on the consensus of the Planning Board. A majority of the Planning Board also voted to include the parcel on the southwest corner of Woodward and Quarton in the expanded Economic Development License area.

**Suggested Action:**

To recommend approval to the City Commission of the following ordinance amendments to allow the use of Economic Development Liquor Licenses in an expanded area as shown on the attached map:

m) Article 2, Section 2.27, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the B1 (Neighborhood Business) zone district;

n) Article 2, Section 2.29, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the B2 (General Business) zone district;

o) Article 2, Section 2.31, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the B2B (General Business) zone district;

p) Article 2, Section 2.39, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the MX (Mixed Use) zone district;

q) Article 3, Section 3.08, District Intent, Permitted Uses and Special Uses to amend the uses requiring a Special Land Use Permit in the MU-3, MU-5 and MU-7 (Mixed Use) zone districts; and

r) Appendix C, Exhibit 1, Economic Development Licenses Map to expand the number of parcels which may qualify for the use of an Economic Development Liquor License.
THE CITY OF BIRMINGHAM ORDAINS: AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND 2.27, B1 (Neighborhood Business) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT.

Section 2.27, B1 (Neighborhood Business) District Intent, Permitted Uses, and Special Uses

Accessory Permitted Uses
- Alcoholic beverage sales*
- Kennel*
- Laboratory – medical/dental*
- Loading facility – off-street*
- Outdoor cafe*
- Outdoor display*
- Parking facility – off-street*
- Sign

Uses Requiring a Special Land Use Permit
- Alcoholic beverage sales (off-premise consumption)
- Alcoholic beverage sales (on-premise consumption)
- Child care center
- Continued care retirement community
- Independent hospice facility
- Drive-in facility*
- Gasoline full service station*
- Skilled nursing facility
- Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels identified on Exhibit 1; Appendix C)
ORDAINED this____day of__________, 2017 to become effective 7 days after publication.

________________________________________
Mark Nickita, Mayor

________________________________________
Cherilynn Mynsberge, City Clerk
THE CITY OF BIRMINGHAM ORDAINS: AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND 2.29, B2 (General Business) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT.

Section 2.29, B2 (General Business) District Intent, Permitted Uses, and Special Uses

Accessory Permitted Uses
- Alcoholic beverage sales (off-premise consumption) *
- Kennel *
- Laboratory – medical/dental *
- Loading facility – off-street *
- Outdoor cafe *
- Outdoor display *
- Outdoor storage *
- Parking facility – off-street *
- Retail fur sales cold storage facility
- Sign

Uses Requiring a Special Land Use Permit
- Alcoholic beverage sales (on-premise consumption)
- Assisted living
- Auto laundry
- Auto sales agency
- Bistro (only permitted in Triangle District or Rail District) *
- Bus/train passenger station and waiting facility
- Continued care retirement community
- Display of broadcast media devices (only permitted in conjunction with a gasoline service station)
- Drive-in facility
- Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels within the Triangle District and on Woodward Avenue identified on Exhibit 1; Appendix C)
- Funeral home
- Gasoline full service station*
- Gasoline service station
- Independent hospice facility
- Independent senior living
- Skilled nursing facility
- Trailer camp

**Uses Requiring City Commission Approval**
- Regulated uses*

ORDAINED this______day of__________, 2017 to become effective 7 days after publication.

___________________________________________

Mark Nickita, Mayor

___________________________________________

Cherilynn Mynsberge, City Clerk
THE CITY OF BIRMINGHAM ORDAINS: AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND 2.31, B2B (General Business) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT.

Section 2.31, B2B (General Business) District Intent, Permitted Uses, and Special Uses

**Accessory Permitted Uses**
- Alcoholic beverage sales (off-premise consumption) *
- Kennel *
- Laboratory – medical/dental *
- Loading facility – off-street *
- Outdoor cafe *
- Outdoor display *
- Outdoor storage *
- Parking facility – off-street *
- Sign

**Uses Requiring a Special Land Use Permit**
- Alcoholic beverage sales (on-premise consumption)
- Assisted living
- Auto laundry
- Bistro (only permitted in Triangle District or Rail District) *
- Bus/train passenger station and waiting facility
- Continued care retirement community
- Display of broadcast media devices (only permitted in conjunction with a gasoline service station)
- Drive-in facility
- Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels within the Triangle District and on Woodward Avenue – identified on Exhibit 1; Appendix C)
- Funeral home
- Gasoline full service station *
- Gasoline service station
• Independent hospice facility
• Independent senior living
• Skilled nursing facility
• Trailer camp

Uses Requiring City Commission Approval
• Regulated uses*

ORDAINED this______day of__________, 2017 to become effective 7 days after publication.

______________________________
Mark Nickita, Mayor

______________________________
Cherilynn Mynsberge, City Clerk
ECONOMIC DEVELOPMENT OPTION
ORDINANCE NO.________

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

TO AMEND 2.39, MX (Mixed Use) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT.

Section 2.39, MX (Mixed Use) District Intent, Permitted Uses, and Special Uses

**Accessory Permitted Uses**
- Alcoholic beverage sales*
- Dwelling – accessory*
- Garage – private
- Greenhouse – private
- Home occupation
- Loading facility – off-street*
- Outdoor café*
- Outdoor display*
- Outdoor storage*
- Parking facility – off-street*
- Parking structure*
- Renting of rooms*
- Sign
- Swimming pool - private

**Uses Requiring a Special Land Use Permit**
- Alcoholic beverage sales (on premise consumption)
- Bistros operating with a liquor license granted under the authority of chapter 10, Alcoholic Liquors, Division 4 – Bistro Licenses
- Uses with expanded hours past 7 a.m. to 11 p.m.
- Church
- College
- Dwelling – first floor with frontage on Eton Road
- Outdoor storage*
• Parking structure (not accessory to principle use)
• Religious institution
• School – private
• School – public
• Residential use combined with permitted nonresidential use with frontage on Eton Road
• Any permitted principal use with a total floor area greater than 6,000 sq. ft.
• Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels identified on Exhibit 1; Appendix C)

Used Requiring City Commission Approval
• Assisted living
• Continued care retirement community
• Independent hospice facility
• Independent senior living
• Regulated uses*
• Skilled nursing facility

ORDAINED this______day of____________, 2017 to become effective 7 days after publication.

______________________________

Mark Nickita, Mayor

______________________________

Cherilynn Mynsberge, City Clerk
THE CITY OF BIRMINGHAM ORDAINS: AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND SECTION 3.08, MU-3 (MIXED USE) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT.

Section 3.08, MU-3 (Mixed Use) District Intent, Permitted Uses, and Special Uses

Accessory Permitted Uses
- Alcoholic beverage sales*
- Alcoholic beverage sales (off-premise consumption)*
- Any use incidental to principal use
- Retail fur sales cold storage facility
- Sign
- Parking – off-street

Uses Requiring a Special Land Use Permit
- Alcoholic beverage sales (on premise consumption)
- Bank (with drive-through facilities)
- Bistro
- Drive-in facility accessory to a permitted retail business, excluding restaurants
- Funeral home
- Church
- Parking structure
- Religious institution
- Social club
- Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels identified on Exhibit 1; Appendix C)

ORDAINED this______day of___________, 2017 to become effective 7 days after publication.

Mark Nickita, Mayor

Cherilynn Mynsberge, City Clerk
ECONOMIC DEVELOPMENT OPTION
ORDINANCE #: ______________

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

TO AMEND SECTION 3.08, MU-5 (Mixed Use) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT.

Section 3.08, MU-5 (Mixed Use) District Intent, Permitted Uses, and Special Uses

Accessory Permitted Uses
- Alcoholic beverage sales*
- Alcoholic beverage sales (off-premise consumption)*
- Any use incidental to principal use
- Retail fur sales cold storage facility
- Sign
- Parking – off-street

Uses Requiring a Special Land Use Permit
- Alcoholic beverage sales (on premise consumption)
- Auto sales agency
- Auto show room
- Bank (with drive-through facilities)
- Bistro
- Drive-in facility accessory to a permitted retail business, excluding restaurants
- Funeral home
- Gasoline full-service station
- Gasoline service station
- Church
- Religious institution
- Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels identified on Exhibit 1; Appendix C)
ORDAINED this______day of__________, 2017 to become effective 7 days after publication.

_____________________________________
Mark Nickita, Mayor

_____________________________________
Cherilynn Mynsberge, City Clerk
THE CITY OF BIRMINGHAM ORDAINS: AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND SECTION 3.08, MU-7 (Mixed Use) DISTRICT INTENT, PERMITTED USES, AND SPECIAL USES TO AMEND THE USES REQUIRING A SPECIAL LAND USE PERMIT.

Section 3.08, MU-7 (Mixed Use) District Intent, Permitted Uses, and Special Uses

**Accessory Permitted Uses**
- Alcoholic beverage sales*
- Alcoholic beverage sales (off-premise consumption)*
- Any use incidental to principal use
- Retail fur sales cold storage facility
- Sign
- Parking – off-street

**Uses Requiring a Special Land Use Permit**
- Alcoholic beverage sales (on premise consumption)
- Auto sales agency
- Auto show room
- Bank (with drive-through facilities)
- Bistro
- Drive-in facility accessory to a permitted retail business, excluding restaurants
- Funeral home
- Gasoline full-service station
- Gasoline service station
- Church
- Religious institution
- **Establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels identified on Exhibit 1; Appendix C)**
ORDAINED this____day of__________, 2017 to become effective 7 days after publication.

________________________________________

Mark Nickita, Mayor

________________________________________

Cherilynn Mynsberge, City Clerk
Hi Jana,

I hope all is well with you! I'm writing this letter to you & the planning board in SUPPORT of an "Economic development license" for the Rail district. As a business owner and ownership in 2 premiere Rail district properties I believe this license would unleash continued growth in a very up & coming area "The rail district".

I cannot attend this Wednesday as I'm out of town and wanted to send my letter of support as We bring many clients both from our area as well as out of town guest to wine & dine in this GREAT TOWN of Birmingham.

Thank you for listening, I look forward to the outcome.

Sincerely,

Chuck White
248-931-2828
2125 East Lincoln
Birmingham, MI 48009
Chuck.White@armstrong-white.com
www.armstrong-white.com

--

Jana L. Ecker
Planning Director
City of Birmingham
248-530-1841
Dear Planning Board,

I'm writing to lend my support for the expansion of the economic development boundaries to include the mixed use area in The Rail District. This initiative will activate an area of our community that requires substantial investment, and will bring new dynamic businesses, restaurants, and mixed use developments to the neighborhood.

Please vote yes to this expansion on Wednesday 10/25 and send this proposal to The City Commission.

Thank you for your continued service and for your attention to this matter.

Sincerely,

Name: Tom Luke
Address: 416 Park St., Birmingham 48009

--

Jana L. Ecker

Planning Director
City of Birmingham
248-530-1841
Fwd: Support for economic development license expansion
1 message

Jana Ecker <jecker@bhamgov.org>  
To: Susan Delpup <sdelpup@bhamgov.org>  

--------- Forwarded message ---------
From: Katherine Abboud <Katherine.Abboud@armstrong-white.com>  
Date: Mon, Oct 23, 2017 at 9:06 PM  
Subject: Support for economic development license expansion  
To: "jecker@bhamgov.org" <jecker@bhamgov.org>  
Cc: Comcast <katherineabboud@comcast.net>  

Dear Planning Board,

I'm writing to lend my support for the expansion of the economic development boundaries to include the mixed use area in The Rail District. This initiative will activate an area of our community that requires substantial investment. This will bring new dynamic businesses, restaurants, and mixed use developments to the neighborhood.

Please vote yes to this expansion on Wednesday 10/25 and send this proposal to The City Commission.

Thank you for your continued service and for your attention to this matter.

Sincerely,

Katherine Abboud  
367 Suffield Ave  
Birmingham, MI 48009

Katherine Abboud  
Partner, Chief Operations Officer | Armstrong White  
2125 E. Lincoln St. Birmingham, MI 48009  
Cell: 248-981-8729  
Katherine.Abboud@armstrong-white.com  
www.armstrong-white.com

--

Jana L. Ecker  
Planning Director  
City of Birmingham  
248-530-1841
Fwd: Rail District Economic Development Boundaries
1 message

Jana Ecker <jecker@bhamgov.org>  To: Susan Delpup <sdelpup@bhamgov.org>  Tue, Oct 24, 2017 at 4:41 PM

---------- Forwarded message ----------
From: Brian Donnelly <donnellybt@sbcglobal.net>
Date: Tue, Oct 24, 2017 at 9:12 AM
Subject: Rail District Economic Development Boundaries
To: "jecker@bhamgov.org" <jecker@bhamgov.org>

Dear Planning Board,

We are writing to lend our support for the expansion of the economic development boundaries to include the mixed use area in The Rail District. This initiative will activate an area of our community that requires substantial investment. This will bring new dynamic businesses, restaurants, and mixed use developments to the neighborhood.

Please vote YES to this expansion on Wednesday 10/25 and send this proposal to The City Commission.

Thank you for your continued service and for your attention to this matter.

Sincerely,

Brian & Beth Donnelly
1724 Yorkshire
Birmingham, MI 48009
248-647-8438

Jana L. Ecker
Planning Director
City of Birmingham
248-530-1841
Fwd: Rail District Re-zoning

1 message

Jana Ecker <jecker@bhamgov.org>
To: Susan Delpup <sdelpup@bhamgov.org>

Thu, Oct 24, 2017 at 4:42 PM

------ Forwarded message ------

From: Paul Grout <paul@ucigroup.net>
Date: Tue, Oct 24, 2017 at 11:27 AM
Subject: Rail District Re-zoning
To: Jecker@bhamgov.org

Dear Planning Board,

As a resident and business owner I'm writing to lend my support for the expansion of the economic development boundaries to include the mixed use area in The Rail District. This initiative will activate an area of our community that requires substantial investment. This will bring new dynamic businesses, restaurants, and mixed use developments to the neighborhood.

Please vote yes to this expansion on Wednesday 10/25 and send this proposal to The City Commission.

Thank you for your continued service and for your attention to this matter.

Sincerely,

Paul Grout
Whittier Building Company, LLC
UC Investments, LLC
801 S. Adams Rd., Ste 214
Birmingham, MI 48009
PLEASE NOTE NEW ADDRESS

248-761-4111-c
1-866-318-2260-f

Jana L. Ecker
Planning Director
City of Birmingham
248-530-1841
Fwd: Rail District

2 messages

Jana Ecker <jecker@bhamgov.org>
To: Susan Delpup <sdelpup@bhamgov.org>

Tue, Oct 24, 2017 at 4:41 PM

---------- Forwarded message ----------
From: Ted Berry <tedberry@magnicoatings.com>
Date: Tue, Oct 24, 2017 at 11:08 AM
Subject: Rail District
To: "Jecker@bhamgov.org" <Jecker@bhamgov.org>

Please expand the Rail District for mixed use. It is a very interesting community and further expansion would benefit all of us.

Thank you,

Ted Berry
Executive VP
The Magni Group, Inc.
390 Park street #300
Birmingham, MI 48009

--

Jana L. Ecker
Planning Director
City of Birmingham
248-530-1841

Jana Ecker <jecker@bhamgov.org>
To: Susan Delpup <sdelpup@bhamgov.org>

Tue, Oct 24, 2017 at 4:42 PM

---------- Forwarded message ----------
From: Leigh McQueen <mcqueenleigh@gmail.com>
Date: Tue, Oct 24, 2017 at 1:32 PM
Subject: Rail District
To: Jecker@bhamgov.org

Dear Planning Board,

https://mail.google.com/mail?ui=2&ik=2aaf724e22&jsver=Kkobh6whZGg.en.&view=pt&search=inbox&th=15f501f37d894af3&siml=15f501ebeaf81416...
I'm writing to lend my support for the expansion of the economic development boundaries to include the mixed use area in The Rail District. This initiative will activate an area of our community that requires substantial investment. This will bring new dynamic businesses, restaurants, and mixed use developments to the neighborhood.

Please vote yes to this expansion on Wednesday 10/25 and send this proposal to The City Commission.

Thank you for your continued service and for your attention to this matter.

Sincerely,

Name: Leigh McQueen
Address: 1238 Cedar Drive

--------

Jana L. Ecker
Planning Director
City of Birmingham
248-530-1841
Fwd: Yes - To the expansion of development boundaries in the Rail District

1 message

Jana Ecker <jecker@bhamgov.org>
To: Susan Delpup <sdelpup@bhamgov.org>

Tue, Oct 24, 2017 at 10:02 PM

Sent from my iPhone

Begin forwarded message:

From: Shawn Ciemniecki <sc5704@aol.com>
Date: October 24, 2017 at 8:51:59 PM EDT
To: Jecker@bhamgov.org
Subject: Yes - To the expansion of development boundaries in the Rail District

Dear Planning Board,

I’m writing to lend my support for the expansion of the economic development boundaries to include the mixed use area in The Rail District. This initiative will activate an area of our community that requires substantial investment. This will bring new dynamic businesses, restaurants, and mixed use developments to the neighborhood.

Please vote yes to this expansion on Wednesday 10/25 and send this proposal to The City Commission.

Thank you for your continued service and for your attention to this matter.

Sincerely,

Shawn S. Ciemniecki
1098 Northlawn Blvd.
Birmingham, Mi 48009

Thanks for your help building our great city!
Fwd: Rail district
1 message

Jana Ecker <jecker@bhamgov.org>
To: Susan Delpup <sdelpup@bhamgov.org>  

Wed, Oct 25, 2017 at 8:42 AM

Sent from my iPhone

Begin forwarded message:

From: Sandra Czako <slczako@comcast.net>
Date: October 24, 2017 at 10:03:34 PM EDT
To: Jecker@bhamgov.org
Subject: Rail district

Ms. Ecker,

Please vote "yes" on expanding the boundaries for mixed use economic development in the Rail District.
It's best for our community!

Thank You,
Sandra Czako
419 Sullfield Ave
Birmingham

Sent from my iPhone
John Willette <john.willette@armstrong-white.com>
To: Jecker@bhamgov.org

Dear Janet & Planning Board,

I'm writing you to express my support for the expansion of the economic development boundaries to include the mixed use area in The Rail District. As a business and property owner in Birmingham, I know first hand that growth requires substantial investment. This expansion would help accelerate growth of the tax base in the area and surrounding communities. Further, this will increase property values by bringing new dynamic businesses, restaurants, and mixed use developments to the neighborhoods.

Please vote yes to this expansion on Wednesday 10/25 and send this proposal to The City Commission.

Thank you for your continued service and for your attention to this matter.

Sincerely,

--

John Willette | CGI Director - Partner
T +1.248.530.5283  M +1.810.333.2813  F +1.248.594.9525
E john.willette@armstrong-white.com

Armstrong White | an sgsco company
A 2125 East Lincoln, Birmingham, MI 48009  W armstrong-white.com | sgsco.com
Re: Rail District inclusion for Economic Development
1 message

Dean Armstrong <Dean.Armstrong@armstrong-white.com> Wed, Oct 25, 2017 at 11:35 AM
To: "jecker@bhamgov.org" <jecker@bhamgov.org>

Dear Janet & Planning Board,

I’m writing you to express my support for the expansion of the economic development boundaries to include the mixed use area in The Rail District. As a business and property owner in Birmingham, I know first hand that growth requires substantial investment. This expansion would help accelerate growth of the tax base in the area and surrounding communities. Further, this will increase property values by bringing new dynamic businesses, restaurants, and mixed use developments to the neighborhoods.

Please vote yes to this expansion on Wednesday 10/25 and send this proposal to The City Commission.

Thank you for your continued service and for your attention to this matter.

Sincerely,
Dean Armstrong-
Armstrong-White

Get Outlook for iOS

From: John Willette
Sent: Wednesday, October 25, 2017 11:29:50 AM
To: Jecker@bhamgov.org
Subject: Rail District inclusion for Economic Development

Dear Janet & Planning Board,

I’m writing you to express my support for the expansion of the economic development boundaries to include the mixed use area in The Rail District. As a business and property owner in Birmingham, I know first hand that growth requires substantial investment. This expansion would help accelerate growth of the tax base in the area and surrounding communities. Further, this will increase property values by bringing new dynamic businesses, restaurants, and mixed use developments to the neighborhoods.

Please vote yes to this expansion on Wednesday 10/25 and send this proposal to The City Commission.

Thank you for your continued service and for your attention to this matter.

Sincerely,

--

John Willette | CGI Director - Partner
T +1.248.530.5283 M +1.810.333.2813 F +1.248.594.9525
E john.willette@armstrong-white.com

Armstrong White | an sgsco company
A 2125 East Lincoln, Birmingham, MI 48009 W armstrong-white.com | sgsco.com
MEMORANDUM
Planning Division

DATE: October 26, 2017
TO: Joseph A. Valentine, City Manager
FROM: Jana Ecker, Planning Director
SUBJECT: Set Public Hearing for a Lot Combination of 412 – 420 E. Frank Street, Lots 31 & 32 and the west 32’ of lots 3 & 4 Blakeslee Addition

The subject site is composed of three parcels, 412 & 420 E. Frank as well as the small strip of parking that abuts 420 E. Frank on the east (see attached survey and aerial photo). 412 E. Frank was most recently occupied by Frank Street Bakery, while 420 E. Frank has been used as an interior design office space for the past several years. The owner of these properties is seeking approval to combine the three parcels into one lot. All 3 parcels combine to make one parcel 15,200 square feet in size on the southeast corner of E. Frank and Ann Street. The applicant is proposing to combine all three lots into one parcel, and demolish the existing buildings to construct a three story, five (5) unit multi-family structure.

On February 13, 2017, the City Commission approved a rezoning of all three of the above lots to TZ1, Transition Zoning to allow both single and multiple family residential uses on the site. The proposed residential units are permitted principal uses in the TZ1 zone.

On March 22nd, 2017, the Planning Board approved the Preliminary Site Plan for construction of the new three story residential building with the following conditions:

1. The applicant will be required to provide the height of the chimneys at Final Site Plan Review to determine compliance with the Zoning Ordinance;
2. The applicant will be required to provide the required number of trees on-site;
3. The applicant will be required to provide the dimensions of the sidewalks to verify that they meet the ordinance requirements;
4. The applicant will be required to provide three additional street trees or obtain a waiver from the Staff Arborist;
5. The applicant must provide the required bike racks or obtain a variance from the BZA;
6. The applicant provides the required 6 ft. masonry screenwall or meets the ordinance requirements; and
7. The applicant complies with requests from City Departments.

On June 28, 2017, the Planning Board approved the Final Site Plan & Design Review for the construction of a new three story residential building on the above parcels with the following conditions:

1. The applicant provide calculations that confirm at least 25% of the proposed building’s front facade is comprised of windows or doors;
2. The east elevation first floor is broken up with some masonry detail to be administratively approved.

At this time, the applicant is seeking approval from the City Commission to combine the three lots into one parcel to allow construction of a new three story building on the site.

Thus, the Planning Division recommends that the City Commission set a public hearing date of **November 20, 2017** to consider the proposed lot combination, pursuant to the procedures set forth in Section 102-52 of the Subdivision Ordinance. The application and a partial land survey have been included for your review. A full survey of all properties within 500’ of the lots to be combined will be provided prior to the public hearing.

**SUGGESTED ACTION:**

To set a Public Hearing for November 20, 2017 to consider the proposed lot combination of 412 & 420 E. Frank as well as the small strip of parking that abuts 420 E. Frank on the east.
APPLICATIONS FOR REZONING

1. 412 – 420 E. Frank St. (Frank St. Bakery & Petrella Designs) –
Request for rezoning of the property from R-3, B-1 and B-2B to TZ-1 (Transition Zone) (continued from November 9, 2016)

Ms. Ecker noted the subject property is located on the southeast corner of Frank St. and Ann St., and includes one corner lot (Lot 32, Blakeslee Addition); one lot immediately to the south facing Ann St. and running parallel to Frank St. (Lot 31, Blakeslee Addition); and the rear 32 ft. of lots 3 and 4 of the Blakeslee Addition that front on S. Old Woodward Ave. All three of these lots or portions of lots were previously combined and appear to have been split into three independent parcels prior to 1960. The three parcels are currently under common ownership.

The applicant is requesting that the Planning Board hold a public hearing to consider the rezoning of the western portion of the property (412 E. Frank St., parcel #19-36-253-001) from R-3 (Single-Family Residential) to TZ-1 (Transition Zone); and the central portion of the property (420 E. Frank St., parcel #19-36-253-002) from B-1 Neighborhood Business to TZ-1 (Transition Zone); and the eastern portion of the property (no known address, parcel #19-36-253-003) from B2-B to TZ-1 (Transition Zone).

On October 26, 2016, the applicant agreed to study the possibility of placing a single-family home on the western portion of the property at the corner of Ann St. and Frank St. and a multi-family residential building on the central and eastern portions of the property using the TZ-1 development standards.

On November 9, 2016, the applicant brought several studies to demonstrate the difficulty in developing the site with the current zoning. However, the plans were submitted at the meeting, and staff did not have an opportunity to review them for zoning compliance. Accordingly, the Planning Board postponed the matter to December 14, 2016 and directed the applicant to conduct additional studies to illustrate their position that the current zoning is obsolete, and to further illustrate that the proposed TZ-1 classification would fit in with the surrounding neighborhood.

The applicant has now made a few changes to their proposals. They added the option for single family on the R-3 lot on the corner of Frank St. and Ann St. with a detached garage and with an attached garage. Staff has found that everything is correct in terms of what could or could not be done on this site.

Mr. John Sarkesian spoke to represent the applicant for the rezoning request. He explained that in order to achieve their proposal the two commercial properties, the B-1 and the B-2B, would require down zoning to residential use, and the R-3 lot would remain a residential use. Their conclusion was the B-2B property would be very
problematic to develop on its own, being only 32 ft. wide. The B-1 property could have a building and the architects have determined that a 6,000 sq. ft. two-story building could be built on the two parcels if they were to be combined as one commercial property.

He offered a detailed analysis of two scenarios for the R-3 lot with a detached and with an attached garage. With an attached garage they determined that the total size as a two-story home with the allowable footprint would not be consistent with the local market. A larger home could be achieved with a detached garage, but it is still undersized and undervalued. Also, any building on the B-1 lot could be right along the eastern property line, two stories, 30 ft. high, affecting desirability, function, and value of the home. There would be no buffer from the commercial properties. For those reasons it seems improbable that someone would want to build a single-family home there, and if they did it would potentially undermine the values of the other single-family homes in the area.

The applicant stated that the character of these three sites with the conditions sited conforms to the stated intent of transitional development, particularly TZ-1. Their proposed project would be a five-unit, for sale, residential condominium with 15 on-site parking spots. Traffic and parking would be contained and separated from the residential neighborhood. The building would be compatible with the area with respect to scale, architecture, and values of the adjacent single-family homes. It would provide a reasonable and orderly transition between commercial and single-family areas. If the property is rezoned, they would voluntarily offer in writing as a condition to rezoning that they would build a residential building of the size, character, and design being proposed.

Mr. Boyle received confirmation that the average size of the units would be 3,000 sq. ft. Further, that the combined B-1 and B-2B commercial site would require 20 parking spaces.

Chairman Clein called for comments from members of the public at 8:25 p.m.

Mr. Paul Reagan pointed out if the applicant is planning for five 3,000 sq. ft. units, they can build three units on the B-1 and the B-2B and one unit on the R-3. The only thing that would not happen is maximization of the total value of the property, which is not the affair of this board. It is feasible to utilize the R-3, so the applicant failed to prove necessity to rezone.

Mr. Eric Morganroth, 631 Ann St., thought that the proposed units would benefit the economic value of his house. He would like to see a commitment by the applicant to ensure the parking is all contained within the structure, that the caliber of the structure would be comparable to the other new construction in the area, and that it would be residential. Therefore, he is in support, knowing that it would down zone the area so that it would be more residential.

Mr. Eric Wolf, 393 E. Frank St. said he would like to get rid of the commercial use. There are advantages to eliminating that and down zoning that he could live with if they engage in "contract zoning." He thinks what has been designed is a very nice project.
Mr. Williams felt the City Commission has been hypocritical on the contract zoning issue. At one time they said no contract zoning and then with respect to Whole Foods that is exactly what they did. So, the question here is whether we can have contract zoning on this site. He will not vote for this proposal or any other proposal until he understands what the City Commission's real position is on contract zoning.

In 1960 these parcels were rezoned to B-1. In 1987 the western-most property was, pursuant to the City's Master Plan, rezoned to R-3. Mr. Williams said it strikes him that this owner is bound by the prior owner's failure to challenge the R-3 rezoning in 1987. They commenced a lawsuit but did not follow through with it. For this board to undo that without a Master Plan is in his view is a dereliction of its responsibilities to adhere to the Master Plan. After saying all of that, he does think the benefits of downsizing on B-1 and B-2B are substantial to the neighborhood and substantial to the existing parking problem in the area. These three properties beg for a contractual resolution. Again, he will vote no on this proposal until he hears from the City Commission.

Mr. Koseck said he looks at these sites and, frankly, finds them to be an odd mix, especially as the B-2B is a very narrow lot. The R-3 house will be 5 ft. away from a wall that goes up 30 ft. and that house will look odd. The neighbors are in favor, so to him, the proposal to combine the lots is a very appropriate plan for this transitional area. Mr. Williams noted that what is proposed is just a general rezoning, not a project. Mr. Koseck pointed out the Planning Board can look at the plan based on the requirements of the ordinance when it comes before them.

Mr. Jeffares thought if this isn't transitional zoning, he doesn't know what it is. There are many people who are empty nesters and are looking for this type of housing and they are not finding it. He appreciates that this allows our town to continue to be attractive to people and they don't have to leave when they move into a different part of their life. This nice five-unit development would be a perfect buffer.

Ms. Whipple-Boyce said she cannot forget the board is here to look at a rezoning and not the building being proposed. It seems to her that contractual zoning would be the best solution for these three properties but this body cannot recommend that. Therefore she was supportive of Mr. Williams' suggestion to forward this matter to the City Commission as a question, rather than a recommendation.

Mr. Williams thought this site begs the question of contract zoning much more so than the Whole Foods property. If that was restricted, why not this property.

Mr. Boyle felt that contemporary zoning needs to be respectful of the community as it is; not as it was. This is an opportunity to sit down and negotiate for a product that is appropriate for this area. The fact there is communication with the neighborhood residents goes hand-in-hand with contemporary master planning and zoning which needs to take into account what is possible in the context of this transitional area.

Chairman Clein said this matter comes down to points about the R-3 and about the overall process. The Planning Board is here for a rezoning. As was said, it is not the
board’s job to maximize value. In his opinion the only way a question can be posed to the City Commission is either by putting forth a recommendation tonight related to the site or by postponing tonight because the petitioner wants to enter into negotiations with the administration.

Ms. Whipple-Boyce did not think the Planning Board has all of the tools that it needs and the City Commission is the only one that can help the board get those. Ms. Ecker observed that the Commission will have the final say either way.

Mr. Koseck noted the zoning being requested exists in the Zoning Ordinance. Speaking for himself, he is pretty tough on people that come to the board and do what he thinks is inappropriate for the community. He has faith this will work out as well as the decision on Whole Foods did.

Mr. Jeffares said he is on that same page. This board has the controls to make sure whatever is proposed fits into the community. The board should not have to go to the extent on each and every property in the community to say it has to see first what is going to be built.

Mr. Baka pointed out that TZ-1 has design standards built in as far as building materials, fenestration, etc.

Mr. Sarkesian stated they will not go before the City Commission if their proposal is voted down by this board. If the Planning Board doesn't like what they are doing, why would the Commission support them. So if they get a positive recommendation they will go to the Commission and fight for what they want to do and make it clear that they will voluntarily offer to restrict what they do with the property.

**Motion by Mr. Koseck**
Seconded by Mr. Jeffares to recommend to the City Commission approval of the proposed rezoning of 412-420 E. Frank St. from B-1, R-3, and B-2B to TZ-1.

Mr. Boyle thought that members of the Planning Board are sending a signal to their colleagues that they have done as much as they can. The developer is proposing to do something that the board is generally in favor of and the board sees this motion as moving it forward. He will therefore vote yes.

There were no comments from the public at 9 p.m.

**Motion carried, 6-1.**

**ROLLCALL VOTE**
Yeas: Koseck, Jeffares, Boyle, Clein, Prasad, Whipple-Boyce
Nays: Williams
Absent: Lazar
City Commission Minutes
February 13, 2017

02-26-17: PUBLIC HEARING TO CONSIDER THE PROPOSED REZONING OF 412-420 E.
FRANK

Mayor Nickita opened the Public Hearing at 8:50 PM.

City Planner Ecker explained described the current location and zoning classification of
each of the three parcels as complicated. The three parcels have been the subject of
Commission discussions relative to Transitional Zoning previously, and no action was
taken at the time, and the parcels have retained their existing zoning. She explained
that currently a house is located on the corner of Frank and Ann which is being used as
an office. The center parcel is Frank Street Bakery, which has been a commercial use for
many years. The third property on the east is vacant, and is open area and was parking
at 4 February 13, 2017 one time. She said the applicant is asking that all three of the
parcels be rezoned to TZ1, Transitional Zoning, which would allow residential uses only.
City Planner Ecker said the western portion of the property (corner of Frank and Ann) is
currently zoned R3, Single Family Residential. From 1935 – 1960, that portion of the lot
was zoned R6.

In 1960, the homeowners asked the City to rezone to B1, Neighborhood Business,
because they were operating a custom drapery shop out of the home while they were
living in the home. The City granted the rezoning. In 1980, the City adopted the Master
Plan, and it was determined that most of the area was a sensitive residential
neighborhood. Planner Ecker said while it is difficult to see exactly where the line was
drawn, it looked like the westernmost parcel was included in the sensitive residential
area. The City then down-zoned the parcel from B1 to R3, Single Family Residential. A
lawsuit against the City was initiated by the property owner but was later dropped. In
1995, a descendant of the family that owned the property initiated a rezoning process,
but did not follow through and nothing changed. In 2013, the current property owner,
who is not the applicant on this rezoning request tonight, applied for a rezoning to have
all three parcels rezoned to B2B to match the easternmost parcel. B2B is seen along Old
Woodward. The neighbors at the time did not want to see commercial uses. There were
several postponements, and the applicant eventually dropped the rezoning request. The
Planning Board has discussed transitional zoning, and originally thought TZ1 would be
the best use for the parcels; however, the neighbors expressed support for the bakery
there. The Planning Board changed their recommendation to TZ2, which would allow
some commercial uses. The City Commission took no action on that recommendation.
The center parcel was zoned R6 until 1960. The lot was split and was rezoned to B1,
Neighborhood Business. Prior to Frank’s Bakery, there was a vintage resale shop, which
was not a legal use, and had to go to the Board of Zoning Appeals for a use variance.
That use continued until 2007. In February 2016, the property owner requested a
change to B2B again for the whole site. The Planning Board recommended denial of the rezoning because while B2B was consistent for the eastern side of the lot, it did not provide the transitional feel that the Planning Board recommended. Therefore, the commercial building is still on the site and is zoned B1. City Planner Ecker said the eastern-most parcel was also zoned R6 from 1935 until 1960, so presumably all three lots were all one lot at one time. In 1960, the property owner successfully applied for the B2B, which is zoned that way today.

City Planner Ecker explained what the applicant must prove when submitting a request for a rezoning. The applicant tonight is not the current property owner, but has the consent of the property owner to apply for the rezoning.

City Planner Ecker explained that an applicant for a rezoning must show why the rezoning is necessary for the preservation and enjoyment of the rights of usage commonly associated with property ownership. She noted that the applicant has indicated that the subject property is surrounded by properties with different uses, some consistent with existing zoning classifications, and many in variance with the existing zoning. The Subject Property is bordered on the east side by an office building and parking lot which fronts on Old Woodward and is in the B2B zoning district. The property adjacent on the north side of Frank Street is a CVS drug store and surface parking lot which fronts on Old Woodward. While the properties to the west and south are in the R-3 (Single Family Residential) zoning district, the home directly west of the Subject Property at the south west corner of Ann Street and Frank Street currently has a multi-family use with three families occupying it. The three buildings on the west side of Ann Street immediately to the south of this corner home are all multi-family properties with 4 units, 24 units and 4 units respectively. The building on the west side of Ann Street, two houses to the north of the intersection of Ann and Frank, is being used as an office building with an adjacent parking lot containing 22 parking spots. Directly to the north of this property on the west side of Ann Street is an 8 unit multi-family building. One block to the west at the intersection of Frank and Purdy is a building with 3 commercial offices, and directly to the north is a 23 unit multi-family property. Other than this last property, all of the other multi-family and commercial properties west of the Subject Property have a non-conforming use in the R-3 Single Family Residential zoning district.

City Planner Ecker said the applicant must provide an explanation of why the existing zoning classification is no longer appropriate. The applicant has noted that the parcel is made up of three contiguous lots with three different zonings (R-3, B-1, and B-2B). Given the current mix of uses on the three parcels, the subject parcel is a transitional property. The very limited areas of the three individual parcels would make it difficult to develop anything consistent to each of the parcel’s current zoning. She said the applicant also noted that the B-2B eastern piece is only 32 feet in width. Further, Frank Street from Woodward to Ann has been widened and onstreet metered parking added, with the effect of extending the Woodward business district along Frank Street, which
along with the CVS plaza on the north side of Frank, with its large surface parking lot visible from the windows of any structure facing Frank Street from the subject property, makes this an undesirable site for single family homes.

City Planner Ecker said the applicant must explain why the proposed rezoning will not be detrimental to surrounding properties. The applicant requests that the Subject Property be rezoned to the transitional zoning classification of TZ-1. This request is consistent with the intent of the City’s transitional zoning. The applicant intends to develop the property as multifamily with no commercial component to the project. Given the very close proximity of a half dozen or more multi-family properties, this rezoning and use would provide a good transition from B-2B General Business and D-2 in the Downtown Birmingham Overlay to the north and east, and would not change the character of the neighborhood.

City Planner Ecker said the applicant has provided all required documentation. The Planning Board held a Public Hearing on the application. The Planning Board found that the entire parcel at 412 – 420 E. Frank Street is clearly a transitional property that separates the commercial areas to the north and east from the residential area to the west. The use of the property for low density multiple family use acts as a transition and buffer, and is entirely consistent with recent rezonings in similar transitional locations around the downtown. The proposed multiple family residential development will also add to the diversity of housing options available, and is similar to those already found in the surrounding area. The proposed request to rezone the entire property to TZ1 Transition Zone and limit the use to residential use only is very appropriate in such a transition zone. Accordingly, the Planning Division found that the proposed rezoning of the Subject Property from R-3 (Single-Family Residential), B-1 (Neighborhood Business), and B-2B (General Business) to TZ1 (Transition Zone) should be recommended for approval.

City Planner Ecker noted that the applicant provided some development options under current zoning conditions to the Planning Board to demonstrate the feasibility of the options under current zoning conditions. City Planner Ecker reviewed the uses under the current zoning classifications and the permitted uses under the proposed TZ1 zoning classification. She noted it is a down zoning, since the commercial uses are eliminated on the middle parcel and the one to the east. It does allow multi-family residential up to 5 units for the parcel as a whole.

Mayor Nickita said transitional zoning has been discussed for some time. This site has been of some concern because of the three zoning classifications on the small site. The Planning Board has recommended TZ1. Mayor Nickita would like to keep the discussion on the actual zoning and not the proposed project. Commissioner Hoff agreed and noted that apparently there have been presentations to the Planning Board.
City Planner Ecker said there have been discussions with the Planning Board about what the applicant is planning with the rezoning, and emphasized that tonight the Commission is considering the rezoning, and not the site plan. She added that some Planning Board members wanted to see what the options are for the site. Any development proposed hereafter if the rezoning is approved, would have to go through site plan review. City Planner Ecker confirmed for Commissioner Hoff that previously, the Commission did not create TZ2 or rezone these parcels to TZ2. She explained that TZ1 allows residential uses only. She added that TZ2 allows some small scale commercial uses, but they are limited in size. She said the Planning Board originally felt TZ1 was the correct zoning, but the neighbors were in favor of retaining the bakery there. The Planning Board then changed its recommendation to TZ2, which went to the City Commission. The Commission was concerned about the commercial uses, and ultimately, TZ2 was not created.

Mayor Nickita noted that currently, the parcels are being used as TZ2, because there is a commercial component. This is really about going forward.

Commissioner Boutros asked City Planner Ecker about the parking lot there now and the proposed rezoning. She responded that if the TZ1 rezoning was approved tonight, the site plan review would determine where the parking would be located. She added that parking would be reduced in TZ1, because only five residential units would be allowed, and only ten parking spaces would be needed on site.

Commissioner DeWeese said the complaints received about transitional zoning classifications had to do with uses. This rezoning would be the most minimal use. D’Angelo Espree commented on the current zoning condition, population density in this area, and residential uses as TZ1.

City Planner Ecker said that the Planning Board considered the maximum number of units that would be permitted, and felt the maximum of five units would be suitable there from the overlay to the single family neighborhood there.

Eric Morganroth commented that he supports the proposed plan especially as it relates to parking. He added that he prefers keeping the R3 designation, and down-zoning the other two commercial parcels to TZ1.

Ron Fry owns a single family home directly to the west on Ann. He commented he is not against good development. He asked for the setbacks of TZ1 as opposed to R3.

City Planner Ecker said the minimum front yard setback (on Frank) would be 0-5 feet, the rear yard minimum when it abuts single family would be 20 feet, side setback would be 0 feet from an interior side lot line, and 10 feet from a side street.
Mr. Fry commented on two front yard setbacks on a corner lot. He said he had to conform to very strict zoning rules on his property in order to build a single family home.

Eric Wolfe commented he is in favor of the proposed project. He hoped the Commission would take into consideration the project.

Commissioner Hoff said the Commission is not considering the proposed development, only the proposed rezoning to TZ1.

Mayor Nickita commented that the proposed project is an example of what can be done with the subject properties, and the Commission is not approving the project, and it is not on the table this evening.

Commissioner DeWeese asked what classification would be needed in order for the project to be built in the way the residents favor.

Mayor Nickita said the project would be possible in the TZ1 classification. Commissioner DeWeese clarified that the project would require that all three parcels would have to be rezoned to TZ1.

Commissioner Sherman said the City does not use contract zoning. The City has used conditional zoning where the City takes an offer from a developer and the City approves it or does not approve it, and the property stays as it is.

City Attorney Currier said the developer must submit a written, non-negotiable offer as to the zoning; it is voted on up or down by the Commission, has a specified time to build, and if it is not built, the property goes back to the former zoning. He said there is no contract zoning provision in the zoning enabling statute.

Commissioner Boutros asked to see the example.

Commissioner Bordman said she agrees with Mr. Wolfe that the Commission would not be discussing this if the request to rezone was not accompanied by the project. She added it seems illogical not to look at the project. In view of the City’s use of conditional zoning recently, she thinks that since there is substantial support of community, it should be considered by the Commission. She is supportive of letting the petitioner address the Commission and considering his proposal.

Mayor Pro Tem Harris said for the purposes of our decision tonight, he would like to see the project tonight. He said although conditional zoning has not been sent to us, if we want to entertain that idea, he asked if we are able to do that tonight, or would that come back to us later after the zoning decision has been made.

City Manager Valentine said that process would be initiated as a separate process. Commissioner Sherman said if a developer is interested in conditional zoning, he would have to propose it. If that is the case, it should be proposed before we review any plans.
Mayor Nickita said it is important to distinguish what is before the Commission today, which is a zoning clarification of a complex site. To tie it to an approval of a project is not on the table tonight.

Commissioner Hoff commented that we should rezone a property because it is the right thing to do, not because there is a project to be accommodated.

Mayor Nickita said the idea of creating transitional zoning was to clarify and clean up areas along the perimeter of the downtown area. He added that we do not zone to accommodate a project, and if a project falls in line with the zoning that the Commission has determined is appropriate, it can move forward in the process of approval. He said the question is whether TZ1 is appropriate zoning for this site. The project is an example of what could be done under transitional zoning, and nothing the Commission might approve today, ties that project to this zoning condition.

Commissioner Bordman said we know there is a petitioner with a specific project. She asked the City Attorney that if we know that is true, and we also know from reading the Planning Board minutes that the petitioner has already suggested that he would be amenable to conditional zoning, could we table the zoning request today, and have the petitioner proceed with the conditional zoning process, and then bring this back at that time.

City Attorney Currier said that is up to the developer to propose it in writing to the City Commission. He added that Section 125.3405 of the Zoning Enabling Act has specific requirements.

City Planner Ecker commented that the developer submitted a statement to the Planning Board, and added she does not know what the specific format must be.

City Attorney Currier responded that the developer is required to put in writing the conditions he wants, and added that the developer may have stated them at the Planning Board meeting, but a separate letter to the Commission is needed including a time frame for completion.

Mayor Nickita clarified that a formal request to the Commission must be submitted. City Attorney Currier responded that the formal request would then be referred to the Planning Board. Mayor Nickita added that we do not have such a request from the developer tonight. Commissioner Sherman commented that the petitioner could ask for a continuance of the hearing. Mayor Nickita said this is the hearing on the rezoning to TZ1. Commissioner Sherman said the petitioner could ask for this hearing to be postponed to a date certain, or he could withdraw his petition, or continue with the hearing right now.

Commissioner Boutros asked if the petitioner could go back after this hearing, and then ask for conditional zoning.
City Attorney Currier said he needs to do research on that question, and added that there is a time limitation. The same request by the same petitioner cannot be submitted for a year, if the Commission has acted on the request. It can be a different request for a rezoning or a different petitioner for a rezoning.

Commissioner Sherman clarified that if the Commission makes a decision tonight and if it is not what the petitioner wants, he might have to wait a year before submitting again. Mayor Nickita commented that if the Commission rezones this to TZ1 tonight, then the petitioner can submit for site plan approval, which is the process we typically follow.

Commissioner Hoff asked if City Planner Ecker knows why the home on the corner is facing Frank and not Ann, when all the others are facing Ann. City Planner Ecker said the records do not reflect that information.

Commissioner Hoff asked about the property owner. City Planner Ecker explained that the applicant for this rezoning is not the owner, but has provided paperwork to the Planning Department that indicates the property owner is aware of the request. The property owner has submitted rezoning requests for the three parcels previously.

Mayor Nickita commented that there are two considerations tonight. One is that we look at the zoning specifically for a rezoning to TZ1, allowing the applicant to then go through the typical process of getting a project approved and built. On the other hand, if the applicant has an interest in conditional zoning, we could consider that.

John Sherkerjian, representing the applicant, asked the City Attorney if proceeding with a written request to the City Commission would constitute a substantive change so the applicant would not be forced to wait a year before resubmitting the application.

City Attorney Currier said it is a procedural change as to how the same issue is being approached. Mr. Sherkerjian said he would be getting to the same result, but with voluntarily offering a condition. City Attorney Currier said it would take a year.

Mayor Pro Tem Harris suggested that the scenario Mr. Sherkerjian discussed assumes that the Commission makes a substantive decision tonight. Mayor Nickita said, to be clear, if the Commission votes on what is on the table tonight, that is definitive, and Mr. Sherkerjian can submit his project under that zoning.

Mr. Sherkerjian added that the residents may not be as comfortable with that because they want to see his plan versus the unknown.

Mayor Nickita suggested another option would be to consider a conditional zoning application. It would require a formal request, a public hearing at the Planning Board and thereafter, the City Commission. C
ommissioner Bordman asked to make clear the Commission is not asking the applicant to do that. Mr. Sherkerjian said they met with the neighbors and came to the conclusion to voluntarily offer conditional zoning. He understands that the offer does not meet the requirements of the City.

City Attorney Currier said the conditional zoning request would begin at the Planning Board and make its way to the City Commission, which would likely take until May or possibly June.

Mr. Sherkerjian said he would be unable to keep his contract with the seller with that long a delay. He has no issue with conditional zoning, but the timing is an issue for him.

Commissioner DeWeese confirmed that Mr. Sherkerjian’s plan will meet the requirements of a TZ1 classification with no variances needed.

Mr. Sherkerjian said the R3 parcel which seems to be the issue with everyone, is inconsistently zoned, is an anomaly, and totally unusual with respect to the other R3 properties. He added that this lot is the only lot not facing Ann, the only lot facing the parking lot, and is the only lot that is not 123 feet deep like the others, so a garage cannot be built. Mr. Sherkerjian described the proposed plan.

Mayor Nickita said an applicant is interested in developing this property, and is ready to proceed subsequent to the rezoning tonight. He added that the Commission is not approving the project shown tonight, but rather a zoning change because of inconsistencies and which will align with transitional zoning.

Commissioner Hoff said she is unclear about neighbors’ opinions. She thought she heard they want to keep an R3 zoning on the single parcel, but also want this development.

Mayor Nickita stated if the R3 zoning remains, the proposed development the applicant discussed could not happen. It also would be inconsistent with creating a transitional zoning. It would create an R3 parcel next to a transitional zoning. The resident clarified his objection.

Mayor Pro Tem Harris said he detected some equivocation in the applicant’s interest in applying for conditional zoning if the Commission does not make a decision this evening, and asked for clarification by the applicant. Mr. Sherkerjian said his concern was with the timing of the request for conditional zoning, and felt that it would not work.

Eric Wolfe commented that the Planning Board was in favor of the project subject to conditional zoning, and was told by the Planning Board Chairman the Board did not have the authority to do that. He added he does not understand why this has to go back to the Planning Board to come back to the Commission.
City Attorney Currier said the ordinance requires that at least one public hearing be conducted before the Planning Board specifically addresses the request for conditional zoning of the parcels.

The Public Hearing was closed at 9:37 PM.

MOTION: Motion by Hoff, seconded by Bordman:

To approve the proposed rezoning of 412 - 420 E. Frank Street from R3 (Single-Family Residential), B1 (Neighborhood Business), and B2B (General Commercial) to TZ1 (Transitional Zoning) for all three parcels.

VOTE: Yeas, 7

Nays, 0

Absent, None
Planning Board Minutes
March 22, 2017

PRELIMINARY SITE PLAN REVIEW

412-420 E. Frank St.
New residential building (currently Petrazellas and Frank Street Bakery)
Review to allow construction of a three-story residential building with five (5) units and enclosed parking

Mr. Baka advised the subject site is composed of three parcels, 412 & 420 E. Frank St. as well as the small strip of parking that abuts on the east. 412 E. Frank St. was most recently occupied by Frank Street Bakery, while 420 E. Frank has been used as an interior design office space for the past several years. The combined parcels are 15,200 sq. ft. in size and are located on the southeast corner of E. Frank St. and Ann St. The applicant is proposing to demolish the existing buildings to construct a five (5) unit multi-family structure. The site was recently rezoned to TZ-1, Transition Zoning. The proposed residential units are permitted principal uses in the TZ-1 Zone.

Article 04 section 4.20 LA-01 (E) requires that one (1) deciduous tree and one evergreen tree be provided per unit. The applicant is proposing five (5) units. Accordingly, they are required to provide five (5) of each type of tree. Therefore, the applicant will be required to provide the required number of trees or obtain a variance from the Board of Zoning Appeals ("BZA").

The cumulative frontage of E. Frank St. and Ann St. is 252 ft., requiring six (6) street trees. The applicant is proposing to plant two (2) new street trees and retain one (1) existing tree. Accordingly the applicant will be required to provide three additional street trees or obtain a waiver from the Staff Arborist.

The applicant is proposing a 19,141 sq. ft. building requiring six (6) bike racks. Currently, no bike racks are proposed. Accordingly, the applicant must provide the required bike racks or obtain a variance from the BZA.

Design Review
A full design review will be performed at Final Site Plan Review.

Mr. John Serkesian, Architect, represented the applicant. He advised they are proposing to remove two metered parking spots. Currently there are three curb cuts on the property and they will be eliminating two of those. The remaining curb cut is as far from the neighborhood as they could get it. They are required to have 10 parking spots and they have 15 under roof and screened with direct access into the building. That should address some of the parking issues in the neighborhood. They will meet with the Staff Arborist as required and plan to meet all landscape requirements. He hopes to only be required to do a 5 ft. sidewalk and match what is along Ann St. The units will be for sale and they average 3,000 sq. ft. in size. The building will be brick and stone. They have shared everything with the neighbors. The peaks of the roof are a little higher than the residences along Ann St.
Motion by Mr. Koseck
Seconded by Ms. Whipple-Boyce to approve the Preliminary Site Plan Review for 412 and 420 E. Frank St. with the following conditions:

1. The applicant will be required to provide the height of the chimneys at Final Site Plan Review to determine compliance with the Zoning Ordinance;
2. The applicant will be required to provide the required number of trees on-site;
3. The applicant will be required to provide the dimensions of the sidewalks to verify that they meet the ordinance requirements;
4. The applicant will be required to provide three additional street trees or obtain a waiver from the Staff Arborist;
5. The applicant must provide the required bike racks or obtain a variance from the BZA;
6. The applicant provides the required 6 ft. masonry screenwall or meets the ordinance requirements; and
7. The applicant complies with requests from City Departments.

Discussion concluded that the width of the sidewalks will be determined by how they relate to the other sidewalks.

No one from the public had comments on the motion at 9:05 p.m.

Motion carried, 6-0.

VOICE VOTE
Yeas: Koseck, Whipple-Boyce, Clein, Jeffares, Share, Williams
Nays: None
Absent: Boyle, Lazar
CONSTRUCTION CONTRACTOR AGREES THAT IN ACCORDANCE WITH GENERALLY ACCEPTED CONSTRUCTION PRACTICES, CONSTRUCTION CONTRACTOR WILL BE REQUIRED TO ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THE PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY; THAT THIS REQUIREMENT SHALL BE MADE TO APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND CONSTRUCTION CONTRACTOR FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD DESIGN PROFESSIONAL HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT EXCEPTING LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE DESIGN PROFESSIONAL.

CAUTION!!
THE LOCATIONS AND ELEVATIONS OF EXISTING UNDERGROUND UTILITIES AS SHOWN ON THIS DRAWING ARE ONLY APPROXIMATE. NO GUARANTEE IS EITHER EXPRESSED OR IMPLIED AS TO THE COMPLETENESS OR ACCURACY THEREOF. THE CONTRACTOR SHALL BE EXCLUSIVELY RESPONSIBLE FOR DETERMINING THE EXACT UTILITY LOCATIONS AND ELEVATIONS PRIOR TO THE START OF CONSTRUCTION.

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420 E FRANK, LLC
36400 WOODWARD AVE.
BLOOMFIELD HILLS, MI  48304

TOPOGRAPHIC SURVEY

NOT FOR CONSTRUCTION
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DESCRIPTION

TMK DN. TMK SUR. OTHERS P.M. JBT

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36400 WOODWARD AVE.
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CONSTRUCTION CONTRACTOR AGREES THAT IN ACCORDANCE WITH GENERALLY ACCEPTED CONSTRUCTION PRACTICES, CONSTRUCTION CONTRACTOR WILL BE REQUIRED TO ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THE PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY; THAT THIS REQUIREMENT SHALL BE MADE TO APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND CONSTRUCTION CONTRACTOR FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD DESIGN PROFESSIONAL HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT EXCEPTING LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF THE DESIGN PROFESSIONAL.
Planning Board Minutes  
June 28, 2017

FINAL SITE PLAN AND DESIGN REVIEW

2. 412 - 420 E. Frank St. (vacant office/restaurant)  
Request for Final Site Plan to allow construction of a new three-story residential building

Mr. Baka explained the subject site is composed of three parcels, 412 & 420 E. Frank St. as well as the small strip of parking that abuts on the east. 412 E. Frank St. was most recently occupied by Frank Street Bakery, while 420 E. Frank has been used as an interior design office space for the past several years. The combined parcels are 15,200 sq. ft. and are located on the southeast corner of E. Frank and Ann Sts. The applicant is proposing to demolish the existing buildings to construct a three-story five-unit multi-family structure. On February 13, 2017 the City Commission approved a rezoning to TZ-1 Transition Zoning. The proposed residential units are permitted principal uses in the TZ-1 Zone.

On March 22, 2017, the Planning Board approved the Preliminary Site Plan with conditions. The applicant has complied with all of the conditions requested by the Planning Board for the acceptance of the Preliminary Site Plan.

Design Review
The plans meet the requirements of Article 04 section 4.82 SS-09 Development Standards for TZ-1. However, the applicant will need to provide glazing calculations for the front facade of residential units to show they are at least 25% windows or doors.

The applicant is proposing to construct the building façade from “Olde Windsor Sand Coated” brick with sections of tan limestone veneer. These are high quality building materials permitted in the Ordinance. The development will mesh nicely with the surrounding neighborhood as many of its neighbors are constructed with identical materials (631, 647, 659, and 650 Ann St.; 393 E. Frank St.; 500 S. Old Woodward Ave).

Mr. Alex Bogaerts, the architect, was present along with Mr. John Serkesian who represented the applicant. Mr. Bogaerts passed around the materials. The building is predominantly masonry with limestone accent. They intend to add the exact percentage of glass to the plans.

Mr. Jeffares thought this a beautiful building but one thing that bothers him is the massive brick wall along the east elevation that can be seen from Woodward Ave. Mr. Bogaerts indicated they can't put in windows because the building is right on the property line. If someone else were to build they could potentially come right up against their building. However, they would be happy to introduce limestone and masonry detailing in the wall.
**Motion by Mr. Jeffares**
Seconded by Ms. Whipple-Boyce to approve the Final Site Plan Review for 412-420 E. Frank St. with the following conditions:
1. The applicant provide calculations that confirm at least 25% of the proposed building's front facade is comprised of windows or doors;
2. The east elevation first floor is broken up with some masonry detail to be administratively approved.

No one from the public wished to comment on the motion at 8:47 p.m.

**Motion carried, 7-0.**

VOICE VOTE
Yeas: Jeffares, Whipple-Boyce, Clein, Koseck, Lazar, Share, Williams
Nays: None
Absent: Boyle
Combination of Platted Lots Application

1. Applicant
   Name: 420 E. Frank St, LLC
   Address: 412 E. Frank St.
   Phone Number: 248-885-1153
   Email Address: JOHN S JOHN RICHARDS.COM

2. Applicant's Attorney/Contact Person
   Name: SAME AS APPLICANT
   Address:
   Phone Number:
   Fax Number:
   Email Address:

3. Project Information
   Address/Location of Property: 420 E. Frank St.
   Sidewall #: 19-36-253-003
   Current Zoning: T2-1

4. Attachments
   - Proof of ownership
   - Written statement of reasons for request
   - A letter of authority or power of attorney in the event the application is made by a person other than the property owner
   - Other data having a direct bearing on the request
   - Sketches of proposed development (optional)
   - One digital copy of plans

   Two (2) copies of a registered land survey showing:
   - All Existing and proposed platted lot lines
   - Legal descriptions of proposed lots
   - Locations of existing/surrounding structures for at least 500 feet in all directions
   - Footprints of proposed development including proposed building envelope with front, side and rear setbacks clearly marked.

(I), (We), the undersigned, do hereby request to combine lots of record in the City of Birmingham, Oakland County, Michigan. (I), (We), do hereby swear that all of the statements, signatures, and descriptions appearing on and with this request are in all respects true and accurate to the best of (my), (our), knowledge.

Signature of Property Owner: 
Signature of Applicant: 
Print Name: JOHN S JOHN RICHARDS, LLC
Print Name: JOHN S JOHN RICHARDS, LLC

Date: 10/26/17
Date: 10/26/17

Fee: $200.00 per lot affected, minimum fee $400
APPLICATION COMBINATION OF PLATTED LOTS
Birmingham Michigan

1. **Change Premises described as:**

412 E. Frank Street & 420 E. Frank Street, Birmingham, MI 48009

Legal description:

**Parcel 1:**
West ½ of Lots 31 and 32, of Plat of Blakeslee’s Addition to the Village of Birmingham, According to the Plat thereof as recorded in Liber 2 of Plats, Page 50, Oakland County Records. (Parcel #19-25-252-001)

**Parcel 2:**
East 60 feet of Lots 31 and 32, of Plat of Blakeslee’s Addition to the Village of Birmingham, According to the Plat thereof as recorded in Liber 2 of Plats, Page 50, Oakland County Records. (Parcel #19-25-252-002)

**Parcel 3:**
West 32 feet of Lots 3 and 4, of Plat of Blakeslee’s Addition to the Village of Birmingham, According to the Plat thereof as recorded in Liber 2 of Plats, Page 50, Oakland County Records. (Parcel #19-25-252-003)

(Together, the “Subject Property”)

By combining the three lots into one with an address of 420 E. Frank Street.

See attached Kem-Tec & Associates sealed land survey showing location, size of lot and placement of buildings.

Statements and reason for request or other data have a direct bearing on the request:

The Subject Property consists of three parcels:

The western portion (approximately 60’ along Frank starting at Ann, known as 412 E. Frank was changed from B-1 zoning in 1987 to its prior zoning of R-3 Single Family Residential. There is a building on this parcel that has an office use with associated parking.

The central portion (60’ in width along Frank, known as 420 E. Frank) is previously zoned B-1 Neighborhood Business.

The eastern portion (32’ in width along Frank, no known address) previously zoned B-2B (General Business) and is currently a parking lot.

The zoning classifications of the properties in the general area of the Subject Property are R-3 (Single Family Residential) to the west and south, and B-2B (General Business) as well as D-2 in the Downtown Birmingham Overlay to the north and east. The Subject Property is surrounded by properties with different uses, some consistent with existing zoning classifications and many in variance of existing zoning. The Subject Property is bordered
on the east side by an office building and parking lot which fronts on Old Woodward and is in the B2B zoning district. The property adjacent on the north side of Frank Street is a CVS drug store and surface parking lot which fronts on Old Woodward. While the properties to the west and south are in the R-3 (Single Family Residential) zoning district, the home directly west of the Subject Property at the southwest corner of Ann Street and Frank Street currently has a multi-family use with three families occupying it. The three buildings on the west side of Ann Street immediately to the south of this corner home are all multi-family properties with 4 units, 24 units and 4 units respectively. The building on the west side of Ann Street two houses to the north of the intersection of Ann and Frank is being used as an office building with an adjacent parking lot containing 22 parking spots. Directly to the north of this property on the west side of Ann Street is an 8 unit multi-family building. One block to the west at the intersection of Frank and Purdy is a building with 3 commercial offices and directly to the north is a 23 unit multi-family property. Other than this last property, all of the other multi-family and commercial properties west of the Subject Property have a non-conforming use in the R-3 Single Family Residential zoning district. (See attached map entitled “Similar in Context Developments/Zoning Plan”)

Given the current mix of uses on the three parcels which make up; the City Commission considered this as a transitional property.

The Subject Property was rezoned to the transitional zoning classification of TZ-1. This request was consistent to the intent of the City’s transitional zoning.

The applicant received Final Site Plan review approval to develop the property as multi-family three story, 5 unit, residential condominium. The applicant has submitted plans and an application for building permits.

The lots need to be combined in order for the Applicant to proceed with the construction of the building indicated in the Final Site Plan.

Applicant: 420 E Frank St, LLC
Signature of Applicant: ______________________________
Print Name: John Shekerjian, its agent
Name of Owner: 420 E. Frank St. LLC
Applicant Address: 36400 Woodward Ave., Bloomfield Hills, MI 48304
Applicant Telephone #: (248) 885-1153
Over the past several months, the Planning Board has been studying potential definitions for personal service uses as directed by the City Commission earlier this year. On August 9, 2017, the Planning Board conducted a public hearing to discuss the following proposed definition:

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

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

**Retail discussion and background**

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

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

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

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

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

Retail Use: Any of the following uses: artisan, community, commercial, entertainment (including all establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development), bistro or restaurant uses.
**Artisan Use:** Any premises used principally for the repair, manufacture, and sale of domestic furniture, arts, and crafts. The work must take place entirely within an enclosed building using only hand-held and/or table-mounted manual and electric tools.

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

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

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

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

**Recent Planning Board activity**

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

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

On May 10, 2017, the Planning Board discussed the direction from the City Commission to consider an ordinance amendment that would temporarily stop some of the uses that fall under the current undefined category of personal services and to stop community uses from being permitted in first-floor retail space Downtown while the board studies the full issue. After
extensive discussion, the board directed the matter back to staff to provide ordinance language that would define personal services to include beauty salons, retail bank branches and other similar uses, and to allow personal services as defined within the Redline Retail District, but to exclude office, medical and quasi-office uses, as well as community uses until the Planning Board can complete a comprehensive study regarding retail Downtown. During this meeting, the Planning Board reviewed definitions of personal services used in other municipalities to assist in crafting a definition for Birmingham. Sample definitions are attached.

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

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

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

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

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

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

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

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

On August 9, 2017, the Planning Board opened a public hearing to consider amendments to
Article 03, section 3.04 to exclude community uses in the Redline Retail District and Article 09,
Definitions, to define Personal Services. Based on the direction of the City Commission and the
City Manager, board members focused on the definition of personal services specifically and did
not engage in a discussion on whether to exclude community uses in the Redline Retail District. After extensive discussion and public input, the Planning Board voted unanimously not to recommend approval to the City Commission for the draft definition proposed for Personal Services. The motion further recommended that the City expedite an immediate update to the comprehensive City wide Master Plan in order to properly address this issue and those that surround it.

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

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

On September 25, 2017, the City Commission considered setting a public hearing to adopt the proposed definition of personal services to clarify the types of uses permitted in the Redline Retail District. After much discussion, the City Commission did not set a public hearing date to consider, the matter, but asked for the matter to be returned to the Planning Board for the purpose of having the Planning Board provide the City Commission with their list of uses discussed at the joint meeting, and to have that list completed and sent back to the City Commission by November 9, 2017. Further, the City Commission requested that the list include the rational of the advantages and disadvantages for each category of use.

On October 25, 2017, the Planning Board reviewed a new draft list of possible personal service uses, including the pros and cons for potentially allowing such uses in the Redline Retail District. The Planning Board reviewed and revised the list and requested that the matter come back on November 8, 2017 to review the completed list.

Accordingly, the Planning Division requests that the City Commission set a public hearing date of **November 13, 2017** to consider adding a definition of personal services to Article 9, section 9.02 of the Zoning Ordinance.

**Suggested Action:**

To set a public hearing date of November 13, 2017 to consider an amendment to Article 9, section 9.02 to add a definition for personal services to the Zoning Ordinance.
ORDINANCE NO.
THE CITY OF BIRMINGHAM ORDAINS:

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

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

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

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

__________________________________________
Mark Nickita, Mayor

__________________________________________
Cherilynn Mynsberge, City Clerk
ORDINANCE NO.______

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

__________________________________________
Mark Nickita, Mayor

____________________________________________
Cherilynn Mynsberge, City Clerk
E. Definition of retail

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

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

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

There were no public comments.
5. Definition of Retail

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

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

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

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

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

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

Consensus was that this topic will need further discussion.
2. Definition of Retail

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

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

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

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

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

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

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

Consensus was to send this matter back to Staff for due consideration and they will bring back appropriate definitions to the next meeting. Also, invite the BSD Director to that meeting. The board can talk about scheduling a public hearing at that time.
Planning Board Minutes
May 24, 2017

1. Definition of Retail

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

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

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

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

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

Motion carried, 7-0.

VOICE VOTE
Yeas: Williams, Lazar, Boyle, Jeffares, Koseck, Prasad, Whipple-Boyce
Nays: None
Absent: Clein
Mr. Williams said he is a free market person and he thinks the market should dictate what goes into the stores. Ms. Lazar stated she did a drive-by of the businesses that are no longer there. There are four on W. Maple Rd. and four on N. Old Woodward Ave. She questioned the rationale behind stymieing a landlord from filling his space. At least it would look like there is activity. Mr. Jeffares thought the City should do some things to encourage retail such as solving the parking problem. If people can't find a place to park they won't come to Birmingham to shop. It would be better to solve that issue than to declare a moratorium that might last for a long time.

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

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

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

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

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

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

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

**Motion by Mr. Jeffares**
**Seconded by Mr. Williams** to continue the discussion on the definition of retail to June 14, 2017.
Mr. Brian Najor received clarification that the board is not moving forward to June 14 for a public hearing on the proposed ordinance amendments. This discussion will be continued on June 14 to get more information and to get more people to weigh in.

**Motion carried, 7-0.**

**VOICE VOTE**

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

**Nays:** None

**Absent:** Clein

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

1. Definition of Retail

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

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

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

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

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

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

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

Motion by Ms. Whipple-Boyce
Seconded by Mr. Koseck to add the following communications to the record:
Mr. Eric Wolfe in favor of the proposed ordinance changes;
Mr. James Esshaki opposed;
Mr. Rick Huddleston opposed.

Motion carried, 5-0.

VOICE VOTE
Yeas: Whipple-Boyce, Koseck, Clein, Jeffares, Prasad
At 8:09 p.m. the chairman invited members of the public to speak.

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

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

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

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

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

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

Mr. Paul Chicorian said he is Executive Manager Director for Colliers International, a commercial real estate firm. Also he is a resident at 1076 Fairfax. He believes if this change were approved it would severely damage the City and its residents. During the slowdown buildings were empty and landlords couldn't get tenants. Now things are better, and it may seem like a good idea to switch everything to retail. But if the economy goes back into a slowdown which it
inevitably will, Birmingham will have vacancies and ultimately Gypsy retails will come in and out. The present mix is ideal, so don't try to fix it.

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

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

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

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

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

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

Mr. Richard Sherer stated that he presently owns 175-185 W. Maple Rd. and his sister has several stores on Pierce. His property at 185 W. Maple Rd. has been vacant for a year. That is
his reality, and to further constrict restricts free enterprise and he is entirely opposed. He questioned what the ordinance proposes to do for building owners who have long-term skin in the game.

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

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

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

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

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

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

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

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

Mr. Koseck indicated the one comment he thought was brilliant was that maybe the Redline Retail District needs to be changed. He feels uncomfortable with pushing the proposal to a public hearing because he thinks it needs study. This matter can be discussed at the joint meeting.
Mr. Jeffares observed the amount of information that came out tonight was extremely helpful. Hopefully more information can be obtained from the BSD so the best possible choice can be made.

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

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

**Motion by Ms. Whipple-Boyece**

**Seconded by Ms. Prasad**

To set a public hearing date of July 12, 2017 at the Planning Board to consider the following ordinance amendments to Chapter 126, Zoning:

1) Article 3, Section 3.04, Specific Standards, to amend the Downtown Birmingham Overlay Standards to exclude community and personal service uses as permitted uses in the Redline Retail District; and

2) Article 9, Section 9.02, Definitions, to add a definition for personal services, to amend the definition of commercial use to exclude personal services and to amend the definition of retail use to include retail bank branches and personal services.

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

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

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

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

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

**Motion carried, 5-0.**

**ROLLCALL VOTE**

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

Nays: None

Recused: Lazar, Share

Absent: Boyle, Williams

Chairman Clein thanked the public for its time and input.
G. RETAIL DEFINITION REVISION

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

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

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

The interpretation has been that a personal service is any type of service that a person can walk in and ask and pay for that service and get that service. The business has to be open to the public so a person off the street has to be able to walk in. It is that gray. A firm selling a marketing service or website designs is a quasi-office use. Maybe these types of uses were not envisioned at the time the 2016 plan was written. We are not sure what the intent of the 2016 plan was with regards to those. Businesses have been able to get in under the definition of personal services because they are open to the public and people walk in and buy their services. The argument is that they are offering personal services. Without a definition, it is difficult to clarify and draw the line as to what constitutes personal services and what doesn't.
So the definition of personal services that is up for consideration right now was arrived at by looking at other jurisdictions and what they defined as personal services. The most common use was that personal services dealt with the care of a person or their clothing, such as tailors, salons, facials, tanning places, shoe repair, anything dealing with the person or their clothing. If that definition was adopted that would very clearly specify that only those types of personal services would fall under commercial and therefore, the quasi-office type uses that we are seeing that are almost more business-related services would not fall under permitted uses in the Redline Retail district. So it is clarifying what would be permitted, and do we want to look at the intent of the 2016 plan and some of these uses that may or may not have even been conceived of at that time.

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

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

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

Mr. Williams said the distinction was not made at the time this came to the Board. One of the issues the Board is grappling with is adopting a proposed solution without a permanent or expiration date. Temporary measures tend to be permanent if they are not replaced. If we are going to have a solution here that is appropriate, we have to put a time frame on it, which would force us to prioritize it. He is quite confident that the landlords are furious because they do not understand the distinction being made tonight, nor did he.
Commissioner Sherman said it is clear that the Board received direction that was unclear, and that is what we are trying to do now. He said the idea of having a study session of what the intention was of the personal service uses under the 2016 plan is a very good next step, even before the Public Hearing. He suggested moving the July 12th Public Hearing to a date certain, have a study session to narrow the definition down a little bit, and then have the Public Hearing. When the Commission prioritizes these items, it is the Commission’s job to give the Board priorities with expectations and timelines. He agreed that something should not be temporary and then allowed to become permanent.

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

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

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

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

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

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

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

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

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

Commissioner Hoff commented that we should move forward on definition before July 24th. She thinks that it is still reasonable.
Mayor Pro Tem Harris said the majority position was for definition of personal use only and not a definition of community use.

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

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

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

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

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

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

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

Commissioner Hoff stated she did not think the Board was going to amend the Downtown Birmingham Overlay standards to exclude community and personal services when we do not know what the personal service definition is. Mr. Valentine clarified that the resolution that passed had a subsequent amendment added which stipulated that the definition of personal services be included when it comes back the Commission.
Commissioner Sherman said the Commission recognized that it made no sense to amend it without a definition of personal service. The Commission is asking the Board to come back with a definition of personal services and the change incorporated into the ordinance as a recommendation.

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

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

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

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

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

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

The latest draft definition for personal services reviewed at the Planning Board’s June 14th meeting does provide a definition for further discussion. However, as it is stated below, this draft language should be modified to only include the services that are permitted and not identify excluded services. This will help further clarify the application of the proposed definition by city staff.
Personal Services: An establishment that is engaged primarily in providing services involving the care of a person or apparel, including but not limited to: beauty and barber shops, nail care or skin salon services, other personal grooming services, laundry services, dry cleaning, shoe or clothing repair; but does not include business services, medical, dental and/or mental health services.

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

Following the completion of the clarification of the personal service definition, the Planning Board should continue to review the definition of retail in accordance with the previous direction to the Planning Board as follows:
To evaluate the success of the red line retail district in Downtown Birmingham to determine if the intended objectives are being met;
To study the existing definition of retail in the Zoning Ordinance and recommend any needed amendments to the definition; and
To review all retail-related requirements contained in the Zoning Ordinance and recommend any needed amendments.
PUBLIC HEARINGS

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

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

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

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

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

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

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

There was no discussion from the public on that motion.

Motion carried, 6-0.

VOICE VOTE
Yeas: Williams, Boyle, Clein, Jeffares, Prasad, Whipple-Boyce
Nays: None
Recused: Lazar
Absent: Koseck

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

1. Definition of Personal Services

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

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

- E-Mails from various individuals -
  - Elizabeth Elkin on July 10;
  - Tom Booth on July 10;
  - Karen Mucha on July 10;
  - Andrea Rehm on July 5.

- E-Mail to Planning Board members from Christopher Longe on July 11.

Motion carried, 6-0.

VOICE VOTE
Yeas: Williams, Whipple-Boyce, Boyle, Clein, Jeffares, Prasad
Nays: None
Recused: Lazar
Absent: Koseck

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

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

1. Postpone the public hearing set for July 12, 2017 to a date certain in the immediate future.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Ecker said what she heard from the majority of members is that Personal Services is an establishment that is open to the general public and engaged primarily in providing services directly to an individual consumer; including but not limited to personal care services, care of
apparel and other personal items; and not including business to business services, medical, dental, and/or mental health services.

Mr. Boyle stated the board needs to have a serious conversation about the Downtown. Everyone knows there is a lot of change happening. His thought was that it behooves the City Commission to take the leadership and create some form of opportunity for people to weigh in on this issue of the nature of our Downtown. So he strongly recommended to the City Commission to give that serious consideration and get it moving in advance of yet more delays on the Master Plan.
PUBLIC HEARINGS
1. An ordinance to amend Chapter 126, Zoning to consider changes to Article 03 section 3.04 to exclude community uses in the Redline Retail District and Article 09, Definitions to define Personal Services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Motion carried, 6-0.

ROLLCALL VOTE
Yeas: Williams, Koseck, Clein, Boyle, Jeffares, Whipple-Boyce
Recused: Lazar, Share
Nays: None
Absent: Prasad

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

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

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

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

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

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

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

Mr. Richard Sherer said he owns multiple properties in Birmingham. He read a couple of sentences from two magazines. Amazon has online sales six times higher than those of
Walmart, Target, Best Buy, Nordstrom, Home Depot, Macy's, Kohl's and Cosco combined. The New York Times states that the retail sector looks quite vulnerable economically with the transition to e-commerce. However, health care has much better numbers. This is the direction things are going.

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

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

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

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

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

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

Mr. Koseck wondered how medical/dental crept in as an exclusion and why some are suggesting that it be included. For simplicity purposes he is willing to move this forward and let the Commission do as they please, but he really would like to study it in greater detail.
Mr. Jeffares said that personally he does not like to walk by a storefront and see people hunched over in a cube and working on a PC. It would be horrible to have that everywhere. However, this process doesn't feel right to him for something that has this kind of magnitude - the first floor on the biggest chunk of Downtown. He doesn't feel that he has all of the necessary information to move this forward. He still thinks it is something for a Master Plan and he would prioritize that as number one on the Action List.

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

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

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

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

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

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

Mr. Williams explained one of the reasons he felt the impetus to move towards a Master Plan was the experience with O-1, O-2, TZ-1, TZ-2, TZ-3 where they tried to grapple with transition areas affecting residents and commercial property owners in transition areas. What the board learned was that they didn't have a Master Plan and it took them seven years from the time they started talking about it until they reached a final conclusion on all of the pieces. They took their time, did it right, and didn't move on an interim solution. What they learned was that piecemeal solutions are a bad idea. That is why he thinks this City needs a Master Plan. He would like to hear from all property owners and would also like the residents to speak up.
No one from the public had comments on the motion at 9:24 p.m.

**Motion carried, 6-0.**

**ROLLCALL VOTE**
Yeas:  Clein, Williams, Boyle, Jeffares, Koseck Whipple-Boyce
Recused:  Lazar, Share
Nays:  None
Absent:  Prasad

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

**DEFINITION**

**Personal service business**

HTTPS://DEFINEDTERM.COM/A/DEFINITION/36084

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

**ADDED BY RICK OWENS**

Endorse (49) Share Flag

**DOCUMENT**

Zoning Code

**RELATED ENTITIES**

City of Bremerton, Washington

**DEFINITION STATISTICS**

Word Count 57  Letter Count 348

**FLESCH-KINCAID READABILITY**

Reading Ease 10.2  Grade Level Graduate School

**RELATED TOPICS**

construction zoning property building real estate development
DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

(113.1) “Porch” means a roofed open area, at tached to or part of the building and with direct access to the residence. Please see definition for “vaulted entry feature” for similar structures greater than 12 feet in height.

(114) “Personal service” means a use providing services of a personal convenience nature, and cleaning, repair or sales incidental thereto, including:

(A) Beauty shops, nail salons, day spas, and barbershops;

(B) Self-service laundry and cleaning services; laundry and cleaning pick-up stations where all cleaning or servicing for the particular station is done elsewhere; and laundry and cleaning stations where the cleaning or servicing for the particular station is done on site, utilizing equipment meeting any applicable Bay Area Air Quality Management District requirements, so long as no cleaning for any other station is done on the same site, provided that the amount of hazardous materials stored does not at any time exceed the threshold which would require a permit under Title 17 (Hazardous Materials Storage) of this code;

(C) Repair and fitting of clothes, shoes, and personal accessories;

(D) Quick printing and copying services where printing or copying for the particular service is done on site, so long as no quick printing or copying for any off-site printing or copying service is done on the same site;

(E) Internet and other consumer electronics services;

(F) Film, data and video processing shops, including shops where processing for the particular shop is done on site, so long as no processing for any other shop is done on the same site; and

(G) Art, dance or music studios intended for an individual or small group of persons in a class (see “commercial recreation” for other activities).

(114.2) “Porte-cochere” means a covered structure attached to a residence or adjacent to a residence and erected over a driveway, which is completely open on three or more sides and used for the temporary unloading and loading of vehicles.

(114.3) “Privacy” means a reasonable expectation that personal activities conducted within and around one's home will not be subject to casual or involuntary observation by others. Complete or absolute privacy is not a realistic expectation.

(115) “Private educational facility” means a privately owned school, including schools owned and operated by religious organizations, offering instruction in the several branches of learning and study required to be taught in the public schools by the Education Code of the State of California.

(116) “Professional office” means a use providing professional or consulting service in the fields of law, architecture and architectural design, engineering, accounting, and similar professions, including associated product testing and prototype development, but excluding product manufacturing or assembly and excluding the storage or use of hazardous materials in excess of permit quantities prescribed in Title 15 of the Municipal Code.
Law Dictionary

personal service

noun

Legal Definition of PERSONAL SERVICE

1: a service based on the intellectual or manual efforts of an individual (as for salary or wages) rather than a salable product of his or her skills

2: physical delivery of process to a person to whom it is directed or to someone authorized to receive it on that person's behalf

From the M-W Editors
Which Came First? Quiz
Do you know which word is older?
TAKE THE QUIZ

ludwig-richter-spring-has-arrived

April 2017 Words of the Day Quiz
Let the rain quiz you
TAKE THE QUIZ

Name That Thing

Name That Thing
Test your visual vocabulary with our 10-question challenge!
TAKE THE QUIZ

Learn a new word every day. Delivered to your inbox!
Personal Services. Establishments providing non-medical services to individuals as a primary use. Examples of these uses include:

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

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

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

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

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

Planning Commission. The City of San Ramon Planning Commission, appointed by the San Ramon City Council in compliance with Government Code Section 65501, referred to throughout this Zoning Ordinance as the "Commission."

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

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

Porch. A covered but otherwise open platform that provides a transition between the interior of a building and the public space of the street.
mobile homes ("Mobile Home, RV and Boat Sales"), or building or landscapc materials ("Building and Landscape Materials Sales"). Outdoor display and sales shall comply with the standards for "Outdoor Displays and Sales" in Section 20-42.110.

**Outdoor Storage.** See "Storage—Outdoor."

**P. Definitions, “P.”**

**Parcel.** See "Lot, or Parcel."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Property Line.** The recorded boundary of a parcel of land.
Proposed Project. A proposed new structure, new addition to an existing structure, or area of other new site development; these do not include the alteration of any portion of an existing structure other than an addition.

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

Q. Definitions, “Q.”

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

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

R. Definitions, “R.”

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

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

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

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

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

1. Collection facility. A center where the public may donate, redeem or sell recyclable materials, which may include the following, where allowed by the applicable zoning district:
   a. Reverse vending machines;
   b. Small collection facilities which occupy an area of 350 square feet or less and may include:
      (1) A mobile unit,
      (2) Bulk reverse vending machines or a grouping of reverse vending machines occupying more than 50 square feet, and
      (3) Kiosk-type units which may include permanent structures;
   c. Large collection facilities which occupy an area of more than 350 square feet and/or include permanent structures.

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

3. Processing facility. A structure or enclosed space used for the collection and processing of recyclable materials for shipment, or to an end-user’s specifications, by such means as baling, briquetting, cleaning, compacting, crushing, flattening, grinding, mechanical sorting, re-manufacturing and shredding. Processing facilities include the following types, both of which are included under the definition of “Scrap and Dismantling Yards,” below:
   a. Light processing facility occupies an area of under 45,000 square feet of collection, processing and storage area, and averages two outbound truck shipments each day. Light processing facilities are
Clause embodied in Report No. 4 of the Scarborough Community Council, as adopted by the Council of the City of Toronto at its meeting held on May 21, 22 and 23, 2002.

7

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

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

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

Purpose:

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

Financial Implications and Impact Statement:

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

Recommendations:

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

Background:

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

Comments:

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

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

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

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

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

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

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

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

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

The definitions and permissions of Personal Service Shop, Service Shop, Personal Service zoning, called “Personal Grooming Establishment” in the former City of Toronto, were briefly examined for all former municipalities across the City. Except for the former Cities of Etobicoke and York, which do not define Aromatherapy Clinics or any of the foregoing uses, but permit these uses under “Retail Uses” and “Retail Store” respectively, the other municipalities generally define and permit these uses in a similar manner to that in Scarborough.
The North York Zoning By-law permits Personal Service Shops in commercial and industrial zones and defines Personal Service Shop as follows:

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

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

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

Conclusions:

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

Contact:

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

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

Purpose:

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

Financial Implications and Impact Statement:

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

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

Background:


Comments:

Official Plan

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

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

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

Zoning By-laws

The Zoning By-laws generally permit Personal Service Shops in Neighbourhood Commercial zones and, because land use permissions in the commercial hierarchy are cumulative, such uses are also permitted in Community Commercial zones. A list of permissions for Personal Service Shops, Service Shops and Personal Services in Scarborough Community By-laws by zone is attached. (Attachment 1).
Personal Service Shops typically include beauty and hair styling parlours, barbershops, custom tailors and dressmakers, dry cleaning and laundry services and, subject to adequate documentation of certification, masseuses and Holistic Centres, including Aromatherapy Clinics and Spas.

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

- **Personal Service Shop:**

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

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

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

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

**Conclusions:**

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

**Contact:**

Errol Chapman, Planner, Community Planning Division, Scarborough Civic Centre
Telephone: 416-396-4250; Fax: 416-396-4265; e-mail: echapman@city.toronto.on.ca
(The attachment referred to in the foregoing report was included in the Agenda for the Scarborough Community Council meeting held on May 7, 2002, and a copy thereof is on file in the Office of the City Clerk, Scarborough Civic Centre.)
On September 25, 2017, the City Commission considered setting a public hearing to create a definition for personal services in the Downtown Birmingham Overlay District. After much discussion, the City Commission did not set a public hearing date to consider the matter, but asked for the matter to be returned to the Planning Board for the purpose of having the Planning Board provide the City Commission with their list of uses discussed at the joint meeting, and to have that list completed and back to the Commission by November 8, 2017. Further, the City Commission requested that the list include the rationale of the advantages and disadvantages for each category of use. Please see attached minutes. As there was no such list previously created, the Planning Division has prepared a sample list of potential personal service uses along with the pros and cons for potentially allowing such uses in the Redline Retail District for the Planning Board’s review. Please find the list attached. The Planning Board should review the types of services included, and determine if any others should be added and be prepared to discuss the potential pros and cons of allowing such uses in the Redline Retail District.

During the City Commission meeting on September 25, 2017, the City Commission expressed concern that the Planning Board had not considered enough sample definitions of personal services in other communities. Planning staff indicated that a number of sample definitions were selected from the research completed to provide the Planning Board with multiple options to consider for Birmingham. Based on the concern expressed that more definitions were not discussed, please find below the 5 sample definitions that were previously provided as options in previous agenda packets (*), along with 12 additional definitions from other communities to supplement the ones originally selected.

- **Bremerton, WA***
  - Personal Service Business means an establishment engaged primarily in providing services involving the care of a person or apparel, such as: show repairs, laundry and dry cleaning, beauty and barber shops, clothing/costume rental, tanning, other personal grooming facilities and domestic assistance services. This does not include massage parlors, health care services, exercise establishments, nor funeral services.
- **Menlo Park, CA***
  - Personal Services: “Personal Services” means barber shops, beauty salons, launderettes, dry cleaning, shoe repair and other similar service businesses.

- **Palo Alto, CA***
  - “Personal Service” means a use providing services of a personal convenience nature, and cleaning, repair or sales incidental thereto, including:
    - Beauty Shops, nail salons, day spas, and barbershops;
    - Self-service laundry and cleaning services; laundry and cleaning pick-up stations where all cleaning or servicing for the particular station is done elsewhere; and laundry and cleaning stations where the cleaning or servicing for the particular station is done on site, utilizing equipment meeting any applicable Bay Area Air Quality Management District requirements, so long as no cleaning for any other station is done at the same site, provided that the amount of hazardous materials stored does not at any time exceed the threshold which would require a permit under Title 17 (Hazardous Material Storage) of this code;
    - Repair and fitting of clothes, shoes, and personal accessories;
    - Quick printing and copying services where printing or copying for the particular shop is done on site, so long as no processing for any other shop is done on the same site; and
    - Art, dance or music studios intended for an individual or small group of persons in a class.

- **San Ramon, CA***
  - Personal Services: Establishments providing non-medical services to individuals as a primary use. Examples of these uses include:
    - Barber and beauty shops
    - Clothing rental
    - Dry cleaning/laundry pickup stores with limited equipment (no on site plant)
    - Home electronics and small appliance repair
    - Laundromats (self-service laundry)
    - Locksmiths
    - Massage (licensed, therapeutic, non-sexual)
    - Pet grooming with no boarding
    - Shoe repair shops
    - Tailors
    - Tanning salons

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

  - Personal Services – Restricted: Personal services that may tend to have a blighting and/or deteriorating effect upon surrounding areas which may need to be dispersed to minimize adverse impacts. Examples of these uses include:
- Check cashing stores
- Fortune tellers
- Palm and card readers
- Pawnshops
- Psychics
- Spas and hot tubs for hourly rental
- Tattoo and body piercing services

**Santa Rosa, CA***
- Personal Services: Establishments providing non-medical services to individuals as a primary use. Examples of these uses include:
  - Barber and beauty shops
  - Clothing rental
  - Dry cleaning pickup stores with limited equipment
  - Home electronics and small appliance repair
  - Laundromats (self-service laundries)
  - Locksmiths
  - Pet grooming with no boarding
  - Shoe repair shops
  - Tailors
  - Tanning salons

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

- Personal Services – Restricted: Personal services that may tend to have a potentially offensive effect upon surrounding areas and which may need to be dispersed to minimize their adverse effects. Examples of these uses include:
  - Check cashing stores
  - Fortune tellers
  - Palm and card readers
  - Psychics
  - Soup kitchens
  - Spas and hot tubs for hourly rental
  - Tattoo and body piercing services

**Delano, MN**
- Personal Service. Personal services shall include the following: barber shops, beauty salon, electrolysis, manicurist, tanning parlor, physical therapy, therapeutic massage, and tattooing.

**Guelph, CA**
- “Personal Service Establishment“ means any premises in which is provided services, including, but is not limited to activities, facilities, or treatments for the improvement of a person’s physical or psychological health or appearance such
as, but not limited to Hair Salons, Tattoo Parlors, Tanning salons, Spas, Electrolysis, Piercing and Aesthetician Salon.

- **Manistee, MI**
  - PERSONAL SERVICE ESTABLISHMENT: An establishment engaged in providing services involving the care of a person or his or her personal goods or apparel, including linen supply, beauty shops, barbershops, shoe repair, health clubs and similar facilities.

- **New Orleans, LA**
  - Personal Service Establishment: An establishment primarily engaged in the provision of frequent or recurrent services of a personal nature. Typical uses include, but are not limited to, beauty salons and spas, barbershops, tanning salons, massage establishments, commercial copy shops, animal grooming, shoe repair, personal item repair shops, laundromats, dry cleaners and tailors. Personal service establishments do not include any adult uses.

- **North Las Vegas, NV**
  - Personal Services: The provision of services generally involving the care of a person or a person’s possessions. Personal services may include, but are not limited to, laundry and dry cleaning services, barber shops, beauty salons, health and fitness studios, music schools, informational and instructional services, tanning salons, and portrait studios.

- **Pasadena, CA**
  - Personal Services: An establishment providing non-medical services to individuals as a primary use. Examples of these uses include:
    - Barber shops
    - Beauty salons
    - Clothing rental
    - Day/health spa
    - Dry cleaning pick-up stores
    - Fortunetellers, psychics and similar services
    - Hair salons
    - Home electronics and small appliance repair
    - Laundromats (self-service laundries)
    - Nail salons
    - Spas and hot tubs for rent
    - Shoe repair shops
    - Tanning salons
    - Tailors

  - Personal Services – Restricted: A personal service establishment that may tend to have a blighting and/or deteriorating effect on surrounding areas and that may need to be dispersed from other similar uses to minimize its adverse impacts, including;
- Check-cashing services
- Tattooing, piercing, and similar services

- **Porterville, CA**
  - Personal Services: Provisions of recurrently needed services of a personal nature. The classification includes barber and beauty shops, tattoo parlors, seamstresses, tailors, dry cleaning agents (excluding large scale bulk cleaning plants), shoe repair shops, self-service laundries, photocopying and photo finishing services, and travel agencies.

- **Romulus, MI**
  - Personal Service Establishment: A use that performs services on the premises, such as barber and beauty shops; watch, radio, television, clothing and shoe repair shops; tailor photographic studios; locksmiths; and similar establishments requiring some minor retail activity.

- **Victoria, CA**
  - “Personal service” means the use of a building or portion thereof to provide professional grooming services to a person including but not limited to hairstylists, aestheticians and spa services.

- **West Bloomfield, MI**
  - Personal service establishment means and business operated primarily to render services to persons, including but not limited to a barber shop, health spa, beauty salon, repair store, photographic studio, laundry, laundromat, dry cleaning drop-off and pick-up service for off-site dry cleaning only, tailor, dressmaker, personal trainer, caterer, or express mail/courier, or similar personal services. Retail sales of items related to the services being provided is permitted only as an accessory use.

- **West Hollywood, CA**
  - Personal Service: Defined as establishments providing non-medical services as a primary use, including (but not limited to): barber and beauty shops, tanning salons, tattoo parlors, spas, and psychic readers.

- **Wylie, TX**
  - Personal service use means a facility for the sale of personal services. Personal service uses include, but are not limited to a barber/beauty shop, shoe repair, a tailor, an instructional arts studio, a photographic studio, a handcrafted art work studio, a travel bureau, and duplicating shop.

**Suggested Action:**

Review and amend the attached list of potential personal service uses and the pros and cons of allowing each of these uses in the Redline Retail District.
SET PUBLIC HEARING TO CONSIDER ADDING DEFINITION OF PERSONAL SERVICES TO ZONING ORDINANCE

Commissioner Sherman said he would like to see the list the Planning Board made in their consideration of the definition of personal services before the Commission schedules a public hearing.

City Manager Valentine confirmed for Commissioner Sherman that the Planning Board's first meeting in November would be November 8, and that the Commission should ask to receive the Planning Board’s list and notes by November 9 at the latest.

Commissioner Sherman clarified he does not want the Planning Board to hold another public hearing; rather, he wants the list the Planning Board had been working on to be provided to the Commission. Commissioner Sherman explained to City Planner Ecker that he would like the list to be inclusive of the uses the Planning Board did and did not consider including in their definition of personal services.

Commissioner Bordman echoed Commissioner Sherman's comments, and added that in all the personal research she had conducted on personal services definitions in different communities, illustrative lists of uses were included. Commissioner Bordman continued that when the Planning Board provides the Commission with its list, it should also include pros and cons for including or excluding each use.

Commissioner DeWeese stated:
  • He was similarly bothered by the lack of real-world examples, and this lack could lead to uncertainty in interpretation of the ordinance.
  • He would like to see how all the businesses currently operating in the red-line retail district would be categorized, even with the understanding that those businesses are grandfathered in, so as to be able to refine how the definitions and uses should be applied.
  • He is not comfortable moving forward with a definition without a more concrete sense of this information.

Mayor Nickita summarized that he was hearing the Commissioners call for more specific examples and information from the Planning Board.

Commissioner Hoff pointed out:
  • The Planning Board was originally hesitant in providing a list because every use would have exceptions.
  • Other approaches might be more consistent with the Commission’s desire to promote vibrant, active businesses in the City’s retail areas.
  • Giving the Planning Board sufficient leeway to explore other approaches might be beneficial.
Mayor Nickita stated that the Commission seemed to be addressing two related issues: use issues and application issues. Citing Lululemon as an example, Mayor Nickita explained that if they, as a retail business, decided to put an office desk in one of their windows, that would be both a use and an application issue.

Commissioner Hoff echoed Mayor Nickita’s point, saying that Lululemon was a good example because they have frequent customers and less dynamic windows, which brings up difficulties with this ordinance and its application.

Commissioner Sherman reiterated that the topic before the Commission was whether to set a public hearing on the public services definition, or to send the topic back to the Planning Board with a request for further information.

Mayor Pro Tem Harris stated:
- This topic has been discussed in at least three joint sessions.
- He believes the Planning Board fulfilled the Commission’s request to provide a definition for public services.
- The Commission now has a number of options, including:
  - Rejecting the definition;
  - Accepting the definition; or
  - Asking the Planning Board to generate a list of additional ways to create a vibrant and active downtown.
- He does not want to send the current definition back to the Planning Board for further elaboration.

Mayor Nickita:
- Agreed with Commissioner Hoff that asking for a list of uses may be complicated because exceptions will exist, but added that he also does not believe the Commission has been provided enough information by the Planning Board to move forward with crafting the ordinance.
- Preferred to receive a list from the Planning Board, even with the drawbacks of generating one, in order to address the issue of clarity around the ordinance’s implementation.

Commissioner Hoff reminded the Commission that Chairman Scott Clein of the Planning Board called for further study of the definition before implementation, and that Chairman Clein did not likely intend that a list of uses would be sufficient substitute for that study.

Mayor Nickita replied that the Planning Board’s recommendation of further study of the definition would be beneficial long-term, but would not resolve the short-term issue of current, appropriate implementation of the ordinance.

Commissioner DeWeese stated:
- His request for a list is in order to provide the Commission with concrete examples with which to work.
• He also agrees with Commissioner Hoff that the more pressing issue at hand is to figure out what rules or regulations should be applied to the first twenty feet of space in these types of zoning situations, and this is more than a use issue.
• There are some uses that may be technically prohibited, but would be more vibrant and interesting to passersby than other uses which are technically permitted but visually lacking, and that acknowledging these potential contradictions will allow the Commission to achieve its ultimate goal of making streets livelier, independent of the master planning process.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Bordman: To send the issue of the definition of personal services back to the Planning Board for the purpose of providing the Commission with the list of uses discussed at the Joint City Commission/Planning Board meeting on September 18, 2017, have the Planning Board complete the list, including the rationale for each use’s inclusion or exclusion, and submit the list by November 9 or earlier.

Commissioner Bordman asked to add “to provide rationale for including or excluding each use” to the motion.

Commissioner Sherman suggested the information may be in the Planning Board’s minutes, and Commissioner Bordman replied she did not believe it was.

Mayor Nickita suggested that if this were to be added as an amendment, the request would need to be more specific. He added that requesting a pro and con list for every use considered may be cumbersome.

Commissioner Bordman said that maybe it would be more efficient to include pros and cons for categories instead of individual uses, and Mayor Nickita agreed.

Upon Mayor Nickita’s request, City Clerk Mynsberge read the amendment proposed as: “You are sending this issue back to the Planning Board for the purpose of having them provide us with their list of uses discussed at the joint meeting, to have that list cleaned up, have it back to the Commission by November 8, and to include the rationale of the advantages and disadvantages for each category.”

Mayor Nickita and City Manager Valentine agreed to change “cleaned up” to “completed”.

Commissioner DeWeese stated:
• He would still like to have concrete examples of how the definition applies within Birmingham’s redline retail district.
• The information could come from the Planning staff instead of the Planning Board.

City Manager Valentine suggested that Commissioner DeWeese’s concerns could be addressed administratively.
Mayor Nickita concurred that a presentation on the topic would be useful.

Commissioner Hoff stated she was still concerned because the Planning Board did not endorse its own definition, and therefore a list of rationales to build on the unendorsed definition would not be beneficial.

Mayor Nickita requested that further Commission comments be related to the motion.

Commissioner Boutros stated:
- Ultimately, in requesting a list, the Commission is asking the Planning Board to commence a limited study without appropriate time or resources.
- He believes the Commission should either accept the currently provided definition or not, and more forward from there.
- He believes a list with sub-items would only further complicate the issue.

Mayor Nickita reminded the Commission the motion on the table was to request further information from the Planning Board so as to clarify the ordinance, and that such a motion could be beneficial so the Commission does not continue to attempt performing work more appropriately carried out by the Planning Board. Mayor Nickita explained to Commissioner Hoff that the intent of the motion was to provide a list of categories that fall within the definition of personal use, and the rationale for the uses’ inclusion or exclusion. In this way, the Commission hopes to gain information as to how the ordinance may be more clearly implemented.

Commissioner Hoff stated she believes the motion just delays the Commission’s effort towards cultivating vibrant and active streets.

Mayor Nickita replied that, while he agrees the issue has already been more delayed than he expected, this motion would only delay the process by an additional month, with a public hearing at the end of November instead of the end of October. He continued that doing so has the benefit of being as informationally complete as possible.

VOTE: Yeas, 4
Nays, 3 (DeWeese, Harris, Hoff)
Absent, 0
DATE: October 23, 2017

TO: Joseph A. Valentine, City Manager

FROM: J. Cherilynn Mynsberge, City Clerk

SUBJECT: J. Cherilynn Mynsberge, City Clerk

Special Event Request

Hotworks Birmingham Fine Art Show

Attached is a special event application submitted by Hot Works, LLC Fine Art & Fine Craft Shows requesting permission to hold Hotworks Birmingham Fine Art Show in Shain Park on August 24 - 26, 2018. This will be the first time in Birmingham for this event.

The set-up is August 24th, and the show will be open 10:00 AM – 5:00 PM on Saturday, August 25th and Sunday, August 26th. Tear-down begins at 5:15 PM on Sunday, August 26th, and is scheduled to be completed at 10:00 PM.

The application has been circulated to the affected departments and approvals and comments have been noted.

The following events have either been approved by the Commission or are planned to be held in August 2018 and have not yet submitted an application. As noted below, the 2018 Common Ground show will be relocated from Old Woodward to Shain Park.

<table>
<thead>
<tr>
<th>Event Name</th>
<th>Date</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farmers Market</td>
<td>Every Sunday</td>
<td>Lot 6 (North Old Woodward)</td>
</tr>
<tr>
<td></td>
<td>May - October</td>
<td></td>
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<tr>
<td>Cruise</td>
<td>August 18, 2018</td>
<td>Old Woodward, Brown, Merrill, possibly Shain Park</td>
</tr>
<tr>
<td></td>
<td></td>
<td>due to S. Old Woodward construction</td>
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<tr>
<td>Movie Night</td>
<td>August 24, 2018</td>
<td>Booth Park</td>
</tr>
<tr>
<td>In the Park Concerts</td>
<td>Every Wednesday</td>
<td>Shain Park</td>
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<tr>
<td></td>
<td>June - August</td>
<td></td>
</tr>
<tr>
<td>Common Ground</td>
<td>Mid-September TBD</td>
<td>Shain Park</td>
</tr>
</tbody>
</table>

SUGGESTED RESOLUTION:
To approve a request from Hot Works, LLC Fine Art & Fine Craft Shows to hold Hot Works Birmingham Fine Art Show in Shain Park, on August 24th, 25th, and 26th, 2018, contingent upon compliance with all permit and insurance requirements and payment of all fees, and further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.
CITY OF BIRMINGHAM
APPLICATION FOR SPECIAL EVENT PERMIT
PARKS AND PUBLIC SPACES

I. EVENT DETAILS

- Incomplete applications will not be accepted.
- Changes in this information must be submitted to the City Clerk, in writing, at least three weeks prior to the event

FEES:
FIRST TIME EVENT: $200.00
ANNUAL APPLICATION FEE: $165.00

(Please print clearly or type)

Date of Application Aug 29, 2017

Name of Event Hot Works Birmingham Fine Art Show

Detailed Description of Event (attach additional sheet if necessary) high quality juried fine art and fine craft show with sponsors and good vendors

Location Shain Park

Date(s) of Event AUGUST 24, 25 & 26, 2018 Hours of Event 10 am - 5 pm daily
Date(s) of Set-up AUGUST 24, 2018 Hours of Set-up 8 am - 9 pm
Date(s) of Tear-down AUGUST 26, 2018 Hours of Tear-down 5:15 pm - 10 pm

Organization Sponsoring Event Hot Works Lee Craft Shows
Organization Address PO BOX 79, MILFORD, MI 48381-0079
Organization Phone 248 684 2613
Contact Person Patty Navozny
Contact Phone 248 684 - 2613 or cell 248 762 2462
Contact Email pattyn@hotworks.org
II. EVENT INFORMATION

1. Organization Type: Focus is visual arts, ethnic diversity, community enrichment, fostering art education among youth (city, non-profit, community group, etc.)

2. Additional Sponsors or Participants (Provide name, address, contact person, status, etc. for all additional organizations sponsoring your event.)
   - Her Works
   - WWJ Newsradio
   - Det Public TV
   - Det Jewish News
   - T. B. D.

3. Is the event a fundraiser? YES NO
   List beneficiary: Institute for the Arts + Education
   List expected income
   Attach information about the beneficiary. See attached

4. First time event in Birmingham? YES NO
   If no, describe

5. Total number of people expected to attend per day: 500

6. The event will be held on the following City property: (Please list)
   - [ ] Street(s) S. Botes between W. Merrill St. and Martin St.
   - [ ] Street(s) Martin St. between S. Botes and Henrietta
   - [ ] Sidewalk(s)
   - [ ] Park(s) Shaw Park

7. Will street closures be required? YES NO S. Botes and Martin between
   - S. Botes and Henrietta

8. What parking arrangements will be necessary to accommodate attendance? Parking garages
9. Will staff be provided to assist with safety, security and maintenance? **YES NO**
   Describe__________________________________________________________________________

10. Will the event require safety personnel (police, fire, paramedics)? **YES NO**
    Describe__________________________________________________________________________

11. Will alcoholic beverages be served? **YES NO**
    If yes, additional approval by the City Commission is required, as well as the Michigan Liquor
    Control Commission.

12. Will music be provided? **YES NO**
    __ Live   __ Amplification   __ Recorded   __ Loudspeakers
    Time music will begin ____________________________
    Time music will end _____________________________
    Location of live band, DJ, loudspeakers, equipment must be shown on the layout map.

13. Will there be signage in the area of the event? **YES NO**
    Number of signs/banners________________________
    Size of signs/banners 3′ x 30′, 4′ x 50′, 3′ x 10′
    Submit a photo/drawing of the sign(s). A sign permit is required.

14. Will food/beverages/merchandise be sold? **YES NO**
    **Unknown for now**
    • Peddler/vendor permits must be submitted to the Clerk’s Office, at least two weeks prior
      to the event.
    • All food/beverage vendors must have Oakland County Health Department approval.
    • Attach copy of Health Dept approval.
    • There is a $50.00 application fee for all vendors and peddlers, in addition to the $10.00
      daily fee, per location. A background check must be submitted for each employee
      participating at the event.
<table>
<thead>
<tr>
<th>VENDOR NAME</th>
<th>GOODS TO BE SOLD</th>
<th>WATER HOOK-UP REQUIRED?</th>
<th>ELECTRIC REQUIRED?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

To submit minimum two weeks before event
### III. EVENT LAYOUT

- Include a map showing the park set up, street closures, and location of each item listed in this section.
- Include a map and written description of run/walk route and the start/finish area

1. Will the event require the use of any of the following municipal equipment? *(show location of each on map)*

<table>
<thead>
<tr>
<th>EQUIPMENT</th>
<th>QUANTITY</th>
<th>COST</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Picnic Tables</td>
<td>6 for $200.00</td>
<td></td>
<td>A request for more than six tables will be evaluated based on availability.</td>
</tr>
<tr>
<td>Trash Receptacles</td>
<td>$4.00 each</td>
<td></td>
<td>Trash box placement and removal of trash is the responsibility of the event. Additional cost could occur if DPS is to perform this work.</td>
</tr>
<tr>
<td>Dumpsters</td>
<td>$200.00 per day</td>
<td></td>
<td>Includes emptying the dumpster one time per day. The City may determine the need for additional dumpsters based on event requirements.</td>
</tr>
<tr>
<td>Utilities (electric)</td>
<td>15 # of vendors requiring utilities</td>
<td>Varies basic electric</td>
<td>Charges according to final requirements of event.</td>
</tr>
<tr>
<td>Water/Fire Hydrant</td>
<td></td>
<td>Contact the Fire Department.</td>
<td>Applicant must supply their own means of disposal for all sanitary waste water. Waste water is NOT allowed to be poured into the street or on the grass.</td>
</tr>
<tr>
<td>Audio System</td>
<td>$200.00 per day</td>
<td></td>
<td>Must meet with City representative.</td>
</tr>
<tr>
<td>Meter Bags / Traffic Cones / Barricades</td>
<td># to be determined by the Police Department.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Will the following be constructed or located in the area of the event? **YES  NO** *(show location of each on map)*  

**NOTE:** Stakes are not allowed.

<table>
<thead>
<tr>
<th>TYPE</th>
<th>QUANTITY</th>
<th>SIZE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tents/Canopies/Awnings</td>
<td>150</td>
<td>10 x 10 tents</td>
</tr>
<tr>
<td>(A permit is required for tents over 120 sq ft)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portable Toilets</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Rides</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Displays</td>
<td>10</td>
<td>10 x 10</td>
</tr>
<tr>
<td>(above 150)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vendors</td>
<td>(artists)</td>
<td>(10 x 10's)</td>
</tr>
<tr>
<td>Temporary Structure (must attach a photo)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (describe)</td>
<td></td>
<td>auto sponsor</td>
</tr>
</tbody>
</table>
Birmingham Fine Art Show
Shain Park
Jun 16 & 17, 2018
(Working Copy of Event Layout as of 08/22/17)
The Birmingham City Commission shall have sole and complete discretion in deciding whether to issue a permit. Nothing contained in the City Code shall be construed to require the City Commission to issue a permit to an applicant and no applicant shall have any interest or right to receive a permit merely because the applicant has received a permit in the past.

As the authorized agent of the sponsoring organization, I hereby agree that this organization shall abide by all conditions and restrictions specific to this special event as determined by the City administration and will comply with all local, state and federal rules, regulations and laws.

IV. **SAMPLE LETTER TO NOTIFY ANY AFFECTED PROPERTY/BUSINESS OWNERS**

- Organizer must notify all potentially affected residential property and business owners of the date and time this application will be considered by the City Commission. *(Sample letter attached to this application.)*

- Attach a copy of the proposed letter to this application. The letter will be reviewed and approved by the Clerk’s Office. The letter must be distributed at least two weeks prior to the Commission meeting.

- A copy of the letter and the distribution list must be submitted to the Clerk’s Office at least two weeks prior to the Commission meeting.

- If street closures are necessary, a map must be included with the letter to the affected property/business owners.
Mission Statement

Institute for the Arts & Education, Inc. is a 501(c)(3) non-profit charitable organization dedicated to educate and foster fine arts and crafts among artists and students — of all age groups and diversity — and the general public. This association works to encourage creative expression and artistic excellence, and to expand public awareness, appreciation of the arts, as well as the acquisition of fine art and fine craft. The focus is visual arts, diversity, community enrichment and fostering art education among youth.

IA&E is associated with Hot Works fine art & fine craft shows, which are juried by art professionals with extensive experience and background in art education and art fairs. The focus of Hot Works is quality, not quantity, and it currently hosts juried art fairs in West Bloomfield, Michigan; Asheville, NC; and Estero and Boca Raton, Florida. Show patrons can expect all work to be original and personally handmade by the artist. All discipline is for sale to the public, including sculpture, paintings, clay, glass, fiber, wood, photography, jewelry, and more. IA&E offers monetary professional artist awards in its associated Hot Works events. IA&E works hard to keep the buy/sell/import out of Hot Works events, as this is becoming a trend nationwide at many of the best juried fine art and fine craft shows.

A critical component of the IA&E is encouraging young artists from surrounding areas to compete to display their art work within Hot Works events. Invitations for the Youth Art and Budding Artist Competitions are sent to numerous local grades K-12 programs. Participants have the opportunity for the public to view their work. In addition, professional artists will judge the work, awarding, $250 in each Youth Art/Budding Artist Art Awards program.

IA&E educates the community through ongoing art demonstrations by artists at the shows. This interaction between professional artists and the community is an invaluable experience for everyone.

Bottom line, IA&E works to encourage creative expression and artistic excellence, and to expand public awareness, diversity, appreciation and acquisition of fine art and crafts.
SPECIAL EVENT REQUEST NOTIFICATION LETTER

September 25, 2017

City of Birmingham
Business Owner and/or Residence

The Birmingham City Code requires that we receive approval from the Birmingham City Commission to hold the following special event. The code further requires that we notify any property owners or business owners that may be affected by the special event of the date and time that the City Commission will consider our request so that an opportunity exists for comments prior to approval.

EVENT INFORMATION

NAME OF EVENT: Hot Works Birmingham Fine Art Show

LOCATION: Shain Park, and on S. Bates and Martin St.

DATES OF EVENT: August 25 & 26, 2018  HOURS OF EVENT: Sat 10am-7pm; Sun 10am-5pm

BRIEF DESCRIPTION OF EVENT/ACTIVITY: High Quality, juried fine art and fine craft show with food vendors (restaurants) and sponsors

DATE OF SET UP: Friday, August 24, 2018  HOURS OF SET UP: 8am-7pm

DATE OF TEAR DOWN: Sunday, August 26, 2018  HOURS OF TEAR-DOWN: 5pm-10pm

DATE OF CITY COMMISSION MEETING: October 30, 2017

The City Commission meets in room 205 of the Municipal Building at 151 Martin at 7:30pm. A complete copy of the application to hold this special event is available for your review at the City Clerk’s office (248-530-1880). Log on to www.bhamgov.org/events for a complete list of special events.

EVENT ORGANIZER: Hot Works, LLC Fine Art & Fine Craft Shows

ADDRESS: PO Box 79, Milford, MI 48381-0079

PHONE: 248-684-2613 or cell 248-762-2462

FOR QUESTIONS ON DAY OF EVENT, CONTACT: PATTY NAROZNY
Birmingham Fine Art Show
Shain Park
Jun 16 & 17, 2018
(Working Copy of Event Layout as of 08/22/18)
CERTIFICATE OF LIABILITY INSURANCE

HOTWO-1

08/11/2017

PRODUCER
Korotkin Insurance Group
P O Box 431
Southfield, MI 48037-0431
Emily M. Korotkin, CLCS

CONTACT NAME: Tia Coleman
PHONE: 248-350-5829
FAX: 248-352-0305
E-MAIL: ticac@getkig.com

INSURED
Hot Works LLC; Institute for the Arts & Education Inc & Peak Productions Inc
PO Box 79
Milford, MI 48381

INSURER A: Essex Insurance Co.
INSURER B: Travelers Indemnity Co. 25658
INSURER C:
INSURER D:
INSURER E:
INSURER F:

CERTIFICATE NUMBER: 6KUB-2E930735

REVISION NUMBER:

COVERAGE

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, employees and volunteers thereof. Coverage shall be primary to any other coverage that may be available to the additional insured whether any other available coverage by primary, contributing or excess.

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

CANCELLATION

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
Emily M. Korotkin, CLCS

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ACORD 25 (2014/1)
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HOLD-HARMLESS AGREEMENT

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

[Signature]
Applicant’s signature 8-29-17

[Signature]
Date 9-26-17
Dear City of Birmingham Special Events:

Enclosed please find a Special Event Permit for the Birmingham Fine Art Show - June 16 & 17, 2018. The art show will be produced by Hot Works, a company that has earned a national outstanding reputation for top-notch, high quality juried fine art and fine craft shows. Hot Works also produces the award-winning Orchard Lake Fine Art Show held in West Bloomfield for the last 15 years – voted top 100 art shows in America - ten years in a row. Hot Works Executive Producer, Patty Naranzy, personally sees that every detail in taken care of. She is a Detroit native, a graduate from Wayne State University, and an Oakland County resident for more than 30 years.

The Birmingham Fine Art Show is a high quality, juried fine art and fine craft show where all work is original and personally handmade by the artist in the show. The location of art show will be in Shain Park, S. Bates Street in front of the library only, and on Martin Street in front of the condos only. All other streets remain open.

To ensure that pertinent information is communicated to all local area businesses, enclosed please find a letter that has been drafted to send to each of the local businesses, including a layout of the event. Especially, we want to assure you that there will be access to all local businesses and residential areas during the event. Detour and directional signs overseen by the City will help people get to where they need to go.

Important items regarding road closure are as follows:

- The location is in Shain Park; and on S. Bates between W. Merrill and Martin Street; and on Martin St., between S. Bates St. and Henrietta St. Enclosed please find a map for your reference.
- S. Bates, between W. Merrill and Martin St., and Martin St., between S. Bates and Henrietta, will be closed to traffic between those points from 1 p.m. Friday, June 15, until 10 p.m. Sunday, June 17.

Below please find some key points about the art show:

- Up to 150 artists participate - all professionals who depend on the sale of their art for a living.
- A significant percentage of our artists are from out of the area – many from out of state -- and therefore display and sell art that would otherwise not be seen or made available for sale in Michigan.
- The art fair is juried by art professionals with many years of art education and/or art fair experience.
- The patrons who attend this event have an understanding of art and are quality art buyers.
- This art fair draws both local and nationwide positive exposure to the City.
- This art fair brings much economic impact to the area.
- This art fair is produced by Hot Works, a company with a national reputation known for producing extremely high-quality art fairs.
- Institute for the Arts & Education is the associated 501c(3) non-profit organization that focuses on visual arts, diversity, community enrichment and fostering art education among youth.
- There is $1,500 in Professional Artist Awards.
Enclosed please find the following documents:

1. Special Event Permit
2. Hot Works check #9713 for $200 – first time event
3. Event Layout (working copy)
4. Sample letter to notify affected property owners/businesses within 300’ of location
5. Insurance information (updated insurance will be provided upon permit approval)
6. Information pertaining to Institute for the Arts & Education, Inc. – the associated 501c3 non-profit organization which focuses on visual arts, diversity, community enrichment, and fostering art education among youth

As part of our commitment to bring art education into the community, the Budding Artist Competition is integrated into the art fair. Sponsored by IA&E, this program encourages young artists in grades 6-12 or ages 9-19 to enter his/her original and personally handmade art which is publicly displayed the entire weekend.

There is $250 in awards as students are exposed to, and begin to learn the rules of, being part of a professional art show. They are encouraged to speak with the professional artists in the show, and to discuss what it takes to create and sell their artwork for a living. The Budding Artist Competition, one of the most unique art fair programs of its kind in the country, provides these students with an unmatched learning experience. The program also brings families to the art show who may not otherwise attend – and exposes them to great art. A Budding Artist Competition application is enclosed with this package; the deadline to apply is May 15, 2018. If you have family in this age group, please do pass along this information.

Hot Works and Institute for the Arts & Education are proud of the success and nationwide recognition we have achieved in our educational endeavors. Additional information may be found at www.HotWorks.org.

Our #1 goal at Hot Works is to make the Birmingham Fine Art Show a pleasant and profitable experience for all of our stakeholders in this endeavor – the artists, patrons and residents, sponsors, local merchants, and the City – all the while aiming to be an enjoyable family-friendly event and destination for which we can all take great pride.

Thank you in advance for your time, consideration, and support of this great community event. If you are interested in being part of the art show, onsite marketing, sponsorship and/or community enrichment opportunities are available. If you have any questions, please feel free to contact me directly at 248-684-2613 or email Patty@HotWorks.org.

See Art, Love Art, Buy Art!

Patty Narozyński, Executive Director and Producer
Birmingham Fine Art Show™

Enclosures: Map of Event Site
Budding Artist Application
Visit us at our other Hot Works shows!

20th & 21st Estero Fine Art Shows *
November 18 & 19, 2017 & January 6 & 7, 2018
New Location! Gulf Coast Town Center
Estero/Fort Myers, FL

9th Boca Raton Fine Art Show *
January 27 & 28, 2018
Downtown Boca Raton, FL

2nd Asheville Fine Art Show *
May 19 & 20, 2018
WNC Ag Center, Davis Event Center
Asheville, NC

16th Orchard Lake Fine Art Show *
July 28 & 29, 2018
West Bloomfield, MI

*Voted top 100 art shows in the U.S.A.!
@hotworksartshows www.hotworks.org
www.facebook.com/hotworksartshows

Scott Bayless, Glass
Call for Budding Artists! As part of our commitment to bring art education into the community, Hot Works' Birmingham Fine Art Show, June 16 & 17, 2018 integrates a Budding Artist Competition into the professional art fair. This program invites young and budding artists, ages 9-19 or grades 6-12, to enter his/her works of art that will be publicly displayed during the entire art fair in the Budding Artist Competition tent. All categories of discipline are accepted (see below), as long as the work is original and personally handmade by the student. $250 awards include one $100 Best of Youth Art and three $50 Youth Art Awards of Excellence. Be imaginative and creative as you begin to learn the rules of being part of a professional art fair! For more information, log on to www.hotworks.org. To participate, please read the "Rules" below and complete the application.

Please print legibly.

Artist/Student Name(s): _______________________________ Age _____
Address: ________________________________________ City: _______ State: ___ Zip: _______
Telephone(s): ______________________________ Email: ___________________________
School Name: ___________________________ School Phone #: __________________________
Name of Parent, Legal Guardian or Art Teacher: ____________________________
How did you hear about this program? ______________________________

Rules:
1. To enter, you must be in grades 6-12, or ages 9-19. Please note your age as of the closing date of the competition, which is on May 15, 2018.
2. Up to two pieces of art work may be entered per student. Fee is $3 per entry. Please make check payable to "Institute for the Arts & Education, Inc." and mail all together: the application, the $3 fee per entry, and a photograph of your art work, with size dimensions clearly labeled to PO Box 79, Milford, MI 48381-0079.
3. Paintings, drawings, photography, and other flat art work must be ready to hang with a wire attached approximately 1/3 from the top, whether framed or not. Framing is optional.
4. Art work is to be delivered to the event site, on Friday, June 15, between 8am-noon to the Information/Check-in booth located in Shain Park. Please include your name and telephone number, plus title of entry, if any, on the back of your art work.
5. When art work is delivered, two complimentary VIP passes for two to enter the art fair will be provided; 13 & under are free.
6. Your entry must be certified as original and unaided. Accepted discipline of art work includes: Painting, Clay, Glass, Printmaking, Drawing, Metal, Mixed-Media, Jewelry, Fiber, Wood, Photography, Sculpture, Digital, Other.
7. Works of art must be exhibited for the entire event, until 3pm on Sunday, June 17. No early removal of art work is allowed under any circumstances.
8. The closing date for entries is May 15, 2018. Please postmark your entry by this date.
9. There are four Budding Artist Competition awards totaling $250: first prize is $100; and three secondary prizes are $50 each along with a gorgeous two-foot long ribbon. Awards are given at judges' discretion, and are based on originality and technique/execution. If your entry reaches the final judging stage and is being considered for an award, you may be asked to submit your birth certificate. You do not need to be present to win. Awards will be paid directly at the event, or by July 10, 2018.
10. All winners will be photographed with his/her art work which will be posted on the event website, www.hotworks.org. The person signing below acknowledges and authorizes the Birmingham Fine Art Show; Hot Works, LLC; Institute for the Arts & Education, Inc.; our sponsors or licensees to use the Budding Artist images for promotional purposes for past or future events.
11. The Birmingham Fine Art Show; Hot Works, LLC; or Institute for the Arts & Education, Inc. cannot be held responsible for plagiarism in student art work.
12. Winners will be announced and the awards distributed on Sunday, June 17, at 3pm; we encourage everyone to attend the presentation. Winners need not be present to win. Art work may be picked up on Sunday any time after 3pm until 5pm, when the show closes.
13. Art work not picked up becomes the property of the Birmingham Fine Art Show. We cannot store art work and are not responsible for any art work not picked up during the designated pick up time.
14. Institute for the Arts & Education, Inc., Birmingham Fine Art Show and Hot Works, LLC will use best efforts to take utmost care of art work; however neither can be made responsible for any damage to work. The applicant assumes all responsibility of art work entered in the Birmingham Fine Art Show.
15. The rules of the competition may not be changed or modified and will be strictly applied.
16. Parent, legal guardian or art teacher: by signing this agreement, you accept the rules listed in this application, as well as additional rules of the event. In addition, you agree to hold harmless and indemnify Institute for the Arts & Education; Birmingham Fine Art Show; Hot Works, LLC; City of Birmingham, MI; and their agents and employees for damage from any cause.
17. **THE CLOSING DATE FOR THE COMPETITION IS MAY 15, 2018. PLEASE POSTMARK BY THIS DATE.**
18. By signing below, I have read and will abide to all the rules listed above.

Budding Artist's Signature ___________________________ Parent, Legal Guardian or Art Teacher's Signature ___________________________ Date ___________________________
INVITATION/APPLICATION

Hot Works™, LLC
Fine Art & Craft Shows
July 29 & 30, 2017
15th annual Orchard Lake Fine Art Show®, West Bloomfield, MI, outdoors
Voted Top 100 Art Shows in the Nation – the last 10 years

November 17 & 18, 2017 and January 6 & 7, 2018
20th & 21st bi-annual Estero Fine Art Shows™, Estero, FL, outdoors at Miromar Design Center

January 27 & 28, 2018
9th annual Boca Raton Fine Art Show™, downtown Boca Raton, FL, outdoors

May 19 & 20, 2018
2nd annual Asheville Fine Art Show™, downtown Asheville, NC, indoors at U.S. Cellular Center

Background Image: Agnes Rathsay, Painting

Hot Works: Your Art. Our Passion™

Our passion is to help you be successful selling your art work – because at Hot Works, your success is our success. We emphasize quality of work, not quantity of artists. All art is original and personally handmade by the artist in attendance. We support the unique relationship between artist and patron; we inspire and encourage serious art shoppers to purchase your art. Hot Works’ principal partner Patty Narozyz has 30+ years of event and media experience. Her longevity in the art industry, combined with her expertise, credibility, durability, integrity, tenacity and stability makes Hot Works events not only profitable for those who participate, but gratifying for all – the community, the artists, the sponsor, and the patrons.

Why do a Hot Works show?

• 30+ years of professional event production and media experience
• A promoter who personally knows, cares about, and supports the artists
• Focus is visual art, juried by art professionals
• Every effort to eliminate buy/sell/swap – we encourage artists to report it, and your name is held in complete confidence
• Each event is tailored to its community and setting
• Friday move-in
• Great event hours: Saturday & Sunday 10am-5pm (Orchard Lake is Saturday until 6pm)
• Enormous advertising campaign – TV, radio, print, social media, posters, banners, post cards, signage, etc.
• Several shows to choose from throughout the year – dealing with one organization
• Professionally managed
• Friendly and experienced professional event crew
• Booth sitter available
• Artist awar in every event
• Artist amenities including, complimentary bottled water and continental artist awards breakfast on Sunday
• Overnight security provided
• Plenty of parking
• Overnight parking available for RV’s

Testimonials

Les Slesnick, Retired Photographer, Orlando, FL
“Nobody cares more about the quality of her shows and the honesty, and integrity of her artists than Patty Narozyz.”

Mauro Pozzobonelli, Sculpture, Loxahatchee, FL
“Patty is the greatest promoter and has a great heart! Patty is a real person!”

Sabra Richards, Sculpture, Worton, MD
“What makes a good show? Sales. Certainly count. Patty is a media expert and uses all her knowledge to get great publicity and bring in the crowds. She wants a good show and is willing to provide every advantage she can, prior to day set up, aggressive polling of buy-sell, fair jurying and numerous awards that help sales. I want to do her shows because she is on my side.”

The Communities

West Bloomfield, Michigan has been voted Money Magazine’s “Best Places to Live” and is an upscale neighborhood with rolling hills that provide a tranquil setting for beautiful and lavish homes. West Bloomfield is located adjacent to Bloomfield Hills, home of world-famous Cranbrook Art Museum and Academy of Art. For the last ten years in a row, the Orchard Lake Fine Art Show has been voted one of Sunshine Artist’s top 100 art shows in America, and has won many awards from Michigan Festivals & Events. In 2017, the event is moving to West Bloomfield High School, north about four miles, south of Orchard Lake. The new location provides high visibility off Orchard Lake Road, plenty of on-site patron parking and most importantly, away from summer road construction.

Estero, Florida is located in southwest Florida, between Naples and Fort Myers. Estero Fine Art Show is a bi-annual event, located at Miromar Design Center, directly across the street from our previous location. The Miromar Outlet Mall since 2008. Miromar Design Center is southwest Florida’s #1 destination for designers and home furnishings. The location provides a gorgeous, affluent setting with visibility from the main road, a grand museum-like sculpture as one drives up the meticulously landscaped grounds, plenty of parking, and shaded areas for both patrons and artists. Under same ownership is Miromar Lakes Beach & Golf Club, voted both #1 Community and #1 Clubhouse in the nation – an achievement unmatched in any other U.S. community. Estero Fine Art Show has been voted top 100 art shows in the nation by Sunshine Artist Magazine and Art Fair Source Book.

Boca Raton, Florida is located on Florida’s southeast coast, between West Palm Beach to the north and Fort Lauderdale to the south. The City of Boca Raton provides unique blend of affluent urban and suburban lifestyles, covering over 29 square miles and enjoying five miles of oceanfront. Boca Raton offers a high quality of life to its residents, and as a result, “2016 Best Places to Live” lists Boca Raton as one of the top 100 towns in the nation. The Boca Raton Fine Art Show is held in the heart of downtown Boca and has been voted in the top 150 art shows in the nation by Sunshine Artist Magazine and Art Fair Source Book.

Asheville, North Carolina is a city in western North Carolina’s Blue Ridge Mountains, is known for its vibrant arts scene and historic architecture, including the dome-topped Biltmore of Saint Lawrence. The 17th-century Biltmore estate displays artwork by masters like Rembrandt. The Downtown Art District is filled with galleries and museums, and in the nearby River Arts District, former factory buildings house artists’ studios. The US Cellular Center (formerly the Civic Center) is located in downtown Asheville and, for more than 40 years, has hosted the bi-annual Southern Highland Craft Guild Art fair in July and October. Advantages include nearby rejuvenated facility, controlled “weather” and ease of load in/out. The US Cellular Center is a well-attended facility for a wide variety of events throughout the year.”
Application

Art Name(s):

Address:

City State Zip:

E-Mail Website:

Type of Vehicle:

License Plate Number:

Events, Booth Sizes, Fees & Electric

July 29 & 30, 2017 – 15th annual Orchard Lake Fine Art Show® Late applications accepted for certain categories – Write to show managers for details:

- Norbert Booth Sat. 10:30a - Sun. 5:30p: Move-In: Fri. - Sat. 9:30a - 9:30p: Move-Out by Sunday evening
- Norbert Booth Sun. 10:30a - Sun. 5:30p: Move-In: Fri. - Sat. 9:30a - 9:30p: Move-Out by Sunday evening

-November 18 & 19, 2017 – 20th biennial Esteros Fine Art Show® Fall Deadline August 5, 2017; notification sent by August 7, 2017; Mission Design Center, Estero, FL – outdoors near Naples/Bokeelia Event Hours Sat & Sun. 10:30a - Sun. 6:00p: Move-In: Fri. - Sat. 8:30a - 9:30p: Move-Out by Sunday evening
-January 6 & 7, 2018 – 20th biennial Esteros Fine Art Show® Winter Deadline September 30, 2017; notification sent by October 15, 2017; Mission Design Center, Estero, FL – outdoors near Naples/Bokeelia Event Hours Sat & Sun. 10:30a - Sun. 6:00p: Move-In: Fri. - Sat. 8:30a - 9:30p: Move-Out by Sunday evening
-November 23, 2017 – 17th annual Naples Beach Fine Art Show® Deadline February 7, 2018; notification sent by November 30, 2017; Naples Beach Hotel & Golf Resort, Naples, FL – outdoors near Naples Event Hours Sat & Sun. 10:30a - Sun. 6:00p: Move-In: Fri. - Sat. 8:30a - 9:30p: Move-Out by Sunday evening
-November 24, 2017 – 23rd annual Naples Beach Fine Art Show® Deadline February 7, 2018; notification sent by November 30, 2017; Naples Beach Hotel & Golf Resort, Naples, FL – outdoors near Naples Event Hours Sat & Sun. 10:30a - Sun. 6:00p: Move-In: Fri. - Sat. 8:30a - 9:30p: Move-Out by Sunday evening

Booth includes all off-white pipe and drapes to separate space between booths.

- Electricity: Add $50 per $500 for Artist’s Generators. May be used outdoors only. You must advise at a minimum of three weeks prior to show date that you are bringing a generator; your generator must not be bigger than any new ones we provide. Your generator must be unplugged for 20 minutes to avoid any current outages.

- Late Fee Add $25 - Late applications may be considered for unoccupied only.

- Tent Rental – For outside shows, a white commercial tent can be rented for $200, includes lightweight, set up and breakdown.

Media Categories

City Digital Drawing Fiber Glass Jewelry Precious Jewelry Precious Non-Metal Mixed Media Other Painting Photography Printmaking Sculpture Wood

Images Title, Size, Material, Rotal of print... please complete the range of work that you intend to display.

Image 1: 

Image 2: 

Image 3: Full Display Booth – please show your complete body of work & professional display how it would be displayed at show (include brown bins, if applicable)

Checklist:

- Contact information
- Bio
- Samples of previous work
- Artist statement
- CV
- Letter of recommendation
- Parking pass
- Transportation
- Application materials
- Application fee

Artists must be present during the entire festival and must personally staff their booths. A government issued picture ID must be available at check-in, upon request.

Collaborative work is not accepted. Submissions should reflect the creativity of the artists, and should be submitted as a joint application. If accepted, collaborating artists may only exhibit work that is truly collaborative in nature. No works that are interpreted, duplicated, or otherwise included as part of the preparation of an image will be accepted. Booth appearance at the show must reasonably resemble booth setup submitted at the show. If rejected, the artist may not submit applications for the show in question for the next 2 years. Artists exhibiting under a pseudonym or in the name of another individual must send in a letter from the other individual validating the intent to exhibit under the same name. Booth appearance at the show must reasonably resemble booth setup submitted at the show. If rejected, the artist may not submit applications for the show in question for the next 2 years. Artists exhibiting under a pseudonym or in the name of another individual must send in a letter from the other individual validating the intent to exhibit under the same name.
### DEPARTMENT APPROVALS

**EVENT NAME** HOTWORKS BIRMINGHAM FINE ART SHOW

**LICENSE NUMBER** #18-00011060

**COMMISSION HEARING DATE:** OCTOBER 16, 2017

**DATE OF EVENT:** AUGUST 24, 25, 26, 2018

**NOTE TO STAFF:** Please submit approval by SEPTEMBER 18, 2017

<table>
<thead>
<tr>
<th>DEPARTMENT</th>
<th>APPROVED</th>
<th>COMMENTS</th>
<th>PERMITS REQUIRED</th>
<th>ESTIMATED COSTS</th>
<th>ACTUAL COSTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLANNING</td>
<td>SC</td>
<td>No comments</td>
<td>(Must be obtained directly from individual departments)</td>
<td>None.</td>
<td>$0</td>
</tr>
<tr>
<td>BUILDING</td>
<td>MM</td>
<td>1. Any tents or canopies must be installed in accordance with the 2015 MBC and 2015 NFC</td>
<td>Depending on tent size</td>
<td>$166.11</td>
<td></td>
</tr>
<tr>
<td>FIRE</td>
<td>JMC</td>
<td>1. No Smoking in any tents or canopy. Signs to be posted. 2. All tents and canopies must be flame resistant with certificate on site. 3. No open flame or devices emitting flame, fire or heat in any tents. Cooking devices shall not be permitted within 20 feet of the tents. 4. Tents and canopies must be properly anchored for the weather conditions, no stakes allowed. 5. Clear fire department access of 12 foot aisles must be maintained, no tents, canopies or other obstructions in the access aisle unless approved by the fire</td>
<td></td>
<td>$80</td>
<td></td>
</tr>
</tbody>
</table>

DEPARTMENT APPROVALS

**EVENT NAME** HOTWORKS BIRMINGHAM FINE ART SHOW

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**COMMISSION HEARING DATE:** OCTOBER 16, 2017

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**NOTE TO STAFF:** Please submit approval by SEPTEMBER 18, 2017
6. Pre-event site inspection required.
7. A prescheduled inspection is required for food vendors through the Bldg. dept. prior to opening.
8. All food vendors are required to have an approved 5lbs. multi-purpose (ABC) fire extinguisher on site and accessible.
9. Cords, hoses, etc. shall be matted to prevent trip hazards.
10. Exits must be clearly marked in tents/structures with an occupant load over 50 people.
11. Paramedics will respond from the fire station as needed. Dial 911 for fire/rescue/medical emergencies.
13. Do Not obstruct fire hydrants or fire sprinkler connections on buildings.
14. Provide protective barriers between hot surfaces and the public.
15. All cooking hood systems that capture grease laden vapors must have an approved suppression system and a K fire extinguisher in addition to the ABC Extinguisher.
16. Suppression systems shall be inspected, tested, and properly tagged prior to the event. All Sprinkler heads shall be of the 155 degree Quick Response type unless serving an area of high heat and approved by the Fire Marshal. The suppression system
shall have a continuous water supply as well as a secondary back up supply. Activation of the suppression system will shut down the ride and cause illumination of the exits.

<table>
<thead>
<tr>
<th>Service</th>
<th>Contact</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>POLICE</strong>&lt;br&gt;101-000.000.634.0003&lt;br&gt;248.530.1870</td>
<td>SG</td>
<td>Based on the size of the event 2 officers on overtime will be assigned to the event like other similar events. Barricades will be provided for street closures. $1,500</td>
</tr>
</tbody>
</table>
| **PUBLIC SERVICES**<br>101-000.000-634.0002<br>248.530.1642 | Carrie Laird<br>9/29/2017 | This event's layout has 150 booths in total, 92 of which are set up on the grass in Shain Park. There is a possibility of turf damage.

The estimated costs include power washing underneath the band shell where the food vendors are located on the provided map, based on past experience of food in the park.

We recommend that the port-a-johns and cars/booths are not placed in the playground area for safety reasons.

The layout also shows a dumpster placed at a private facility. $4,000 |
| **ENGINEERING**<br>101-000.000.634.0002<br>248.530.1839 | A.F. | Maintain 5’ clear pedestrian pathways on sidewalks. No damage to pavements allowed for tents, shelters, barricades, etc… None $0 $0 |
| **SP+ PARKING**<br> | A.F. | Information emailed to SP+ 10/02/17 None $0 $0 |
| **INSURANCE**<br>248.530.1807 | CA | Certificate of Insurance on file in Clerk’s office None $0 $0 |
| **CLERK**  
| 101-000.000-614.0000  
| 248.530.1803  |
| Notification letters mailed by applicant on 9/25/17. Notification addresses on file in the Clerk’s Office. Evidence of required insurance must be on file with the Clerk’s Office no later than 8/9/18.  |
| Applications for vendors license must be submitted no later than 8/9/18.  |
| $200 (pd)  |
| **TOTAL DEPOSIT REQUIRED**  |
| **ACTUAL COST**  |
| $5,746.11  |

**FOR CLERK’S OFFICE USE**

Deposit paid ________________  
Actual Cost ________________  
Due/Refund ________________  

Rev. 10/10/17  
"h:\shared\special events\- general information\approval page.doc"
DATE:  October 18, 2017

TO:  Joseph A. Valentine, City Manager

FROM:  Mark H. Clemence, Chief of Police

SUBJECT:  Sec. 110-67 - Interference with Normal Flow of Traffic

In July of 2017, the Michigan Legislature allowed civic and charitable organizations to seek donations in the roadway. Previously, Michigan Legislature banned these organizations from the roadway after a fire fighter was tragically killed while participating in a “boot campaign” to raise funds.

The state has changed this, to allow, with a number of conditions, civic and charitable organizations to return to the roadway when seeking donations. The statue also states that no municipality may prevent a charitable organization from soliciting donations. Therefore, it is necessary to add the ordinance to reflect the current state law.

A person who violates this section is responsible for a civil infraction.

The attached proposed ordinance is consistent with current state law.

SUGGESTED ACTION:

To amend Part II of the City Code, Chapter 110 Transportation Systems, Article III Michigan Vehicle Code, to add section 110-67 Interference with Normal Flow of Traffic, and to authorize the Mayor and City Clerk to sign the ordinance on behalf of the city.
CITY OF BIRMINGHAM
ORDINANCE NO. _____

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 110 TRANSPORTATION SYSTEMS, ARTICLE III – MICHIGAN VEHICLE CODE, TO ADD SECTION 110-67 INTERFERENCE WITH NORMAL FLOW OF TRAFFIC.

THE CITY OF BIRMINGHAM ORDAINS:

Part II of the City Code, Chapter 110 Transportation Systems, Article III – Michigan Vehicle Code, shall be amended to add Section 110-67 Interference with Normal Flow of Traffic, as follows:

ARTICLE III – Michigan Vehicle Code

Sec. 110-67. – Interference with Normal Flow of Traffic.

(a) Subject to subsection (b) a person without authority shall not block, obstruct, impede, or otherwise interfere with the normal flow of vehicular or pedestrian traffic upon a public street or highway in the City of Birmingham by means of barricade, object, device or with his or her person. This section does not apply to persons maintaining, rearranging, or constructing public utility facilities in or adjacent to a street or highway.

(b) Subsection (a) and any provision of the Michigan Administrative Code that prohibits a person from standing in a roadway, other than a limited access highway, for the purpose of soliciting a ride, employment, or business from the occupant of any vehicle, do not apply to a person who is soliciting contributions on behalf of a charitable or civic organization during daylight hours, if all the following are satisfied:

(1) The charitable or civic organization complies with all City of Birmingham ordinances.

(2) The charitable or civic organization maintains at least five hundred thousand dollars ($500,000) in liability insurance.

(3) The person is eighteen (18) years of age or older.

(4) The person is wearing high visibility safety apparel that meets current American standards promulgated by the Internal Safety Equipment Association.

(5) The portion of the roadway upon which the solicitation occurs is not a work zone.

(6) The portion of the roadway upon which the solicitation occurs is within an intersection where traffic control devices are present.
(c) The City of Birmingham or the Oakland County Road Authority that has jurisdiction over a roadway upon which solicitation occurs as described in subsection (b) is not liable for any claim for damages arising out of the use of the roadway as described in subsection (b).

(d) A person who violates this section is responsible for a civil infraction.

(e) As used in this section "charitable or civic organization" means a non-profit organization that is qualified under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, 26 USC 501, or a veteran's organization that has a tax exempt status under the Internal Revenue Code.

Secs. 110-68 - 110-80. Reserved.

All other Sections of Chapter 110, Transportation Systems, Article III. Michigan Vehicle Code shall remain unaffected.

Ordained this _____ day of ____________________, 2017. Effective upon publication.

____________________________
Mark Nickita, Mayor

____________________________
Cherilynn Brown, City Clerk

I, Cherilynn Brown, 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 ____________________, 2017 and that a summary was published ____________________, 2017.

____________________________
Cherilynn Brown, City Clerk
DATE: October 18, 2017

TO: Joseph A. Valentine, City Manager

FROM: Mark H. Clemence, Chief of Police

SUBJECT: Sec. 74-324 – Minor in Possession (MIP)

The Michigan Legislature has recently made changes to MCL 436.1703 (Minor in Possession) that becomes effective January 1, 2018. The primary change includes decriminalizing a first offense Minor in Possession (MIP) making it a civil infraction from a misdemeanor. Numerous other changes to MCL 436.1703 were made as a result of a first offense civil infraction, such as requiring notifying parents/guardians after a civil infraction was issued.

As a result, the City of Birmingham, ordinance 74-324 must be updated to reflect the changes that take effect in 2018.

The attached proposed ordinance is to replace our current ordinance in order to be consistent with state law effective January 1, 2018.

SUGGESTED ACTION:

To replace Part II of the City Code, Chapter 74 Offenses, Article VII Offenses Against Public Morals, Division 5 Controlled Substances, Subdivision III. Alcoholic Liquors Generally, Section 74-324 with attached ordinance effective January 1, 2018, and to authorize the Mayor and City Clerk to sign the ordinance on behalf of the city.
CITY OF BIRMINGHAM

ORDINANCE NO. _____

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 74 OFFENSES, ARTICLE VII—OFFENSES AGAINST PUBLIC MORALS, DIVISION 5 CONTROLLED SUBSTANCES, SUBDIVISION III. ALCOHOLIC LIQUORS GENERALLY, SECTION 74-324

THE CITY OF BIRMINGHAM ORDAINS:

Part II of the City Code, Chapter 74 Offenses, Article VII—Offenses Against Public Morals, Division 5 Controlled Substances, Subdivision III Alcoholic Liquors Generally, Section 74-324, shall be amended, as follows:

Sec. 74-324. - **Purchase, consumption, or possession of alcoholic liquor by minor; attempt; violation; fines; sanctions; furnishing fraudulent identification to minor; use by minor; prior violation; screening and assessment; prior judgment; chemical breath analysis; notice to parent, custodian, or guardian; exceptions; recruitment of minor for undercover operation prohibited; affirmative defense; definitions.**

Persons under 21, unlawful purpose, consumption or possession, arrest based upon reasonable cause or upon results of preliminary chemical breath analysis; participation in undercover programs.

(1) A minor shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, possess or attempt to possess alcoholic liquor, or have any bodily alcohol content, except as provided in this section. A minor who violates this subsection is responsible for a civil infraction or guilty of a misdemeanor as follows:

(a) For the first violation, the minor is responsible for a civil infraction and shall be fined not more than $100.00. The court may order a minor under this subdivision to participate in substance use disorder services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office of substance abuse services, and may order the minor to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (5). A minor may be found responsible or admit responsibility only once under this subdivision.

(b) If a violation of this subsection occurs after 1 prior judgment, the minor is guilty of a misdemeanor. A misdemeanor under this subdivision is punishable by imprisonment for not more than 30 days if the court finds that the minor violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, or by a fine of not more than $200.00, or both. The court may order a minor under this subdivision to complete a term of probation, participate in substance use disorder services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office of...
substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (5).

(c) If a violation of this subsection occurs after 2 or more prior judgments, the minor is guilty of a misdemeanor. A misdemeanor under this subdivision is punishable by imprisonment for not more than 60 days, if the court finds that the minor violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, or by a fine of not more than $500.00, or both, as applicable. The court may order a minor under this subdivision to complete a term of probation, to participate in substance use disorder services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (5).

(2) An individual who furnishes fraudulent identification to a minor or, notwithstanding subsection (1), a minor who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both.

(3) If an individual who pleads guilty to a misdemeanor violation of subsection (1)(b) or offers a plea of admission in a juvenile delinquency proceeding for a misdemeanor violation of subsection (1)(b), the court, without entering a judgment of guilt in a criminal proceeding or a determination in a juvenile delinquency proceeding that the juvenile has committed the offense and with the consent of the accused, may defer further proceedings and place the individual on probation. The terms and conditions of that probation include, but are not limited to, the sanctions set forth in subsection (1)(c), payment of the costs including minimum state cost as provided for in section 18m of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18m, and section 11 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.11, and the costs of probation as prescribed in section 3 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3. If a court finds that an individual violated a term or condition of probation or that the individual is utilizing this subsection in another court, the court may enter an adjudication of guilt, or a determination in a juvenile delinquency proceeding that the individual has committed the offense, and proceed as otherwise provided by law. If an individual fulfills the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. A discharge and dismissal under this section is without adjudication of guilt or without a determination in a juvenile delinquency proceeding that the individual has committed the offense and is not a conviction or juvenile adjudication for purposes of disqualifications or disabilities imposed by law on conviction of a crime. An individual may obtain only 1 discharge and dismissal under this subsection. The court shall maintain a nonpublic record of the matter while proceedings are deferred and the individual is on probation and if there is a discharge and dismissal under this subsection. The secretary of state shall retain a nonpublic record of a plea and of the discharge and dismissal under this subsection. These records shall be furnished to any of the following:
(a) To a court, prosecutor, or police agency on request for the purpose of determining if an individual has already utilized this subsection.

(b) To the department of corrections, a prosecutor, or a law enforcement agency, on the department's, a prosecutor's, or a law enforcement agency's request, subject to all of the following conditions:

(i) At the time of the request, the individual is an employee of the department of corrections, the prosecutor, or the law enforcement agency, or an applicant for employment with the department of corrections, the prosecutor, or the law enforcement agency.

(ii) The record is used by the department of corrections, the prosecutor, or the law enforcement agency only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.

(4) A misdemeanor violation of subsection (1) successfully deferred, discharged, and dismissed under subsection (3) is considered a prior judgment for the purposes of subsection (1)(c).

(5) A court may order an individual found responsible for or convicted of violating subsection (1) to undergo screening and assessment by a person or agency as designated by the department-designated community mental health entity as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, to determine whether the individual is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. A court may order an individual subject to a misdemeanor conviction or juvenile adjudication of, or placed on probation regarding, a violation of subsection (1) to submit to a random or regular preliminary chemical breath analysis. The parent, guardian, or custodian of a minor who is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6, may request a random or regular preliminary chemical breath analysis as part of the probation.

(6) The secretary of state shall suspend the operator's or chauffeur's license of an individual convicted of a second or subsequent violation of subsection (1) or of violating subsection (2) as provided in section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319.

(7) A peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may request that individual to submit to a preliminary chemical breath analysis. If a minor does not consent to a preliminary chemical breath analysis, the analysis shall not be administered without a court order, but a peace officer may seek to obtain a court order. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a civil infraction proceeding or criminal prosecution to determine if the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content.

(8) The Birmingham Police Department, on determining that an individual who is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6, allegedly
consumed, possessed, or purchased alcoholic liquor, attempted to consume, possess, or purchase alcoholic liquor, or had any bodily alcohol content in violation of subsection (1) shall notify the parent or parents, custodian, or guardian of the individual as to the nature of the violation if the name of a parent, guardian, or custodian is reasonably ascertainable by the Birmingham Police Department. The Birmingham Police Department shall notify the parent, guardian or custodian not later than 48 hours after the Birmingham Police Department determines that the individual who allegedly violated subsection (1) is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6. The Birmingham Police Department may notify the parent, guardian, or custodian by any means reasonably calculated to give prompt actual notice including, but not limited to, notice in person, by telephone, or by first-class mail. If an individual less than 17 years of age is incarcerated for violating subsection (1), his or her parents or legal guardian shall be notified immediately as provided in this subsection.

(9) This section does not prohibit a minor from possessing alcoholic liquor during regular working hours and in the course of his or her employment if employed by a person licensed by this act, by the commission, or by an agent of the commission, if the alcoholic liquor is not possessed for his or her personal consumption.

(10) The following individuals are not considered to be in violation of subsection (1):

(a) A minor who has consumed alcoholic liquor and who voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.

(b) A minor who accompanies an individual who meets both of the following criteria:

(i) Has consumed alcoholic liquor.

(ii) Voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.

(c) A minor who initiates contact with a peace officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern.

(11) If a minor who is less than 18 years of age and who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, voluntarily presents himself or herself to a health facility or agency for treatment or for observation as provided under subsection (10), the health facility or agency shall notify the parent or parents, guardian, or custodian of the individual as to the nature of the treatment or observation if the name of a parent, guardian, or custodian is reasonably ascertainable by the health facility or agency.
(12) This section does not limit the civil or criminal liability of a vendor or the vendor's clerk, servant, agent, or employee for a violation of this act.

(13) The consumption of alcoholic liquor by a minor who is enrolled in a course offered by an accredited postsecondary educational institution in an academic building of the institution under the supervision of a faculty member is not prohibited by this act if the purpose of the consumption is solely educational and is a requirement of the course.

(14) The consumption by a minor of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this act.

(15) Subsection (1) does not apply to a minor who participates in either or both of the following:

(a) An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the person's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

(b) An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action unless the initial or contemporaneous purchase or receipt of alcoholic liquor by the minor was not under the direction of the state police, the commission, or the local police agency and was not part of the undercover operation.

(16) The state police, the commission, or a local police agency shall not recruit or attempt to recruit a minor for participation in an undercover operation at the scene of a violation of subsection (1), section 701(1), or section 801(2).

(17) In a prosecution for the violation of subsection (1) concerning a minor having any bodily alcohol content, it is an affirmative defense that the minor consumed the alcoholic liquor in a venue or location where that consumption is legal.

(18) As used in this section:

(a) "Any bodily alcohol content" means either of the following:

(i) An alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(ii) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

(b) "Emergency medical services personnel" means that term as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.
(c) "Health facility or agency" means that term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(d) "Prior judgment" means a conviction, juvenile adjudication, finding of responsibility, or admission of responsibility for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(i) This section or section 701 or 707.

(ii) Section 624a, 624b, or 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.624a, 257.624b, and 257.625.

(iii) Section 80176, 81134, or 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, 324.81134, and 324.82127.

(iv) Section 167a or 237 of the Michigan penal code, 1939 PA 328, MCL 750.167a and 750.237.

(a) A minor shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, possess or attempt to possess alcoholic liquor, or have a bodily alcohol content, except as provided in this section. A minor who violates this subsection is guilty of a misdemeanor punishable by the following fines and sanctions:

(1) For the first violation, may be ordered to pay a fine of not more than $100.00, complete a term of probation, substance abuse prevention services, substance abuse treatment and rehabilitation services, as defined in Section 6107 of the Public Health Code, 1978 PA 368, MCL 333.6107, and designated by the administrator of substance abuse services, to perform community service and/or to undergo substance abuse screening and assessment at his or her own expense.

(2) For a violation of this section following a prior conviction or juvenile adjudication for a violation of this section, MCL 436.1703, or another local ordinance substantially corresponding to this section or MCL 436.1703, by imprisonment for not more than 30 days—but only if the minor has been found by the court to have violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, a fine of not more than $200.00, or both, complete a term of probation, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in Section 6107 of the Public Health Code, 1978 PA 368, MCL 333.6107, and designated by the administrator of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense.

(3) For a violation of this section following two or more prior convictions or juvenile adjudications for a violation of this section, MCL 436.1703, or another local ordinance substantially corresponding to this section or MCL 436.1703, by imprisonment for not
more than 60 days but only if the minor has been found by the court to have violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, a fine of not more than $500.00, or both, complete a term of probation, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in Section 6107 of the Public Health Code; 1978 PA 368, MCL 333.6107, and designated by the administrator of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense.

(b) A person who furnishes fraudulent identification to a minor, or notwithstanding subsection (a), a minor who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both.

(c) The secretary of state shall suspend the operator’s or chauffeur’s license of an individual convicted of violating subsection (a) or (b) as provided in Section 319 of the Michigan Vehicle Code; 1949 PA 300, MCL 257.319.

(d) A police officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may request the person to submit to a preliminary chemical breath analysis. A police officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content.

(e) A law enforcement agency, upon determining that a person less than 18 years of age who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed, possessed, purchased alcoholic liquor, attempted to consume, possess, or purchase alcoholic liquor or had any bodily alcohol content in violation of subsection (a) shall notify the parent or parents, custodian, or guardian of the person as to the nature of the violation if the name of a parent, guardian, or custodian is reasonably ascertainable by the law enforcement agency. The notice required by this subsection shall be made not later than 48 hours after the law enforcement agency determines that the person who allegedly violated subsection (a) is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6. The notice may be made by any means reasonably calculated to give prompt actual notice including, but not limited to, notice in person, by telephone, or by first-class mail. If an individual less than 17 years of age is incarcerated for violating subsection (a), his or her parents or legal guardian shall be notified immediately as provided in this subsection.

(f) This section does not prohibit a minor from possessing alcoholic liquor during regular working hours and in the course of his or her employment if employed by a person licensed under the Michigan Liquor Control Code of 1998, 1998 PA 264, MCL 436.41 to 436.540, or by an agent of the Liquor Control Commission, if the alcoholic liquor is not possessed for his or her personal consumption.
(g) This section does not limit the civil or criminal liability of the vendor or the vendor’s clerk, servant, agent, or employee for a violation of this section.

(h) The consumption of alcoholic liquor by a minor who is enrolled in a course offered by an accredited postsecondary educational institution in an academic building of the institution under the supervision of a faculty member is not prohibited by this section if the purpose of the consumption is solely educational and is a requirement of the course.

(i) The consumption by a minor of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this section.

(j) Subsection (a) does not apply to a minor who participates in either or both of the following:

1. An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the person’s employer and with the prior approval of the city attorney’s office as part of an employer-sponsored internal enforcement action.

2. An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action unless the initial or contemporaneous purchase or receipt of alcoholic liquor by the minor was not under the direction of the state police, the commission, or the local police agency and was not part of the undercover operation.

(k) As used in this section, “any bodily alcohol content” means either of the following:

1. An alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

2. Any presence of alcohol within a person’s body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as part of a generally recognized religious service or ceremony.

(l) When an individual who has not previously been convicted of or received a juvenile adjudication for a violation of subsection (a), or under any statute of the United States, or any state or local ordinance involving a minor in possession or consumption of alcohol pleads guilty to a violation of subsection (a) or offers a plea of admission in a juvenile delinquency proceeding for a violation of subsection (a), the court, without entering a judgment of guilt in a criminal proceeding or a determination in a juvenile delinquency proceeding that the juvenile has committed the offense and with the consent of the accused, may defer further proceedings and place the individual on probation upon terms and conditions that include, but are not limited to, the sanctions set forth in subsection (f). Upon violation of a term or condition of probation or upon a finding that the individual is utilizing this subsection or similar provision in another court, the court may enter an adjudication of guilt or a determination in a juvenile delinquency proceeding that the individual has committed the offense, and proceed as otherwise provided by law. Upon fulfillment of the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this subsection shall be without adjudication of guilt or without a determination in a juvenile delinquency proceeding that the individual has committed the offense and is not a conviction or juvenile adjudication for purposes of this subsection or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions or juvenile adjudications. There may be only one discharge and dismissal under this subsection as to an individual. The court shall maintain a nonpublic record of the matter while proceedings are deferred and the individual is on probation and, if there is a discharge and dismissal under this subsection. The secretary of state shall retain a nonpublic record of a plea and of the discharge and dismissal under this subsection. These records shall be furnished to any of the following:
(1) To a court, prosecutor, or police agency upon request for the purpose of determining if an individual has already utilized this subsection.

(2) To the department of corrections, a prosecutor, or a law enforcement agency, upon the department's, a prosecutor's, or a law enforcement agency's request, subject to all of the following conditions:

a. At the time of the request, the individual is an employee of the department of corrections, the prosecutor, or the law enforcement agency, or an applicant for employment with the department of corrections, the prosecutor, or the law enforcement agency.

b. The record is used by the department of corrections, the prosecutor, or the law enforcement agency only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.

All other Sections of Chapter 74, Offenses, Article VII. Offenses Against Public Morals shall remain unaffected.

Ordained this ____ day of ________________, 2017. Effective upon publication.

________________________________________
Mark Nickita, Mayor

________________________________________
Cherilynn Brown, City Clerk

I, Cherilynn Brown, 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 ________________, 2017 and that a summary was published ________________, 2017.

________________________________________
Cherilynn Brown, City Clerk
CITY OF BIRMINGHAM

ORDINANCE NO. _____

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 74 OFFENSES, ARTICLE VII—OFFENSES AGAINST PUBLIC MORALS, DIVISION 5 CONTROLLED SUBSTANCES, SUBDIVISION III. ALCOHOLIC LIQUORS GENERALLY, SECTION 74-324

THE CITY OF BIRMINGHAM ORDAINS:

Part II of the City Code, Chapter 74 Offenses, Article VII — Offenses Against Public Morals, Division 5 Controlled Substances, Subdivision III Alcoholic Liquors Generally, Section 74-324, shall be amended, as follows:

Sec. 74-324. - Purchase, consumption, or possession of alcoholic liquor by minor; attempt; violation; fines; sanctions; furnishing fraudulent identification to minor; use by minor; prior violation; screening and assessment; prior judgment; chemical breath analysis; notice to parent, custodian, or guardian; exceptions; recruitment of minor for undercover operation prohibited; affirmative defense; definitions.

(1) A minor shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, possess or attempt to possess alcoholic liquor, or have any bodily alcohol content, except as provided in this section. A minor who violates this subsection is responsible for a civil infraction or guilty of a misdemeanor as follows:

(a) For the first violation, the minor is responsible for a civil infraction and shall be fined not more than $100.00. The court may order a minor under this subdivision to participate in substance use disorder services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office of substance abuse services, and may order the minor to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (5). A minor may be found responsible or admit responsibility only once under this subdivision.

(b) If a violation of this subsection occurs after 1 prior judgment, the minor is guilty of a misdemeanor. A misdemeanor under this subdivision is punishable by imprisonment for not more than 30 days if the court finds that the minor violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, or by a fine of not more than $200.00, or both. The court may order a minor under this subdivision to complete a term of probation, participate in substance use disorder services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office of substance abuse services, to perform community service, and to undergo substance
abuse screening and assessment at his or her own expense as described in subsection (5).

(c) If a violation of this subsection occurs after 2 or more prior judgments, the minor is guilty of a misdemeanor. A misdemeanor under this subdivision is punishable by imprisonment for not more than 60 days, if the court finds that the minor violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, or by a fine of not more than $500.00, or both, as applicable. The court may order a minor under this subdivision to complete a term of probation, to participate in substance use disorder services as defined in section 6230 of the public health code, 1978 PA 368, MCL 333.6230, and designated by the administrator of the office of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (5).

(2) An individual who furnishes fraudulent identification to a minor or, notwithstanding subsection (1), a minor who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $100.00, or both.

(3) If an individual who pleads guilty to a misdemeanor violation of subsection (1)(b) or offers a plea of admission in a juvenile delinquency proceeding for a misdemeanor violation of subsection (1)(b), the court, without entering a judgment of guilt in a criminal proceeding or a determination in a juvenile delinquency proceeding that the juvenile has committed the offense and with the consent of the accused, may defer further proceedings and place the individual on probation. The terms and conditions of that probation include, but are not limited to, the sanctions set forth in subsection (1)(c), payment of the costs including minimum state cost as provided for in section 18m of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.18m, and section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j, and the costs of probation as prescribed in section 3 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3. If a court finds that an individual violated a term or condition of probation or that the individual is utilizing this subsection in another court, the court may enter an adjudication of guilt, or a determination in a juvenile delinquency proceeding that the individual has committed the offense, and proceed as otherwise provided by law. If an individual fulfills the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. A discharge and dismissal under this section is without adjudication of guilt or without a determination in a juvenile delinquency proceeding that the individual has committed the offense and is not a conviction or juvenile adjudication for purposes of disqualifications or disabilities imposed by law on conviction of a crime. An individual may obtain only 1 discharge and dismissal under this subsection. The court shall maintain a nonpublic record of the matter while proceedings are deferred and the individual is on probation and if there is a discharge and dismissal under this subsection. The secretary of state shall retain a nonpublic record of a plea and of the discharge and dismissal under this subsection. These records shall be furnished to any of the following:
(a) To a court, prosecutor, or police agency on request for the purpose of determining if an individual has already utilized this subsection.

(b) To the department of corrections, a prosecutor, or a law enforcement agency, on the department's, a prosecutor's, or a law enforcement agency's request, subject to all of the following conditions:

(i) At the time of the request, the individual is an employee of the department of corrections, the prosecutor, or the law enforcement agency, or an applicant for employment with the department of corrections, the prosecutor, or the law enforcement agency.

(ii) The record is used by the department of corrections, the prosecutor, or the law enforcement agency only to determine whether an employee has violated his or her conditions of employment or whether an applicant meets criteria for employment.

(4) A misdemeanor violation of subsection (1) successfully deferred, discharged, and dismissed under subsection (3) is considered a prior judgment for the purposes of subsection (1)(c).

(5) A court may order an individual found responsible for or convicted of violating subsection (1) to undergo screening and assessment by a person or agency as designated by the department-designated community mental health entity as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a, to determine whether the individual is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. A court may order an individual subject to a misdemeanor conviction or juvenile adjudication of, or placed on probation regarding, a violation of subsection (1) to submit to a random or regular preliminary chemical breath analysis. The parent, guardian, or custodian of a minor who is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6, may request a random or regular preliminary chemical breath analysis as part of the probation.

(6) The secretary of state shall suspend the operator's or chauffeur's license of an individual convicted of a second or subsequent violation of subsection (1) or of violating subsection (2) as provided in section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319.

(7) A peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may request that individual to submit to a preliminary chemical breath analysis. If a minor does not consent to a preliminary chemical breath analysis, the analysis shall not be administered without a court order, but a peace officer may seek to obtain a court order. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a civil infraction proceeding or criminal prosecution to determine if the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content.
(8) The Birmingham Police Department, on determining that an individual who is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed, possessed, or purchased alcoholic liquor, attempted to consume, possess, or purchase alcoholic liquor, or had any bodily alcohol content in violation of subsection (1) shall notify the parent or parents, custodian, or guardian of the individual as to the nature of the violation if the name of a parent, guardian, or custodian is reasonably ascertainable by the Birmingham Police Department. The Birmingham Police Department shall notify the parent, guardian or custodian not later than 48 hours after the Birmingham Police Department determines that the individual who allegedly violated subsection (1) is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6. The Birmingham Police Department may notify the parent, guardian, or custodian by any means reasonably calculated to give prompt actual notice including, but not limited to, notice in person, by telephone, or by first-class mail. If an individual less than 17 years of age is incarcerated for violating subsection (1), his or her parents or legal guardian shall be notified immediately as provided in this subsection.

(9) This section does not prohibit a minor from possessing alcoholic liquor during regular working hours and in the course of his or her employment if employed by a person licensed by this act, by the commission, or by an agent of the commission, if the alcoholic liquor is not possessed for his or her personal consumption.

(10) The following individuals are not considered to be in violation of subsection (1):

(a) A minor who has consumed alcoholic liquor and who voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.

(b) A minor who accompanies an individual who meets both of the following criteria:

(i) Has consumed alcoholic liquor.

(ii) Voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.

(c) A minor who initiates contact with a peace officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern.

(11) If a minor who is less than 18 years of age and who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, voluntarily presents himself or herself to a health facility or agency for treatment or for observation as provided under subsection (10), the health facility or agency
shall notify the parent or parents, guardian, or custodian of the individual as to the nature of
the treatment or observation if the name of a parent, guardian, or custodian is reasonably
ascertainable by the health facility or agency.

(12) This section does not limit the civil or criminal liability of a vendor or the vendor's clerk,
servant, agent, or employee for a violation of this act.

(13) The consumption of alcoholic liquor by a minor who is enrolled in a course offered by an
accredited postsecondary educational institution in an academic building of the institution under
the supervision of a faculty member is not prohibited by this act if the purpose of the
consumption is solely educational and is a requirement of the course.

(14) The consumption by a minor of sacramental wine in connection with religious services at a
church, synagogue, or temple is not prohibited by this act.

(15) Subsection (1) does not apply to a minor who participates in either or both of the
following:

(a) An undercover operation in which the minor purchases or receives alcoholic liquor
under the direction of the person's employer and with the prior approval of the local
prosecutor's office as part of an employer-sponsored internal enforcement action.

(b) An undercover operation in which the minor purchases or receives alcoholic liquor
under the direction of the state police, the commission, or a local police agency as
part of an enforcement action unless the initial or contemporaneous purchase or
receipt of alcoholic liquor by the minor was not under the direction of the state
police, the commission, or the local police agency and was not part of the
undercover operation.

(16) The state police, the commission, or a local police agency shall not recruit or attempt to
recruit a minor for participation in an undercover operation at the scene of a violation of
subsection (1), section 701(1), or section 801(2).

(17) In a prosecution for the violation of subsection (1) concerning a minor having any bodily
alcohol content, it is an affirmative defense that the minor consumed the alcoholic liquor in a
venue or location where that consumption is legal.

(18) As used in this section:

(a) "Any bodily alcohol content" means either of the following:

(i) An alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210
liters of breath, or per 67 milliliters of urine.
(ii) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

(b) "Emergency medical services personnel" means that term as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.

(c) "Health facility or agency" means that term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(d) "Prior judgment" means a conviction, juvenile adjudication, finding of responsibility, or admission of responsibility for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(i) This section or section 701 or 707.

(ii) Section 624a, 624b, or 625 of the Michigan vehicle code, 1949 PA 300, MCL 257.624a, 257.624b, and 257.625.

(iii) Section 80176, 81134, or 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, 324.81134, and 324.82127.

(iv) Section 167a or 237 of the Michigan penal code, 1939 PA 328, MCL 750.167a and 750.237.

All other Sections of Chapter 74, Offenses, Article VII. Offenses Against Public Morals shall remain unaffected.

Ordained this _____ day of __________________, 2017. Effective upon publication.

__________________________________________
Mark Nickita, Mayor

__________________________________________
Cherilynn Brown, City Clerk
I, Cherilynn Brown, 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 ________________, 2017 and that a summary was published ________________, 2017.

Cherilynn Brown, City Clerk
NOTICE OF INTENTION TO APPOINT TO THE CABLECASTING BOARD

At the regular meeting of Monday, December 4, 2017 the Birmingham City Commission intends to appoint to the Cablecasting Board one regular member to serve the remainder of a term expiring March 30, 2020. Applicants must be residents of the City of Birmingham.

Interested citizens may submit an application available at the City Clerk’s office or online at www.bhamgov.org/boardopportunities. Applications must be submitted to the City Clerk's office on or before noon on Wednesday, November 29, 2017. These applications will appear in the public agenda for the regular meeting at which time the City Commission will discuss recommendations, and may make nominations and vote on the appointments.

Duties of the Cablecasting Board

1) Advise the municipalities on matters relating to cable communications;
2) Monitor the franchisee's compliance with the franchise agreement and the cable communications ordinance;
3) Conduct performance reviews as outlined in Chapter 30, Article VII of the city code;
4) Act as liaison between the franchisee and the public; hear complaints from the public and seek their resolution from the franchisee;
5) Advise the various municipalities on rate adjustments and services according to the procedure outlined in Chapter 30; Article VI
6) Advise the municipalities on renewal, extension or termination of a franchise;
7) Appropriate those moneys deposited in an account in the name of the Cablecasting Board by the member communities;
8) Oversee the operation of the education, governmental and public access channels;
9) Apprise the municipalities of new developments in cable communications technology;
10) Hear and decide all matters or requests by the operator (Comcast Cablevision);
11) Hear and make recommendations to the municipalities of any request of the operator for modification of the franchise requirement as to channel capacity and addressable converters or maintenance of the security fund;
12) Hear and decide all matters in the franchise agreement which would require the operator to expend moneys up to fifty thousand dollars;
13) Enter into contracts as authorized by resolutions of the member municipalities;
14) Administer contracts entered into by the Board and terminate such contracts.

<table>
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<tr>
<th>Criteria/Qualifications of Open Position</th>
<th>Date Applications Due (by noon)</th>
<th>Date of Interview</th>
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<tbody>
<tr>
<td>Member must be residents of the City of Birmingham.</td>
<td>11/29/17</td>
<td>12/4/17</td>
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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.
DATE: October 23, 2017

TO: Joseph A. Valentine, City Manager

FROM: Lauren A. Wood, Director of Public Services

SUBJECT: Staff Report - Seaway Painting Follow Up Items

This serves as a follow-up to clarify some questions from the October 16, 2017 City Commission meeting pertaining to light pole painting in the City of Birmingham. Historically, the City of Birmingham has used Seaway Painting, LLC for painting all posts for over sixteen years.

DTE is the owner of the light poles on Woodward Avenue, Maple Road (and all light poles in the City of Birmingham) and therefore a pre-approved vendor from DTE is required to do the work. Seaway Painting, LLC is the approved DTE contractor for painting poles in the City of Birmingham. Prices vary based on the type and size of the pole and scope of work for the project area. The Birmingham green color also adds cost to each pole for the painting projects.

Seaway is considered a sole-source vendor for this work and has fixed pricing for each of the variety of poles. The unit price of $245.00 for the sixty-four (64) poles for the 2017 Maple Road painting project is the same price as the 2014 Woodward Avenue painting project for the same style poles. Since they extended the pricing for us we did not negotiate the 2017 project.

In addition, some of the previous year’s painting projects, DTE reimbursed the City for a portion of the costs. This all depends on what funding or project dollars DTE has available at the time we need to get the poles painted. Therefore, the cost per pole will vary from year to year for the City depending on whether or not DTE contributes dollars toward the project.

DTE does not always contribute money toward our pole painting projects. For instance in 2014 for Woodward Avenue they did cost share, for the 2016 downtown pole painting project they did not. Unless DTE determines the poles are part of their painting schedule, DTE will not cost share with the City. DTE may not always determine the poles need to be painted, where in many cases the City feels the poles need painting.

The 2017 West Maple Road painting project which awarded on October 16, 2017 is underway as of last week. We anticipate some funding will be available through DTE for these light poles and it will be credited to the total project cost. Since we inquired about a cost share for this work from DTE, to date we have not been provided any information. Once we are informed of the credit amount from DTE for this project, I will provide an additional update.
Unit pricing is fairly standard from year to year and is based on the pole type and general scope of work. Over the years, in order to reduce costs and become more effective, we have requested Seaway Painting to roll-on the paint rather than spray paint the posts. The scope of work includes such items as painting a new unpainted pole, repainting an existing pole, including cleaning and priming poles. Each project is specific to the area and pole type and for pricing purposes each pole type does have standard pricing. The City expects poles to be painted and maintained on a regular and consistent basis. This may not always be the case from DTE. They have proven to be competitive in their pricing. We will continue to challenge them for the best pricing opportunities. They do provide quality work and have shown great customer service over the years.
Public Act 213 of 2007 requires investment reporting on the City’s general investments to be provided to the City Commission on a quarterly basis. This information is also required to be provided annually, which the City has and will continue to include within the audited financial statements.

General investments of the City are governed by state law and the City’s General Investment Policy approved by the City Commission. The services of an outside investment advisor are utilized to assist the treasurer in determining which types of investments are most appropriate and permitted under the investment policy, maximize the return on the City’s investments within investment policy constraints and provide for cash flow needs.

The two primary objectives for investment of City funds are the preservation of principal and liquidity to protect against losses and provide sufficient funds to enable the City to meet all operating requirements that might be reasonably anticipated. Investment activities include all City funds except the retirement and retiree health-care funds as follows:

- General Fund
- Permanent Funds
- Special Revenue Funds
- Capital Projects Fund
- Enterprise Funds
- Debt Service Funds
- Component Unit Funds
- Internal Service Funds

The City has two pooled funds (CLASS Pool and J-Fund), which are used to meet payroll, contractor and other accounts payable needs. As indicated on the attached schedule, there is approximately $27.1 million invested in pooled funds at the end of September. A maximum of 50% of the portfolio may be invested in pooled funds that meet state guidelines. The amount currently invested in pooled funds is 33%.

The City also holds approximately $22.8 million, or 28%, of its investments in government securities, which are obligations of the United States. The maximum amount of investments that may be held in government securities is 100%.
Investments in federal agencies total approximately $31.5 million, or 39%, of the City’s investments. The maximum amount of the portfolio that may be invested in federal agencies is 75%.

The Investment Policy requires that the average maturity of the portfolio may not exceed two and one-half years. The current average maturity of the portfolio is .89 years.
