

AGENDA
REGULAR MEETING OF THE BIRMINGHAM PLANNING BOARD
WEDNESDAY DECEMBER 8, 2021
151 MARTIN ST., CITY COMMISSION ROOM 205, BIRMINGHAM MI *
*******7:30 pm*******

The highly transmissible COVID-19 Delta variant is spreading throughout the nation at an alarming rate. As a result, the CDC is recommending that vaccinated and unvaccinated personnel wear a facemask indoors while in public if you live or work in a substantial or high transmission area. Oakland County is currently classified as a substantial transmission area. The City has reinstated mask requirements for all employees while indoors. The mask requirement also applies to all board and commission members as well as the public attending public meetings.

- A. Roll Call**
- B. Review and Approval of the Minutes of the Regular Meeting of **November 10, 2021****
- C. Chairpersons' Comments**
- D. Review of the Agenda**
- E. Unfinished Business**
- F. Rezoning Applications**
- G. Community Impact Studies**
- H. Special Land Use Permits**
- I. Site Plan & Design Reviews**
- J. Study Session**
 - 1. **The Birmingham Plan 2040 – Review of Chapter Two (Embrace Managed Growth)**
 - 2. **Outdoor Dining (End Date)**
 - 3. **Outdoor Dining (Comprehensive)**
- K. Miscellaneous Business and Communications:**
 - 1. Communications
 - 2. Administrative Approval Correspondence
 - 3. Draft Agenda – **December 16, 2021**
 - 4. Other Business
- L. Planning Division Action Items**
 - 1. Staff Report on Previous Requests
 - 2. Additional Items from Tonight's Meeting
- M. Adjournment**

*Please note that board meetings will be conducted in person once again. Members of the public can attend in person at Birmingham City Hall OR may attend virtually at:

Link to Access Virtual Meeting: [**https://zoom.us/j/111656967**](https://zoom.us/j/111656967)

Telephone Meeting Access: 877-853-5247 US Toll-Free

Meeting ID Code: 111656967

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Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un día antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).

City Of Birmingham
Regular Meeting Of The Planning Board
Wednesday, November 10, 2021
City Commission Room
151 Martin Street, Birmingham, Michigan

Minutes of the regular meeting of the City of Birmingham Planning Board held on November 10, 2021. Chair Clein convened the meeting at 7:30 p.m.

A. Roll Call

Present: Chair Scott Clein; Board Members Robin Boyle, Stuart Jeffares, Bert Koseck, Daniel Share, Janelle Whipple-Boyce, Bryan Williams; Alternate Board Members Jason Emerine, Nasseem Ramin; Student Representative Daniel Murphy

Absent: Board Member Robin Boyle; Student Representative Jane Wineman

Administration:

Nick Dupuis, Planning Director
Brooks Cowan, Senior Planner
Jana Ecker, Assistant City Manager
Laura Eichenhorn, City Transcriptionist

Master Planning Team:

Matt Lambert, DPZ

11-175-21

B. Approval Of The Minutes Of The Regular Planning Board Meeting of October 27, 2021

Mr. Share said on page two, in sixth paragraph from the top, it should read “makes Pierce seem dark”; on page four, in the fifth paragraph from the bottom, “effected” should be changed to “affected”; and, on page seven, in the second paragraph under Other Business, “Board” should be added after “said the”.

Motion by Mr. Share

Seconded by Mr. Williams to approve the minutes of the Regular Planning Board Meeting of October 27, 2021 as amended.

Motion carried, 6-0.

VOICE VOTE

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

Nays: None

Abstain: Emerine

11-176-21

C. Chair's Comments

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

11-177-21

D. Review Of The Agenda

11-178-21

E. Unfinished Business

None.

11-179-21

F. Rezoning Applications

None.

11-180-21

G. Community Impact Studies

None.

11-181-21

H. Special Land Use Permits

11-182-21

I. Site Plan & Design Reviews

11-183-21

J. Study Session

1. The Birmingham Plan 2040 – Review of the Introduction, Future Land Use & Chapter One (Connect the City)

PD Dupuis introduced the item. Mr. Lambert presented the item.

Mr. Lambert confirmed for Chair Clein that any lots described as 'low-intensity seams' were not being recommended for a change in land use. The only changes recommended are multi-modal and pedestrian improvements.

Chair Clein invited public comment. Seeing no immediate public comment, Chair Clein opened the topic to the Board for discussion.

Mr. Williams said the revisions captured the essence of the Board's comments over the last year. He said he found the paragraph on page six of the draft beginning "All of these other aspects" incendiary and recommended it be removed. He said the draft should recommend that the southwest area of the City be slated for the addition of sidewalks and multi-modal improvements. He noted that coming up the hill on Northlawn near the Birmingham Country Club was particularly perilous.

Mr. Share said it would be helpful to briefly describe lot sizes and/or density allowances for zoning districts so the public better understands the proposals. He opined that the draft still retained too much of a focus on social engineering, citing specificity in tasks and committees or the recommendation for a community foundation as two examples. He said those suggestions could possibly be better used in an appendix at the end of the draft. He asked whether residents living near parks with potential commercial destinations had been surveyed regarding their interest. He said he was not sure that every neighborhood planning district needed a commercial area. He said he was unsure of the demand for a public circulator. He asked why metered parking was being recommended for Lincoln. He said he did not believe that all of the civic buildings needed to be in the Tudor style, citing the new fire station on Adams as an attractive building not in the Tudor style. He said the draft could retain its recommendations that certain ideas be explored, but that it need not specify which committee look at those ideas.

Messrs. Share and Emerine and Ms. Whipple-Boyce said they did not believe that Glenhurst at Lincoln was an optimal location for a small commercial destination.

Mr. Jeffares said two-way cycling is a bane for fellow cyclists, citing Eton Street's current experiment with it, and recommended the draft find safer ways to promote cycling. He said Detroit and Ferndale both have good examples of safer cycling options. He said he liked the idea of the traffic oval on Woodward from the first draft. He recommended that the draft not specify where complete streets and social districts be located. Instead, he said the draft should just encourage exploration of the concepts and the bringing in of an expert to make location recommendations. He suggested the Multi-Modal Transportation Board explore electric golf cart type options for residents to use on 25 m.p.h. streets that could be parked two-to-a-spot to reduce demand on parking and increase accessibility. He said the draft should recommend that development projects include consideration of the integration of a senior or community center. He said the draft should recommend the creation of public transit options to get from downtown Birmingham to the Troy Transit Center. He said he thought a public circulator was worth further exploration. Regarding the paragraph from page six mentioned by Mr. Williams, Mr. Jeffares said he felt that the point was that diversified tools for surveying the public allowed the master planning team to access more diverse opinions. He noted that there are routes cyclists already prefer to use, and recommended the draft seek to improve the safety of those instead of creating new ones. He

noted that the area of Northlawn described by Mr. Williams is safer for cyclists than using Lincoln. He recommended the City try having a cafe food truck at Booth Park before deciding whether to add a brick and mortar location. He said the neighborhood loop could be more useful if it added ways to get into the City from neighboring municipalities, saying the addition of 'spokes' would be beneficial.

Mr. Lambert confirmed that Mr. Jeffares' interpretation of the paragraph on page six aligned with Mr. Lambert's intent.

Ms. Whipple-Boyce stated that the future land use planning map on pages eight and nine seemed to have mis-labelled Greenwood Cemetery as a recreational option. She said that instead of recommending the specific locations of commercial destinations in parks the draft could just more broadly suggest the idea be explored. She noted that an overlap of grey and red on the land use map seemed to be resulting in purple, and asked that those areas be corrected. She said she was not sure of the utility of either the neighborhood loop or the public circulator, but was willing to hear why they might be useful.

Mr. Emerine recommended that any references to this being the second draft, or similar statements that would have to be revised out of the final draft, just be removed now. He asked Staff to update Mr. Lambert on the ongoing study of a two-way cycling path on Eton. He said that Booth Park could be an ideal location for a 30 to 40 sq. ft. cafe, citing a similar cafe in Mariano Park in Chicago that is very popular with park visitors.

Chair Clein commended Mr. Lambert on the revisions made to the draft. He said he agreed with many of his colleagues' comments. He said that, unlike Mr. Jeffares, he did not like the proposal for a traffic circle on Woodward and said that he was not sure people would want to spend time in the middle of Woodward. He said he prefers to shrink intersections, while acknowledging that was a philosophical preference. He said that the recommended scale could be clarified for the commercial destinations, stating that kiosks would be appropriate where larger cafes would not, like at Glenhurst and Lincoln. He disagreed with Mr. Share's contention that programming options need not be considered, stating that if they are not considered then the City would be more likely to design spaces that cannot be used effectively at all. He said that while he liked the idea of a neighborhood loop that could be restricted to pedestrian use on certain days, he agreed with Ms. Whipple-Boyce that he was no longer sure of the utility of the neighborhood loop as it was being proposed. He said he thought the concept needed more clarification, or may need to be removed from the plan.

Mr. Share concurred that kiosk-sized cafes might be more appropriate than larger commercial destinations in parks. He said that the discussion of the neighborhood loop could be as broad as recommending that the City explore 'citywide interconnection'.

Mr. Lambert said the intent of the neighborhood loop was to provide a throughline in the City where multi-modal development, including sidewalks, benches, wayfinding, and other options are especially prioritized.

Given that description, Chair Clein said that instead of including the neighborhood loop the draft should recommend that all areas be ADA-compliant and have a variety of multi-modal improvements.

Mr. Koseck said he agreed with many of his colleagues' comments and said the revisions to the draft were good. He reminded Mr. Lambert to continue writing at the public's, and not the planning professional's, level. He said the neighborhood loop could be useful for exercise and to define a major pedestrian option.

Mr. Lambert was asked to outline criteria that would help the City decide where to implement recommendations from the draft, instead of making specific location recommendations.

Public Comment

Since there was no initial public comment, Chair Clein opened the discussion again to public comment.

Paul Reagan stated there is a covenant on Booth Park that would cause the park to revert to the Booth Family Trust if it is used for anything other than a park. He added that the land use map might be easier to read if only the areas to have zoning changes are highlighted. He re-proposed his idea from previous meetings of a pedestrian bridge for crossing Woodward. He recommended that concepts that have been scaled back in the plan, like accessory dwelling units, just be considered for removal instead, noting that the City could always pursue such an idea in the future even if it is not mentioned in the master plan.

Kevin Kozlowski recommended that more contrasting colors be used for the maps.

In reply to Mr. Kozlowski, Mr. Lambert clarified that some of the lots around Poppleton Park were being recommended for reduced density in comparison with the draft one recommendations as part of the direction to reduce the extent of the seams.

Chair Clein thanked Mr. Lambert, the Board, and the public.

Mr. Lambert noted that it would be useful to remind the public that the master plan does not zone or re-zone property.

Mr. Koseck recommended that the changes made to the second draft be redlined.

Mr. Williams said he did not believe that was necessary.

Ms. Whipple-Boyce said that if there was a way to show the future land use map and the current zoning for those same areas that would be useful.

SP Cowan said it would be possible to create hyperlinks between the online future land use map and the current zoning ordinance and the draft master plan and the zoning ordinance.

Chair Clein said that while that was a great idea, it would probably have limited public use. He said the colors and a brief explanation of the zoning districts would likely be sufficient.

SP Cowan updated the Planning Board on the Multi-Modal Transportation Board's ongoing study of the Eton St. bicycle lane, sidewalks in the southwest portion of the City, and the Neighborhood Loop.

In response to a point raised by Ms. Whipple-Boyce, Chair Clein asked Mr. Lambert to create maps to show all changes proposed to land use, not just changes to seams and commercial destinations.

2. Outdoor Dining

PD Dupuis presented the item.

Mr. Share noted that the word 'enclosed' in Article 4, Section 4.44(A)(7)(e) on page 81 might lead to confusion since the Board did not want to allow enclosed spaces.

Mr. Williams recommended that 'enclosed' be omitted from the aforementioned section in response to Mr. Share's comment.

In reply to Ms. Whipple-Boyce, ACM Ecker confirmed that snow removal is already required of business operators.

Mr. Koseck said the implementation of this temporary policy would be a good opportunity for Board members to observe the winter outdoor dining options and to integrate those observations into the Board's more general discussion of the outdoor dining standards.

Motion by Mr. Williams

Seconded by Mr. Koseck to set a public hearing on December 8, 2021 to amend Article 4, Section 4.44 Outdoor Dining Standards of the zoning ordinance to remove temporal restrictions on outdoor dining patios in the public right-of-way and to allow outdoor dining fixtures and furnishings to stay outside.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

11-184-21

K. Miscellaneous Business and Communications

a. Communications

b. Administrative Approval Correspondence

c. Draft Agenda for next meeting

d. Other Business

Motion by Mr. Williams

Seconded by Mr. Share to schedule a special meeting for Thursday, December 16, 2021 in the City Commission room.

Motion carried, 7-0.

VOICE VOTE

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

Nays: None

PD Dupuis stated he had spoken with BO Johnson about Ms. Whipple-Boyce's request from the October 13, 2021 meeting regarding the average setbacks of homes. PD Dupuis said he and the Building Department would work on a proposal to clarify that section of the ordinance and that it could be brought for Board review at the Board's discretion after the new year.

11-185-21

L. Planning Division Action Items

a. Staff Report on Previous Requests

b. Additional Items from tonight's meeting

11-186-21

M. Adjournment

No further business being evident, the Chair adjourned the meeting at 9:53 p.m.

Nick Dupuis
Planning Director



MEMORANDUM

Planning Division

DATE: December 8, 2021

TO: Planning Board

FROM: Nicholas Dupuis, Planning Director

SUBJECT: The Birmingham Plan 2040 - Review of Chapter Two (Embrace Managed Growth)

Introduction/Summary

The City of Birmingham received the second draft of The Birmingham Plan 2040 (“the Plan”) in October 2021 after nearly 2 years of review and input. On October 11th, 2021, the Plan was introduced to the City Commission and Planning Board at a joint meeting. During this meeting, City Staff and Planning Board members outlined a rough review timeline for the second draft that would consist of four meetings at the Planning Board, and at least one joint meeting of the Planning Board and City Commission to finalize the second draft and authorize distribution of the Plan for review by entities as required by state planning law.

On October 13th, 2021, the Planning Board discussed a detailed review timeline for the second draft of the Plan, and requested a new Future Land Use Map document to better guide the four review meetings. At this meeting, the Planning Board adopted the following public review timeline:

- **November 10th, 2021** - Introduction, Future Land Use Map, and Chapter 1 (Connecting the City)
- **December 8th, 2021** – Chapter 2 (Embrace Managed Growth)
- **January 12th, 2022** – Chapter 3 (Retain Neighborhood Quality)
- **February 9th, 2022** – Chapter 4 (Support Mixed-Use Districts) and Chapter 5 (Advance Sustainability Practices)

On November 8th, 2021, the Planning Board started the review of the second draft of the Plan with the Introduction, Future Land Use Map, and Chapter 1. During the review, the Planning Board generally commended the consultant team for addressing many of their directions from the review of draft one. The board also discussed an array of topics including various multimodal issues, suggestions for the Future Land Use Map, and commercial destinations.

Chapter 2 – Embrace Managed Growth

Similar to the review of Chapter 1, the Planning Division has included several documents in the packet to aid in the review of Chapter 2. Up to this point, the Planning Division has received no additional public comment to include. The following documents are attached for your reference:

- DPZ summary letter of recommendations from the review of the first draft of the Plan
- Current draft of the Future Land Use Map
- Current Zoning Map
- Map series demonstrating changes from current Zoning Map to Future Land Use Map
- Chapter 2 – Embrace Managed Growth

Master Plan Access and Meeting Participation

As a reminder, digital copies of the first and second draft of the Plan, presentation slides, frequently asked questions, Future Land Use Map, other documents pertaining to the review of the Plan, and a comment submission portal may be found on www.thebirminghamplan.com. In addition, you can find much of the same information, plus an online interactive Future Land Use Map on the Planning Division's [Citywide Master Plan](#) webpage. You may also sign up for news and updates on the Plan (and other City business) through the City of Birmingham [Constant Contact Service](#).

Those who are unable to attend any of the review meeting, or wish to provide any additional comments to the Planning Board are welcome to submit a letter or email to the Planning Director, Nicholas Dupuis (ndupuis@bhamgov.org), who will compile and submit all comments received to the Planning Board at the next available meeting.

Ch 2. Embrace Managed Growth

Ch 2. Embrace Managed Growth

Encourage Housing in Mixed-use Districts

Encourage Housing in Mixed-use Districts

Maple and Woodward

The Maple and Woodward district (Downtown Birmingham) has an imbalance of commercial to residential development, with very few households compared to a significant amount of office and retail space. This lack of housing has been recognized since the 1980 plan, due significantly to a policy which does not allow residences to park in the public parking decks. Each mixed-use district requires a balance of housing with offices and retail space; a proper mix ensures that the district is active during daytime hours and into the evening, supporting retail spaces and restaurants and promoting greater public safety. If housing is to be provided downtown to re-balance the 24-hour life-cycle of the downtown, it will require access to the municipal parking supply.

Providing parking on private properties in downtown is difficult due to the small size of properties and goals for walkable streets activated by storefronts. Properties in suburban locations can more easily provide on-site parking because land is not scarce. Those areas are also not walkable. Walkable streets require small blocks and a lot of activity; there is not room for parking on every property. The current rules encourage development to add housing on upper floors to achieve a height bonus, but require some of the very valuable ground floor to be set aside for parking. This results in very large and very expensive housing in a downtown that needs small and relatively inexpensive

apartments and condos.

Parking downtown is typically heavily utilized during the daytime, with most public garages over 90% of their capacity. However, that same parking is virtually empty during the evening and overnight. Weekend parking is also underutilized with around 2,000 spaces available. This parking imbalance is an ideal opportunity to accommodate housing, which requires parking at night and on weekends, and vacates parking during the day. When initially proposed as a concept, concern for the time that residents would depart and office workers would arise was raised. Having monitored parking patterns, at least half of total parking capacity is available at 10am, providing a significant period of overlap between uses. (See Figure 28)

Presently, four and five-story buildings are allowed in most areas downtown yet most buildings are lower. Considering the difference between the height of existing buildings and the currently allowed potential, all housing growth needed in the downtown area could be accommodated within the existing zoned capacity. Some of that capacity is further limited by the historic status of many existing buildings. However, we do not recommend increasing heights beyond what is currently zoned, except where adjusting zone boundaries for greater consistency. Focus should instead be on filling existing capacity, here and in other mixed-use districts.

New residential parking permit price should be set attainably yet to discourage residents from parking cars that

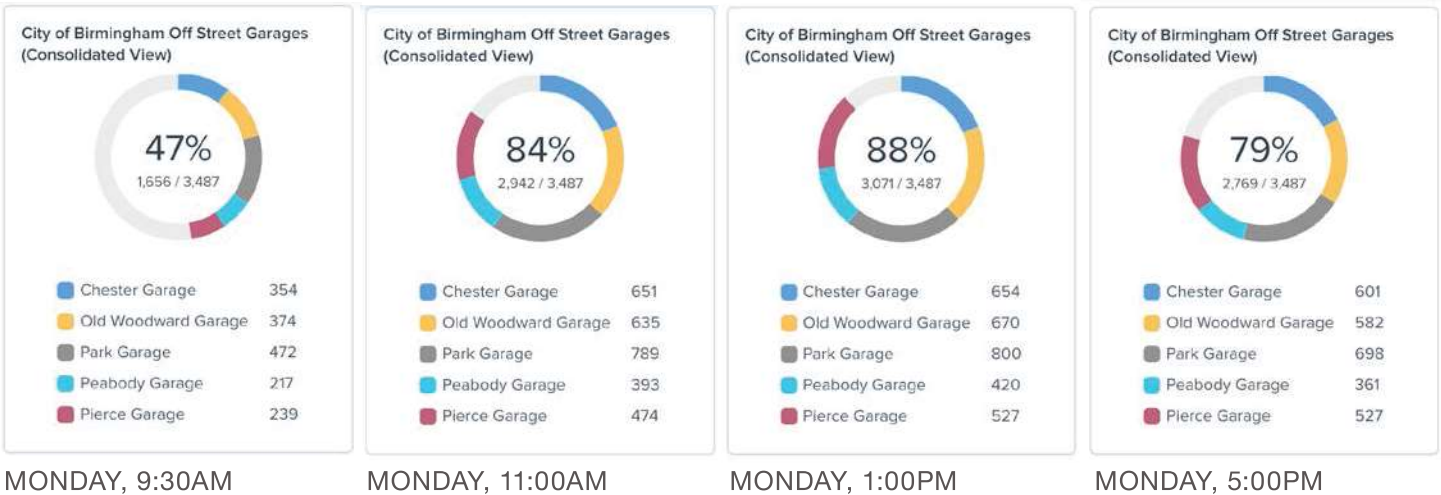


Figure 28. Downtown garage capacity at different times on a Monday.

Ch 2. Embrace Managed Growth

Encourage Housing in Mixed-use Districts

are not used regularly. Distribution of permits can also be managed through permit assignments, assigning spaces in less used garages like Chester Street. For the mostly younger and older residents who may not need a car, they benefit from the cost of parking being entirely eliminated from the cost of their housing. And lastly, the added income for the parking district can be reinvested into existing structures and for replacements and new structures.

Haynes Square

Haynes Square, to both sides of Woodward, can accommodate a significant amount of infill development. As discussed in a prior section, this area should be targeted for more housing than office within the use mix. Most of the available capacity is located east of Woodward in the Triangle District, which is already zoned for significant infill capacity. However, like Downtown, housing development in Haynes Square / Triangle District, on both sides of Woodward, is restricted by parking.

To the east of Woodward, many properties are oddly shaped and all are relatively shallow in depth. These characteristics mean that parking provided on-site is inefficient. Non-residential development in this area has been slow for similar reasons - parking is difficult to fit due to the geometry of most properties. A public parking structure is needed east of Woodward to drive private sector development, as previously discussed.

To the west of Woodward, properties are also too shallow to provide sufficient on-site parking. In addition, because this area is near to the downtown parking district but not within, development demand funnels to the downtown district where parking is not required for new development. One solution to this issue is proposed in a previous section, removing the southern portion of Old Woodward to extend properties and create public surface parking. This will not provide sufficient parking for the district, however, as the public parking opportunity is very close to lower scale homes. The western Haynes Square district could be provided additional parking access by: extending the downtown parking district; building a parking structure on the west side of Woodward as part of the Haynes Square street modifications; or including this area within a Triangle District parking district.

The Rail District

Like the Triangle District, the Rail District has long been zoned for significant infill but has seen little growth over time, particularly in the lower Rail District near Cole and Lincoln. This location is ideal for housing infill with its proximity to Kenning Park and future access to the Troy Transit Center. Development has occurred in the area on properties that are large, but the many smaller properties around Cole Street remain underdeveloped, despite being zoned for high density infill. Similar to the Triangle District, development of housing is restricted by the size and shape of properties, and lack of public parking. A public parking garage should be built near the lower Rail District and future Troy Transit Station access. Like the other mixed-use districts, this garage should allow for unbundled residential parking by selling residential parking passes. The garage would also help alleviate parking conflicts with the adjacent Torry neighborhood.

MASTER PLAN ACTIONS

1. Immediately pilot unbundled residential parking in Downtown. This may be achieved by releasing 100 to 200 passes for new downtown residential units.
2. Task the Advisory Parking Committee to study downtown residential parking. The committee should consider:
 - a. Offering a limited supply of permits for downtown housing, eliminating on-site parking. Evaluate the supply and modify as needed over time to maximize garage usage and housing.
 - b. Tie parking passes to an average rental or sales rate of 150% of Area Median Income or less, calculated on a per-building basis.
 - c. Tier permit costs according to the number of vehicles per residence, increasing in price for each vehicle and by parking garage.
3. Task the Advisory Parking Committee to study opportunities for expanding downtown parking capacity and accommodate more monthly permit users as capacity becomes available.
4. Build public parking in the Triangle District as previously discussed.

Ch 2. Embrace Managed Growth

Infill Some Medium and High Intensity District Seams

5. Provide public parking for the western Haynes Square district.
6. Build public parking in the Rail District. This should be on a site with adequate access to the Lower Rail District and the future connection to the Troy Transit Center.
7. Establish permanent unbundled residential parking in all mixed-use districts as municipal garages are built.

Infill Some Medium and High Intensity District Seams

Increasing the housing supply in only the high intensity mixed-use districts will result in a narrow range of new housing types, almost exclusively larger multi-family buildings. This form of infill addresses the need of some but not all demographic groups. One under-supplied group is households with young children, which are important in supporting the public school system. Few opportunities exist for new townhomes, duplexes, smaller houses, and small multi-family buildings. To accommodate these housing types, medium and high intensity district seams should be zoned to enable this range of housing.

Most of the medium and high intensity district seams are already mapped on multi-family properties, which does

- High Intensity Seams
- Medium Intensity Seams



Figure 29. High and Medium Intensity District Seams.

Ch 2. Embrace Managed Growth

Study Accessory Dwelling Units

add to the housing supply. However, there may be some additional infill capacity available in these properties by adjusting downward the minimum open space per dwelling standards, which are quite high today. Additionally, some medium and high intensity district seams are mapped on properties that are single-family today, notably along 14 Mile Road. While there are not many properties available for infill at this scale, those areas able to accommodate infill should be zoned to encourage it.

MASTER PLAN ACTIONS

1. Create a new zoning district or modify the transition zone districts to encourage infill development of small homes, townhomes, duplexes, and small multi-family buildings, limited to medium and high intensity district seams.

Study Accessory Dwelling Units

Accessory Dwelling Units (ADUs) are a low impact way to provide additional housing, particularly for older adults and lower income individuals. The City currently allows accessory structures but has restrictions to prohibit their use as permanent dwellings.

Accessory Dwelling Units (ADUs) are small homes typically located in the rear yard of a single-family or attached townhouse lot, frequently over a garage but often a small secondary unit within the primary home. ADUs can provide housing sought by many young renters, single-person households, and older adults. Birmingham has had historic ADUs for decades.

Presently, there is considerable market demand for ADUs in the City, but accessory structures are not permitted to be used as residences for people other than a relative of the primary household. The primary advantage of an ADU, if properly regulated, is that the property owner must also live on the property, providing oversight by the owner. For older adults looking to downsize but avoid a spike in property tax by selling, they can build an at-grade ADU to live in and rent their primary home. ADUs add a small amount of additional units, at a very low overall neighborhood impact.



Figure 30. An existing ADU equivalent.

MASTER PLAN ACTIONS

1. Enable Accessory Dwelling Units in already compatible zones: MX, TZ1, TZ3, and R4 through R8.
2. Convene a committee to study Accessory Dwelling Units, where they are appropriate in Birmingham, and the regulations necessary to ensure any negative impacts are minimized.

ADU BEST PRACTICES

- a. Permit ADUs where the property owner lives on-site, in the primary home or ADU.
- b. Prohibit two-rental structures on any single-family property.
- c. Require ADUs to be designed and built to match or exceed the quality of the primary structure.
- d. Require adequate landscape screening between ADUs and adjacent properties
- e. Do not require parking for ADUs.
- f. Increase the allowable height for accessory structures to allow 2 stories when there is a dwelling within it above a garage.
- g. Exempt the area of interior staircases from the maximum area of accessory structures when there is a dwelling within it.

Ch 2. Embrace Managed Growth

Update the Zoning Code

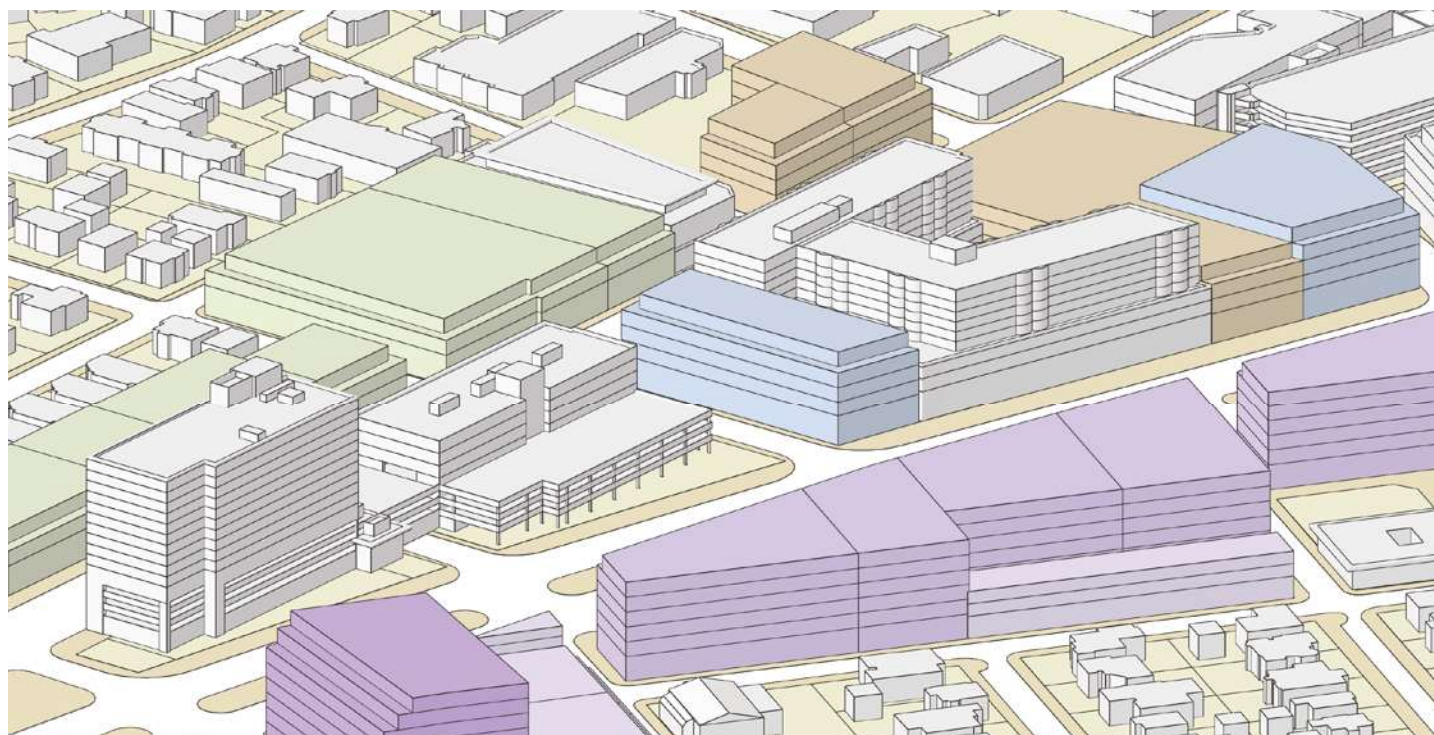
Update the Zoning Code

Birmingham's Zoning Ordinance is difficult to understand and has been adapted for recent districts, like Downtown and the Triangle District, through overlays which are essentially a patchwork over code elements that no longer function for the City's goals.

Birmingham's Zoning Code is due for an overhaul. While it is certainly better than many other codes for cities of a similar size across the country, the code no longer aligns with best practices. Zoning codes should be legible and comprehensible for residents and professionals alike, including graphic exhibits to clarify text-based concepts. Zones should be minimized, combining those which may be very similar but in different parts of the city (See Figure 31), like the Downtown Overlay, Triangle District Overlay, and the Mixed-use district established for the Rail District. Ideally the residential districts should also be examined for their appropriateness and some collapsed, especially

towards the higher end - R6 through R8. The existing Business and Office districts should be rezoned to the most appropriate mixed-use district.

Clarity and simplicity in zoning helps residents understand the implication of the zoning code, which is otherwise opaque to most. Additionally, collapsing zones and standards can simplify the review process and make new revisions easier to implement. Along with these, use categories should be collapsed to the broadest categories practicable. Overlays remain a useful tool, but they are best used to apply more stringent standards for an area, rather than overriding the majority of the code. At Maple and Woodward, for instance, the overlay is a good means of limiting ground floor office uses, which may be appropriate in other mixed-use districts.



Max allowable heights:

■ D2 3-story development - 56'

■ D3 4-story development - 68'

■ D4 5-story development - 80'

Max allowable heights:

■ MU-3 MFR 5-story development - 60'

■ MU-5 SF 6-story development - 82'

■ MU-7 9-story development - 118'

Figure 31. Existing Development Potential in Neighboring Overlays.

Ch 2. Embrace Managed Growth

Update the Zoning Code

MASTER PLAN ACTIONS

1. Update the zoning code. Focus on brevity, clarity, graphics, and aligning zones with Future Land Use categories. Consolidate zones and uses as much as is practical and ensure the updated document is legible, clear, and predictable for residents as well as developers. This should be a significant update.

BEST PRACTICE RECOMMENDATIONS

- a. Collapse uses into the broadest categories possible, with detailed use specification only provided where absolutely necessary, and in limited areas.
- b. Combine the business, office, Downtown, Triangle, and mixed-use districts into a single set of mixed-use districts shared between all mixed-use areas. Low intensity mixed-use districts would only include the lower intensity mixed-use zones, and high intensity mixed-use districts the higher intensity zones.
- c. Consider zoning district modifications for residential districts following the character descriptions and analysis for the City's neighborhoods, described in the next chapter of this plan.
- d. Revise residential districts to reduce the number of non-conforming structures by better aligning standards with existing structures.
- e. Ensure new zoning language is considered for simplicity and expediency, achieving regulatory goals in a manner clear to the general public.

Ch 2. Embrace Managed Growth

Update the Zoning Code

Downtown overlay

Triangle overlay

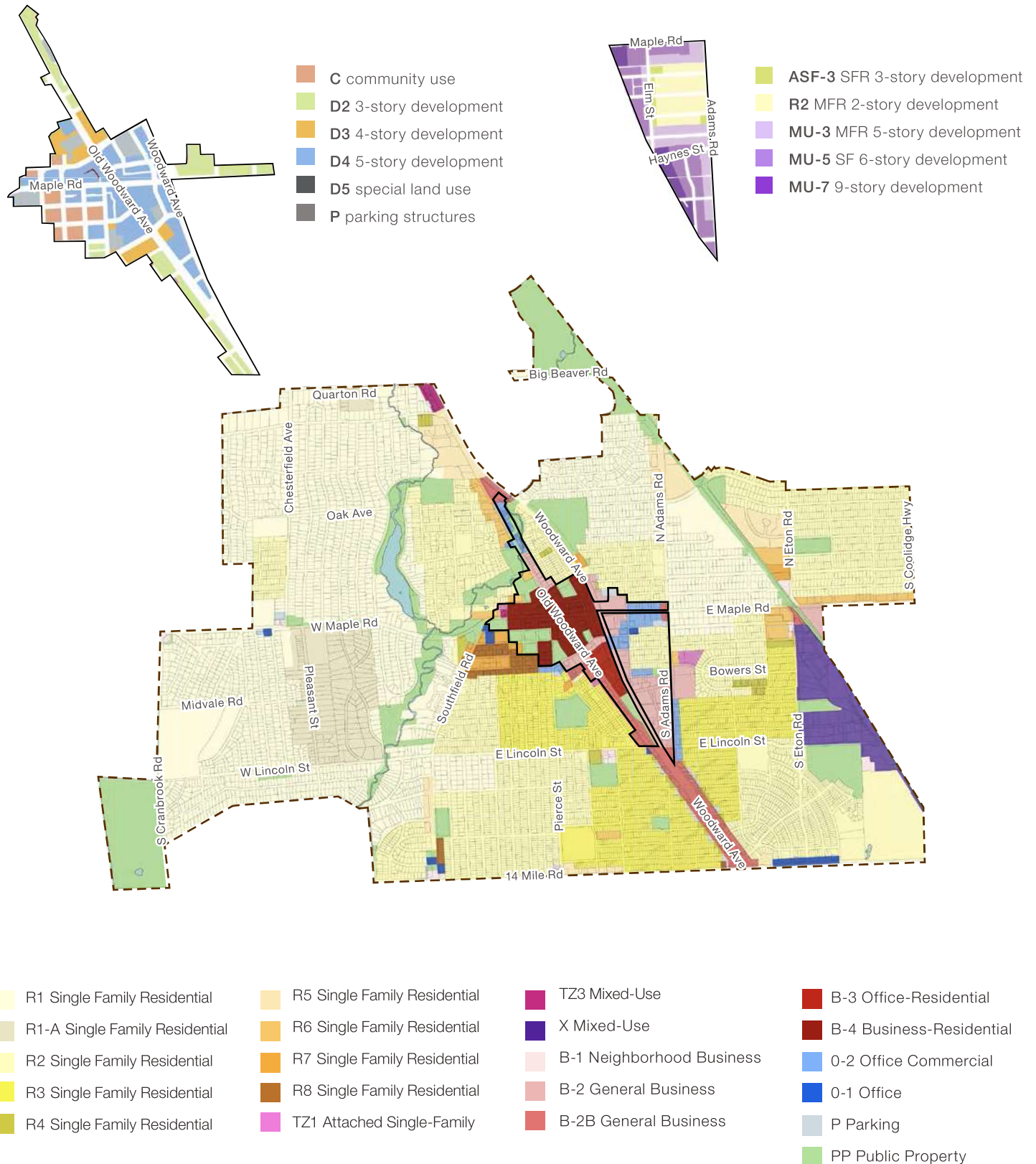


Figure 32. Existing Zoning Districts.

B. Future Land Use

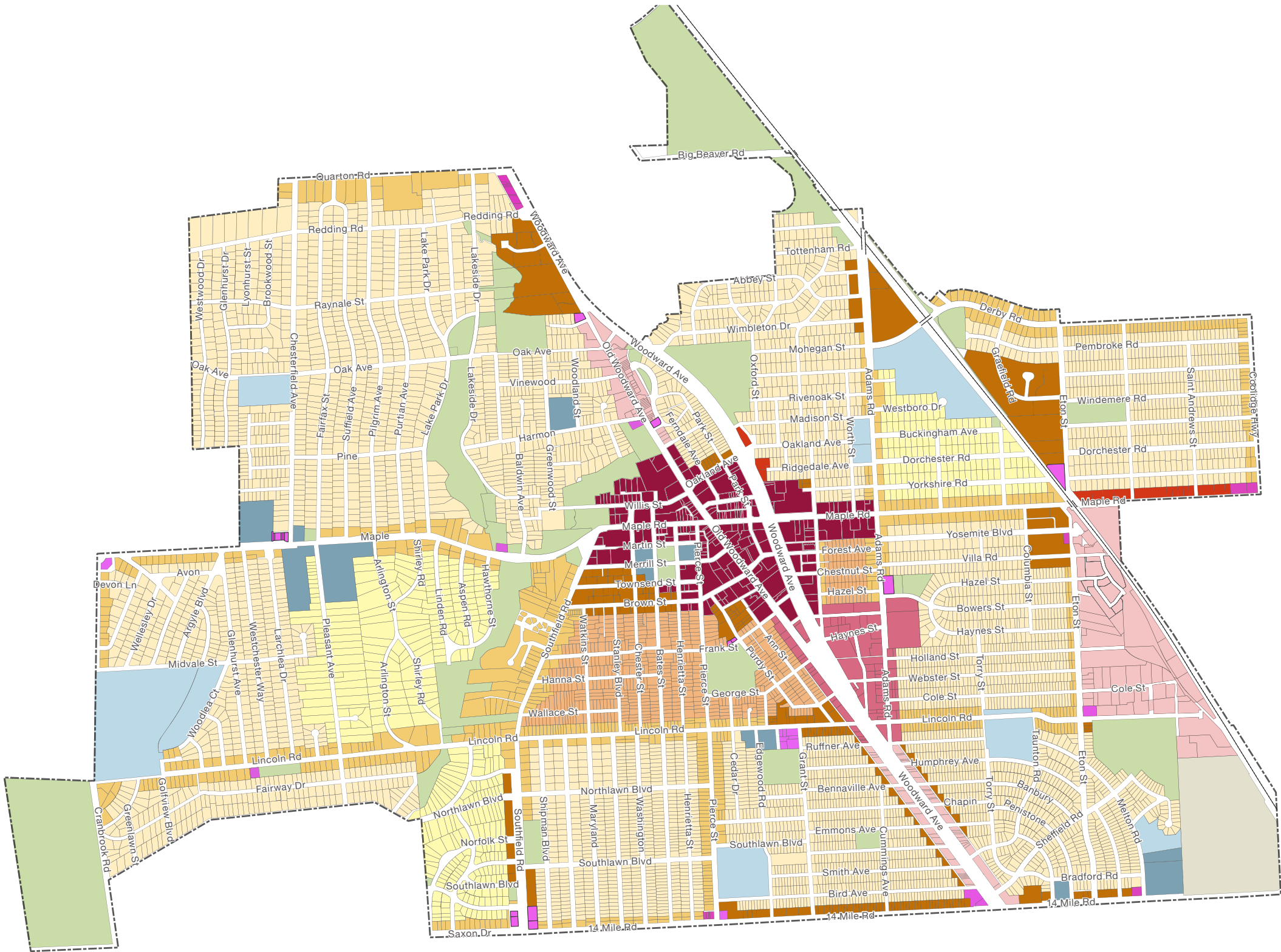


Figure 6. Future Land Use Map.

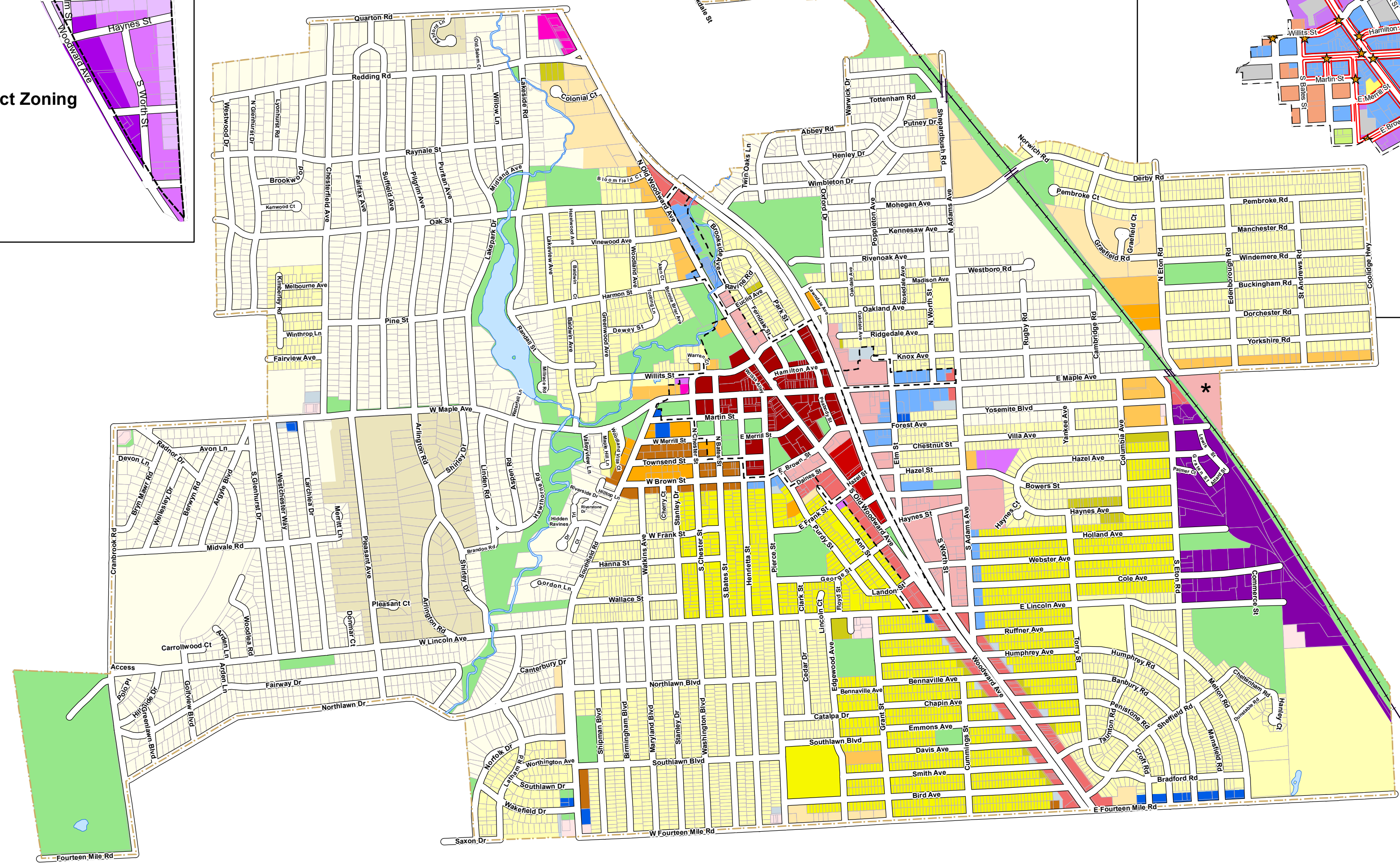
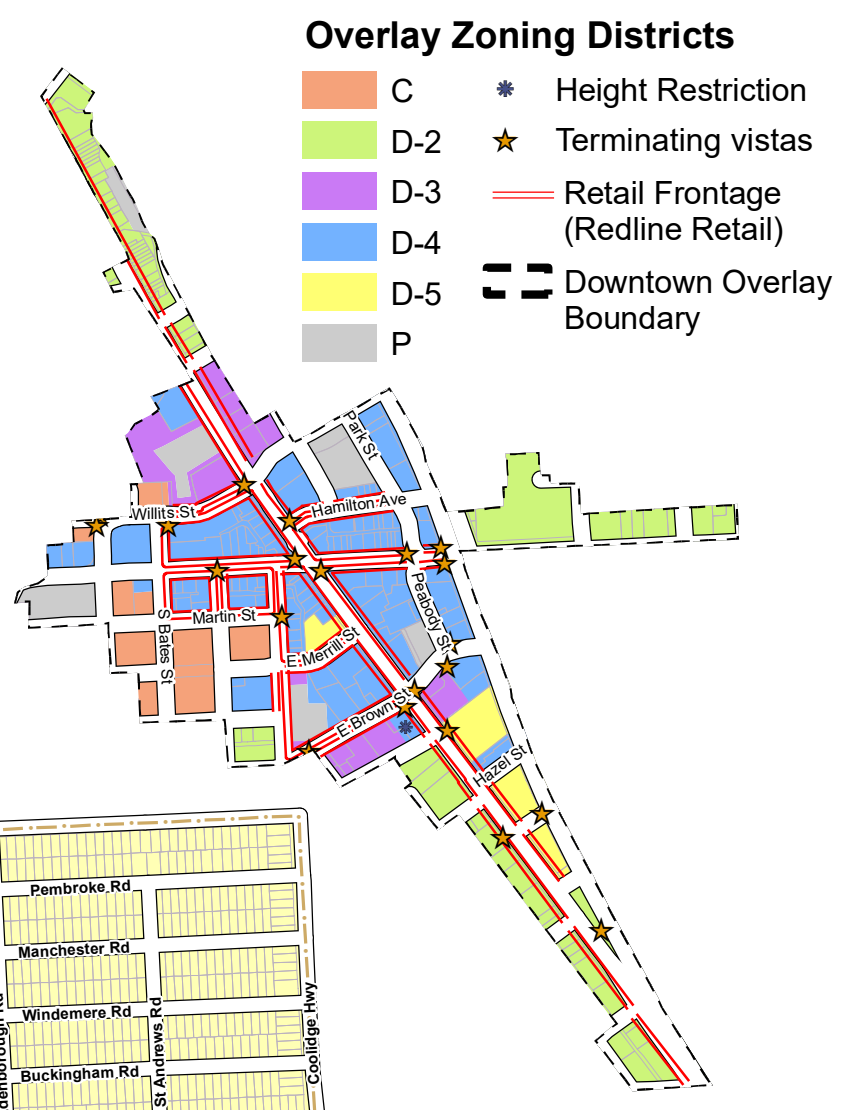
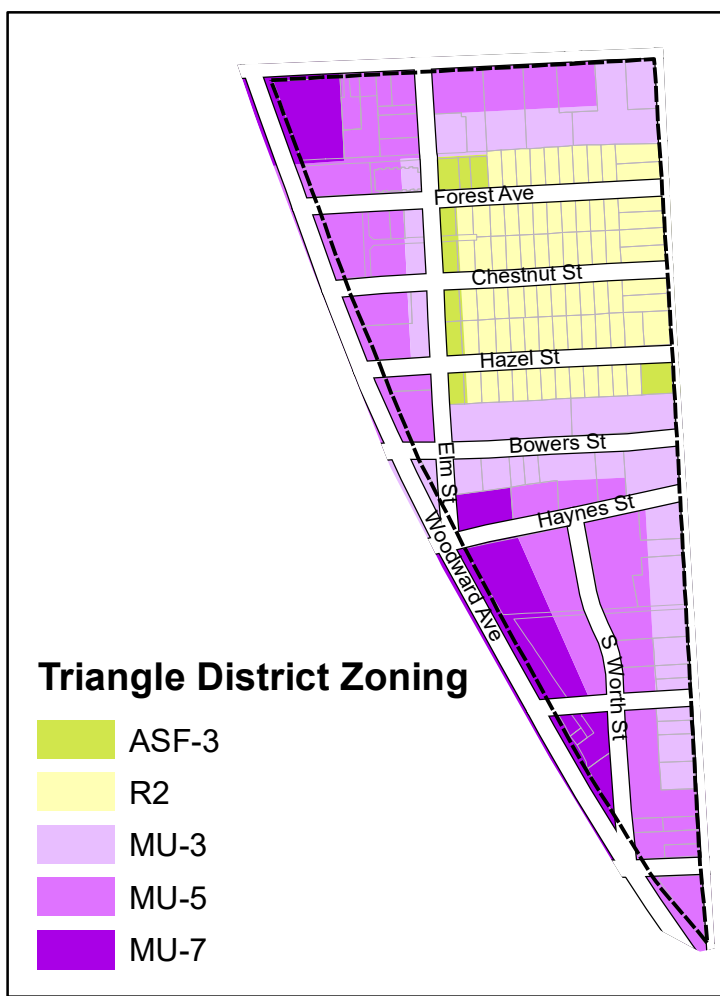
B. Future Land Use

Future Land Use Map

Future Land Use Map

Birmingham’s future land use map is structured by Planning District boundaries within which land uses reinforce the desired future character. This map serves as the basis for zoning, specifying where different uses and intensities are appropriate throughout the City. This Future Land Use Map aims to identify, sustain, and strengthen Birmingham’s neighborhoods and mixed-use districts. The following sections describe each land use in greater detail.

- Boundaries**
- Planning Districts
- District Destinations**
- Civic Destination: General
 - Civic Destination: School
 - Civic Destination: Cemetery
 - Recreational Destination
 - Commercial Destination
- Mixed Use District Fabric**
- High Intensity
 - Medium Intensity
 - Low Intensity
- Neighborhood District Fabric**
- High Intensity
 - Medium Intensity
 - Low Intensity
- District Seams**
- High Intensity (TZ-1, TZ-3, R3, R4, R5, R6, R7, R8, and MX)
 - Medium Intensity (TZ-1, R3, R4, R5, R6, and R8)
 - Low Intensity (R1A, R1, R2, R3)



City Of Birmingham Zoning Map

R1	Single-Family Residential	R7	Multiple-Family Residential	B-2B	General Business
R1-A	Single-Family Residential	R8	Multiple-Family Residential	B-3	Office-Residential
R2	Single-Family Residential	TZ1	Transitional Zoning 1	B-4	Business-Residential
R3	Single-Family Residential	TZ3	Transitional Zoning	O-2	Office Commercial
R4	Two-Family Residential	MX	Mixed-Use	O-1	Office
R5	Multiple-Family Residential	B-1	Neighborhood Business	P	Parking
R6	Multiple-Family Residential	B-2	General Business	PP	Public Property
		*	B-2 General Business Limited to Grocery Store Use		
					Downtown Overlay Boundary

B. Future Land Use

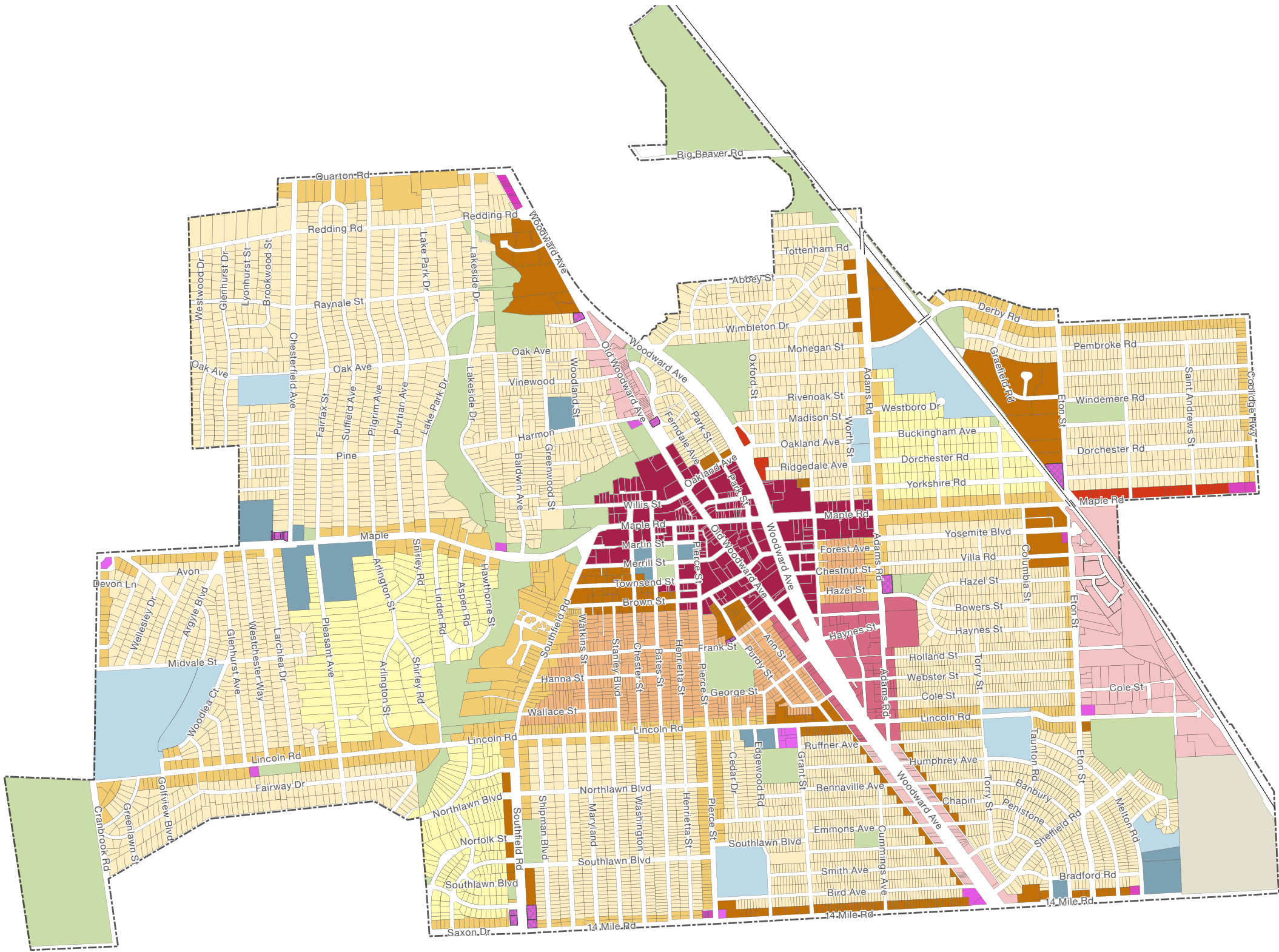


Figure 6. Future Land Use Map.

B. Future Land Use

Future Land Use Map

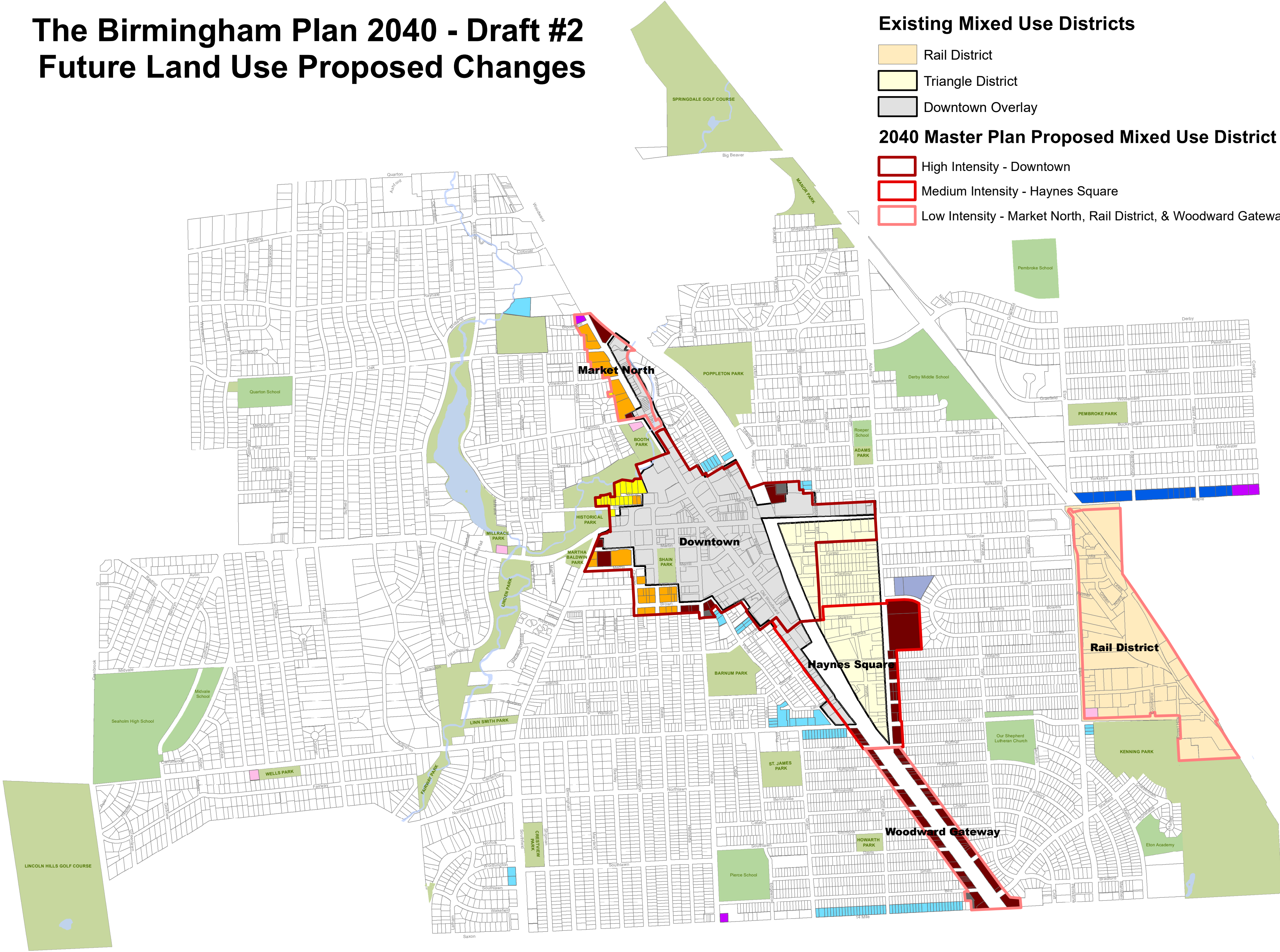
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- Boundaries**
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 - High Intensity (TZ-1, TZ-3, R3, R4, R5, R6, R7, R8, and MX)
 - Medium Intensity (TZ-1, R3, R4, R5, R6, and R8)
 - Low Intensity (R1A, R1, R2, R3)

The Birmingham Plan 2040 - Draft #2

Future Land Use Proposed Changes



Existing Mixed Use Districts

- Rail District
- Triangle District
- Downtown Overlay

2040 Master Plan Proposed Mixed Use District Fabric

- High Intensity - Downtown
- Medium Intensity - Haynes Square
- Low Intensity - Market North, Rail District, & Woodward Gateway

Proposed Mixed Use District Fabric Changes

- Office-Business (O1,O2, B2, B2-B) to Mixed Use District*
- Single Family (R2) to Mixed Use
- Multi-Family (R5, R6, R7, R8) to Mixed Use
- Parking (P) to Mixed Use District

*Office-Business zones permit mixed-use however the highlighted properties are not currently included in a defined mixed-use district.

Proposed District Seam Changes

- Medium Intensity Seam: Single Family (R1, R2, R3) to Multi-Family
- High Intensity Seam: Multi-Family (R5, R6, R7, R8) to Mixed-Use

Proposed District Destination Changes

- Transitional Zone (TZ-1) to Recreation (Park)
- City Park with a Commercial Destination (ie. small cafe)
- Multi-Family to Commercial Destination

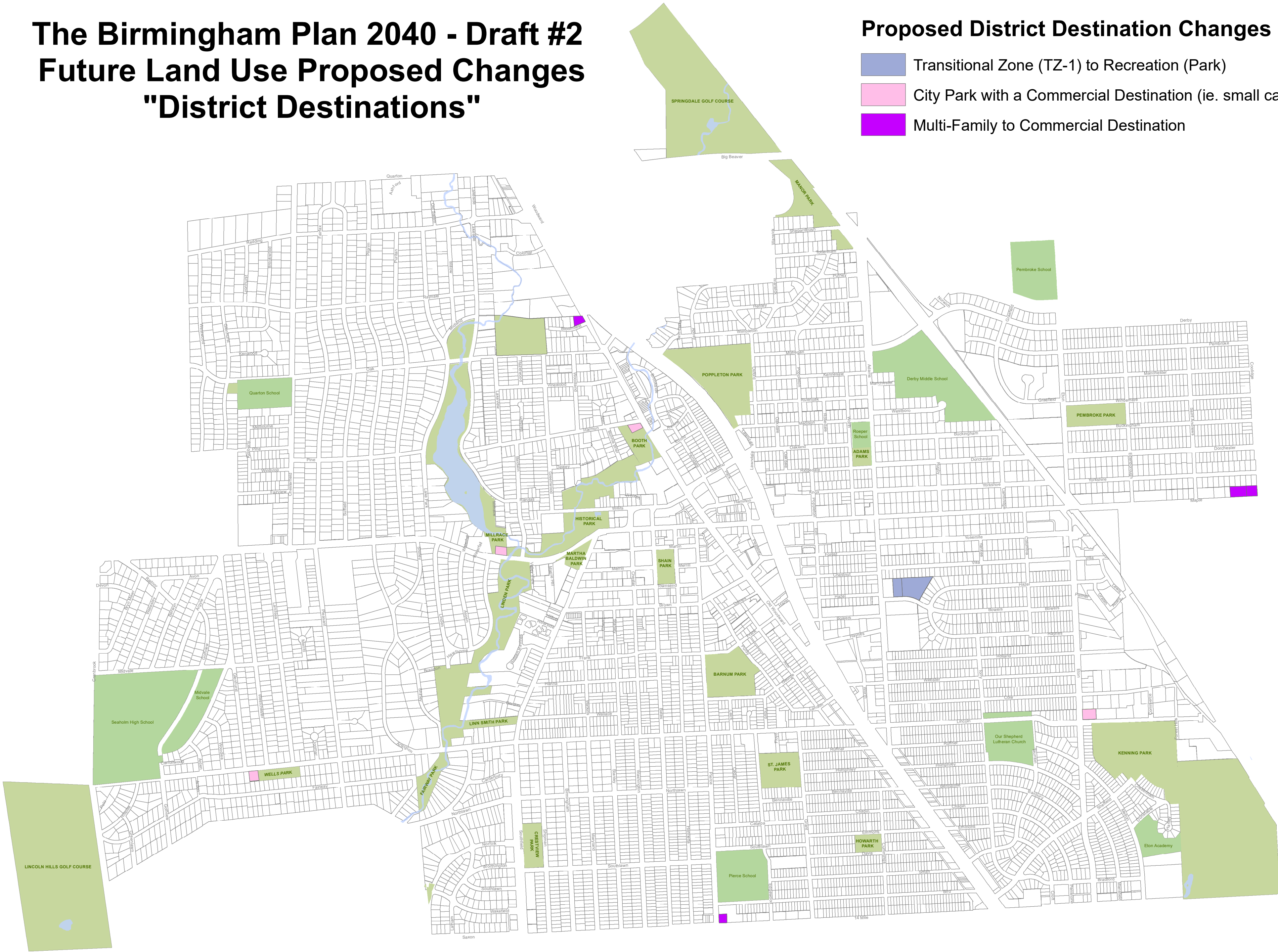
The Birmingham Plan 2040 - Draft #2

Future Land Use Proposed Changes

"District Destinations"

Proposed District Destination Changes

- Transitional Zone (TZ-1) to Recreation (Park)
- City Park with a Commercial Destination (ie. small cafe)
- Multi-Family to Commercial Destination

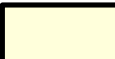


The Birmingham Plan 2040 - Draft #2

Future Land Use Proposed Changes

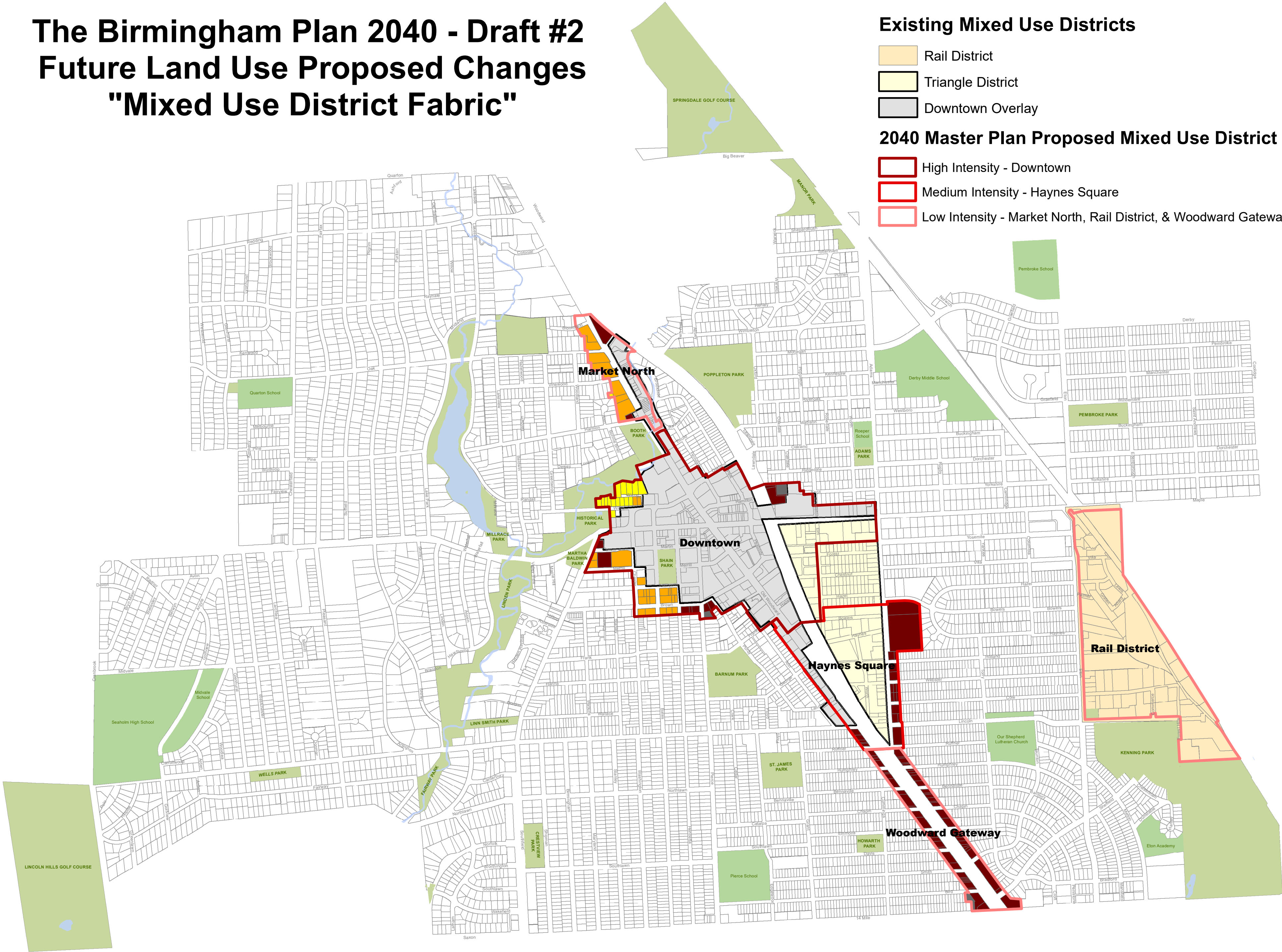
"Mixed Use District Fabric"

Existing Mixed Use Districts

-  Rail District
-  Triangle District
-  Downtown Overlay

2040 Master Plan Proposed Mixed Use District Fabric

-  High Intensity - Downtown
-  Medium Intensity - Haynes Square
-  Low Intensity - Market North, Rail District, & Woodward Gateway



Proposed Mixed Use District Fabric Changes

-  Office-Business (O1, O2, B2, B2-B) to Mixed Use District*
-  Single Family (R2) to Mixed Use
-  Multi-Family (R5, R6, R7, R8) to Mixed Use
-  Parking (P) to Mixed Use District

*Office-Business zones permit mixed-use however the highlighted properties are not currently included in a defined mixed-use district.

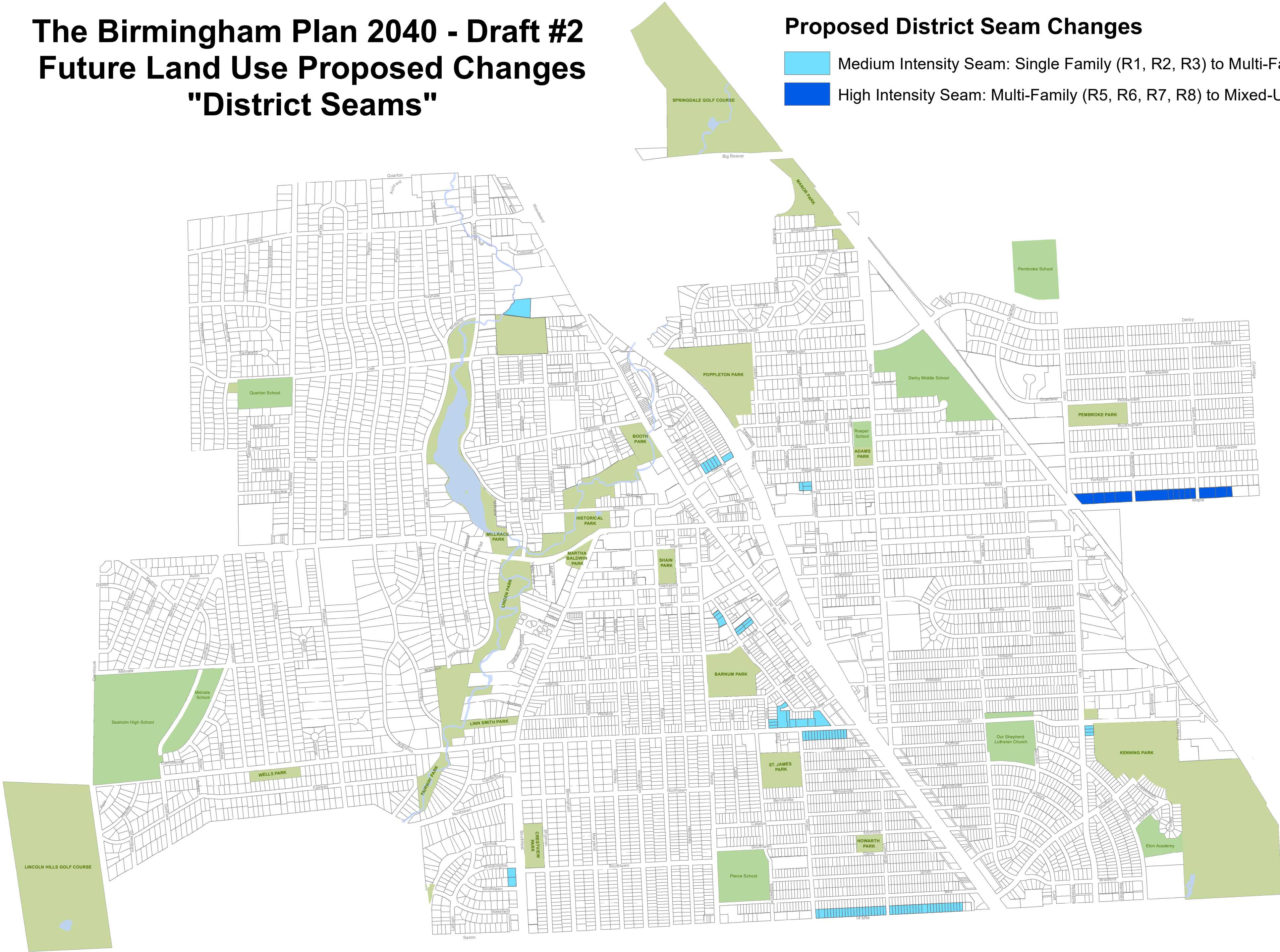
The Birmingham Plan 2040 - Draft #2

Future Land Use Proposed Changes

"District Seams"

Proposed District Seam Changes

- Medium Intensity Seam: Single Family (R1, R2, R3) to Multi-Family
- High Intensity Seam: Multi-Family (R5, R6, R7, R8) to Mixed-Use





April 13, 2021

City Commission Members, Planning Board Members
City of Birmingham
151 Martin St.
Birmingham, MI 48012

1st Draft Master Plan Recommendations, April 19, 2021 Joint City Commission and Planning Board Meeting

Dear City Commission and Planning Board Members,

Following-up upon the brief discussion held during the March 22nd City Commission meeting, this memo provides some additional information concerning the Planning Board's recommendations for changes to the Master Plan First Draft. During the March 22nd City Commission meeting, more detail was desired concerning the recommendations of the Planning Board, both explanatory in nature and recounting the degree to which the recommendation reflects primarily Planning Board direction, primarily public direction, or a combination thereof. The explanatory detail provided below remains brief and can be expanded upon by the consultants as necessary during the upcoming joint meeting.

In addition to the expanded details, a general summary of public input received is included as a separate memo from McKenna.

Further detail concerning the high-level direction from the Planning Board follows, retaining the order and numbering of the prior memo for ease of discussion.

General Direction

These items are not specifically related to a physical location or area of the city and are therefore considered more general in nature.

1. The length of the Master Plan should be significantly reduced.
 - Source: City Commission, Planning Board, and public comment
 - Detail: This item requires no additional explanatory detail.

2. The Master Plan should provide clear prioritization of recommendations, including the Themes created during the review process.
 - Source: Planning Board direction concerning the Themes. Prioritization as direction came from the City Commission, Planning Board, and public comment, specifically in October of 2019.
 - Detail: Further details concerning the direction is not necessary as it is general and clear. However please note that this was discussed as an original goal for the Second Draft by the consultant when presenting the First Draft in 2019. The consultant considers this a step in the process. The First Draft collects and explains all of the recommendations assembled through the Charrette process, to be accepted, rejected, or augmented. The Second Draft organizes and prioritizes the recommendations and timelines.
3. Language should be as plain as possible, where technical language is required, it should be clearly defined. This extends to terms that can be vague like sustainability.
 - Source: City Commission, Planning Board, and public comment
 - Detail: This item is a distillation of comments from the Commission and Board, as well as public comment. It was not presented as a single recommendation originally, rather this is inferred direction across many comments which has been validated by the Planning Board.
4. Adjust and clarify the correction to growth projections (2,000 people not 2,000 units).
 - Source: Consultant, supported by Planning Board and public comment
 - Detail: During the course of review the consultant identified that the growth projection as stated in the First Draft was incorrect. During Planning Board review, the consultant corrected this information publicly. Some public comment specifically referred to the growth projection numbers. That comment in some instances is related to following items concerning the form and location of growth, and other comments sought clarity.

5. Infrastructure should be addressed (the details of this request require discussion).
 - Source: Public comment
 - Detail: This item was brought up through public comment, specifically relating to stormwater, unimproved streets, and sewer capacity. It is identified as requiring further discussion (clarity) by the consultants. At the beginning of this contract the consultants asked for clarity concerning how infrastructure was to be addressed in the Master Plan. The City Manager at the time stated that infrastructure included only the surface, principally the details of streets, and did not include sub-surface infrastructure.
6. Increase the focus on sustainability.
 - Source: Planning Board principally, with some public comment
 - Detail: This item is general in nature as it appears in a few places within the First Draft, along with in the introduction, and touches on natural areas like the Rouge, on streets and stormwater, on public buildings and grounds, on practices like recycling and composting, and on energy use and pollution. These points are spread-out in the First Draft. Some items like reduction of greenhouse gasses from vehicles were not discussed as they are inherent in the physical form of Birmingham inviting walking, and should be discussed along with other stated items in a collected goal of greater sustainability.
7. Acknowledge Covid-19, including a prologue to ground the document in the current condition (occurred after the Master Plan First Draft).
 - Source: Planning Board principally, with some public comment
 - Detail: Concerning the source, Planning Board members discussed physical attributes and concerns in the city related to Covid-19, social distancing, and workplace dynamics. Initially this was brought up through public comment and revisited more than once by the Planning Board. While the current protocols surrounding Covid-19 are temporary there are a number of real items to discuss going forward. Concerning the disease, while it is expected that Covid-19 can be successfully mitigated, infectious diseases of this type

are anticipated to increase in frequency and severity in the future. A number of other recent diseases like H1N1 in 2009 luckily did not reach pandemic levels, but they have come close. Trends indicate that infectious disease has been steadily on the rise. A number of prior pandemics have led to changes in the built environment, including the Spanish Flu, Cholera, and Plague. The statement to acknowledge Covid-19 comes in part that preparing a 20 year plan without at least acknowledging such a significant event is considered a mistake but also that there are serious considerations which Covid-19 brings to a number of Master Plan recommendations. There is a general consensus that office space demand will be reduced going forward, and a greater demand for spaces to work some of the time within the home. Today's response may be an overreaction, with many tech companies abandoning or significantly reducing office space. However the technology available to work and meet more effectively in a remote manner has become well established in the workplace. Some change is anticipated, which may result in office space that should be converted to housing. In Downtown, this further supports the recommendation to allow residential permit parking in garages. In homes it may mean that definitions of home occupation should be revisited. That is one example of many, including allowances for dining decks, shared streets that provide more pedestrian space, and a demand for more seating opportunities in parks. Most of these items are included within the First Draft to some extent, but warrant revisiting the recommendations in consideration of recent experiences. Luckily Birmingham is a good location to weather Covid-19, and for many of the reasons that Birmingham is a great place to live generally.

8. Focus on the bold moves, like Haynes Square and perhaps more aggressive fixes for Woodward, so the plan is forward-looking.

- Source: Planning Board
- Detail: This item is both organizational and directing content. From an organizational perspective, a focus on bold moves can garner support. Recommendations can be organized in many ways - by location (as current), by theme, by goal, by department, by change versus stability, etc. Along with the comment on prioritization, this comment is about making the document motivating. The second piece is being more aggressive on some of the key

items, Woodward in particular. For Woodward, some detail was lost in the large document as comments made by the Board were already covered in the First Draft. But Woodward would also benefit from additional crossing improvements and focus on speeds as was discussed extensively. Other areas like Haynes Square are similar.

9. Schools should be more prominently featured in the plan expressing a shared vision between the City and the School District.

- Source: Planning Board principally, with some public comment
- Detail: Schools came up numerous times in discussion. It was recommended that the consultants coordinate with the School District concerning their future plans, including any considerations needed ahead of potential changes, closures, or expansions. Additionally, aspects of the plan had addressed schools with relation to population diversity and housing options, however the schools were a bullet point within those discussions instead of being the other way around. Schools may be better addressed in a goal-oriented organizational format.

10. The senior center proposal should be more prominently featured in the plan.

- Source: Planning Board
- Detail: The plan included direction to establish a more prominent senior center, as had been discussed at length during the Charrette. As with some other items, this had become a side note to the plan, addressed presently on pages 65 and 66.

11. Further address connections to surrounding communities.

- Source: Planning Board
- Detail: This item requires no additional explanatory detail.

12. Include recommendations for new historic districts and strengthening of existing districts.

- Source: Planning Board, Historic District Commission, and a few public comments

- Detail: This item requires no additional explanatory detail.
13. Ensure all considerations for walkability address older adults and people of varying abilities.
- Source: Planning Board
 - Detail: Aspects of walkability are discussed throughout the First Draft. While aimed at multiple users, they may not clearly address how multiple users should be considered.
14. Growth should be focused in Downtown, the Triangle District, and a small amount in the Rail District.
- Source: Planning Board and public comment
 - Detail: Aspects of this will re-appear later concerning Seams. This was a growth strategy that was discussed across numerous meetings and in reaction to public comment. The recommendation could be stated in the opposite manner, recommending that growth not be focused within or between neighborhoods.
15. More outdoor gathering spaces are needed in light of Covid-19, including covered outdoor spaces in parks.
- Source: Planning Board
 - Detail: Details surrounding this item were covered previously.
16. Increase the focus on connecting across Big Woodward and pedestrian safety.
- Source: Planning Board, and public comment
 - Detail: This item was addressed above concerning bold moves. It is listed separately as it was a common area of concern and discussion among Board members and the public.
17. Big Woodward north of Maple should be further investigated for traffic calming, in addition to the portion between 14 and Maple.
- Source: Planning Board

- Detail: In Board discussions concerning traffic calming on Big Woodward, the higher-speed condition of Big Woodward north of Maple was identified as a condition that requires specific consideration.
18. Retain the reduction of parking regulation complexity, but recommend that it be further studied by committee rather than proposing the solution.
- Source: Planning Board
 - Detail: The general idea of simplifying on-street parking regulation was supported but the Board believes it should be studied by a committee rather than providing a specific solution within the Master Plan. The Master Plan would retain the problem statement and recommend a committee be established to carry on the work.
19. More broadly address the Rouge natural area, including bank restoration, removal of invasive species, improving the natural condition, and trail modifications to increase accessibility without detracting from the natural environment.
- Source: Planning Board principally, with some public comment
 - Detail: The item is clear but note that the character of the trail is an area of conflict. Some members of the public feel that the trail should remain as it is with wood chips. Other members of the public, and the Board, feel that the trail should be accessible to users of all abilities. The direction as stated is to improve the trail but recommend strategies to limit the impact that such improvements would have to the existing natural character.
20. Consider the future of the public golf courses.
- Source: Planning Board
 - Detail: There is no specific direction to this item. The golf courses were not addressed in the First Draft and the recommendation is to consider their potential to remain as is, to improve, or to be used in some other manner.

Direction Related to Mixed-use Districts

1. Generally

1. Consider more shared streets and pedestrian-only areas, including Worth Park as a potential piazza.
 - Source: Planning Board
 - Detail: The First Draft included some shared streets and the Board recommended that the concept be expanded beyond the areas identified in the First Draft. The recommendation also identifies that Worth Park is an opportunity to provide greater variety in open space types by recommending a plaza instead of a green.
2. Consider dining decks in light of Covid-19.
 - Source: Planning Board
 - Detail: This item was discussed previously.
3. EV charging and other similar sustainable strategies should be considered in mixed-use districts.
 - Source: Planning Board
 - Detail: This item is related to a previous discussion point on increasing the focus on sustainability.

2. Downtown

1. Bates Street should be included in recommendations.
 - Source: Planning Board
 - Detail: At the beginning of the Master Plan process, a proposal for the Bates Street extension was going through public review. As such it was not included in the Master Plan. The recommendation is to include a proposal in the Master Plan since the prior measure was rejected.

2. Revisit the pilot parking program for downtown housing in light of Covid-19 changing business demand and potential future office space demand.

- Source: Planning Board
- Detail: This item was discussed previously.

3. Retail district standards (redline) should be lightened on side streets.

- Source: Planning Board
- Detail: The area of very high standards for ground floor uses within Downtown extends to most street frontages. The First Draft recommended that two sets of standards be created, one of higher and one of slightly lower specificity. This recommendation is to expand the slightly lower standards to side streets like Hamilton and Willits.

3. Haynes Square / Triangle District

1. Adams Square should be included in recommendations.

- Source: Planning Board
- Detail: This item requires no additional explanatory detail.

2. Consider live-work buildings.

- Source: Planning Board
- Detail: Live-work buildings are like a townhome with a small business space on the front. They are typically service uses like attorneys. Live-work buildings are common in historic towns and in some newly built neighborhoods but often not allowed in zoning. The recommendation is to consider where, if anywhere, live-work buildings should be allowed or encouraged. The most likely outcome is consideration for the type within the Triangle District and the Adams Square shopping center, in addition to the Rail District where they are currently allowed.

3. Add a pedestrian or vehicular connection from Worth to Bowers.
 - Source: Planning Board
 - Detail: This item requires no additional explanatory detail, however the consultant strongly supports the recommendation.
4. Address how the abandoned portion of Old Woodward south of Haynes should transfer ownership with concern for the existing property owners with frontage on Old Woodward. Also address the City's ability to vacate property by ordinance.
 - Source: Planning Board
 - Detail: This is a process-related detail of the recommendation to terminate Old Woodward at Haynes in order to improve traffic safety and increase the viability of commercial properties south of Haynes.
5. Focus Missing Middle housing principally in Haynes Square and Adams Square.
 - Source: Planning Board
 - Detail: This is related to allowing more townhomes, duplexes, and small multi-family housing units. The recommendation is to encourage these types of housing in limited areas rather than along most Seams.
6. Look more closely at the Haynes / Adams traffic situation with respect to the proposed modifications.
 - Source: Planning Board
 - Detail: The First Draft recommends that southbound Adams traffic be diverted onto Haynes to meet Big Woodward in order to both improve traffic safety and increase the viability of the Triangle District. The recommendation is to add further detail for this condition to ensure that it is viable from a traffic management standpoint.

4. South Woodward Gateway

1. Study the housing proposals along the South Woodward alleys more closely and consider other effective means of noise buffering.
 - Source: Planning Board
 - Detail: The First Draft recommended townhouse-like housing be located along alleys in the South Woodward Gateway area. The alley proposal is aimed at activating alleys which provide a more comfortable means of walking along Big Woodward than the discontinuous sidewalks. Activating the alleys would increase noise which could affect adjacent homes. The First Draft recommended that housing be used to buffer noise as housing is very effective and doing so. These would be located along the alley where houses have previously been removed for additional parking area. The recommendation is to consider options in addition to housing, and to clarify or reconsider the housing recommendation.

Direction Related to Neighborhoods

1. Revise to define sub-areas of the City as “planning districts” and remove all recommendations related to neighborhood associations.
 - Source: Planning Board and public comment
 - Detail: There are two items here. The first is to use the term “planning district” rather than neighborhood to refer to the boundaries identified on Page 30. The second is straightforward, to remove any of the remaining details concerning neighborhood associations.
2. Seams should be significantly reduced in location, intensity, and building types allowed, and be thoughtfully located in the limited areas where they may be appropriate.
 - Source: Planning Board and significant public comment
 - Detail: The recommendations concerning Seams brought significant public pushback. This began early in the review process but

accelerated towards the end of the process as both information and misinformation about the Seams proposal spread throughout the community. Despite attempts at clarifying the concept, the public reaction was strong and emotional. Throughout the Planning Board review sessions, the subject had come up numerous times and the Board's recommendation was to reduce the intensity of Seams and limit the types of housing allowed within them, targeting growth in the mixed-use areas. Towards the end of the review sessions, public comment increased. While some residents welcomed the recommendation, the majority did not. The Board re-affirmed their prior position and strengthened it. The concept of Seams as presented may be applicable in a few limited locations but the addition of housing type diversity along the edge of most planning districts should not be allowed.

3. Accessory Dwelling Units need to be revisited and should be severely limited should they be permitted anywhere.

- Source: Planning Board and public comment
- Detail: Both the Board and public shared concern about accessory dwelling units. Public comment varied from those with specific concerns, such as privacy where existing properties are small, to those with wished to not allow accessory units anywhere. The Board echoed the specific concerns, remaining open to consider conditions that accessory units may be allowed but generally skeptical. The recommendation is to have the consultant consider this input and revise where and to what extent accessory units might be allowed.

4. New neighborhood commercial destination locations should be reduced and thoughtfully considered while existing destinations strengthened; include more clarity on the uses that should be permitted.

- Source: Planning Board
- Detail: Neighborhood commercial destinations were proposed in the First Draft in some areas that merit removal, like at Lincoln and

Southfield. The recommendation is to retain the concept and remove some instances mapped in the First Draft. Additionally, the Board would like additional detail concerning the types of uses that should be allowed, and other regulatory considerations.

5. Torry requires more amenities.

- Source: Planning Board
- Detail: This item requires no additional explanatory detail.

6. Include stronger reference to the Unimproved Streets Committee recommendations (completed after the Master Plan First Draft).

- Source: Planning Board
- Detail: The committee work on unimproved streets paralleled the Master Plan process. The First Draft references the committee which has now completed its study and recommendations. The direction is to include this within the Second Draft. While public comment isn't mentioned in the source, the topic of unimproved streets was brought up by the public multiple times.

7. Completing sidewalks requires more focus and prioritization, could be handled similarly to the committee on Unimproved Streets.

- Source: Planning Board
- Detail: The first draft recommends completing missing sidewalks. The Board feels that it may be lost in other recommendations and wishes to highlight the importance and priority.

8. Provide more detail on green infrastructure opportunities.

- Source: Planning Board
- Detail: Green infrastructure (bio-swales) was briefly addressed in the First Draft. The recommendation is to include more specificity on green infrastructure in the Second Draft.

9. Clarify the neighborhood loop, bicycle boulevards, and protected bike paths by including street sections and greater detail addressing different user types.

- Source: Planning Board
- Detail: This item requests further information concerning street design where new approaches and types are included. The neighborhood loop is one instance where the specific implications on street design are not clear to the Board. Some of the other questions come from items in the multi-modal plan that were included in the Master Plan within maps but detailed street sections were not included in the Master Plan.

10. Clarify the Kenning Park path recommendations concerning both pedestrians and cyclists.

- Source: Planning Board
- Detail: Within the First Draft there is a paved bike path mapped in Kenning Park which was envisioned to be pedestrian and bicycle use but could be read as bicycle only. The Board suggested that it include pedestrian accommodations. This item is a clarification of the First Draft.

11. Increase aggressiveness of tree preservation and replacement recommendations.

- Source: Planning Board
- Detail: Tree preservation and replacement is briefly addressed in the First Draft. This item recommends that the process be prioritized and accelerated, particularly around preservation in consideration of new construction.

12. Provide more detail on non-financial incentives for renovation of homes over new construction and provide greater ability to add 1st floor master bedrooms. This topic is likely to differ between planning districts.

- Source: Planning Board

- Detail: The First Draft recommends incentives be established to encourage home renovations instead of tear-downs. The Board is concerned that this will be construed as financial incentives and recommends that additional detail be provided concerning potential incentives that are not financial.

13. Review lot coverage standards and consider adjustments by lot size.

- Source: Planning Board and public comment
- Detail: Public comment brought up concerns about drainage in new construction and illuminated a concern about impervious lot coverage. The First Draft doesn't address lot coverage in residential districts aside from a note related to incentives mentioned in the previous item.

14. Provide more detail on design controls that may be considered.

- Source: Planning Board
- Detail: The First Draft recommends an approvals process for exterior design and materials for homes, along with a discussion suggesting objective and simple design controls that avoid stylistic restrictions. This item requests more information concerning the types of simple design controls referenced. Note that while the source states only the Planning Board that this was also discussed in the October 2019 joint meeting with the City Commission.

15. Remove lot combination areas but review the existing ordinance to provide better direction.

- Source: Planning Board
- Detail: The lot combination areas were a source of confusion initially because they were mapped along with the Seams. These are areas where lot combinations would be allowed rather than relying on the more subjective process in place today. This item recommends that specific areas for lot combinations be removed and that the existing ordinance be reviewed to produce better outcomes.



We look forward to a discussion of this direction and to revising the Draft Master Plan; thank you.

Regards,

A handwritten signature in black ink, appearing to read 'Matthew Lambert'.

Matthew Lambert

Cc: Jana Ecker, Planning Director; Bob Gibbs, Gibbs Planning Group; Sarah Traxler, McKenna



MEMORANDUM

Planning Division

DATE: December 8th, 2021

TO: Planning Board

FROM: Nicholas Dupuis, Planning Director

SUBJECT: Outdoor Dining Ordinance (Outdoor Dining End Date Removal) – Public Hearing

On October 11th, 2021, the Planning Board and City Commission met at a joint meeting to discuss planning topics and get some feedback on key items in the Planning Board pipeline. During the discussion on outdoor dining, City Commission and Planning Board members discussed the possibility of an ordinance amendment to allow for year-round outdoor dining as soon as this year, while also considering a change to the rule in which outdoor dining operators are required to bring in all outdoor dining fixtures and furnishings each night for snow removal.

On October 25th, 2021, the City Commission directed the Planning Board to study the Outdoor Dining ordinance to amend the November 15th end of regular outdoor dining season date and provide recommendations to the City Commission.

On October 28th, 2021, the Planning Division sent a letter to all permit-holding outdoor dining establishments indicating that there will be study regarding a change in the outdoor dining ordinance that could eliminate the November 15th end of regular outdoor dining season date for outdoor dining patios in the public right-of-way, and that the City will be pausing enforcement of this deadline while the study session progresses.

On November 10th, 2021, the Planning Board discussed the proposed ordinance amendments to Section 4.44 of the Zoning Ordinance, and moved to set a public hearing for December 8th, 2021 to consider the amendments and make a recommendation to the City Commission.

At this time, the Planning Division proposes the following ordinance amendments to Chapter 4, Section 4.44 of the Zoning Ordinance (*please see next pages*):

Sample Motion Language:

Motion to recommend APPROVAL to the City Commission the ordinance amendments to Article 4, Section 4.44, Outdoor Dining Standards, to remove temporal restrictions on outdoor dining

patios in the public right-of-way, and to allow outdoor dining fixtures and furnishings to stay outside overnight.

CITY OF BIRMINGHAM

ORDINANCE NO. _____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 4, SECTION 4.44, OUTDOOR DINING STANDARDS, TO REMOVE TEMPORAL RESTRICTIONS ON OUTDOOR DINING PATIOS IN THE PUBLIC RIGHT-OF-WAY, AND TO ALLOW OUTDOOR DINING FIXTURES AND FURNISHINGS TO STAY OUTSIDE OVERNIGHT.

4.44 OD-01 Outdoor Dining Standards

This Outdoor Dining Standards section applies to the following districts:

B1 B2 B2B B2C B3 B4 MX O1 O2 TZ3

The following outdoor dining standards apply:

- A. Outdoor Dining: Outdoor dining is permitted immediately next to the principal use, subject to Site Plan Review, and the following conditions:
 1. Outdoor dining areas shall provide and service refuse containers within the outdoor dining area and maintain the area in good order.
 2. All outdoor activity must cease at the close of business or as noted in subsection 3 below.
 3. When an outdoor dining area is immediately adjacent to any single-family or multiple-family residential district, all outdoor activity must cease at the close of business or 10:00 p.m., whichever is earlier.
 4. Outdoor dining may be permitted on the sidewalk throughout the year with a valid Outdoor Dining License, ~~provided that all outdoor dining fixtures and furnishings must be stored indoors each night between November 16 and March 31 to allow for snow removal.~~
 5. All tables and chairs provided in the outdoor dining area shall be constructed primarily of metal, wood, or material of comparable quality.
 6. Table umbrellas shall be considered under Site Plan Review and shall not impede sight lines into a retail establishment, pedestrian flow in the outdoor dining area, or pedestrian or vehicular traffic flow outside the outdoor dining area.
 7. For outdoor dining located in the public right-of-way:
 - a. All such uses shall be subject to a license from the city, upon forms provided by the Community Development Department, contingent on compliance with all city codes, including any conditions required by the Planning Board in conjunction with Site Plan approval.

- b. In order to safeguard the flow of pedestrians on the public sidewalk, such uses shall maintain an unobstructed sidewalk width as required by the Planning Board, but in no case less than 5 feet.
 - c. Outdoor dining is permitted to extend in the right-of-way in front of neighboring properties, with the written permission of the property owner(s) and with Planning Board approval, if such property is vacant or the first floor storefront(s) is/are vacant. Outdoor dining areas may extend up to 50% of the width of the neighboring lot(s) storefront(s), or up to 50% of the lot(s) frontage, if such lot is vacant.
 - d. City Commission approval is also required for outdoor dining extensions onto neighboring property if the establishment making such a request holds a bistro license.
 - e. An elevated, ADA compliant, ~~enclosed~~ platform may be erected on the street in front of an eating establishment to create an outdoor dining area ~~from April 1 through November 15~~ only if the Engineering Department determines there is sufficient space available for this purpose given parking and traffic conditions.
 - f. No such facility shall erect or install permanent fixtures in the public right-of-way.
8. Outdoor dining is permitted in a B1 District at a rate of 4 seats for every 12 linear feet of store frontage, with no more than 12 seats total per building; no elevated enclosed platforms on the street are permitted in a B1 District.



MEMORANDUM

Planning Division

DATE: December 8, 2021

TO: Planning Board

FROM: Nicholas Dupuis, City Planner

SUBJECT: Outdoor Dining Ordinance – Study Session #6

On December 7, 2020, the City Commission discussed amending the Zoning Ordinance to consider allowing the enclosure of outdoor dining areas during the winter months. The City Commission asked the Planning Board to consider this issue, and any regulations they may recommend should outdoor dining enclosures be permitted.

On June 21st, 2021, the City Commission and Planning Board met at a joint meeting to further discuss outdoor dining, and to get a clear direction as to what elements of outdoor dining should be addressed. In general, the City Commission and Planning Board discussed several topics spanning from enclosures to private vs. public space, but ultimately asked the Planning Board to take a comprehensive look at the entire outdoor dining ordinance.

On June 23rd, 2021, the Planning Board discussed outdoor dining in further detail based on the joint meeting two days prior. The Planning Board settled on a list of goals that they would like to focus on in the ordinance review process, which includes the following:

- Incentivize outdoor off-season dining;
- Review the placement of decks and enclosures;
- Ensure that additional outdoor off-season dining does not become an extension of the indoor space;
- Solicit feedback from restaurateurs of all types in the City;
- Seek possible ideas from local, national and international examples;
- Review the current ordinance for issues;
- Review tickets that were given out to temporary outdoor dining operations;
- Review photos of the variety of temporary outdoor dining structures that were used around the City;
- Explore options for maintaining permanent aspects of outdoor dining structures even if the parts of the structures come down in different seasons;
- Discuss potential differences in policy for outdoor dining on public versus private property;
- Solicit feedback from Public Services and the BSD;

- Review agreements from temporary outdoor dining to see if any of the temporary policies might be worth integrating;
- Consider aspects like sidewalk widths and snow clearing in writing the policy;
- Maintain the current seating allowances for differently-sized establishments and maintain the differences for establishments holding different kinds of licenses for alcoholic beverage service; and,
- Recommend a permanent solution so that restaurateurs do not have to continue to adapt to changing policies.

Study Session #1 Summary

On July 14th, 2021, the Planning Board reviewed a high-level report on outdoor dining to guide future discussion. The topics included observations as to what constitutes “good” outdoor dining with national and local examples, as well as a local ordinance review for outdoor dining. The Planning Board discussed next steps and emphasized the need to (1) hear from different City Departments (code issues, retail neighbor conflicts, streetscape), (2) review available codes and ordinances from other areas of the country (enclosures, public vs. private, year-round), and (3) analyze information from national downtown associations or other related organizations (trends, social districts, success stories).

Study Session #2 Summary

On August 11th, 2021, the Planning Board reviewed another high-level report in which the Planning Division presented various departmental comments on outdoor dining, a national outdoor dining ordinance review, conversations with local cities, and a study of national organization input and trends. The Planning Division also provided some public feedback from Engage Birmingham, which surveyed the public for their opinion of the COVID-19 temporary outdoor dining expansions, which were overwhelmingly positive. Moving forward, the Planning Board expressed interest in getting into more detail on seasonal/year round dining and its effect on street activation, public versus public space, the potential for regulating different restaurants/licenses differently, and defining and establishing a purpose of outdoor dining in the City.

Study Session #3 Summary

On September 9th, the Planning Board discussed the report which contained comments from the Advisory Parking Committee, common issues with outdoor dining patios, information on the temporary COVID-19 patios, and also discussed the purpose of outdoor dining. In addition, the Planning Board was able to review an example of how the outdoor dining ordinance could look based on comments up to that point. Ultimately, the conversation started to get more granular with specific ordinance-related ideas ranging from an official stance on enclosures to material guidelines to patio placement. There were several other requests for information including a review of Michigan Liquor Control Commission guidelines for outdoor dining, a review of the concept of windbreak versus wall, and the possibility of regulating outdoor dining by zones.

Study Session #4 Summary

On September 23rd, the Planning Board discussed the MLCC rules for outdoor dining patios, the concept of a windbreak and whether or not they should be permitted, and also explored the different zoning districts in which outdoor dining is permitted. These topics led to more conversation about how overhead weather protection will interact with said overhead coverings, and what typed of overhead protection the Planning Board should permit. The Planning Board expressed an interest in taking a deeper dive into overhead weather protection and reviewing different options.

Study Session #5 Summary

On October 27th, 2021, the Planning Board focused much their conversation on overhead weather protection and which types may be considered within the new ordinance language, and what different issues might arise with the different styles. In addition, the Birmingham Fire Chief Paul Wells gave a brief overview of the fire code as it relates to overhead weather protection, and offered some guidance to the Planning Board regarding fire suppression and other aspects of outdoor dining. In addition to overhead weather protection, the Planning Board provided some clear direction on the subjects of windbreaks, year-round dining, and the role of outdoor dining decks.

Study Session #6

The Planning Division has received the highly anticipated comments regarding outdoor dining from the Birmingham Shopping District (BSD). As the BSD plays a unique role in the City, and its constituents are comprised of retail and restaurant uses alike, it was important for the BSD to thoroughly vet their comments and recommendations through each of their sub-committees so that they may offer a consistent and well-represented response to the Planning Division's request for input. The attached document offers several recommendations, as well as a background of the thought processes and some of the opposing viewpoints that were expressed during their meetings.

In addition to the BSD comments, the Fire Department has also included updated comments for the Planning Board review based on their additional research into the Fire Code. These updated comments are intended to keep the Planning Board current with the most up-to-date codes and processes relating to all aspects of outdoor dining patios. As it follows, new comments were added regarding enclosures/coverings, smoke detectors, structures attached to buildings, and propane storage.

Article 4, Section 4.44 – Outdoor Dining Standards

This Outdoor Dining Standards section applies to the following districts:

B1 B2 B2B B2C B3 B4 MX O1 O2 TZ3

The following outdoor dining standards apply:

- A. Purpose and Intent: The purpose of this section is to provide an appropriate balance for outdoor dining patios across the city, and to encourage better spaces to support public health, activate public space, foster economic development, safeguard the use of public property, and provide flexibility for current trends and future demands for outdoor dining.
- B. Outdoor Dining – General: Outdoor dining is permitted immediately adjacent to the principal use, subject to review by the Planning Board, or by the Planning Division at the discretion of the Planning Director, and the following conditions
 - 1. All outdoor activity must cease at the close of business or as noted in subsection 2 below.
 - 2. When an outdoor dining patio is immediately adjacent to any single-family or multiple-family zoned residential district, all outdoor activity must cease at the close of business or 10:00 p.m., whichever is earlier.
 - 3. The review of outdoor dining patios shall include, but are not limited to, the following elements: tables, chairs, umbrellas, portable heating elements, barriers, service stations, landscaping/plantings, awnings, canopies, lighting, host/hostess stands, and entertainment.
 - 4. Outdoor dining may be permitted on public property throughout the year with a valid Outdoor Dining License, provided that the following conditions are met:
 - i. Approval of an Outdoor Dining License shall be contingent on compliance with all city codes, including any conditions required by the Planning Board in conjunction with Site Plan approval.
 - ii. Operators of outdoor dining patios shall be responsible for snow and ice removal, and shall remove of such in a manner consistent with that of the Department of Public Services.
 - iii. Portable patio elements such as tables, chairs, heaters and umbrellas must be stored indoors each night between December 1 and March 1 to allow for complete snow and ice removal.
 - iv. An ADA compliant platform may be erected in the on-street parking space(s) in front of an eating establishment to create an outdoor dining patio from April 1 through November 1, subject to a review by the Advisory Parking Committee.
 - 5. All outdoor patios shall be designed to meet the requirements of this section, as well as all applicable building and fire codes.
- C. Outdoor Dining – Design: All outdoor dining patios are subject to the following design standards:

1. All tables and chairs provided in the outdoor dining patio shall be constructed primarily of metal, wood, or a material of comparable quality as determined by the Planning Board.
2. Outdoor dining patios shall provide and service refuse containers within the outdoor dining patio and maintain the area in good order.
3. Outdoor dining patios shall not contain enclosures as defined in Article 9, Section 9.02 of the Zoning Ordinance.
4. In order to safeguard the flow of pedestrians on the public sidewalk, such uses shall maintain an unobstructed sidewalk width as required by the Planning Board, but in no case less than 6 ft.
5. No such facility shall erect or install permanent fixtures in the public right-of-way.
6. Table umbrellas or other overhead weather protection shall not (1) impede sight lines into a retail establishment, (2) obstruct pedestrian flow in the outdoor dining area, (3) obstruct pedestrian or vehicular traffic flow outside the outdoor dining area, or (4) contain signage or advertising.
7. Barriers defining outdoor patios shall be constructed of a quality and durable material, and shall be maintained and placed in a consistent and organized fashion. Barriers shall be secured to the ground and/or building to maintain an immovable, clearly defined patio space. Barriers may not exceed 42 inches in height with the exception of planting material.
8. Windbreaks are permitted within outdoor dining patios and shall be affixed to a barrier. The total combined height of a barrier and windbreak shall not exceed 60 inches. Windbreaks must be constructed of a clear and durable material.
9. Portable heating elements must be maintained and kept in an orderly fashion. Propane or other fuels may not be stored on public property, and are subject to the Storage and Display Standards outlined in Article 4, Section 4.67 of the Zoning Ordinance.
10. Ancillary elements such as service stations or host/hostess stands must be located within the approved outdoor dining patio, contained, and kept in a neat and orderly fashion. Service stations and host/hostess stands may not exceed 4 feet in height. The storage of dirty dishware is prohibited.

Article 9, Section 9.02 – Definitions

Enclosure (outdoor dining): An area that may or may not contain a roof and as few as one wall, panel, or material that provides relief from weather and impedes physical and/or visual access to the space. For the purposes of this definition, enclosure does not include exterior building walls, windbreaks or landscaping.

Outdoor Dining Patio: A defined outdoor area accessory to an existing food and drink establishment designated for consumption of food and/or drink prepared within the establishment and subject to the provisions of this ordinance.

Permanent Fixture (outdoor dining): Any element within an outdoor dining patio containing a foundation or other rigid attachment that prevents removal or that which requires extensive modifications to the public right-of-way.



Birmingham Shopping District
Meeting Date: 11/04/2021
151 Martin Street
Birmingham, MI 48009
248-530-1200
ALLINBirmingham.com

MEMORANDUM

DATE: November 2, 2021
TO: Birmingham Shopping District Board
FROM: Sean Kammer, Executive Director
SUBJECT: Outdoor Dining Recommendations

The proposed recommendations below have been developed for the BSD's consideration to advise the Planning Board regarding its study of outdoor dining. Should the board concur with these recommendations, a resolution has been prepared for its consideration.

SUGGESTED ACTION:

The Birmingham Shopping District approves the following recommendations to the Planning Board concerning outdoor dining.

RECOMMENDATIONS

The Planning Board may wish to consider recommending that any form of extended and/or expanded dining permission be available only to bistros and any other establishment holding a liquor license. Further, outdoor dining establishments should at least be open until 9:00 p.m.

The BSD recommends that the spirit of the Bistro program be considered when evaluating the extent of outdoor dining permissions in the downtown. The Bistro Program was intended to help spur activity in the downtown by encouraging foot traffic, dining outside, which is visible and publicly displays activity, as well as encourages commercial activity to be visible through the windows of bistros (dining, socializing, etc). It is understood that the Planning Board has been asked by Planning Department staff to consider the viability of social districts as a means to incentivize businesses to stay open later to meet this criteria.

The Planning Board should consider formulating recommendations regarding the size of outdoor dining space and the number of furniture permitted in zoning districts other than B1.

The BSD suggests that a formula be developed to address the number of outdoor seats that are permitted for bistros in zoning districts B2, B2B, and B4. Under the relaxed restrictions during the pandemic, there were no guidelines for the number of outdoor seating furniture and bistros were able to breach their previous 65 seat threshold, some by an extreme number. The B1 district has guidance on the size of outdoor dining areas based on the linear frontage of the business. The B1 district is a neighborhood business district, applying to only three small parcels in the city, all outside of the shopping district. The city's zoning ordinance lays out the dimensions and seating criteria for outdoor dining in the B1 district. The ordinance does not mention the seating ratios to building frontage for the other districts (B2, B2B, B4, etc). It may be that no standard ratios for such districts exist. If this is the case, the BSD strongly recommends that the Planning Board consider formulating criteria for the size of outdoor dining areas based on ratios of building frontage, as exists in the B1 District.

The Planning Board should consider recommending stronger regulations regarding businesses that attempt to have both sidewalk cafes and on-street dining platforms in order to ensure public walkways are not obstructed, and that on-street parking remains available.

The Planning Board may wish to consider formulating additional guidance regarding the co-location of on-street platforms and sidewalk dining. In some specific cases, the lack of cohesion has resulted in a cluttered view of an otherwise clean and well planned streetscape with instances of garbage accumulation in the public right-of-way, obstructed public walkways, congestion, and obstructed views of shops and services. The BSD consulted the guidance provided by the city's 2016 Plan concerning outdoor dining platforms and sidewalk cafes. The BSD recommends that this plan be considered when developing future outdoor dining policies.

The Planning Board may also wish to consider limiting the number of parking spaces occupied by on-street dining platforms on any given block. This could be established as a formula per block or even by referencing the parking utilization rates that have been observed in recent studies.

Further, if the maximum permitted number of seats can feasibly be accommodated on the sidewalk in front of a business, then the option of an on-street outdoor dining platform should not be considered. A business with outdoor dining would have a sidewalk café, or an on-street platform if they can accommodate more seats, but ideally not both.

The Planning Board should consider downtown maintenance activities performed by the BSD/DPS when considering additional features and accoutrements related to outdoor dining, and encourages the Planning Board to recommend supporting the current ordinance restricting outdoor dining to the months of April through November.

The BSD, along with DPS, funds and performs regular maintenance activities in the downtown, ranging from snow removal, to power washing the sidewalks in the summer. Too many items in the public right of way at certain times of the year can inhibit the performance of necessary upkeep of the downtown. This also potentially generates significantly more costs for the BSD and DPS in order to achieve the same maintenance outcomes while experiencing challenges and obstacles. Consequently, the BSD recommends that the Planning Board support the current ordinance which regulates the outdoor dining season (April through November).

Obstructed views can create problems. The Planning Board should consider the effects of wind screening, temporary outdoor dining structures, and other outdoor dining items on traffic visibility, the appearance of the streetscape, terminating vistas, and views to retail display windows.

The BSD has observed complaints from non-restaurants regarding the effect of obstructed store fronts on their business. The Planning Board may wish to consider rules for outdoor dining that mitigates these potential externalities.

MOTION: Motion by Astrein, seconded by Pohlod to approve the stated recommendations to the Planning Board concerning outdoor dining.

VOTE: Yeas: 8; Nays: 0; Absent: 4.

APPENDIX – A

BACKGROUND

Relaxed outdoor dining restrictions and the extension of outdoor dining into the colder months were intended as business relief and recovery measures during a nation-wide state of emergency. Outdoor dining restrictions were relaxed during the covid-19 pandemic in order to relieve businesses of the stress of reduced sales resulting from capacity restrictions, which were implemented to protect the public health.

Since that time, outdoor dining has proliferated, not just in Birmingham but in many other communities as well. The current demand for outdoor dining continues to remain very high. A recent survey about outdoor dining on the Engage Birmingham website revealed that it remains popular among the respondents.

The Planning Board has undertaken a study on outdoor dining in order to ascertain the need for any permanent changes to local regulations. The BSD and other city departments have been asked to provide input. The purpose of the Planning Board's study is to determine the future of outdoor dining innovations as potentially permanent features of the dining experience in downtown Birmingham.

In recent meetings, the Planning Board has discussed a range of topics, such as whether retractable awnings could be permitted to enhance outdoor dining in the downtown and whether windscreens should be permitted for dining in colder months.

As far as the BSD is concerned, outdoor dining must be measured in terms of its effect on the downtown overall. This includes impacts on operations, marketability, safety, attractiveness, business development, and promotion potential of the downtown. Additionally, it should be noted that the BSD represents a diverse constituency, ranging from retailers and restaurants, to salons, and office firms who have differences of opinion on outdoor dining. Some retailers have expressed frustration at unreasonably large outdoor dining structures that obstructed their storefronts. Some pedestrians found difficulty safely navigating the public sidewalks in areas where sidewalk cafes and dining platforms were co-located. Consequently, the position of the BSD must take these various perspectives into account, while also prioritizing what it considers to be the best policies to protect the community's economy, reputation, operation, safety, and overall appearance.

BSD staff undertook a comprehensive effort to equitably gather the perspectives of downtown stakeholders for the BSD's review. On August 31, BSD staff sent out a general announcement to businesses and property owners soliciting opinions and feedback on outdoor dining policies, allowing stakeholders more than ten days to respond with their perspectives and concerns.

The BSD's committees considered the physical expansion of outdoor dining footprints, relaxed restrictions, and seasonal extension of the outdoor dining season into the winter months. The committees considered this issue from a downtown marketing, infrastructure, events, and economic development perspective. The Business Development committee identified two features of the outdoor dining question, the first being the question of physical expansion of dining into the public right-of-way, and the second being the seasonal extension of outdoor dining into the winter months.

It should be noted that at the October 25th, 2021 City Commission meeting, the Commission directed staff to develop zoning amendments regarding the November 15 end of the regular outdoor dining season for businesses that currently have city-approved outdoor dining.

The BSD's Business Development committee suggested that the BSD consider consulting the City's 2016 Plan, which contained recommendations for outdoor dining in respect to sidewalk width. According to the plan, sidewalks should not be completely obstructed with outdoor dining tables, chairs and other accoutrements to the point where it might interfere with pedestrian access.

Further commentary included that outdoor dining was originally intended for businesses with bistro licenses and other establishments with liquor licenses. The committee also provided commentary addressing the expansion of winterized enclosures defeating the purpose of 'outdoor' dining, and may end up becoming cost prohibitive when considering the costs of requirements such as enclosures, propane for heaters, fire suppression, and other equipment. During the covid-19 pandemic, some of these costs were mitigated by public subsidies, which may not always be the case moving forward.

The Advertising and Marketing Committee considered the issue of outdoor dining in light of regional competition and the downtown's brand identity. The Capital Improvements and Maintenance Committee chair identified several concerns related to the ongoing maintenance and cleanliness of the downtown, and the Special Events Committee provided feedback concerning outdoor dining's effect on the BSD's annual events. Attached for the BSD's review

are the written feedback received from downtown stakeholders and committee members concerning the issue of expanded outdoor dining.

The BSD received minimal feedback from business owners. General comments included support for outdoor dining, but with practical limitations. One owner revealed that the costs of heating outdoor dining structures in cold weather was prohibitively expensive. Further, business owners reported that sudden and rapid shifts and reversals in public policies concerning outdoor dining created logistics and cost challenges.

Additionally, board members discussed the committee recommendations and feedback at the October 7th BSD board meeting. It was agreed that a developed set of recommendations would be presented to the BSD board at the November 4, 2021 board meeting.

CONSENSUS OF THOUGHTS

The feedback from committee members varied widely from advocating an extension of relaxed outdoor dining practices to support for a return to precovid guidelines. Some committees were unable to arrive at a consensus, however some general themes can be identified by the comments. The proposed recommendations for the BSD's consideration are based on what feedback was provided. Generally, outdoor dining is a positive activity in the downtown. The restaurants in the shopping district are more competitive in light of regional competition and popular trends.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "SKammer", with a long horizontal flourish extending to the right.

Sean Kammer, Executive Director



CITY OF BIRMINGHAM FIRE DEPARTMENT

572 SOUTH ADAMS • BIRMINGHAM, MICHIGAN 48009 • 248.530.1900 FAX 248.530.1950

Fire Department Outdoor Dining Requirements

Dining platforms in the street

- These structures and the footprint shall be clear of the right of way for traffic and emergency vehicles.
- Proper clearance from fire department connections FDC: 36 inches wide, 36 inches in depth and 78 inches in height.
- Proper clearance around fire hydrants, 3 feet in circumference and no obstructions from the street.
- Clear path of egress from buildings (do not setup dining in path of egress).

Enclosures/coverings

- Temporary tents, air-supported, air-inflated or tensioned membrane structures shall not be erected for a period of more than 180 days within a 12-month period on a single premise. **Use period Sec. 3103.5., International Fire Code 2015 ed.**
- Flame retardant certificates shall be provided to the AHJ for structures using membrane and other combustible materials **Sec. 3104.2 Flame propagation performance treatment, International Fire Code 2015 edition.**
- Tents or membrane structures and their appurtenances shall be adequately roped, braced and anchored to withstand the elements of weather and prevent against collapsing. Documentation of structural stability shall be furnished to the fire code official on request. **Sec. 3103.9 Anchorage required International Fire Code 2015 ed.**
- A field inspection shall be performed by the Assistant Building Official and Fire Marshal for all erected structures prior to final approval.

Heating elements

- Portable outdoor gas-fired heating appliances shall be located not less than **5 feet** from buildings. **Sec. 603.4.2.1.2 Clearance to buildings, International Fire Code 2015 ed.**
- Heating devices shall meet the proper clearance from combustible material at all times (5 feet). **Sec. 603.4.2.1.3 Clearance to combustible materials, International Fire Code 2015 ed.** Gas fired heating devices may be approved to be placed closer than 5 feet if specific manufacturer recommendations and specifications are followed. Documentation shall be submitted for review, and a field inspection performed by the Fire Marshal to determine safety is met prior to approval.
- Portable outdoor gas -fired heating appliances shall not be located within **5 feet** of exits or exit discharge. **603.4.2.1.4 Proximity to exits. International Fire Code 2015 edition.**



CITY OF BIRMINGHAM FIRE DEPARTMENT

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- Electric heating devices are allowed following manufacturers specifications and meeting proper clearances. Manufactures specifications shall be provided to the fire code official upon request for review and approval. **Sec. 603.4.2.1.3 Clearance to combustible materials International Fire Code 2015 ed.**
- Portable outdoor fireplaces shall be used in accordance with the manufacturer's instructions and shall not be operated within **15 feet** of a structure or combustible material. (ex. fire pits, fire tables on wood, vinyl, composite platforms). **Sec. 307.4.3 Portable Outdoor fireplaces. International Fire Code 2015 edition.**
- Portable open-flame devices fueled by flammable or combustible gases or liquids shall be enclosed or installed in such a manner as to prevent the flame from contacting combustible material. **Sec. 308.1.6.2 Portable fueled open-flame devices. International Fire Code 2015 edition.** Approved outdoor fireplaces shall be fully screened to cover exposed flames. Final approval by the Fire Marshal is required.
- Solid fuels (wood, coal, etc.) shall not be allowed for use of outdoor fire features such as fire tables, fire pits or other heating and decorative devices.
- **Weather protection (umbrellas, tents, awnings):** Must provide a flame retardant certificate to the AHJ regardless of using outdoor heating or not. These items must meet the clearance of heating devices and provide fire extinguisher protection.

Smoke Detectors / Carbon monoxide detection

- Smoke alarms and carbon monoxide (CO) detectors shall be installed for enclosed or semi-enclosed (3 or more sides enclosed) structures regardless of heating device used or not. Enclosures near vehicle traffic shall have carbon monoxide detectors in the event that vehicle emissions enter the enclosure accidentally.

Fire extinguisher

- Shall be installed in enclosed or semi-enclosed structures as well as structures made of combustible materials. Authority Having Jurisdiction (AHJ) to determine size, type and location(s) of devices. **Sec. 906.2, International Fire Code 2015 ed.**
- Fire extinguishers shall be mounted to a stationary object.
- Fire extinguishers shall be provided with a service tag showing annual maintenance performed within the last twelve months.



CITY OF BIRMINGHAM FIRE DEPARTMENT

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Storage of LP gas

- Storage of fuel cannot be inside of a building. LP gas must be stored in a lockable cage outdoors. Storage cage must be a **minimum of 10 feet** from any type of building opening. Storage locations shall be approved by the Planning Department and the Fire Marshal. **6104.3 Container location, International Fire Code 2015 ed.**
- No loose or free-standing tanks are permitted at any time. All tanks shall be installed inside of heating devices, or secured in LP cages that are strategically placed to prevent an accidental vehicle strike.
- Only 20-pound or smaller LP tanks will be approved.

Structures attached to buildings

- Full fire suppression for structures attached to buildings with **existing** fire suppression is required on additions such as awnings, retractable awnings, tents, sun rooms, projections etc. that are more than 4 feet wide and of combustible material. If a structure is free standing and is a minimum of 3 feet away from a building, it would not require suppression. **8.15.7.1 National Fire Protection Agency 13, Standard for the Installation of Sprinkler Systems 2013 ed.**
- **A-2** assembly occupancy that currently **does not** have fire suppression required could be required to suppress the whole building with the addition of an attached outdoor structure depending on occupant load and square footage increases (ie. A building with the new outdoor addition is now over 5,000sq. ft. or over 100 occupants), layout and other aspects of design. **Sec. 903.2.1.2, Michigan Building Code 2015 ed.**
- Sunshades, awnings or other added structures that are attached to buildings and are 3 feet or more away from the building do not require fire suppression. Example: a sunshade is installed with tension cables anchored to the building and ground but situated so that the shade material itself meets the clearance requirement of 3 or more feet away from the building.



MEMORANDUM

Planning Division

DATE: December 8, 2021

TO: Planning Board

FROM: Nicholas Dupuis, City Planner

SUBJECT: Outdoor Dining Ordinance – Study Session #6

On December 7, 2020, the City Commission discussed amending the Zoning Ordinance to consider allowing the enclosure of outdoor dining areas during the winter months. The City Commission asked the Planning Board to consider this issue, and any regulations they may recommend should outdoor dining enclosures be permitted.

On June 21st, 2021, the City Commission and Planning Board met at a joint meeting to further discuss outdoor dining, and to get a clear direction as to what elements of outdoor dining should be addressed. In general, the City Commission and Planning Board discussed several topics spanning from enclosures to private vs. public space, but ultimately asked the Planning Board to take a comprehensive look at the entire outdoor dining ordinance.

On June 23rd, 2021, the Planning Board discussed outdoor dining in further detail based on the joint meeting two days prior. The Planning Board settled on a list of goals that they would like to focus on in the ordinance review process, which includes the following:

- Incentivize outdoor off-season dining;
- Review the placement of decks and enclosures;
- Ensure that additional outdoor off-season dining does not become an extension of the indoor space;
- Solicit feedback from restaurateurs of all types in the City;
- Seek possible ideas from local, national and international examples;
- Review the current ordinance for issues;
- Review tickets that were given out to temporary outdoor dining operations;
- Review photos of the variety of temporary outdoor dining structures that were used around the City;
- Explore options for maintaining permanent aspects of outdoor dining structures even if the parts of the structures come down in different seasons;
- Discuss potential differences in policy for outdoor dining on public versus private property;
- Solicit feedback from Public Services and the BSD;

- Review agreements from temporary outdoor dining to see if any of the temporary policies might be worth integrating;
- Consider aspects like sidewalk widths and snow clearing in writing the policy;
- Maintain the current seating allowances for differently-sized establishments and maintain the differences for establishments holding different kinds of licenses for alcoholic beverage service; and,
- Recommend a permanent solution so that restaurateurs do not have to continue to adapt to changing policies.

Study Session #1 Summary

On July 14th, 2021, the Planning Board reviewed a high-level report on outdoor dining to guide future discussion. The topics included observations as to what constitutes “good” outdoor dining with national and local examples, as well as a local ordinance review for outdoor dining. The Planning Board discussed next steps and emphasized the need to (1) hear from different City Departments (code issues, retail neighbor conflicts, streetscape), (2) review available codes and ordinances from other areas of the country (enclosures, public vs. private, year-round), and (3) analyze information from national downtown associations or other related organizations (trends, social districts, success stories).

Study Session #2 Summary

On August 11th, 2021, the Planning Board reviewed another high-level report in which the Planning Division presented various departmental comments on outdoor dining, a national outdoor dining ordinance review, conversations with local cities, and a study of national organization input and trends. The Planning Division also provided some public feedback from Engage Birmingham, which surveyed the public for their opinion of the COVID-19 temporary outdoor dining expansions, which were overwhelmingly positive. Moving forward, the Planning Board expressed interest in getting into more detail on seasonal/year round dining and its effect on street activation, public versus public space, the potential for regulating different restaurants/licenses differently, and defining and establishing a purpose of outdoor dining in the City.

Study Session #3 Summary

On September 9th, the Planning Board discussed the report which contained comments from the Advisory Parking Committee, common issues with outdoor dining patios, information on the temporary COVID-19 patios, and also discussed the purpose of outdoor dining. In addition, the Planning Board was able to review an example of how the outdoor dining ordinance could look based on comments up to that point. Ultimately, the conversation started to get more granular with specific ordinance-related ideas ranging from an official stance on enclosures to material guidelines to patio placement. There were several other requests for information including a review of Michigan Liquor Control Commission guidelines for outdoor dining, a review of the concept of windbreak versus wall, and the possibility of regulating outdoor dining by zones.

Study Session #4 Summary

On September 23rd, the Planning Board discussed the MLCC rules for outdoor dining patios, the concept of a windbreak and whether or not they should be permitted, and also explored the different zoning districts in which outdoor dining is permitted. These topics led to more conversation about how overhead weather protection will interact with said overhead coverings, and what typed of overhead protection the Planning Board should permit. The Planning Board expressed an interest in taking a deeper dive into overhead weather protection and reviewing different options.

Study Session #5 Summary**Study Session #6**

Article 4, Section 4.44 – Outdoor Dining Standards

This Outdoor Dining Standards section applies to the following districts:

B1 B2 B2B B2C B3 B4 MX O1 O2 TZ3

The following outdoor dining standards apply:

- A. Purpose and Intent: The purpose of this section is to provide an appropriate balance for outdoor dining patios across the city, and to encourage better spaces to support public health, activate public space, foster economic development, safeguard the use of public property, and provide flexibility for current trends and future demands for outdoor dining.
- B. Outdoor Dining – General: Outdoor dining is permitted immediately adjacent to the principal use, subject to review by the Planning Board, or by the Planning Division at the discretion of the Planning Director, and the following conditions
 - 1. All outdoor activity must cease at the close of business or as noted in subsection 2 below.
 - 2. When an outdoor dining patio is immediately adjacent to any single-family or multiple-family zoned residential district, all outdoor activity must cease at the close of business or 10:00 p.m., whichever is earlier.
 - 3. The review of outdoor dining patios shall include, but are not limited to, the following elements: tables, chairs, umbrellas, portable heating elements, barriers, service stations, landscaping/plantings, awnings, canopies, lighting, host/hostess stands, and entertainment.
 - 4. Outdoor dining may be permitted on public property throughout the year with a valid Outdoor Dining License, provided that the following conditions are met:
 - i. Approval of an Outdoor Dining License shall be contingent on compliance with all city codes, including any conditions required by the Planning Board in conjunction with Site Plan approval.
 - ii. Operators of outdoor dining patios shall be responsible for snow and ice removal, and shall remove of such in a manner consistent with that of the Department of Public Services.
 - iii. Portable patio elements such as tables, chairs, heaters and umbrellas must be stored indoors each night between December 1 and March 1 to allow for complete snow and ice removal.
 - iv. An ADA compliant platform may be erected in the on-street parking space(s) in front of an eating establishment to create an outdoor dining patio from April 1 through November 1, subject to a review by the Advisory Parking Committee.
 - 5. All outdoor patios shall be designed to meet the requirements of this section, as well as all applicable building and fire codes.
- C. Outdoor Dining – Design: All outdoor dining patios are subject to the following design standards:

1. All tables and chairs provided in the outdoor dining patio shall be constructed primarily of metal, wood, or a material of comparable quality as determined by the Planning Board.
2. Outdoor dining patios shall provide and service refuse containers within the outdoor dining patio and maintain the area in good order.
3. Outdoor dining patios shall not contain enclosures as defined in Article 9, Section 9.02 of the Zoning Ordinance.
4. In order to safeguard the flow of pedestrians on the public sidewalk, such uses shall maintain an unobstructed sidewalk width as required by the Planning Board, but in no case less than 6 ft.
5. No such facility shall erect or install permanent fixtures in the public right-of-way.
6. Table umbrellas or other overhead weather protection shall not (1) impede sight lines into a retail establishment, (2) obstruct pedestrian flow in the outdoor dining area, (3) obstruct pedestrian or vehicular traffic flow outside the outdoor dining area, or (4) contain signage or advertising.
7. Barriers defining outdoor patios shall be constructed of a quality and durable material, and shall be maintained and placed in a consistent and organized fashion. Barriers shall be secured to the ground and/or building to maintain an immovable, clearly defined patio space. Barriers may not exceed 42 inches in height with the exception of planting material.
8. Windbreaks are permitted within outdoor dining patios and shall be affixed to a barrier. The total combined height of a barrier and windbreak shall not exceed 60 inches. Windbreaks must be constructed of a clear and durable material.
9. Portable heating elements must be maintained and kept in an orderly fashion. Propane or other fuels may not be stored on public property, and are subject to the Storage and Display Standards outlined in Article 4, Section 4.67 of the Zoning Ordinance.
10. Ancillary elements such as service stations or host/hostess stands must be located within the approved outdoor dining patio, contained, and kept in a neat and orderly fashion. Service stations and host/hostess stands may not exceed 4 feet in height. The storage of dirty dishware is prohibited.

Article 9, Section 9.02 – Definitions

Enclosure (outdoor dining): An area that may or may not contain a roof and as few as one wall, panel, or material that provides relief from weather and impedes physical and/or visual access to the space. For the purposes of this definition, enclosure does not include exterior building walls, windbreaks or landscaping.

Outdoor Dining Patio: A defined outdoor area accessory to an existing food and drink establishment designated for consumption of food and/or drink prepared within the establishment and subject to the provisions of this ordinance.

Permanent Fixture (outdoor dining): Any element within an outdoor dining patio containing a foundation or other rigid attachment that prevents removal or that which requires extensive modifications to the public right-of-way.



MEMORANDUM

Planning Division

DATE: September 23rd, 2021

TO: Planning Board

FROM: Nicholas Dupuis, City Planner

SUBJECT: Outdoor Dining Ordinance – Study Session #4

On December 7, 2020, the City Commission discussed amending the Zoning Ordinance to consider allowing the enclosure of outdoor dining areas during the winter months. The City Commission asked the Planning Board to consider this issue, and any regulations they may recommend should outdoor dining enclosures be permitted.

On June 21st, 2021, the City Commission and Planning Board met at a joint meeting to further discuss outdoor dining, and to get a clear direction as to what elements of outdoor dining should be addressed. In general, the City Commission and Planning Board discussed several topics spanning from enclosures to private vs. public space, but ultimately asked the Planning Board to take a comprehensive look at the entire outdoor dining ordinance.

On June 23rd, 2021, the Planning Board discussed outdoor dining in further detail based on the joint meeting two days prior. The Planning Board settled on a list of goals that they would like to focus on in the ordinance review process, which includes the following:

- Incentivize outdoor off-season dining;
- Review the placement of decks and enclosures;
- Ensure that additional outdoor off-season dining does not become an extension of the indoor space;
- Solicit feedback from restaurateurs of all types in the City;
- Seek possible ideas from local, national and international examples;
- Review the current ordinance for issues;
- Review tickets that were given out to temporary outdoor dining operations;
- Review photos of the variety of temporary outdoor dining structures that were used around the City;
- Explore options for maintaining permanent aspects of outdoor dining structures even if the parts of the structures come down in different seasons;
- Discuss potential differences in policy for outdoor dining on public versus private property;
- Solicit feedback from Public Services and the BSD;

- Review agreements from temporary outdoor dining to see if any of the temporary policies might be worth integrating;
- Consider aspects like sidewalk widths and snow clearing in writing the policy;
- Maintain the current seating allowances for differently-sized establishments and maintain the differences for establishments holding different kinds of licenses for alcoholic beverage service; and,
- Recommend a permanent solution so that restaurateurs do not have to continue to adapt to changing policies.

Study Session #1 Summary

On July 14th, 2021, the Planning Board reviewed a high-level report on outdoor dining to guide future discussion. The topics included observations as to what constitutes “good” outdoor dining with national and local examples, as well as a local ordinance review for outdoor dining. The Planning Board discussed next steps and emphasized the need to (1) hear from different City Departments (code issues, retail neighbor conflicts, streetscape), (2) review available codes and ordinances from other areas of the country (enclosures, public vs. private, year-round), and (3) analyze information from national downtown associations or other related organizations (trends, social districts, success stories).

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On August 11th, 2021, the Planning Board reviewed another high-level report in which the Planning Division presented various departmental comments on outdoor dining, a national outdoor dining ordinance review, conversations with local cities, and a study of national organization input and trends. The Planning Division also provided some public feedback from Engage Birmingham, which surveyed the public for their opinion of the COVID-19 temporary outdoor dining expansions, which were overwhelmingly positive. Moving forward, the Planning Board expressed interest in getting into more detail on seasonal/year round dining and its effect on street activation, public versus public space, the potential for regulating different restaurants/licenses differently, and defining and establishing a purpose of outdoor dining in the City.

Study Session #3 Summary

On September 9th, the Planning Board discussed the report which contained comments from the Advisory Parking Committee, common issues with outdoor dining patios, information on the temporary COVID-19 patios, and also discussed the purpose of outdoor dining. In addition, the Planning Board was able to review an example of how the outdoor dining ordinance could look based on comments up to that point. Ultimately, the conversation started to get more granular with specific ordinance-related ideas ranging from an official stance on enclosures to material guidelines to patio placement. There were several other requests for information including a review of Michigan Liquor Control Commission guidelines for outdoor dining, a review of the concept of windbreak versus wall, and the possibility of regulating outdoor dining by zones.

Study Session #4

Michigan Liquor Control Commission (MLCC)

In conversations regarding enclosures, it was suggested that the Planning Board review the MLCC rules for enclosures so that the ordinance language amendments do not conflict or confuse outdoor dining patio operators who would have to then juggle two separate rules. At this time, it appears as though the MLCC rules regarding outdoor patios are simple:

R 436.1419 - Outdoor service without approval prohibited; requirements for outdoor service if approval is granted.

- (1) An on-premises licensee shall not have outdoor service without the prior written approval of the commission.
- (2) If approval for outdoor service is granted, then the on-premises licensee shall ensure that the outdoor service area is well-defined and clearly marked and the on-premises licensee shall not sell, or allow the consumption of, alcoholic liquor outdoors, except in the defined area.
- (3) The commission may issue up to 12 daily temporary outdoor service permits to a licensee each calendar year upon written request of the licensee and approval of the chief law enforcement officer who has jurisdiction.

It is clear that the Planning Board would do well to include that language in new ordinance language, but also be safe to define enclosures as they see fit.

Windbreak versus Wall

As the Planning Board has decided their approach to outdoor dining will *not* include allowing enclosures, the board did express interest in exploring some options for relief from wind. Windbreak is generally defined as “a thing, such as a row of trees or a fence, wall, or screen, that provides shelter or protection from the wind.” At this point, it is also helpful to review definitions for a couple of other concepts:

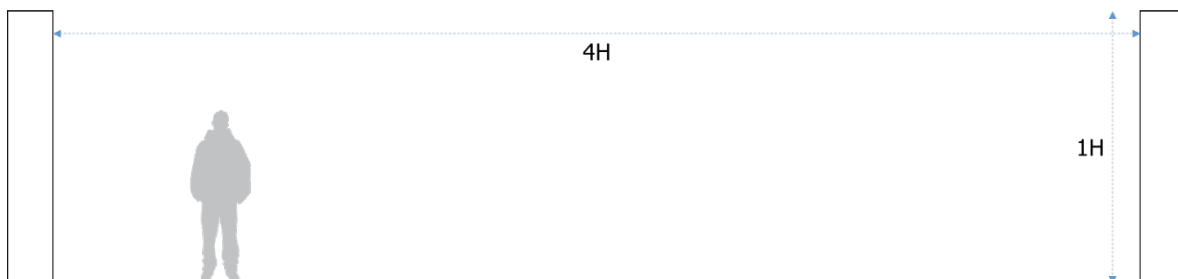
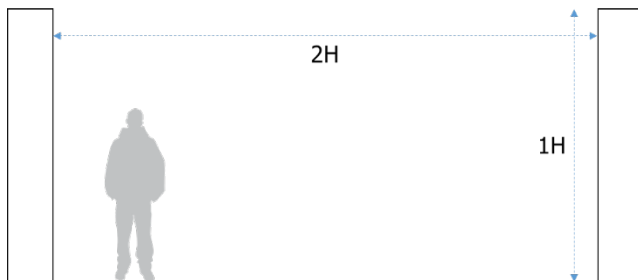
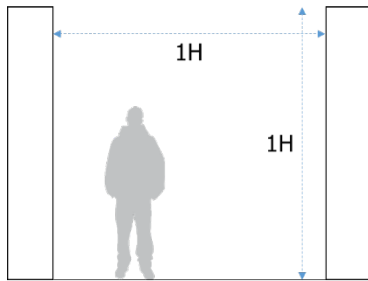
- **Wall:** Structural element used to divide or enclose, and, in building construction, to form the periphery of a room or a building. ([Britannica](#))
- **Room:** A part of the inside of a building that is separated from other parts by walls, floor, and ceiling. ([Cambridge](#))
- **Building:** Any structure having a roof, including but not limited to tents, awning, carports, and such devices as house trailers, which have a primary function other than being a means of conveyance. ([Article 9, Section 9.02](#))

As the Planning Division understood the conversation at the Planning Board, there seems to be a line where a windbreak could become something closer to a wall, and the Planning Board is interested in discussing what that point may be. To help guide that conversation, the Planning Division considered the following:

Degree of Enclosure

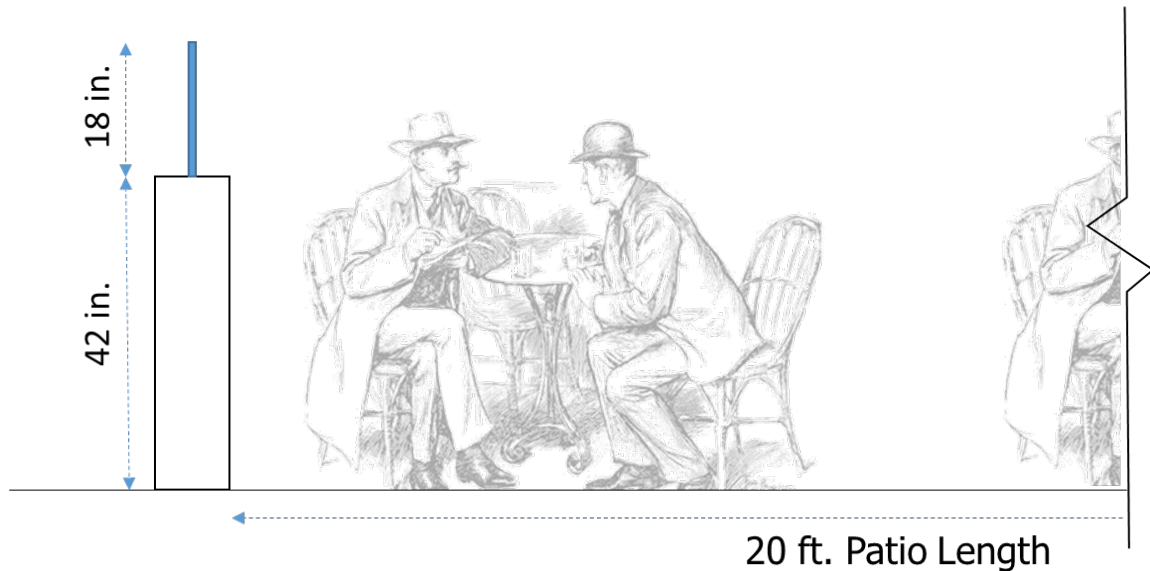
The concept of [degree of enclosure](#) is an urban design principle that revolves around a person's perception of enclosure within a space, which is based on a horizontal to vertical ratio. In general, the principle suggests that a person begins to perceive a sense of enclosure at a 3:1 ratio, and

more of a sense of enclosure as that ratio decreases. Ratios of 4:1 or greater generate no sense of enclosure.

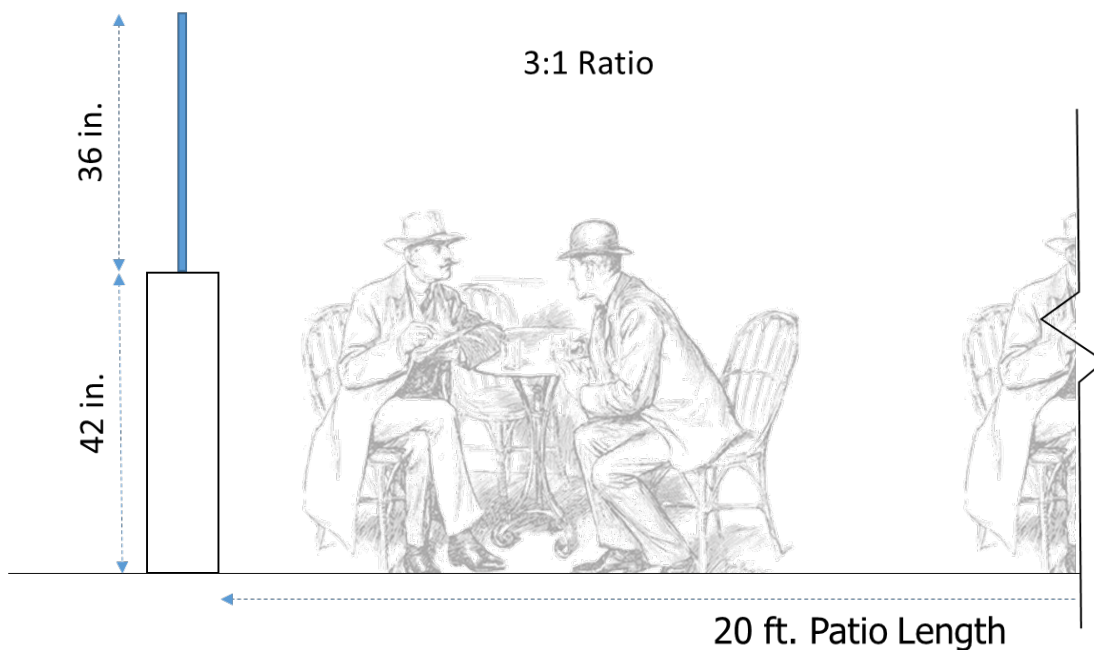


Could this concept be transposed and used to determine the appropriate height for a windbreak in an outdoor dining patio? For example, using the 4:1 ratio in an outdoor dining patio that measures 20 ft. in length (the typical length of a platform in the right-of-way), a barrier with a wind break would be permitted at no greater than 5 ft. (60 in.). A barrier with windbreak for the same 20 ft. patio at a 3:1 ratio would permit a roughly 6 ft. 6 in. (78 in.) barrier and windbreak. The following drawings were created under the assumption that the patio barrier would be 42 in. tall as currently permitted under the Zoning Ordinance:

4:1 Ratio

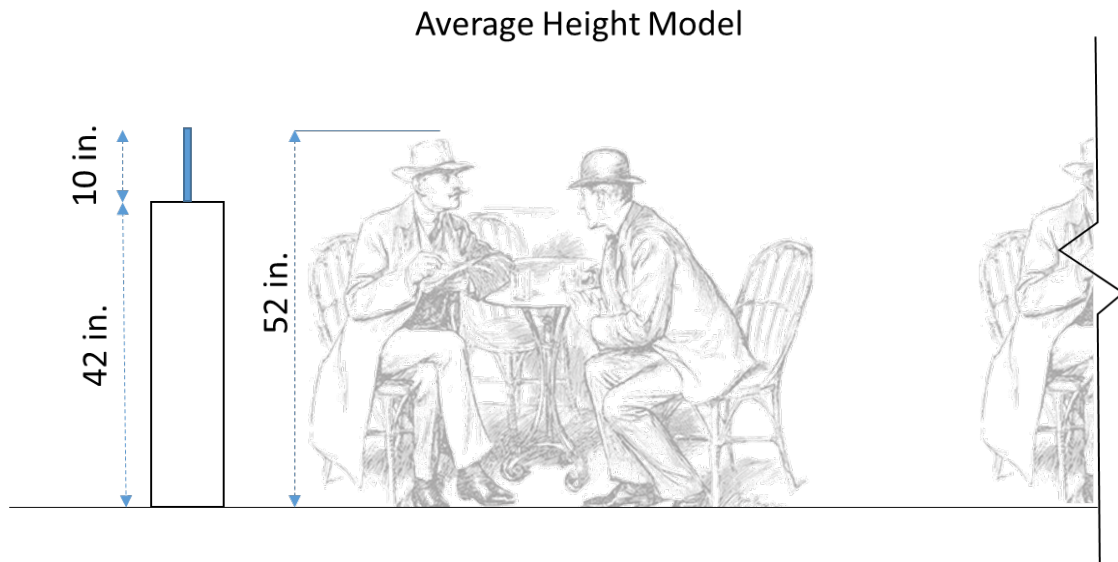


3:1 Ratio



Average Height

Alternatively, if a more standard height is preferred based on the ease and consistency of review and enforcement, the Planning Board could consider the average height of Americans. According to the [Center for Disease Control](#), the average height of a male is 5 ft. 9 in. (69 in.), while the average height for a female is 5 ft. 4 in. (64 in.) An analysis of the seat height of 10 different outdoor patio chairs yielded an average seat height of 17.5 in. Using a simple proportion of 50/50 for the average human, we can assume that we should consider 50% of a person's height in determining the overall height of a person sitting in a chair. Using these figures, the average male should measure around 52 in. tall while sitting, and the average female would measure 49.5 in. tall while sitting.



Interestingly enough, if the Planning Board were to account for different seat and person height, the windbreak could be close in height to the 4:1 ratio model presented above.

In addition to height, the Planning Board was also interested in what typed of materials to consider for windbreaks. Based on research, different materials for windbreaks could include glass/plastic, landscaping, screens, wood, metal or canvas/cloth. However, the most common windbreaks observed in outdoor dining patios appear to be glass/plastic:







Outdoor Dining Regulations by Zoning District

At this time, outdoor dining is permitted in all business and office zones within the city (B1, B2, B2B, B2C, B3, B4, O1, O2, MX) as well as the TZ3 transitional zone. Out of the 43 establishments with outdoor dining, 64% are located within the B4 zoning district, while the next highest share is located in O2 at 14%.

Please see attached maps for reference.

Draft Ordinance Language

(See next page)

Article 4, Section 4.44 – Outdoor Dining Standards

This Outdoor Dining Standards section applies to the following districts:

B1 B2 B2B B2C B3 B4 MX O1 O2 TZ3

The following outdoor dining standards apply:

- A. Purpose and Intent: The purpose of this section is to provide an appropriate balance for outdoor dining patios across the city, and to encourage better spaces to support public health, activate public space, foster economic development, safeguard the use of public property, and provide flexibility for current trends and future demands for outdoor dining.
- B. Outdoor Dining – General: Outdoor dining is permitted immediately adjacent to the principal use, subject to review by the Planning Board, or by the Planning Division at the discretion of the Planning Director, and the following conditions
 - 1. All outdoor activity must cease at the close of business or as noted in subsection 3 below.
 - 2. When an outdoor dining patio is immediately adjacent to any single-family or multiple-family zoned residential district, all outdoor activity must cease at the close of business or 10:00 p.m., whichever is earlier.
 - 3. The review of outdoor dining patios shall include, but are not limited to, the following elements: tables, chairs, umbrellas, portable heating elements, barriers, service stations, landscaping/plantings, awnings, canopies, lighting, host/hostess stands, and entertainment.
 - 4. Outdoor dining may be permitted on public property throughout the year with a valid Outdoor Dining License, provided that the following conditions are met:
 - i. Approval of an Outdoor Dining License shall be contingent on compliance with all city codes, including any conditions required by the Planning Board in conjunction with Site Plan approval.
 - ii. Operators of outdoor dining patios shall be responsible for snow and ice removal, and shall remove of such in a manner consistent with that of the Department of Public Services.
 - iii. Portable patio elements such as tables, chairs, heaters and umbrellas must be stored indoors each night between December 1 and March 1 to allow for complete snow and ice removal.
 - iv. An ADA compliant platform may be erected in the on-street parking space(s) in front of an eating establishment to create an outdoor dining patio from April 1 through November 1, subject to a review by the Advisory Parking Committee.
 - 5. All outdoor patios shall be designed to meet the requirements of this section, as well as all applicable building and fire codes.
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1. All tables and chairs provided in the outdoor dining patio shall be constructed primarily of metal, wood, or a material of comparable quality as determined by the Planning Board.
2. Outdoor dining patios shall provide and service refuse containers within the outdoor dining patio and maintain the area in good order.
3. Outdoor dining patios shall not contain enclosures as defined in Article 9, Section 9.02 of the Zoning Ordinance.
4. In order to safeguard the flow of pedestrians on the public sidewalk, such uses shall maintain an unobstructed sidewalk width as required by the Planning Board, but in no case less than 6 ft.
5. No such facility shall erect or install permanent fixtures in the public right-of-way.
6. Table umbrellas or other freestanding overhead weather protection shall not (1) impede sight lines into a retail establishment, (2) obstruct pedestrian flow in the outdoor dining area, (3) obstruct pedestrian or vehicular traffic flow outside the outdoor dining area, or (4) contain signage or advertising.
7. Barriers defining outdoor patios shall be constructed of a quality and durable material, and shall be maintained and placed in a consistent and organized fashion. Barriers shall be secured to the ground and/or building to maintain an immovable, clearly defined patio space. Barriers may not exceed 42 inches in height with the exception of planting material.
8. Windbreaks are permitted within outdoor dining patios and shall not exceed 60 inches in height and must be constructed of a clear material. Windbreaks placed atop a barrier shall not exceed 18 in. in height.
9. Portable heating elements must be maintained and kept in an orderly fashion. Propane or other fuels may not be stored on public property, and are subject to the Storage and Display Standards outlined in Article 4, Section 4.67 of the Zoning Ordinance.
10. Ancillary elements such as service stations or host/hostess stands must be located within the approved outdoor dining patio, contained, and kept in a neat and orderly fashion. Service stations and host/hostess stands may not exceed 4 feet in height. The storage of dirty dishware is prohibited.

Article 9, Section 9.02 – Definitions

Enclosure (outdoor dining): An area that may or may not contain a roof and as few as one wall, panel, or material that provides relief from weather and impedes physical and/or visual access to the space. For the purposes of this definition, enclosure does not include exterior building walls, windbreaks or landscaping.

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Permanent Fixture (outdoor dining): Any element within an outdoor dining patio containing a foundation or other rigid attachment that prevents removal or that which requires extensive modifications to the public right-of-way.



MEMORANDUM

Planning Division

DATE: September 9th, 2021

TO: Planning Board

FROM: Nicholas Dupuis, City Planner

SUBJECT: Outdoor Dining Ordinance – Study Session #3

On December 7, 2020, the City Commission discussed amending the Zoning Ordinance to consider allowing the enclosure of outdoor dining areas during the winter months. The City Commission asked the Planning Board to consider this issue, and any regulations they may recommend should outdoor dining enclosures be permitted.

On June 21st, 2021, the City Commission and Planning Board met at a joint meeting to further discuss outdoor dining, and to get a clear direction as to what elements of outdoor dining should be addressed. In general, the City Commission and Planning Board discussed several topics spanning from enclosures to private vs. public space, but ultimately asked the Planning Board to take a comprehensive look at the entire outdoor dining ordinance.

On June 23rd, 2021, the Planning Board discussed outdoor dining in further detail based on the joint meeting two days prior. The Planning Board settled on a list of goals that they would like to focus on in the ordinance review process, which includes the following:

- Incentivize outdoor off-season dining;
- Review the placement of decks and enclosures;
- Ensure that additional outdoor off-season dining does not become an extension of the indoor space;
- Solicit feedback from restaurateurs of all types in the City;
- Seek possible ideas from local, national and international examples;
- Review the current ordinance for issues;
- Review tickets that were given out to temporary outdoor dining operations;
- Review photos of the variety of temporary outdoor dining structures that were used around the City;
- Explore options for maintaining permanent aspects of outdoor dining structures even if the parts of the structures come down in different seasons;
- Discuss potential differences in policy for outdoor dining on public versus private property;
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- Review agreements from temporary outdoor dining to see if any of the temporary policies might be worth integrating;
- Consider aspects like sidewalk widths and snow clearing in writing the policy;
- Maintain the current seating allowances for differently-sized establishments and maintain the differences for establishments holding different kinds of licenses for alcoholic beverage service; and,
- Recommend a permanent solution so that restaurateurs do not have to continue to adapt to changing policies.

Study Session #1 Summary

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Study Session #3

Advisory Parking Committee Comments

During the August 4th, 2021 meeting of the Advisory Parking Committee, the committee expressed an interest in being involved in the process for the current outdoor dining study. The Planning Division brought the issue to the September 1st, 2021 meeting to solicit some comments for the Planning Board to consider. Their comments arose from their role in reviewing outdoor dining platforms, and their effect on parking specifically. Their comments may be summarized in the following bullet points:

- Regulating the number of platforms per block.
- Begin the platform review at the APC instead of Planning Board.
- Finding a balance between two desired commodities: outdoor dining and parking.
- Annual review of outdoor dining decks.
- Different uses, different rules.

- Platforms open at all hours of the day to foster activation, avoid empty decks/wasted space.
- The possibility of different outdoor dining districts.

Common Ordinance Issues

During Study Session #2, Planning Board members expressed an interest in reviewing some of the issues that arose during the temporary COVID-19 outdoor dining expansions, and which of the expansions received enforcement for violations of the temporary ordinance. Before reviewing these issues, the Planning Division felt it important to outline some of the more regular and/or routine issues with approved outdoor dining patios that are observed on a day-to-day basis:

- Maintenance of the required 5 ft. minimum clear path.
- Maintaining a valid outdoor dining license.
- Adherence to the approved outdoor dining/site plans.
- Exceeding approved/permitted outdoor dining seat counts.

These four issues come up on a regular basis during the outdoor dining season, but also a typically become a focal point during the annual liquor license review process for those establishments serving alcoholic beverages, which occurs in January/February every year. When it comes to the required 5 ft. minimum clear path, there are a number of variables to consider. For outdoor dining patios with more modular barriers separating the dining patio from the sidewalk, these barrier elements tend to migrate outward more easily, causing issues with pedestrian passage (or in the case of alleys, vehicular passage). Those dining patios that are enclosed with a more rigid barrier such as a fixed metal railing are better suited to maintain the required clear path, but may not offer as many opportunities for beautification/plantings.

In the absence of barriers, tables and chairs also have a tendency to migrate. In some recent reviews for outdoor dining proposals, it was observed that outdoor dining plans often show tables and chairs neat and tucked in without considerations for the space a person takes up after sitting at the table. While a 5 ft. clear path is often shown on the plans as required, reality is often observed to be different. To combat this, the Planning Division is considering either widening the required clear path to 6 ft. or more, or requiring outdoor dining plans to show a buffer around each table to reduce the likelihood of encroachments into the clear path. Finally, it has been noted by the Engineering Division that the exposed aggregate concrete in the streetscape amenity zones throughout Birmingham may not be considered ADA compliant and thus, may not be considered as clear path for the purposes of this ordinance.

The issue of maintaining a valid outdoor dining license also contains many layers. The outdoor dining license is an annual license required for all outdoor dining patios located on public property. The applicant is required to submit the application, as well as complete and sign an Outdoor Café License Agreement outlining their responsibilities in using public property. The Planning Division is currently reviewing the Outdoor Café License Agreement for any potential areas of improvement, but it has been observed over the years that there are often inconsistencies with the information entered by applicants in terms of their tables and chairs, and whether or not any changes have occurred from previous years.

The inconsistencies described above, along with other factors, often result in outdoor dining patios that do not adhere to the approved outdoor dining plans on file within the Planning Division.

Table and chair numbers, umbrellas, heaters, planters, and service stations are often added or changed without any approval from the Planning Division or Planning Board. These types of changes and the requirements for changes to the outdoor patio space is expected to be clarified in new ordinance language.

The deviations from the approved number of tables and chairs can become an issue not only for certain uses who are permitted to have a maximum seat count, but we now know that outdoor seating matters when it comes to the plumbing code and required restroom facilities.

Temporary COVID-19 Enforcements

The temporary COVID-19 outdoor dining expansions offered some new complications on top of what is typically observed in outdoor dining patios. During the pandemic, and through various emergency orders by state and local governments, the Police Department performed regular checks on restaurants to monitor all of the COVID-19 regulations associated with the emergency orders, as well as compliance with the temporary resolution adopted by the City Commission. A full log of checks is attached for your review containing comments from the Police and Fire Departments, as well as the Building Division. When the end date for the temporary resolution came up in June 2021, the Police Department also created a summary presentation for the City Commission with general information on some of the challenges that the City was facing in regards to the temporary patio expansions. Some of the main issues were as follows:

- ADA standards and requirements were compromised.
- Expansions encroached further into sidewalks, yellow curb zones, and streets.
- Expansions impaired access to neighboring retailers.
- Propane heaters and storage of propane tanks posed safety concerns.

These issues, in conjunction with the state of the overall COVID-19 pandemic, were the main drivers in ending the temporary resolution and bringing the City's outdoor dining patios back into compliance with pre-COVID outdoor dining plans. The Police Department presentation is also attached for your review.

In addition, the Fire Department performed an inspection of the temporary outdoor dining expansion and provided some photographs to the Planning Division which are attached to this report. Finally, the Planning Division kept a spreadsheet of which restaurants applied for expansions and recorded data on the outdoor dining conditions on site, which is also attached to this report. In most cases, due to the social distancing requirements, the number of outdoor dining seats pre-COVID and expansion related were comparable. However, the square footage of total outdoor dining space was not.

Purpose of Outdoor Dining

Also discussed at length during Study Session #2 was the need for the Planning Board to consider the purpose of the outdoor dining ordinance, and the potential to codify this purpose within the ordinance language. From an urban planning/urban design perspective, outdoor dining is beneficial in many ways:

- Outdoor dining is trendy, but also a permanent fixture;
- Spending time outdoors is beneficial to overall public health;
- Increased seating options frees up indoor space for the rapid growth in carry-out business;

- Added business fosters economic development;
- Well-designed patios activate public space;
- Outdoor dining offers more options for diners, including pet owners;

A purpose statement for outdoor dining could include any or all of these benefits, as well as general statements regarding the health, safety and welfare of the public. Other areas of our current Zoning Ordinance contain purpose statements, including the following:

- Screening Standards: The purpose of this section is to require a barrier, capable of containing noise, vehicular lights, visual disarray, debris and other factors detrimental to the health, safety and welfare of the community, between an open parking station, outdoor storage, dumpsters and adjacent properties. Flexibility in the materials, size, height and placement of walls is permitted in order to allow architectural harmony and usable open space and to accomplish a unified design.
- Landscaping Standards: Landscaping is an essential part of the design and development of a site. Landscape plantings are a benefit to the environment, public health, air quality, safety, comfort, convenience and general welfare of the community. These standards will result in the reduction of storm water runoff, heat buildup and will filter and reduce glare from car headlights. They may reduce energy costs in structures and will improve the aesthetics of the community.
- Alternative Energy: The purpose and intent of the city is to balance the need for clean and renewable energy resources with the necessity to protect the public health, safety and welfare of the city, as well as to preserve the integrity, character, property values, and aesthetic quality of the community at large.

Below is an example of how the outdoor dining purpose statement could look:

- Outdoor Dining: The purpose of this section is to provide an appropriate balance for outdoor dining patios across the city, and to encourage better spaces to improve public health, activate public space, foster economic development, and provide flexibility for current trends and future demands for outdoor dining.

Draft Ordinance Language

(See next page)

Article 4, Section 4.44 – Outdoor Dining Standards

This Outdoor Dining Standards section applies to the following districts:

B1 B2 B2B B2C B3 B4 MX O1 O2 TZ3

The following outdoor dining standards apply:

- A. Purpose and Intent: The purpose of this section is to provide an appropriate balance for outdoor dining patios across the city, and to encourage better spaces to improve public health, activate public space, foster economic development, and provide flexibility for current trends and future demands for outdoor dining.
- B. Outdoor Dining – General: Outdoor dining is permitted immediately adjacent to the principal use, subject to review by the Planning Board, or by the Planning Division at the discretion of the Planning Director, and the following conditions
 1. Outdoor dining patios shall provide and service refuse containers within the outdoor dining patio and maintain the area in good order.
 2. All outdoor activity must cease at the close of business or as noted in subsection 3 below.
 3. When an outdoor dining patio is immediately adjacent to any single-family or multiple-family zoned residential district, all outdoor activity must cease at the close of business or 10:00 p.m., whichever is earlier.
 4. The review of outdoor dining patios shall include, but are not limited to, the following elements: tables, chairs, umbrellas, portable heating elements, barriers, service stations, landscaping/plantings, awnings, canopies, lighting, host/hostess stands, and entertainment.
 5. Outdoor dining patios shall not contain enclosures as defined in Article 9, Section 9.02 of the Zoning Ordinance.
 6. All outdoor patios shall be designed to meet the requirements of this section, as well as all applicable building and fire codes.
- C. Outdoor Dining – Public Property: Outdoor dining located on public property such as sidewalks, alleys and passages, and streets, shall be subject to the following requirements:
 1. Outdoor dining may be permitted on public property throughout the year with a valid Outdoor Dining License, provided that the following conditions are met:
 - i. Approval of an Outdoor Dining License shall be contingent on compliance with all city codes, including any conditions required by the Planning Board in conjunction with Site Plan approval.
 - ii. Operators of outdoor dining patios shall be responsible for snow and ice removal, and shall remove of such in a manner consistent with that of the Department of Public Services.
 - iii. Portable patio elements such as tables, chairs, heaters and umbrellas must be stored indoors each night between December 1 and March 1 to allow for complete snow and ice removal.

- iv. An ADA compliant platform may be erected in the on-street parking space(s) in front of an eating establishment to create an outdoor dining patio from April 1 through November 1, subject to a review by the Advisory Parking Committee.

2. Design: Outdoor dining patios located on public property are subject to the following design standards:

- i. All tables and chairs provided in the outdoor dining patio shall be constructed primarily of metal, wood, or a material of comparable quality as determined by the Planning Board.
- ii. In order to safeguard the flow of pedestrians on the public sidewalk, such uses shall maintain an unobstructed sidewalk width as required by the Planning Board, but in no case less than 6 ft.
- iii. No such facility shall erect or install permanent fixtures in the public right-of-way.
- iv. Table umbrellas or other freestanding overhead weather protection shall not (1) impede sight lines into a retail establishment, (2) obstruct pedestrian flow in the outdoor dining area, (3) obstruct pedestrian or vehicular traffic flow outside the outdoor dining area, or (4) contain signage or advertising.
- v. Barriers delineating outdoor patios shall be constructed of a quality and durable material, and shall be maintained and placed in a consistent and organized fashion. Barriers may not exceed 42 inches in height, with the exception of planting material.
- vi. Portable heating elements must be maintained and kept in an orderly fashion. Propane or other fuels may not be stored on public property, and are subject to the Storage and Display Standards outlined in Article 4, Section 4.67 of the Zoning Ordinance.
- vii. Ancillary elements such as service stations or host/hostess stands must be located within the approved outdoor dining patio, contained, and kept in a neat and orderly fashion. Service stations and host/hostess stands may not exceed 4 feet in height. The storage of dirty dishware is prohibited.

D. Outdoor Dining – Private Property: Outdoor dining located on private property such as general private property, porches, recesses, courtyards decks and rooftops, shall be subject to the following conditions:

1. Design: Outdoor dining patios located on private property are subject to the following design standards:

- i. All tables and chairs provided in the outdoor dining patio shall be constructed primarily of metal, wood, or a material of comparable quality as determined by the Planning Board.
- ii. Table umbrellas or other freestanding overhead weather protection shall not (1) impede sight lines into a retail establishment, (2) obstruct pedestrian flow in the outdoor dining area, (3) obstruct pedestrian or

- vehicular traffic flow outside the outdoor dining area, or (4) contain signage or advertising.
- iii. Barriers delineating outdoor patios shall be constructed of a quality and durable material, and shall be maintained and placed in a consistent and organized fashion. Barriers may not exceed 42 inches in height, with the exception of planting material.
 - iv. Portable heating elements must be maintained and kept in an orderly fashion. The storage of propane or other fuels shall be subject to the Storage and Display Standards outlined in Article 4, Section 4.67 of the Zoning Ordinance.
 - v. Ancillary elements such as service stations or host/hostess stands must be located within the approved outdoor dining patio, contained and kept in an orderly fashion. Service stations and host/hostess stands may not exceed 4 feet in height. The storage of dirty dishware is prohibited.

Article 9, Section 9.02 – Definitions

Enclosure (outdoor dining): An area that may or may not contain a roof and as few as one wall, panel, or material that provides relief from weather and impedes physical and/or visual access to the space. For the purposes of this definition, enclosure does not include exterior building walls or landscaping.

Outdoor Dining Patio: A defined outdoor area accessory to an existing food and drink establishment designated for consumption of food and/or drink prepared within the restaurant and subject to the provisions of this ordinance.

Permanent Fixture (outdoor dining): Any element within an outdoor dining patio containing a foundation or other rigid attachment that prevents removal or that which requires extensive modifications to the public right-of-way.



MEMORANDUM

Planning Division

DATE: August 11th, 2021

TO: Planning Board

FROM: Nicholas Dupuis, City Planner

SUBJECT: Outdoor Dining Ordinance – Study Session #2

On December 7, 2020, the City Commission discussed amending the Zoning Ordinance to consider allowing the enclosure of outdoor dining areas during the winter months. The City Commission asked the Planning Board to consider this issue, and any regulations they may recommend should outdoor dining enclosures be permitted.

On June 21st, 2021, the City Commission and Planning Board met at a joint meeting to further discuss outdoor dining, and to get a clear direction as to what elements of outdoor dining should be addressed. In general, the City Commission and Planning Board discussed several topics spanning from enclosures to private vs. public space, but ultimately asked the Planning Board to take a comprehensive look at the entire outdoor dining ordinance.

On June 23rd, 2021, the Planning Board discussed outdoor dining in further detail based on the joint meeting two days prior. The Planning Board settled on a list of goals that they would like to focus on in the ordinance review process, which includes the following:

- Incentivize outdoor off-season dining;
- Review the placement of decks and enclosures;
- Ensure that additional outdoor off-season dining does not become an extension of the indoor space;
- Solicit feedback from restaurateurs of all types in the City;
- Seek possible ideas from local, national and international examples;
- Review the current ordinance for issues;
- Review tickets that were given out to temporary outdoor dining operations;
- Review photos of the variety of temporary outdoor dining structures that were used around the City;
- Explore options for maintaining permanent aspects of outdoor dining structures even if the parts of the structures come down in different seasons;
- Discuss potential differences in policy for outdoor dining on public versus private property;
- Solicit feedback from Public Services and the BSD;

- Review agreements from temporary outdoor dining to see if any of the temporary policies might be worth integrating;
- Consider aspects like sidewalk widths and snow clearing in writing the policy;
- Maintain the current seating allowances for differently-sized establishments and maintain the differences for establishments holding different kinds of licenses for alcoholic beverage service; and,
- Recommend a permanent solution so that restaurateurs do not have to continue to adapt to changing policies.

Study Session #1 Summary

On July 14th, 2021, the Planning Board reviewed a high-level report on outdoor dining to guide future discussion. The topics included observations as to what constitutes “good” outdoor dining with national and local examples, as well as a local ordinance review for outdoor dining. The Planning Board discussed next steps and emphasized the need to (1) hear from different City Departments (code issues, retail neighbor conflicts, streetscape), (2) review available codes and ordinances from other areas of the country (enclosures, public vs. private, year-round), and (3) analyze information from national downtown associations or other related organizations (trends, social districts, success stories).

Study Session #2

Departmental Comments

Initially, the Planning Board requested that staff solicit comments from the Department of Public Services (DPS) and Birmingham Shopping District (BSD) regarding outdoor dining and its different aspects from their point of view. From the Department of Public Services, any issues surrounding snow removal, streetscape maintenance, or other relevant issues observed from DPS were topics of interest. As for the BSD, the Planning Board wanted to determine if expanded outdoor dining had any impact on neighboring, non-restaurant retail uses...positive or negative. During the discussion at the first study session, the Planning Board requested to include the Building Division, Fire Department, Police Department and Engineering Division for comments pertaining to their professions and expertise. Full comments from each department are attached.

- **Department of Public Services**

In general, the Department of Public Services has some issues with snow removal and streetscape maintenance. They noted that although the plows have managed to get by without major incident thus far, snow and ice accumulates in the hard-to-reach areas, which necessitates more salt and more maintenance to mitigate the hazard. In addition, although private businesses are responsible for clearing their own platforms or dining areas, the snow is often placed right back into the street or sidewalk, which creates more of the same conditions noted above. As far as streetscape maintenance, DPS notes that tree pruning/trimming becomes challenging while working around platforms and patios, and these dining areas often get in the way of other streetscape programs such as hanging baskets, tree lighting, and possibly even landscaping beds in the future.

- **Birmingham Shopping District**

The Birmingham Shopping District will make this a discussion item at their Board meeting in September. Comments will be provided to the Planning Board thereafter.

- **Engineering Division**

The Engineering Division provided important comments relating to stormwater, infrastructure elements such as fire hydrants, manhole covers, drains, and catch basins, and patio placement. For dining platforms specifically, Engineering requires a channel between the curb and the deck structure for the passage of stormwater during rain events. Large rain events like those we have experienced recently (and will continue to experience) may exacerbate any issues with drainage and the placement of storm sewers and other infrastructure. Furthermore, they indicate that these patios should have provisions in place for emergency events such as water/sewer main repairs. As far as patio placement, Engineering noted that a 5 ft. clear path should be maintained, but also explained that traffic lanes should not be impeded for larger vehicles such as emergency vehicles and busses, and that sign lines may be impacted by dining patios.

- **Building Division**

As far as Building Division comments go, they note that much of the outdoor dining elements, from patios to enclosures/coverings, must be built to the standards of the Michigan Building Code. In addition, the Building Division outlined some issues with encroachment into the pedestrian path of umbrellas, tents, awnings etc. as well as important points about the Michigan Plumbing Code and employee use of the pedestrian clear path.

- **Police Department**

The Police Department has indicated that they do not have many issues with outdoor dining, nor concerns about any changes at this time. There has been no loss of revenue from the parking meters for outdoor dining platforms, as the owners of the platforms pay a fee to cover the costs. Additionally, they have not considered the loss of parking spaces as an issue at this time.

- **Fire Department**

The Fire Department comments revolved heavily around heating elements, structures/coverings, and access for emergencies. When it came to portable outdoor heating elements, there are a laundry list of requirements that must be followed to meet the Fire Codes. These regulations include the size and storage of fuel tanks, clearance, and safety devices such as fire extinguishers and carbon monoxide detectors. In terms of structures/coverings, the Fire Department requires flame retardant certificates regardless of the presence of heating elements. For those structures attached to buildings, the Fire Department may require the facility to contain fire suppression.

National Ordinance Review

The Planning Board expressed interest in finding out what other areas of the country may have ordinance wise. These areas include the Midwest and east coast, but also other areas with weather conditions that may necessitate unique outdoor dining solutions such as Colorado, Seattle, and warm weather cities. Several cities and the relevant facets of their Zoning Ordinances are provided below. In general it appears that most all cities require review of outdoor dining

proposals on both private and public space. Full enclosures of outdoor dining do not appear to be permitted on public space in any city reviewed.

- [Elmwood Park, IL](#) (Chicago Area)
 - o Parking requirements for outdoor dining which requires the greater of one parking space for every two seats or 3.5 parking spaces per 100 square feet of indoor and outdoor dining area.
- [Highland Park, IL](#) (Chicago Area)
 - o Table and chair limits determined by City Manager.
 - o Temporary barrier required to keep tables and chairs from migrating into the requires 5 ft. clear path.
 - o Tables and chairs removed every night.
- [Oak Brook, IL](#) (Chicago Area)
 - o No live entertainment.
 - o 5 ft. pedestrian path.
- [Columbus, OH](#)
 - o "Outdoor patio" means an outdoor area, open to the air at all times, that is either: enclosed by a roof or other overhead covering and not more than two walls or other side coverings; or has no roof or other overhead covering at all regardless of the number of walls or other side coverings.
 - o Parking is required for dining patios at a rate of 50% of ratio required for primary structure.
- [Edina, MN](#) (Minneapolis Area)
 - o The patio shall not be enclosed in such a manner that the space becomes an indoor area.
 - o Patio screening may be required if the premises is adjacent to a residential district.
- [Fishers, IN](#) (Indianapolis Area)
 - o Outdoor dining areas shall be adjacent to their tenant space.
- [Columbia, MO](#) (St. Louis Area)
 - o Outdoor patio plan with requirements to include any existing light poles, sidewalk grates, parking meters, or other facilities located in the right-of-way.
 - o Any tables, chairs, posts, cordons or other furniture be portable and not fastened or affixed to or over the public sidewalk unless the owner has obtained right-of-use approval from the city council.
- [Arvada, CO](#) (Denver Area)
 - o Outdoor dining areas shall not be located within 100 feet of a residential zoning district.
 - o Outdoor dining areas are allowed and shall be set back as required for the principal building. Outdoor dining on public property permitted within specific district.
- [Golden, CO](#) (Denver Area)

- o Portable seating, movable chairs, tables for cafes and other furniture should be of substantial materials; preferably metal or wood rather than plastic.
- o Permanent outdoor seating is recommended in and along all publicly-accessible pathways and spaces.

Local Strategies

Staff reviewed Ordinance requirements for local cities including Royal Oak, Rochester, Ferndale, Berkley, Northville, and Plymouth for the way outdoor dining was handled prior to the Covid-19 pandemic. The Planning Division was also able to speak with staff or an elected official from each of the localities. All cities mentioned above require board review and approval for restaurants proposing outdoor dining on private and/or public space. The only City that allows restaurants to rent an on-street parking space for outdoor dining is Northville. Full enclosures for outdoor dining on public property are not allowed in any of the cities mentioned. Rochester and Ferndale said they would allow a restaurant to have an enclosure such as a tent, igloo, or greenhouse on private property. Examples of private outdoor enclosures in Ferndale include igloos at Detroit Fleet and a tent on Rosie O'Grady's patio. Enclosure material on private space is not tightly regulated. The Planning Director of Berkley indicated full enclosures were not permitted on private property. In regards to placement, the outdoor dining on public property for all cities mentioned is required to stay within the frontage lines of the business, it may not extend in front of neighboring properties.

As in Birmingham, a number of Ordinance regulations mentioned above for outdoor dining were relaxed in a temporary resolution during the Covid-19 pandemic. All of the cities experimented with outdoor dining for on-street parking spaces and some allowed enclosures for outdoor dining on public sidewalks and/or streets. A number of the resolutions were extended into winter time 2021-2022 for the sampled cities and will be reviewed for what to extend, what to get rid of, and what to keep indefinitely.

Downtown/Restaurant Organizations

The Planning Division looked to various national and local associations or organizations that could potentially provide some information on trends and happenings within national or local communities that may help guide discussions regarding outdoor dining in Birmingham. It is worth noting that in recent news, blogs or publications from these groups, it was difficult to separate outdoor dining and the COVID-19 pandemic. However, the Planning Board did indicate that they wish to discuss the temporary COVID-19 outdoor dining expansions that were built in Birmingham. Additionally, Engage Birmingham survey results (attached) appeared to indicate that many residents and business owners in Birmingham were supportive of the various expansions and/or enclosures that were erected in the City.

- **[Michigan Downtown Association](#)**

The Michigan Downtown Association has also provided some opinions on outdoor dining as an attraction for a downtown. In a 2021 article about [creative ways to bring residents downtown this summer and boost economic growth](#), it was noted that the Michigan Economic Development Corporation has supported outdoor dining expansion efforts across the state through Match on Main funding. Restaurants have seen the value of a quality outdoor dining space and have been investing in such to use into the future, and potentially year-round.

- **Main Street America**

Main Street America is an organization “committed to strengthening communities through preservation-based economic development in older and historic downtowns and neighborhood commercial districts.” Digging into their website, the Planning Division found an interesting article based on a 2021 Main Street Forward Award Winner in the Argenta District in North Little Rock, Arkansas. The award was given based on the efforts to create the Argenta Outdoor Dining District, a designated outdoor seating area that has helped local restaurants stay in business despite the pandemic. Although created for the pandemic, the district has plans underway to reopen in the spring. “Given its success, city leaders want to keep the district going even after the pandemic recedes, and Argenta’s restaurants are inspired to continue regular meetings to ensure the neighborhood’s future as a culinary destination.”

- **National Restaurant Association**

In general, the National Restaurant Association is an important resource in understanding trends and data regarding the restaurant industry. In reading through two documents, “2021 Restaurant Trends” and “Restaurant Industry 2030” (both attached), it was apparent that this particular group do not appear to be overly concerned about outdoor dining. Interestingly enough, this group found that restaurants would need to dedicate more space and capitol to *off-premise consumption* (i.e. takeout) as opposed to on premise indoor or outdoor dining. Additionally, when it comes to weather volatility, the group is finding that the concern lies in supply chains and food costs as opposed to protecting diners with coverings or enclosures.

- **Independent Restaurant Coalition**

The Independent Restaurant Coalition was created to “provide a strong, unified voice on legislative, regulatory, and policy issues that affect the restaurant industry; and provide advocacy, advice, networking and information to members.” In obtaining data from this group (attached), it is clear that the restaurant industry is an important industry that has unique struggles when it comes to situations like the pandemic. Restaurants and bars have large economic impacts in business and job creation, which could benefit from new outdoor dining regulations that could possibly expand outdoor dining, or add more comfort to outdoor dining patios.



MEMORANDUM

Planning Division

DATE: July 14th, 2021

TO: Planning Board

FROM: Nicholas Dupuis, City Planner

SUBJECT: Outdoor Dining Ordinance – Study Session #1

On December 7, 2020, the City Commission discussed amending the Zoning Ordinance to consider allowing the enclosure of outdoor dining areas during the winter months. The City Commission asked the Planning Board to consider this issue, and any regulations they may recommend should outdoor dining enclosures be permitted.

On June 21st, 2021, the City Commission and Planning Board met at a joint meeting to further discuss outdoor dining, and to get a clear direction as to what elements of outdoor dining should be addressed. In general, the City Commission and Planning Board discussed several topics spanning from enclosures to private vs. public space, but ultimately asked the Planning Board to take a comprehensive look at the entire outdoor dining ordinance.

On June 23rd, the Planning Board discussed outdoor dining in further detail based on the joint meeting two days prior. The Planning Board settled on a list of goals that they would like to focus on in the ordinance review process, which includes the following:

- Incentivize outdoor off-season dining;
- Review the placement of decks and enclosures;
- Ensure that additional outdoor off-season dining does not become an extension of the indoor space;
- Solicit feedback from restaurateurs of all types in the City;
- Seek possible ideas from local, national and international examples;
- Review the current ordinance for issues;
- Review tickets that were given out to temporary outdoor dining operations;
- Review photos of the variety of temporary outdoor dining structures that were used around the City;
- Explore options for maintaining permanent aspects of outdoor dining structures even if the parts of the structures come down in different seasons;
- Discuss potential differences in policy for outdoor dining on public versus private property;
- Solicit feedback from Public Services and the BSD;

- Review agreements from temporary outdoor dining to see if any of the temporary policies might be worth integrating;
- Consider aspects like sidewalk widths and snow clearing in writing the policy;
- Maintain the current seating allowances for differently-sized establishments and maintain the differences for establishments holding different kinds of licenses for alcoholic beverage service; and,
- Recommend a permanent solution so that restaurateurs do not have to continue to adapt to changing policies.

At this early stage, the Planning Division would like to begin with a high-level general review of outdoor dining beginning with research into what “good” outdoor dining may look like. By beginning with an example driven discussion, the Planning Division hopes to work towards several of the goals listed above and guide more pointed discussions in future study sessions.

Discussing personal experiences with outdoor dining across the world was a large part of the Planning Board and City Commission discussions prior to embarking on this study session. Considering this approach, the Planning Division reviewed [OpenTable's annual list 100 Best Al Fresco Restaurants in America for 2019](#). Naturally, California, Florida and Hawaii make up 67% of the list. However, the Midwest and Northeast (similar weather conditions to Birmingham) have strong representation on the list, making it an interesting place to start. Please see the following page for images of several outdoor dining spaces from restaurants present on the list.

Upon researching many of the outdoor dining patios on the list, the Planning Division made several observations:

1. Overhead coverings are common in the form of umbrellas, awnings, and pergola-type structures. Other covering methods such as canvas shade sails, retractable fabric shade canopies, and even trees/vegetation were observed as well.
2. Several rooftop patios made the list.
3. Heaters, lights, and fire tables/pits were very common.
4. Dining chairs appeared to be constructed of a myriad of materials, including plastic, wicker, and fabric.
5. Full enclosures (roof/covering plus walls or partial walls) were rare. Most cases of perceived enclosures included variables such as below-grade placement, placement next to building facades or screening from nuisances such as parking areas.
6. The majority of outdoor dining patios contained greenery and plantings.
7. Patio placement was observed in public and private property, and patio design elements were consistent between those that were on both.



Cecconi's – Brooklyn, NY



Farmers Fishers Bakers – Washington D.C.



El Five – Denver, CO



The Mooring Restaurant – Newport, RI



Campfire – Carlsbad, CA



The Pink Door – Seattle, WA

Similar observations were made while researching opinions of the “best” outdoor dining in Michigan. [Pure Michigan's Top Outdoor Patios for Dining in Michigan](#) and [M-Live's list of Michigan's Best Outdoor Dining](#) highlight several dining establishments that contain many of the same features.



On a more local level, Southeast Michigan contains several comparable cities with outdoor dining. The Planning Division was able to locate several cities that created specific regulations for outdoor dining within their Zoning Ordinances:

- [Berkley](#)
- [Royal Oak](#)
- [Plymouth](#)
- [Rochester Hills](#) (pg. 77)
- [Lake Orion](#) (pg. 60)

Other cities and Zoning Ordinances such as Northville, Detroit, Ferndale and Ann Arbor were also researched. However, the Zoning Ordinances of these cities either did not contain any specific ordinance language regarding outdoor dining, or proved too difficult to locate at this time. Of the above cities that yielded results, only one or two had detailed regulations regarding outdoor dining within their Zoning Ordinance. If requested, further research into the Zoning Ordinance regulations of other cities, local or national, will be provided for review. As a consequence, no

examples of different outdoor dining regulations for private versus public property, enclosures, maintenance, or other items from the list of goals above were discovered.



So how does the feedback from the City Commission, the Planning Board's current list of goals for the outdoor dining discussion, and the above high-level research relate to the current Outdoor Dining ordinance? At this time, there are outdoor dining standards spread across several areas of the Zoning Ordinance:

- [Article 4, Section 4.44 – Outdoor Dining Standards](#)
- [Article 3, Section 3.04 \(C\)\(10\) – Bistros](#)
- [Article 3, Section 3.14, 3.16 – Via Activation Overlay](#)
- [Article 9, Section 9.02 – Definitions \(Bistro, Outdoor Café\)](#)

This outdoor dining study affords an opportunity to ensure that ordinance language is consistent throughout, and addresses the issues of potentially regulating different restaurant and/or liquor license types (Bistro, Class C, Economic Development, Theaters & Hotels) separately, or affording them all the same outdoor dining standards, at least in terms of design. For example, rooftop dining is permitted for bistro license holders, but is not mentioned in the overall outdoor dining standards. Similarly, the bistro ordinance language prohibits enclosures facilitating year-round dining outdoors, but the Outdoor Dining Standards do not regulate enclosures.

Considering the information above, and before attempts are made at amending any zoning ordinance language, the Planning Division suggests a discussion based on the following questions and requests that the Planning Board provide some direction as to which items to move forward with for the next study session, including any that are not listed:

- Does the Planning Board want to see enclosures? If so, during what season(s)? Additionally, the City should define “enclosure” as a part of this study. This has also been advised by the City Attorney.
- Should restaurants be permitted to extend in front of neighboring properties on the sidewalk? In the street?
- Should a survey be created and sent to property owners to solicit feedback on several key discussion points before the Planning Board begins to draft ordinance amendments?
- Should the Planning Division do a broader ordinance search for other areas of the Midwest and/or Northeast? What should we be looking for?

AGENDA
REGULAR MEETING OF THE BIRMINGHAM PLANNING BOARD
WEDNESDAY, DECEMBER 16, 2021
151 MARTIN ST., CITY COMMISSION ROOM 205, BIRMINGHAM MI *
*******7:30 pm*******

The highly transmissible COVID-19 Delta variant is spreading throughout the nation at an alarming rate. As a result, the CDC is recommending that vaccinated and unvaccinated personnel wear a facemask indoors while in public if you live or work in a substantial or high transmission area. Oakland County is currently classified as a substantial transmission area. The City has reinstated mask requirements for all employees while indoors. The mask requirement also applies to all board and commission members as well as the public attending public meetings.

- A. Roll Call
- B. Review and Approval of the Minutes of the Regular Meeting of **December 8, 2021**
- C. Chairpersons' Comments
- D. Review of the Agenda
- E. Unfinished Business
- F. Rezoning Applications
- G. Community Impact Studies
- H. Special Land Use Permits
 - 1. **211 Hamilton Row – Sybil – SLUP request for new restaurant service alcoholic liquors for on premise consumption and associated exterior building modifications**
- I. Site Plan & Design Reviews
 - 1. **211 Hamilton Row – Sybil – FSP & DR request for new restaurant service alcoholic liquors for on premise consumption and associated exterior building modifications**
 - 2. **460 N. Old Woodward – FSP & DR request for a new 4-story mixed use building**
 - 3. **325 S. Eton – District Lofts Phase 3 – FSP & DR request for a new 4-story mixed use building**
- J. Study Session
- K. Miscellaneous Business and Communications:
 - 1. Communications
 - 2. Administrative Approval Correspondence
 - 3. Draft Agenda – **January 12, 2021**
 - 4. Other Business
- L. Planning Division Action Items
 - 1. Staff Report on Previous Requests
 - 2. Additional Items from Tonight's Meeting
- M. Adjournment

* Please note that board meetings will be conducted in person once again. Members of the public can attend in person at Birmingham City Hall OR may attend virtually at:

Link to Access Virtual Meeting: [**https://zoom.us/j/111656967**](https://zoom.us/j/111656967)

Telephone Meeting Access: 877-853-5247 US Toll-Free

Meeting ID Code: 111656967

NOTICE: Due to Building Security, public entrance during non-business hours is through the Police Department—Pierce St. Entrance only. Individuals with disabilities requiring assistance to enter the building should request aid via the intercom system at the parking lot entrance gate on Henrietta St.

Persons with disabilities that may require assistance for effective participation in this public meeting should contact the City Clerk's Office at the number (248) 530-1880, or (248) 644-5115 (for the hearing impaired) at least one day before the meeting to request help in mobility, visual, hearing, or other assistance.

Las personas con incapacidad que requieren algún tipo de ayuda para la participación en esta sesión pública deben ponerse en contacto con la oficina del escribano de la ciudad en el número (248) 530-1800 o al (248) 644-5115 (para las personas con incapacidad auditiva) por lo menos un día antes de la reunión para solicitar ayuda a la movilidad, visual, auditiva, o de otras asistencias. (Title VI of the Civil Rights Act of 1964).

November 10, 2021

Nicholas Dupuis
Planning Director
151 Martin St
PO Box 3001
Birmingham MI 48012

Re: Notice of Intent for a New Master Plan

Dear colleague & Planning Commission members,

The City of Royal Oak initiated the process of developing a new Master Plan. In accordance with the provisions of the Michigan Planning Enabling Act, P.A. 33 of 2008, as amended, the city is notifying adjacent municipalities, public utilities, and reviewing agencies of our intent to do so.

As of the date of this letter, the city has distributed a Request-For-Qualifications to retain a highly qualified consulting firm to assist in its development.

A draft copy will be available for your review and comment later in the process.

In the future, comments may be addressed to:
Chairperson, Royal Oak Planning Commission
c/o Joseph M. Murphy, Director of Planning (joem@romi.gov)
Planning Division, Community Development Department
203 S. Troy St.
Royal Oak MI 48067

If you have questions, feel free to contact me at (248) 246-3285 or by e-mail at: joem@romi.gov

Respectfully,
CITY OF ROYAL OAK



Joseph M. Murphy
Director of Planning
Community Development Department

