

Planning Commission

May 24, 2021 – 7 pm

REGULAR MEETING AGENDA

This meeting will be held via Webex in accordance with the local emergency declaration made by the City under Minn. Stat. § 12.37. The public may monitor this meeting by watching on Comcast cable channel 16, by streaming on CCXmedia.org, or by calling 1-415-655-0001 and entering the meeting code **177 607 5175**. The public may participate in this meeting during public comment sections by calling 763-593-8060 and following the automated prompts.

Additional information about monitoring electronic meetings is available on the [City website](#). For technical assistance, please contact the City at 763-593-8007 or webexsupport@goldenvalleymn.gov. If you incur costs to call into the meeting, you may submit the costs to the City for reimbursement consideration.

1. **Call to Order**
2. **Approval of Agenda**
3. **Approval of Minutes**
May 10, 2021, Planning Commission Meeting
4. **Discussion** – Temporary Outdoor Service Uses

– End of Televised Portion of Meeting –

To listen to this portion, please call 1-415-655-0001 and enter meeting access code 177 607 5175.

5. **Council Liaison Report**
6. **Other Business**
 - a. Reports on Board of Zoning Appeals and Other Meetings
 - b. Annual Commissioner Orientation
 - c. Exclusionary Zoning Brief & Reading Recommendations
7. **Adjournment**



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Planning Commission

May 10, 2021 – 7 pm

REGULAR MEETING MINUTES

This meeting was held via Webex in accordance with the local emergency declaration made by the City under Minn. Stat. § 12.37. In accordance with that declaration, beginning on March 16, 2020, all Planning Commission meetings held during the emergency were conducted electronically. The City used Webex to conduct this meeting and members of the public were able to monitor the meetings by watching it on Comcast cable channel 16, by streaming it on CCXmedia.org, or by dialing in to the public call-in line.

1. Call to Order

The meeting was called to order at 7:06 by **Vice-Chair Pockl**.

Roll Call

Commissioners present: Ron Blum, Adam Brookins, Andy Johnson, Noah Orloff, Lauren Pockl, Chuck Segelbaum

Commissioners absent: Rich Baker, Ryan Sadeghi

Staff present: Jason Zimmerman – Planning Manager, Myles Campbell – Planner

Council Liaison present: Gillian Rosenquist

2. Approval of Agenda

Vice-Chair Pockl asked for a motion to approve the agenda.

MOTION made by **Commissioner Segelbaum**, seconded by **Commissioner Johnson**, to approve the agenda of May 10, 2021. Staff called a roll call vote and the motion carried unanimously.

3. Approval of Minutes

Vice-Chair Pockl asked for a motion to approve the minutes from April 26, 2021.

MOTION made by **Commissioner Johnson**, seconded by **Commissioner Brookins**, to approve minutes. Staff called a roll call vote and the motion carried unanimously.

4. Public Hearing – Reguiding and Rezoning Properties at the General Mills James Ford Bell Research Center to Achieve Conformance with the 2040 Comprehensive Plan

Applicant: City of Golden Valley

Jason Zimmerman, Planning Manager, reviewed the series of conversations around rezoning so as to create alignment between Future Land Use Map in the 2040 Comprehensive Plan and the City's Zoning Map. Today's request is to reguide one property and rezone two properties at the General Mills James Ford Bell Research Center. There are NO active development proposals for any properties currently under discussion.



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Staff displayed both the future land use and the current zoning map during the presentation. The zoning map displayed also showed areas that have already been zoned as part of this alignment.

The General Mills James Ford Bell Research Center is a PUD that consists of three parcels; the southernmost parcel contains the research center. The two northernmost parcels contain the General Mills Research Nature Area and an undeveloped parcel with a stormwater pond. Duluth Street splits through the northern section and there are no plans to improve the ROW aside from nature area parking.

Zimmerman expanded that the area owned by GM is 100+ acres, purchased in 1956 and the research center was opened in 1960. There's an agreement with Golden Valley from 1976 that the public is allowed to use the nature area north of the research center. The City built and maintains trails but it is private land. The PUD was created in 1999 and staff went on to discuss details of the PUD.

Zimmerman explained that Met Council requires alignment between land use and zoning and instead of creating non-conformities, staff negotiated to reguide south parcel to Industrial and rezone north parcels to Light Industrial. To further clarify, staff will ask City Council to approve an update to the PUD permit with additional language around the Land Use.

Recommendation

Following the provisions of State statute (sec. 473.858, subd. 1) and the requirements of the Metropolitan Council with respect to comprehensive planning, staff recommends:

- Amending the Future Land Use Map to change the guided land use for 9000 Plymouth Avenue North from Light Industrial to Industrial
- Rezoning 9145 Earl Street and PID 3011821240063 from Industrial to Light Industrial

Vice-Chair Pockl opened the discussion.

Commissioner Johnson asked if Met Council had a specific request or was their request about following guidelines. **Zimmerman** clarified that Met Council did not comment on this property specifically but that staff is following their general directive for alignment between land use and zoning. **Johnson** stated Duluth street on the map felt misleading as it doesn't drive the way it's marked on the map. **Zimmerman** responded that the entire ROW is labeled on the map and what's on the map is the ROW owned by the City even though it's never been paved. If a change were proposed, it would be a public process through the CIP and it would need to be amended in the PUD. The question has come up but there are no plans to make a road through the area.

Commissioner Orloff asked if staff can generalize what it means to have a nature area zoned as light-industrial. **Zimmerman** responded that nothing will change and the current zoning is Industrial and has been for decades. The zoning is being down-zoned and the area can continue to be used as green space. Should General Mills ever choose to amend the PUD and expand, this zoning will be the base for what's allowed. As of right now, General Mills has no plans to develop the area in their 10-20 year plan.

Vice-Chair Pockl opened the public hearing at 7:20pm.

Commissioner Johnson asked about the process if General Mills zoned the area as a green space since that is what it is. The applicant was not present at the meeting so staff speculated perspective and discussed the potential process for the applicant if they were to rezone as a green space and then decide to rezone again in the future to light-industrial.

Kathy Longar

2105 Aquila Ave N

I think a lot of our neighborhood confusion is that people didn't realize the use for the nature area could be light-industrial. There is concern about what may happen with the ROW and pages in the agenda mark the ROW as "unimproved." A minor amendment allows up to 3% of open space to be developed; is it possible for the amendment to clarify that the trail will not become a street as a result of this amendment.

Since the text is changing to reflect three lots and not two, I wonder if it could be revised before it's signed off on. This minor amendment is the third on the General Mills Land and the first two were approved by City Council. The Mayor signed off on the first two and I wonder why this signature is for the City Manager and not the Mayor.

Vice-Chair Pockl asked if staff can clarify points made by the caller. **Zimmerman** stated that the Mayor would sign this amendment when it becomes a minor amendment, as has been done in the past. Staff can consider clarifying the language regarding plans to the ROW but that will be a larger conversation with different departments. **Zimmerman** reiterated that there are no plans to put a street in the ROW but clarifying the process may be helpful. **Commissioner Segelbaum** stated the process seems reasonable and hopes the down zoning will help residents feel at ease. He added that if he lived in the area, he too would want to know what the process would be if the City decided to build a street in the ROW. **Zimmerman** added that it feels straightforward to staff however this process made residents realize this property was neither City owned nor has it been zoned green space. Staff wanted to make sure this process was thorough and well communicated. The discussion continued on whether or not to include ROW intention/process in the amendment.

Vice Chair Pockl closed the Public Hearing at 7:34pm.

MOTION made by **Commissioner Segelbaum** and seconded by **Commissioner Brookins** recommend approval to change the land use on 9000 Plymouth Ave N from Light Industrial to Industrial.

Staff took a roll call vote.

Aye: Brookins, Johnson, Pockl, Segelbaum

Nay:

Abstain: Blum

Motion Passes

MOTION made by **Commissioner Brookins** and seconded by **Commissioner Johnson** to recommend approval of an amendment to the zoning map to rezone 9145 Earl Street and PID 3011821240063

from Industrial to Light Industrial and have the City create language documenting potential ROW improvement processes.

Staff took a roll call vote.

Aye: Brookins, Johnson, Pockl, Segelbaum

Nay:

Abstain: Blum

Motion Passes

Televised portion of the meeting concluded at 7:40 pm

5. Council Liaison Report

Planning Manager Zimmerman provided an update from **Council Member Rosenquist**: the Council approved the Hidden Lakes PUD amendment and also the application to rezone the northwest corner of the GV Country Club; the GV Energy Action Plan was approved by the Council; work on habitat restoration at Briarwood was approved; the City is applying for a Reducing Harm through Collaborative Solutions Grant through the Pohlad Foundation; and the Minneapolis Park and Recreation Board did not approve the draft MOU with Golden Valley, but emergency response plans will move forward.

6. Reports on Board of Zoning Appeals and other Meetings

Planner Campbell reported that one item from the April BZA meeting will carry over to May. A second application was also received.

7. Other Business

The Commissioners held elections for new officers. **Commissioner Segelbaum** nominated **Commissioner Pockl** for Chair; **Commissioner Johnson** seconded. The vote to approve was unanimous. **Segelbaum** nominated **Commissioner Brookins** for Vice-Chair; **Commissioner Blum** seconded. The vote to approve was unanimous. **Segelbaum** nominated **Johnson** for Secretary; **Pockl** seconded. The vote was unanimous.

8. Adjournment

MOTION by **Commissioner Brookins** to adjourn, seconded by **Commissioner Johnson**, and approved unanimously. Meeting adjourned at 8:16 pm.

Andy Johnson, Secretary

Amie Kolesar, Planning Assistant



MEMORANDUM

Planning Department

763-593-8095 / 763-593-8109 (fax)

Date: May 24, 2021
To: Golden Valley Planning Commission
From: Jason Zimmerman, Planning Manager
Subject: Temporary Outdoor Service Uses – Discussion

Summary

Spurred by a request from Schuller's Tavern to explore options to allow outdoor seating at 7345 Country Club Drive, staff has been working to develop a new Temporary Outdoor Service use that could be applied throughout the City. The Planning Commission discussed this idea generally at its March 8 meeting; staff would like feedback on a refined concept before bringing forward a proposed zoning text amendment for consideration at a future public hearing.

Background

Schuller's has operated as a nonconforming use (a restaurant within a single-family zoning district) for many decades. In recent years, the owners have sought to find a way to utilize outdoor space for seating and dining. Due to the existing nonconforming status, this would be considered an illegal expansion of the restaurant use.

In search of solutions, the idea was raised to explore the possibility of creating interim – or temporary – uses within the Zoning Chapter and potentially applying the concept to this property. Interim uses are those which are temporary in nature and are allowed to exist for a pre-determined period of time. They can be targeted to specific aspects of individual zoning districts. If workable, this idea could provide a focused solution to the current problem without exposing the wider neighborhood to potentially greater impacts.

Staff also notes that COVID restrictions for restaurants and other retail/service uses in 2020 and 2021 resulted in the creation of Temporary Outdoor Service Area permits for use across the city. These permits – reviewed and approved by staff in Planning, Inspections, and Fire – allowed for outdoor seating/dining and retail sales using creative and temporary arrangements in parking lots and other areas.

Temporary Outdoor Service Use

The concept of a new Temporary Outdoor Service use would roughly follow the permit process developed and tested in 2020 and would complement the City's other current Temporary Uses found in Section 113-31 of the City Code: Mobile Food Vending, Seasonal Farm Produce Sales, and Temporary Retail Sales. It would be consistent with the criteria for interim uses outlined in Minnesota Statute 462.3597. There, an interim use is defined as "a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it." A city may set conditions on interim uses, but may only grant permission for an interim use of property if:

- (1) the use conforms to the zoning regulations;
- (2) the date or event that will terminate the use can be identified with certainty;
- (3) permission of the use will not impose additional costs on the public if it is necessary for the public to take the property in the future; and
- (4) the user agrees to and conditions that the governing body deems appropriate for permission of the use.

In order to comply with these criteria, the Zoning Chapter would need to be amended in two ways. First, the Temporary Outdoor Service use would need to be listed as a permitted use in each zoning district where it would be applied. Second, new text would need to be added to the Temporary Use section of code that detailed any conditions of approval that might be necessary to regulate operations and mitigate impacts.

The benefits of making this change would be to allow businesses to have the flexibility to hold outdoor events that only last a few days or a few weeks, or to "test" a concept (outdoor dining, for example) with more interim infrastructure before deciding if a more permanent solution should be pursued. The temporary nature of the use would allow for oversight and feedback to help mitigate potential impacts.

Staff has identified a few areas for consideration and discussion by the Planning Commission.

Targeted Zoning Districts

In order to be utilized for a given retail/service business, the Temporary Outdoor Service use must be included as a permitted use in the corresponding zoning district. It appears obvious that both Commercial and Mixed Use districts could benefit from this option. In addition, there are residential districts (R-3 and R-4) that allow for restaurant or retail uses as a ground floor activity in a multifamily building. Extending the option for Temporary Outdoor Service uses to these districts as well would provide similar opportunities to utilize outdoor spaces for dining or retail sales. Finally, with Schuller's located in an R-1 district, staff recommends allowing Temporary Outdoor Services uses in both the R-1 and R-2 zoning districts (though the lack of existing service/retail businesses in these districts, or the ability to establish news ones, means opportunities to apply this option would be extremely limited).

In comparison, Mobile Food Vending is currently allowed in all zoning districts in one fashion or another, Seasonal Farm Produce uses are allowed in the Commercial and Institutional (Sub-District I-1) zoning districts, and Temporary Retail Sales are allowed in Light Industrial and Industrial zoning districts.

Review and Approval Authority

All Temporary Uses currently allowed in Golden Valley are reviewed and approved administratively by staff. These applications are not subject to public comment and are not scrutinized by the Planning Commission or City Council as part of a public hearing. Reviewing the procedures of other local municipalities that have interim uses, these are often reviewed by the Planning Commission and approved by the City Council.

In considering a new Temporary Outdoor Service use, there may be some advantages in allowing the public to provide comments in certain situations. While the use of a parking lot in a commercial area for a tent sale may raise little concern, expanding outdoor seating/dining in a residential neighborhood has the potential to create significantly more objections. Rather than bringing all Temporary Outdoor Service proposals through the public hearing process, or allowing staff to review them all administratively, one solution could be to grant staff the authority to approve uses in the Commercial and Mixed Use districts while directing those in Residential zoning districts to the Planning Commission (and perhaps on to the City Council) for review and approval. This would provide a chance for affected neighbors to weigh in an offer feedback in a transparent fashion.

Conditions of Use

Currently, mobile food trucks, seasonal produce sales, and temporary retail (warehouse) sales are all subject to various conditions spelling out in the zoning text (see attached) that address a number of aspects of the use:

- details around the application for the permit
- regulations around operating within a public right-of-way
- restrictions related to impacts to parking and overnight storage
- hours of operation
- responsibilities related to trash and recycling
- limits to the location of operations in relation to other identified uses
- the duration of the approved permit
- circumstances under which revocation is allowed

For a new Temporary Outdoor Service use such as outdoor seating/dining, it would be important to develop conditions to mitigate potential impacts related to parking, hours of operation, lighting, noise, visual screening, etc. For a proposed use for outdoor retail/service, considerations of circulation, parking impacts, and hours of operation would all be important to document.

Length of Time

The allowed length of time for operation of the “temporary” use could vary wildly. Current regulations limit the number of days of operation for mobile food trucks, restrict seasonal farm produce sales to 45 consecutive days, and temporary retail sales in industrial areas to five consecutive days or a total of 15 days in a calendar year. Staff imagines an area set up for outdoor retail sales might prefer to operate for a week or for a number of weekends. Outdoor seating/dining would likely be carried out over most of the year (with winter months typically excluded) but could be “tested” as a concept over two or three years. Rather than try to anticipate every type of request and plan, staff proposes to develop a maximum duration and assess each request on a case by case basis.

Renewal of a Temporary Outdoor Service Permit

If things go well, staff anticipates the operators of many of these temporary uses would want to renew their permit for an additional period of time – either as an immediate continuation at the conclusion of the permit period or in the following season/year. Other cities that utilize temporary uses require an application for a renewal or extension, and assign the responsibility for approving the renewal to the Planning Commission or City Council. Staff believes that a public renewal process is beneficial in many cases, as it would provide an opportunity to receive feedback on how well the temporary outdoor service integrated into the surrounding area over the course of the permit, and knowing this the operator would be incentivized to ensure impacts were minimal.

Conclusion

Staff believes the addition of a Temporary Outdoor Service use as a tool to be applied to more transitory or non-fixed operations has some potential advantages and could be developed fairly easily based on existing temporary uses and the Temporary Outdoor Service Area permit process developed during COVID-19.

Staff Request

At this time, staff is soliciting feedback and discussion on this topic and the various aspects of a potential zoning text change identified above. Future consideration of a zoning text amendment is expected in the near future.

Attachments

Section 113-31 – Temporary Uses (6 pages)

Sec. 113-31. - Temporary Uses.

(a) *Purpose and Intent.* The purpose and intent of this section is to provide conditions under which certain temporary uses may be allowed while ensuring a minimum negative impact to neighboring land uses.

(b) *Permitted Temporary Uses.*

- (1) Mobile food vending.
- (2) Seasonal farm produce sales.
- (3) Temporary retail sales.

(c) *Prohibited Temporary Uses.* Temporary family health care dwellings, as defined in State law, are prohibited in all zoning districts.

(d) *General Requirements.*

(1) *Mobile Food Vending.* The City Manager or his/her designee may issue a permit for a mobile food vending operation, defined as a self-contained vehicle or trailer used to prepare and serve food that is ready movable without disassembling, to operate for a temporary period not to exceed three days in City parks, one day in Residential Zoning Districts, or 120 days in all other zoning districts. Properties in residential zoning districts are limited to two permits in a 12-month period. The permit application shall be on a form promulgated by the City Manager or his/her designee and shall include any information needed to establish compliance with this section. Any application shall include the application fee amount established by the City Council in the Master Fee Schedule, and such fee shall be not refundable if the permit is denied or the applicant withdraws or otherwise ceases operation or use of the permit. All mobile food vending permit applications and permits shall be subject to the following conditions:

- a. With the permit application, the applicant shall provide written proof that the applicant is the current holder of all licenses required by the County and the State, as applicable, with respect to a mobile food vending operation in which food is prepared and served on a vehicle or trailer, and the vendor shall maintain such license in good standing for the duration of the permit.
- b. The vendor shall comply with all other applicable provisions of the City Code, including, but not limited to, those regulations regarding parking, signage, lighting, and sound.
- c. A permit is valid for only one mobile food vending vehicle or trailer.
- d. The permitted days of operation shall be set forth in the permit. A vendor that has obtained a permit under this section, upon the expiration thereof, may apply for another permit under this section.
- e. The permit application shall contain a signed statement that the applicant shall hold harmless the City, and their officers and employees, and shall indemnify the City, and their

officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit.

f. If the application seeks to operate a vending operation in a City-owned property and/or on the public right-of-way, the application shall include documentation satisfactory to the City Manager or his/her designee evidencing the applicant's public liability, food products liability, automobile liability, and property damage insurance and that the City is or will be named as an additional insured on such insurance for all the permitted days of operation. Such insurance shall be maintained without change for the duration of the permitted days of operation.

g. The permit shall set forth the location where the vending operation may operate and it shall be a violation of this section for any vendor to engage in vending operations in any location in the City other than the location set forth in the permit. Mobile food vendors must be located at least 10 feet from all principal and accessory structures as well as five feet from side and rear yard property lines.

h. Overnight parking and storage by the vendor is prohibited at the permitted location. The vendor must vacate the permitted location when not engaging in vending operations. Hours of vending operation are limited to 8:00 a.m. to 10:00 p.m. unless otherwise limited or extended by the City Manager or his/her designee, as set forth in the permit. Permits approved for vending operations on properties located in Residential Zoning Districts are limited to an eight-hour time period.

i. With the permit application, the applicant shall provide written proof permission from the owner of the property at the permitted location to engage in vending operations at those location. If the permitted location is located on City-owned property, the issuance of the permit by the City shall constitute such permission.

j. The vendor must keep a copy of the permit with the vending unit and demonstrate compliance with the permit and the permit conditions set forth in this section upon inspection.

k. The vending operation may be located on public right-of-way unless right-of-way adjacent to the property for which the permit is issued, with the service window facing the curbside of the street. The vending operation may not block sidewalks or drive aisles, impede pedestrian or vehicular traffic, or interfere with public safety.

l. The vending operation shall be located on an impervious surface unless unique circumstances cause the City Manager or his/her designee to permit the operation to be located on a pervious surface.

m. No vending operation may occupy accessible parking spaces or parking spaces used to fulfill any property's minimum parking requirements under this Code, unless the applicable property owner can demonstrate that parking would be adequately supplied during the vending operations.

n. The vendor must provide and remove trash and recycling receptacles for customer use and keep the site in a neat and orderly fashion. The permitted location must be kept free from litter, refuse, debris, junk or other waste which results in offensive odors or unsightly conditions. The vendor shall be responsible for all litter and garbage left by customers.

o. No vending operation may be located within 200 feet at its closest point to the main entrance of a public eating establishment or any outdoor dining area with the exception of other mobile food vendors and except with the written consent of the proprietor of the establishment or dining area. No person shall either pay or accept payment for such written consent. With the permit application, the applicant shall provide written permission from the proprietor when applicable.

p. No vending operation may be located within 1,000 feet at its closest point to a school while the school is in session unless written permission from the school principal is provided in the permit application. With the permit application, the applicant shall provide written permission from the principal when applicable.

q. Permits issued for vending operations on properties located in Residential Zoning Districts must limit sales to the property owner and other private parties associated with the private event. The vending operation shall not serve the general public unless a special event permit is approved by the City.

r. The placement, duration, or any other applicable requirements for operation under this section may be superseded by the provisions of an approved special event permit.

s. If, while holding a permit granted under this section, a vendor violates any provision of this section, in addition to any other remedy provided under this Code, the City Manager or his/her designee may revoke the permit and/or prohibit such vendor from obtaining a new permit under this section for a period not exceeding 13 months from the date of such violation for properties in Residential Zoning Districts and not exceeding 30 days from the date of such violation for properties in all other zoning districts.

(2) *All Seasonal Farm Produce Sales.* The City Manager or his/her designee may issue a permit for seasonal farm produce sales. All permits for seasonal farm produce sales shall be subject to the following conditions:

a. Seasonal farm produce sales shall take place only in a zoning district for which it is listed as a permitted use.

b. Seasonal farm produce sales operations shall not exceed a temporary period of 45 consecutive days. This shall include each day, or any part thereof, during which any structure, equipment, or merchandise can be found at the sale premises, regardless of whether any actual sales transactions occur on that day. However, a single permit may be issued for a period of up to six months at a time provided that the operation so permitted occupies the same site according to a regular schedule not to exceed two days or portions thereof per week and also provided that the operation so permitted completely vacates the premises on those days or portions thereof when not scheduled to conduct sales transactions.

c. A completed application shall be submitted at least three weeks prior to the commencement of seasonal farm produce sales activity.

d. With the permit application, the applicant shall provide written proof of permission from all owners, managers, or involved operators of the property to be occupied by or involved in the sales. The conditions of the permit are considered binding on any involved operator, owner, and manager of the seasonal farm produce sales operation. With the permit

application, the applicant shall provide written consent of adjacent property owners, when required under the terms of this section.

e. With the permit application, the applicant shall provide proof that all applicable licenses and approvals from the City, the County, or other governmental units have been obtained and the applicant shall maintain such license and approvals in good standing for the duration of the permit.

f. No sales transactions or promotional efforts shall take place within any part of a public right-of-way or within 25 feet of any street lot line.

g. Sales operations may be located within side or rear setback areas provided that any damage to or alteration of landscaping elements is subsequently corrected, and providing that written consent is obtained from the owners of any nonresidential property located within 15 feet of the actual sales site and any residential property located within 50 feet of the actual sales site, and providing that the City review staff find no potentially hazardous situations that could occur because of the location of the sales site. All existing landscaping elements within 10 feet of the proposed site shall be shown on the site plan submitted with application. The exact dimensions and proposed location of any booth, tent, vehicle, rack, barrel, or other structure or equipment shall also be provided. Photographs of any structures, vehicles, or equipment to be used for the sales operation may be required.

h. The parking and circulation plan submitted with the permit application must demonstrate that the proposed site meets the requirements of this section with regard to parking and on-site vehicular circulation.

i. A sign permit is required for all signage for seasonal farm produce sales. All signage shall comply with the provisions of [Chapter 105](#).

j. If the proposed sales hours are to extend after dark, a lighting plan must demonstrate that adequate light will be provided for the sales operation in such a way as to minimize any potential hazard or distraction to others.

k. Up to 25 percent of the area occupied by a sales operation may be used for the storage and sale of processed agricultural products such as honey, juices, or hand-crafted decorative display items if, in the judgment of the City review staff, the amount and type of processing still meets the intent of this section.

l. For sales operations occupying sites of 180 square feet in area or less or for sales of Christmas trees occupying sites of more than 180 square feet of area, the area occupied by a sales operation shall be calculated to include any structure, vehicle, equipment, and merchandise storage or display area, plus an extra two feet of clear space beyond the limit of such elements at any location where customer circulation can be expected to occur. In no case may an individual sales operation exceed 180 square feet.

m. For sales operations occupying sites of 180 square feet in area or less or for sales of Christmas tree occupying sites of more than 180 square feet of area, there shall be no on-site parking required for the sales operation itself, but it shall not impede normal on-site vehicular circulation. The submitted plan shall clearly demonstrate that adequate off-street parking for the proposed event can and will be provided for the duration of the sale. Determination of compliance with this requirement shall be made by the City, which shall consider the nature of the sale and the applicable parking requirements of this chapter.

Consideration shall be given to the parking needs and requirements of other occupants in the case of shopping centers and multi-tenant buildings. Parking on public right-of-way and streets is prohibited.

n. If while holding a permit granted under this section, a vendor violates any provision of this section, in addition to any other remedy provided under this Code, the City Manager or his/her designee may revoke the permit.

(3) *Temporary Retail Sales.* The City Manager or his/her designee may issue a permit for temporary retail sales in the Light Industrial and Industrial Zoning Districts. All permits for temporary retail sales shall be subject to the following conditions:

a. Temporary retail sales in the Light Industrial and Industrial Zoning Districts shall not exceed five consecutive days or a total of 15 days in any one calendar year.

b. Temporary retail sales shall include only the retail sales contemplated by the permitted uses in the Commercial Zoning District. Retail sales contemplated by the conditional uses in the Commercial Zoning District are excluded.

c. A completed application shall be submitted at least two weeks prior to the commencement of the temporary retail sale.

d. With the permit application, the applicant shall provide written proof of permission from the owner of the property at the permitted location that authorizes the applicant to engage in temporary retail sales at that location. The applicant shall also provide written certification from the property owner that notification of the temporary retail sale has been given to all other tenants of the building or site in which the sale is to take place.

e. With the permit application, the applicant shall provide proof that all applicable licenses and approvals from the City, the County, or other governmental units have been obtained and the applicant shall maintain such license and approvals in good standing for the duration of the permit.

f. The temporary retail sales operation shall comply with all fire and safety provisions required by the City Code for the duration of the permit.

g. With the permit application, the applicant shall provide a vehicle circulation and street access plan. It shall include acceptable methods of access to the sale premises and acceptable traffic control measures to ensure safety of those entering and exiting the sale premises. The operator of the sale must provide at his/her cost all traffic control measures recommended by the City Manager or his/her designee which may include the hiring of qualified persons to control traffic. Safe ingress and egress to the site is required for approval of the permit. The temporary retail sale shall not interrupt vehicular circulation on the site or obstruct parking spaces needed by permanent businesses established on the site.

h. With the permit application, the application shall provide a parking plan that indicates adequate available parking on the sale premises during its proposed hours of operation. The plan must also indicate adequate parking for any other businesses located on the same sale premises. Adequate off-street parking for the sale must be provided and off-street parking must not impede the operation of other businesses on the premises for the duration of the permit.

- i. The temporary retail sale shall take place only inside a building.
- j. Sale hours shall be between 9:00 a.m. and 9:00 p.m. The exact dates and hours of operation of the proposed sale shall be set forth in the permit.
- k. If while holding a permit granted under this section, a vendor violates any provision of this section or conditions set forth in the permit, in addition to any other remedy provided under this Code, the City Manager or his/her designee may revoke the permit.



MEMORANDUM
Physical Development Department
763-593-8095 / 763-593-8109 (fax)

Date: May 25, 2021
To: Golden Valley Planning Commission
From: Myles Campbell, Planner
Subject: Exclusionary/Inclusionary Zoning

Summary

At its meeting on May 11, commissioners noted their appreciation for an opinion article shared with them titled *The 'New Redlining' Is Deciding Who Lives in Your Neighborhood*. The article discussed the history of “exclusionary zoning” practices in the United States, and contrasted these historical examples with the proposed federal level policies to encourage “inclusionary zoning”. A handful of commissioners had requested that they would like to learn more on these two topics as they relate to their own work as Planning Commissioners in Golden Valley. This memo will provide a brief overview of the terminology, before providing commissioners with additional articles and literature on various topic areas.

Exclusionary vs. Inclusionary Zoning

Nearly every municipal zoning code in the country includes to some degree, an element of exclusionary zoning, which at a base level simply refers to zoning language that excludes certain uses. Looking at the Golden Valley Code as an example of this, we exclude Metal Fabrication businesses from all of our zoning districts except our Industrial (I) district. This is for good reason, as this type of use can create noise, air pollution, and other negative externalities that would be damaging to another use in close proximity, such as a restaurant, public park, or apartment building. The ability of a municipality to place limits on the location or form of certain uses was famously upheld by the courts in *Village of Euclid v. Ambler Realty Company*.¹

Over time, this broad description of exclusionary zoning, as well as the conversation around its benefit, have changed. Today the term exclusionary zoning is used in a more targeted manner,

¹ <https://www.oyez.org/cases/1900-1940/272us365>

often in regard to costs or requirements prescribed by code that limit the overall supply of housing. One of the most discussed and pervasive exclusionary zoning policies was the adoption of zoning districts that only allowed for the construction of single-family homes. By excluding multi-family and even two-family homes from broad sections of developing suburban and rural communities, the overall affordability of housing in these areas, and even the broader regions, was impacted. Further requirements of code regarding items such as minimum lot sizes would have the further effect of increasing the cost of homes, while decreasing the amount of land available for more housing overall. The Brookings Institute, in a study of Washington D.C., found that ¾ of residentially zoned land in the District did not allow any multi-family housing.²

Exclusionary zoning is also used to refer to those historic policies and uses of zoning that explicitly excluded BIPOC households from certain areas. In the early part of the previous century, multiple Cities in the United States had zoning ordinances that defined residential blocks as black or white, and which excluded black people from living on a residential block that was considered white.³ In 1916, *Buchanan v. Warley*⁴ was heard at the Supreme Court, and involved a Louisville Kentucky ordinance to a similar effect as above. The Supreme Court unanimously found the ordinance to be unconstitutional. Justice William R. Day wrote that Louisville's interest in its "promotion of the public health, safety, and welfare," did not change the fact that the ordinance would deny black residents rights guaranteed to them under the Civil Rights Act of 1866, the Fourteenth Amendment, and the Constitution.

The *Buchanan v. Warley* decision ostensibly made it unconstitutional to use zoning to exclude people of a particular race from certain neighborhoods or areas. In practice, it instead forced Cities to pursue new, legally defensible, methods of enacting segregation. In the Twin Cities metro, this includes practices such as the racially restrictive covenants that continued into the middle of the twentieth century that prohibited the sale of homes to minority households. While those covenants were still a clearly racially-motivated practice, there were other more subtle alternatives for municipalities. If you could not explicitly exclude BIPOC households from a neighborhood, you could still use zoning to create barriers to entry, such as by restricting development to large-lot single-family homes, which would be expensive enough to deter undesired communities.

With that understanding of exclusionary zoning in place, we can move to discussing the much younger planning concept of inclusionary zoning. Inclusionary zoning is at its core a reaction to those earlier policies that sought to exclude low-income and BIPOC households. Inclusionary

² <https://www.brookings.edu/research/gentle-density-can-save-our-neighborhoods/>

³ <https://www.asu.edu/courses/aph294/total-readings/silver%20--%20racialoriginsofzoning.pdf>

⁴ <https://www.oyez.org/cases/1900-1940/245us60>

zoning policies have initially taken the form of mixed income housing policies, however there is some movement to broaden the terms usage to apply to other policies.

Here in Golden Valley we have our Mixed-Income Housing Policy, which requires that new market-rate developments over a certain size set aside a portion of the units for rent or sale at an affordable rate (50 or 60% of Area Median Income for rentals, 80% AMI for-sale). These types of policies have become more common both in Minnesota and across the country. While requiring new developments to include affordable housing units is one way of combatting housing disparities, it doesn't directly address the previously enacted exclusionary code language.

The emerging wing of inclusionary zoning beyond mixed income requirements is instead examining what zoning policies have historically excluded groups from residential access. An example close to home is Minneapolis' elimination of the solely single-family zoning designation. Allowing duplexes and triplexes in neighborhoods that historically have only allowed single-family is obviously a drastic change in policy. That said, Minneapolis prior to the pandemic was already in the midst of an affordable housing shortage, and the ability to address this in part by adding density throughout the City is certainly a tempting option to address that shortage.

While eliminating the single-family zoning designation is one way of reversing exclusionary zoning practices, there are certainly other methods available to Cities. Elimination of minimum lot sizes is another example highlighted by the proposed federal grant program. Again, the impact is the same, increasing the density of housing units in a given area. For another example that has perhaps not previously been considered an inclusionary zoning policy, Accessory Dwelling Units are becoming a common inclusion in many Minnesota zoning codes. The introduction of these secondary units in previously single-family neighborhoods have a number of positive benefits for expanding the range of housing types provided. ADUs can be an additional source of income if rented, or they can provide space for aging parents to down-size into from their own homes.

That all being said, inclusionary zoning is an emerging area of planning work and discussion. Despite the many articles both for and against Minneapolis' reversal of single-family zoning, there is still very little data on how those changes have impacted the City's housing market. Especially now with the added variable of the COVID-19 pandemic, it is difficult to evaluate the merit of the policy change, and so as Planners and Planning Commissioners we will instead need to remain educated and continue to monitor state-wide and nation-wide trends in planning in order to evaluate how effective these policies might be in Golden Valley

To that end staff has assembled some additional articles and materials relating to both planning history and exclusionary zoning, as well as some on current practices and emerging policy ideas.

This is not meant to be a comprehensive reading list, although we have tried to pull from a variety of academic and journalistic sources. We would encourage Commissioners to read these as they are able to, and if there is interest in a particular subject or topic we can schedule a follow up discussion.

Further Reading

Understanding Exclusionary Zoning and Its Impact on Concentrated Poverty By Elliott Anne Rigsby
<https://tcf.org/content/facts/understanding-exclusionary-zoning-impact-concentrated-poverty/>

Good overview on the topic of exclusionary zoning and the impacts on BIPOC communities and overall the provision of affordable housing

The Racial Origins of Zoning in American Cities By Christopher Silver
<https://www.asu.edu/courses/aph294/total-readings/silver%20--%20racialoriginsofzoning.pdf>

Discussion of the early history of zoning and race. Frames the discussion around the change in how zoning was used to promote segregation based on the Buchanan v. Warley decision.

Putting Exclusionary Zoning in its Place: Affordable Housing and Geographical Scale By Christopher Serkin & Leslie Wellington
<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=https://scholar.google.com/&httpsredir=1&article=2528&context=ulj>

Focused more on the economics of exclusionary zoning, including the fiscal reality that many of these policies supported higher tax bases and lower public service costs in the communities that used them. Also addresses the regional perspective of exclusionary policy, and whether the “New Urbanism” wave of density will actually combat affordable housing shortages or create new exclusionary practices.

“Gentle” Density Can Save Our Neighborhoods By Alex Baca, Patrick McAnaney, and Jenny Schuetz
<https://www.brookings.edu/research/gentle-density-can-save-our-neighborhoods/>

Contrasting its recommendations with the Minneapolis Single-Family Housing decision, the article describes how in the context of Washington, DC, “gentler” inclusionary zoning practices can be introduced to meet affordable housing demand.

How Land-Use Regulation Undermines Affordable Housing By Sanford Ikeda and Emily Hamilton
<https://www.mercatus.org/publications/regulation/how-land-use-regulation-undermines-affordable-housing>

Taking some of these arguments even further. That both exclusionary land use regulation, and inclusionary zoning polices stymie affordable housing development. Really interesting are some of the policy recommendations starting on p. 24, one example being the transfer of some generated tax revenue of new development to surrounding property owners.

How much will Minneapolis' 2040 plan actually help with housing affordability in the city? By Jessica Lee
<https://www.minnpost.com/metro/2019/05/how-much-will-minneapolis-2040-plan-actually-help-with-housing-affordability-in-the-city/>

Article covering the Minneapolis 2040 Plan and single-family zoning decision. Includes a wide-range of perspectives on what their expectations are for the policy: exec director of HOME Line, Family Housing Fund, housing activists, and Councilmembers.

Want More Housing? Ending Single-Family Zoning Won't Do It By Emily Hamilton
<https://www.bloomberg.com/news/articles/2020-07-29/to-add-housing-zoning-code-reform-is-just-a-start>

Ignore the click-bait headline! Article does offer a critique of the Minneapolis 2040 plan, but also goes into depth on the effectiveness of other inclusionary zoning policies, and the importance of managing the minute details of a zoning change.