

		<b>AGENDA ITEM EXECUTIVE SUMMARY</b>					
		Title:	Presentation on the Downtown Overlay District				
		Presenter:	Russell Colby Chris Aiston				
<i>Please check appropriate box:</i>							
	Government Operations				Government Services		
X	Planning & Development – 7/11/11				City Council		
Estimated Cost:			Budgeted:		YES		NO
If NO, please explain how item will be funded:							
<b>Executive Summary:</b>							
<p>In 2006, the City adopted a completely new Zoning Ordinance, which included a zoning “overlay” district within the downtown to “preserve economic vitality and the pedestrian character of the downtown’s shopping core.” The Downtown Overlay District (often incorrectly referred to as the “Retail Only” district) limits the type of businesses that can locate in the first floor/street level spaces to a set of businesses that generate pedestrian activity. This concept was promoted by the Downtown Partnership for a number of years.</p> <p>The Zoning Ordinance provides for an exemption to the overlay restrictions in very limited circumstances, solely based on the physical characteristics of a given tenant space. Recently, staff has received multiple inquiries from property owners and brokers regarding whether a given tenant space can be exempted from or removed from the Downtown Overlay District. Most who have contacted the City have stated that the only prospective tenants interested in their property are office users and that they have not had any interest from retailers. Staff is concerned that administratively granting multiple exemptions to the Overlay District requirements will ultimately undermine the purpose of having such an overlay district.</p> <p>On June 22, 2011, staff solicited feedback from the Downtown Partnership Economic Restructuring Committee on the Downtown Overlay District exemption provisions. The Committee generally supported narrowing the exemption provisions, in particular the criteria related to Handicap Accessibility. The Committee also generally discussed making the exemption provisions clearer and easier to apply.</p> <p>The Economic Development Department has provided a recommendation that the Exemption provisions be expanded to help reduce vacancies in the downtown, either temporarily in account of current economic conditions, or permanently. See the attached memo from Chris Aiston.</p>							
<b>Attachments:</b> <i>(please list)</i>							
Staff Memo from Russell Colby, Planning Division Staff Memo from Chris Aiston, Economic Development Director							
<b>Recommendation / Suggested Action</b> <i>(briefly explain):</i>							
Staff is looking for feedback from the Committee regarding possibly changing the Exemption provisions. The purpose and geographic scope of the district is expected to be revisited as a part of the Comprehensive Plan project.							
<i>For office use only:</i>		<i>Agenda Item Number:</i>					

**Community Development  
Planning Division**

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**MEMO**

**TO:** Chairman Cliff Carrignan  
And the Planning and Development Committee

**FROM:** Russell Colby, Planner

**CC:** Rita Tungare, Director of Community Development  
Brian Townsend, City Administrator

**RE:** Downtown Overlay District Exemptions

**DATE:** June 30, 2011

**BACKGROUND**

In 2006, the City adopted a completely new Zoning Ordinance, which included a zoning “overlay” district within the downtown to “preserve economic vitality and the pedestrian character of the downtown’s shopping core.” The Downtown Overlay District (often incorrectly referred to as the “Retail Only” district) limits the type of businesses that can locate in the first floor/street level spaces to a set of businesses that generate pedestrian activity.

The concept of a “Retail Only” district within the downtown was discussed and promoted by the Downtown Partnership for a number of years prior to 2006.

<b>Business uses allowed on the First Floor in the Downtown Overlay District:</b>	<b>Business uses not allowed on the First Floor, but allowed on the 2<sup>nd</sup> floor and elsewhere in Downtown:</b>
Art Gallery/Studio	Business and Professional Office
Theater	Medical/Dental Office
Indoor Recreation	Bank
Hotel	Financial Institution (such as mortgage service)
Personal Services (Salons, Funeral Home, Tailor, Pet Grooming, Dry Cleaner, etc)	
Retail	
Restaurant	
Tavern	

**EXISTING BUSINESSES**

A number of banks, offices and other uses no longer permitted on the first floor within the Downtown Overlay District existed at the time the ordinance went into effect in 2006. Those businesses were considered “legal non-conforming”, meaning the business can continue to operate and may be replaced by the same business (bank replacing a bank, for example), as long as the space does not stay vacant for more than 180 days. After 180 days of the business leaving the site, any new business that moves into the location must be one listed on the Downtown Overlay District first floor use list.

## **EXEMPTIONS TO THE OVERLAY DISTRICT**

The Downtown Overlay District provides for an exemption to the business restrictions in only very limited circumstances. The criteria to be considered are solely based on the physical characteristics of a given tenant space. A finding must be made by the Director of Community Development that the space is “Unsuitable for occupancy for any of the first floor uses permitted in the Downtown Overlay District”, and that altering the space to make it suitable for the permitted uses would:

- Be inconsistent with Historic Preservation requirements
- Impose an undue financial burden on the property owner (cost exceeding 25% of building value)

Criteria that may be considered in making this determination:

- Inappropriate placement, size, or orientation of doors or windows
- A floor level which is not of a similar elevation to the adjoining sidewalk
- Lack of window area for display of goods
- Lack of street frontage
- Interior space which is not adaptable to the permitted uses because of structural components or limitations on accessibility

## **ISSUES WITH THE EXEMPTION REQUIREMENTS**

Recently, the Community Development Department has received multiple inquiries from property owners and brokers regarding whether a given tenant space can be exempted from or removed from the Downtown Overlay District. Most who have contacted the City have stated that the only prospective tenants interested in their property are office users and that they have not had any interest from retailers.

City staff has identified potential issues with the Exemption standards:

- Many downtown buildings could potentially qualify for an exemption based on physical characteristics. For example, a converted residential building in Century Corners could be exempted because the building was originally designed with a first floor elevated above the sidewalk and without an accessible entrance. Once one type of building has been granted an exemption, all similar buildings could be eligible for the same exemption.
- The Exemption standards do not take into account the marketability of a given tenant space at a given time. Some tenant spaces may be isolated from any “retail” or similar service uses, which may make the property unmarketable to a retail use.
- Granting multiple exemptions to the Overlay District undermines the purpose of the district, which is to build a concentrated core of pedestrian-oriented businesses.

Other issues to consider:

- The Downtown Overlay District is part of the Zoning Ordinance of the City and is subject to legal requirements. Decisions on exemptions generally have to be made by the City Council or the Director of Community Development, based on specific, objective criteria.
- Changes to the Downtown Overlay District would require an Amendment to the City’s Zoning Ordinance. Amendments to the Zoning Ordinance require a City Plan Commission public hearing and recommendation, followed by City Council review and approval. Any changes will need to be reviewed by the City’s legal counsel.

### **Downtown St. Charles Partnership Economic Restructuring Committee**

City staff attended the Downtown Partnership Economic Restructuring Committee meeting on June 22, 2011 to solicit feedback on the Downtown Overlay District exemption provisions. The Committee discussed Staff's experience in administering the exemption provisions in relation to specific types of properties.

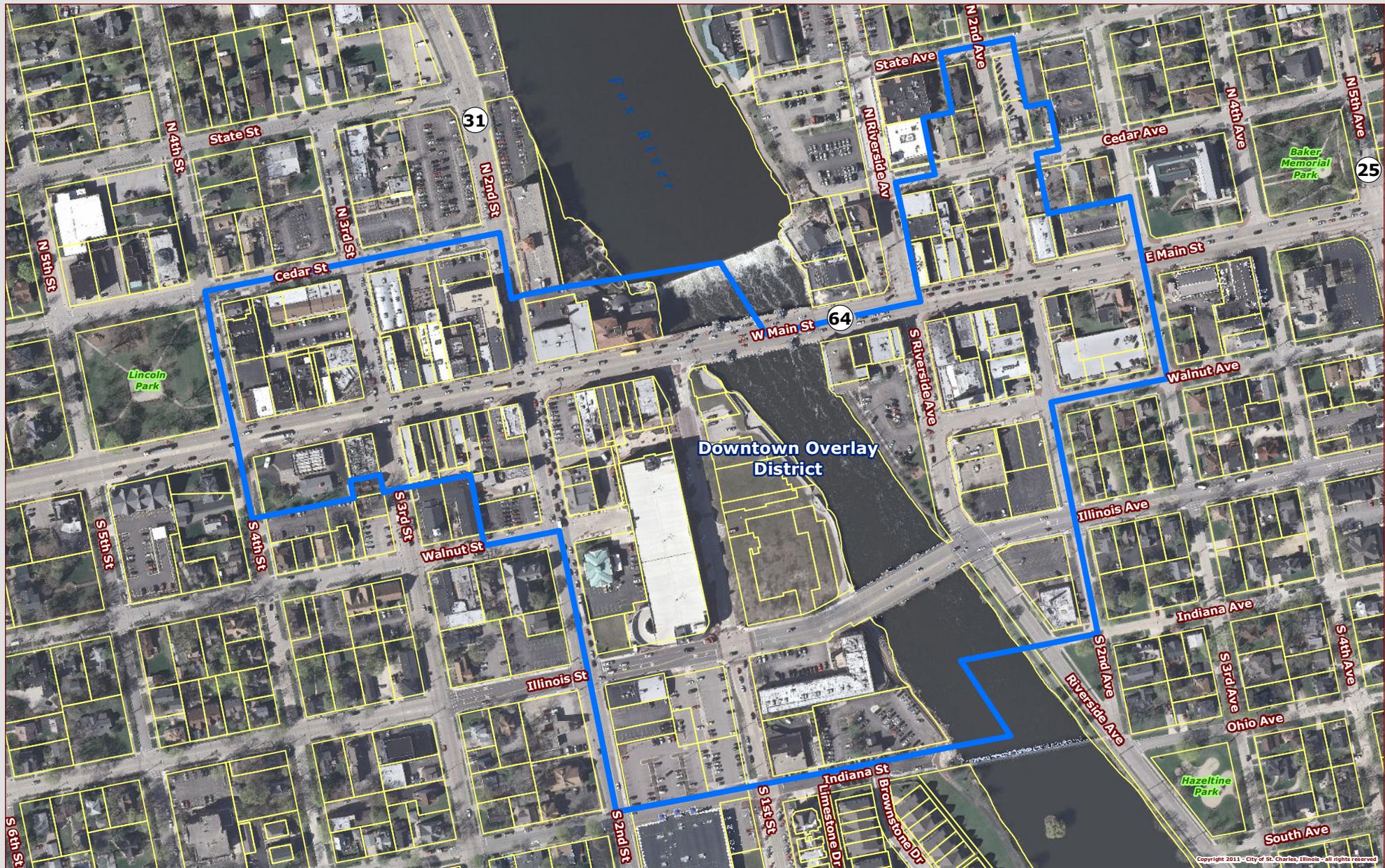
The Committee generally supported narrowing the exemption provisions, in particular the criteria related to Handicap Accessibility. The Committee felt that exempting a tenant space based on accessibility issues alone would allow too many older buildings in the downtown to qualify for an exemption. They also noted that other uses like a professional office require an accessible entrance to meet current building code requirements.

The Committee also generally discussed making the exemption provisions clearer and easier to apply. For example, a building that was historically constructed for use specifically as a bank could be exempted based on this information alone.

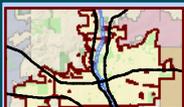
### **Conclusion**

City staff would like feedback from the Planning and Development Committee on the exemption provisions of the Downtown Overlay District.

The purpose and geographic scope of the district is expected to be revisited as a part of the Comprehensive Plan project.



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Downtown Overlay District      Parcels

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Memo

TO: Planning and Development Committee

FROM: Chris Aiston, Economic Development Director

DATE: June 30, 2011

RE: Downtown Overlay District – Ground Floor Use Limitations

Please be advised that it is the position of the Economic Development Department that if there were an amendment made to the Zoning Ordinance with respect to the existing use limitations for ground floor building space within the designated Downtown Overlay District, such amendment should increase the list of existing conditions that may justify allowing non-sales tax-producing uses.

The Department recognizes and generally supports the need to limit, long-term, the number and mass of non-sales tax-producing uses in our downtown business district. However, it is our position that existing economic conditions (retail contraction, low consumer confidence, etc.) would justify the City to relax existing code limitations that generally prohibit office, service and other miscellaneous commercial uses other than sales tax-producing types from occupying downtown ground floor space. Under current conditions, enhancing opportunities for building owners to lease vacant ground floor building space better serves the district than policies that keep such spaces vacant for extended periods of time. It is generally recognized that increased business begets more business and increased vacancies begets more vacancies.

Perhaps a temporary, middle-ground position may be considered, such as establishing a proviso wherein the expanded list of conditions that may allow non-sales tax-producing uses in ground floor spaces has a sunset date (say Dec. 31, 2013), reverting back to the more restrictive list thereafter. Under this scenario, I'd suggest that those uses put in place because of the temporarily applied expanded list, would then become legal, though non-conforming, after the sunset date.

In either case, if this initiative moves forward to a formal public hearing before the City's Plan Commission, the Economic Development Department will be prepared to discuss our position in greater detail and for the record.