

**BIRMINGHAM CITY COMMISSION MINUTES**  
**JULY 22, 2019**  
**MUNICIPAL BUILDING, 151 MARTIN**  
**7:30 P.M.**

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

Mayor Patty Bordman called the meeting to order at 7:30 PM.

**II. ROLL CALL**

Present: Mayor Bordman  
Mayor Pro Tem Boutros  
Commissioner DeWeese  
Commissioner Harris (arrived at 7:32 p.m.)  
Commissioner Hoff  
Commissioner Nickita  
Commissioner Sherman

Absent: None

Administration: City Manager Valentine, City Attorney Currier, Police Chief Clemence, Planning Director Ecker, DPS Manager Filipski, Assistant City Engineer Fletcher, Finance Director Gerber, Deputy Treasurer Klobucar, City Clerk Mynsberge, DPS Director Wood

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

**07-183-19 ANNOUNCEMENTS**

- City Attorney Currier read the following statement:

“There has been much dialogue regarding events that occurred at the last City Commission meeting. The issues are simple; the Open Meetings Act provides that citizens be allowed to comment at a meeting on issues not on the agenda. This is a right of free speech.

The Michigan Campaign Financing Act states that the City cannot authorize the use of any public resource in support of a political campaign or candidate.

The conflict that occurs between these acts is when individuals wish to use the public resources of the governmental cable television channel paid for by the City of Birmingham for the purposes of advocating for their political position or candidate. That is the use of a public resource.

The use of the governmental channel is without question a public resource, by the City allowing the channel to be used gives the appearance that it has been authorized by the City, which it has not.

This is not intended to impinge upon anyone’s free speech. From this point forward, we are going to ask for those that wish to address an issue on the ballot be allowed to speak first at the public comments section of the agenda. At such time, the City may turn off the broadcast of the meeting for the public comments section if advocacy occurs. There is no law that requires the City to broadcast its meetings, but the City feels it is important to do so. We believe that this is a solution to allow free speech at a public meeting in accordance with the Open Meetings Act and not violate the Michigan Campaign Financing Act.

We ask that individuals be respectful in making comments and not make personal attacks on individuals or other institutions in the City.”

- Mayor Bordman read the following statement:

“In November 2018 when I was sworn in as mayor, I took an oath of office that I would support the constitution of the State of Michigan. I also agreed in writing to be bound by a Birmingham City Ordinance that requires me to comply with the laws of the State and the City. All of the other commissioners sitting here today, and every person appointed to a City board must take this oath and enter into this agreement to comply with the laws of the state and city.

The Michigan Campaign Finance Act was enacted by the State of Michigan in 1976. It does not matter if I like or dislike the act, it makes no difference if I agree or disagree with the act. Whether it is bad policy or good policy does not matter. As mayor, I do not have the luxury to make those judgements. I swore an oath to abide by the law and the Michigan Campaign Finance Act is a duly enacted law of the state of Michigan.

When City Attorney Currier recommended to me to adjourn the meeting of July 8 in order that the City of Birmingham did not conflict with the law; I had no choice but to adjourn. Tonight we will follow Mr. Currier's advice in the manner in which he gave it, and I will remind you of that when we get to Public ~~Commit~~ Comment<sup>1</sup> later in the meeting."

- City Attorney Tim Currier added:
  - That he did recommend to the Mayor in light of the meeting getting heated to adjourn.
  - A number of reporters asked if anyone had ever been removed from a meeting, trying to compare the City of Birmingham with the City of Detroit Charter Commission.
  - In the 28 years that he has been here, the Commission had never removed anyone from a meeting.
  - It is not how this body conducts itself.
- Celebration of Commissioner Harris' birthday.
- The Birmingham Shopping District presents Day on the Town:
  - The biggest shopping day of the year in downtown Birmingham, on Saturday, July 27; from 9:00 a.m. until 6:00 p.m.
  - Birmingham merchants will place their discounted merchandise on display around the Maple and Old Woodward area.
  - Parking is free in all parking structures all day and at meters throughout the event.
- The Birmingham Fire Department is offering an American Heart Association recognized CPR class on Saturday, July 27, from 8:00 a.m. until noon, at the Adams Fire Station. Cost of the class is \$45. Register by calling the Fire Department at 248-530-1906.
- The City Commission extends its thanks to James Cunningham for his service on the Birmingham Museum Board and wishes him well in his future endeavors.
- In The Park Summer Concert Series continues in Shain Park:
  - Wednesday, July 24 with Sky Island Band (Motown-Blues-Jazz) at 7:00 p.m.
  - Wednesday, July 31 is Thornetta Davis (Funky Rocking Blues) at 7:00 p.m.

**07-184-19 APPOINTMENT TO THE MUSEUM BOARD**

The City Commission interviewed current member Judith Keefer.

**MOTION:** Motion by Commissioner Hoff:

To appoint Judith Keefer as a regular member to the Birmingham Museum Board to serve a three-year term to expire July 5, 2022.

VOTE:           Yeas,           7  
                   Nays,           0

City Clerk Mynsberge administered the Oath of Office to Ms. Keefer.

**IV. CONSENT AGENDA**

All items listed on the consent agenda are considered to be routine and will be enacted by one motion and approved by a roll call vote. There will be no separate discussion of the items unless a commissioner or citizen so requests, in which event the item will be removed from the general order of business and considered under the last item of new business.

**07-185-19 APPROVAL OF CONSENT AGENDA**

The following items were removed from the Consent Agenda:

Commissioner Hoff:           Item A - Resolution approving the Special City Commission meeting minutes of July 1, 2019.

Commissioner Nickita:       Recusal from Item A due to absence.

<sup>1</sup> As corrected on August 5, 2019

Item F - Resolution approving the purchase and installation of decorative aluminum fencing to be located at Booth Park, along North Old Woodward.

**MOTION:** Motion by Commissioner Sherman, seconded by Mayor Pro Tem Boutros:  
To approve the Consent Agenda, excluding Items A and F which were pulled from consent.

ROLL CALL VOTE:   Ayes:           Mayor Bordman  
  Mayor Pro Tem Boutros  
  Commissioner DeWeese  
  Commissioner Harris  
  Commissioner Hoff  
  Commissioner Nickita  
  Commissioner Sherman  
                                  Nays:           None

- B. Resolution approving the Regular City Commission meeting minutes of July 8, 2019.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated July 10, 2019 in the amount of \$1,307,978.67.
- D. Resolution approving the warrant list, including Automated Clearing House payments, dated July 17, 2019 in the amount of \$538,044.23.
- E. Resolution accepting the resignation of Richard Lilley as an Alternate Member of the Board of Zoning Appeals, thanking him for his service, and directing the City Clerk to begin the process of filling the vacancy.
- G. Resolution approving the fertilizer/chemical purchases for Lincoln Hills and Springdale Golf Courses from Harrell's for \$22,000, Target Specialty Products for \$22,000 and Great Lakes Turf for \$8,000. The total purchase from all vendors will not exceed a total of \$52,000. Funds are available from the Department of Public Services account #s 584/597-753.001-729.0000.
- H. Resolution approving the purchase of uniforms with Contractors Clothing Company for the total amount not to exceed \$9,000 for fiscal year 2019-2020. Funds are available in the Department of Public Services Uniform Allowance account # 101-441.002-743.0000.
- I. Resolution approving \$20,800 in Municipal Credits and \$7,917 in Community Credits from fiscal year 2020 to Next in support of their specialized transportation program; and approving \$21,932 in Community Credits from fiscal year 2020 to purchase and install a bus shelter (location to be determined); and further to direct the Mayor to sign the Municipal Credit and Community Credit contract for fiscal year 2020 on behalf of the City.
- J. Resolution approving the Amendment to License Agreement with enCodePlus, LLC, to provide for ordinance codification services on an as-requested basis at a rate of \$18 per page to be paid from Account # 101-215.000-815.02, and to direct the Mayor and City Clerk to execute the Amendment on behalf of the City.
- K. Resolution approving the METRO Act Application of CenturyLink Communications, LLC and the METRO Act Permit for Level 3 Communications, LLC for "Project Location 2" as shown on Exhibit A.
- L. To approve the purchase of (11) 4RE DVR camera systems from WatchGuard Video via Oakland County Cooperative Purchasing contract # 004898; further charging this expenditure in the amount of \$97,854.00 to the Drug and Law Enforcement Fund capital outlay account # 265-302-002-971.0100, further to direct the Mayor and City Clerk to sign the agreement on behalf of the City.

**07-186 -19                    (ITEM A) RESOLUTION APPROVING THE SPECIAL CITY COMMISSION MEETING MINUTES OF JULY 1, 2019.**

Commissioner Hoff pointed out that on page 7, the reference to Robinson should be Robertson.

**MOTION:** Motion by Commissioner Hoff, and seconded by Commissioner Sherman:  
To approve the Special City Commission meeting minutes of July 1, 2019 as corrected.

VOTE:           Yeas,           6  
                      Nays,           0

Recused, 1 (Commissioner Nickita)

**07-187-19 (ITEM F) RESOLUTION APPROVING THE PURCHASE AND INSTALLATION OF DECORATIVE ALUMINUM FENCE TO BE LOCATED AT BOOTH PARK, ALONG NORTH OLD WOODWARD.**

Commissioner Nickita suggested a citywide fence review to assure fence selections are more appropriate for the settings already created in Birmingham, and he would like to see fence consistencies throughout the City.

**MOTION:** Motion by Commissioner Nickita, and seconded by Mayor Pro Tem Boutros: To approve the purchase and installation of Decorative Aluminum Fence from Kimberly, LLC, in the amount not to exceed \$8,287.31, to be located at Booth Park, along North Old Woodward. Funds are available from the Parks Other Contractual Services account # 101-751.000-811.0000. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City.

VOTE: Yeas, 7  
Nays, 0

**V. UNFINISHED BUSINESS**

None

**VI. NEW BUSINESS**

**07-188-19 WIMBLETON PETITION STATUS REPORT**

Assistant City Engineer Austin Fletcher presented the item.

Commissioner Hoff asked if the engineering staff has met with petitioners. Assistant City Engineer Fletcher replied that the standard departmental practice is to validate the number of signatures obtained, and schedule an information session with the petitioners. Due to the timing of obtaining signatures, the department was not able to schedule the informational session before this meeting.

Commissioner Sherman recalled that the issue was removing Wimbleton from the cape seal project if they received the desired number of signatures on a petition for permanent improvements. He went on to say that the residents did an admirable job on obtaining signatures in record time, and he personally, feels there is no need to hear from the petitioners. Commissioner Sherman was comfortable removing Wimbleton from the cape seal list.

Mayor Bordman asked if every household on Wimbleton was approached. Dominick Pulis, 824 Wimbleton, replied that all households were approached, but feedback was not received from 30 properties.

Assistant City Engineer Fletcher confirmed for Commissioner Harris that 51.8% of households included additional properties referenced in the memo.

**07-189-19 PUBLIC HEARING OF CONFIRMATION FOR 2019 CAPE SEAL PROGRAM**

Mayor Bordman opened the public hearing at 7:52 p.m.

Mayor Bordman explained that during the Public Hearing on this program held at the July 8 City Commission meeting, there were some residents from Wimbleton who wanted their street to be improved rather than cape sealed. The residents were advised to get a petition signed by the majority of residents on Wimbleton agreeing to permanent street improvements. The petitioners were successful.

Deputy Treasurer Klobucar presented the item.

Commissioner Hoff suggested removing Wimbleton, like Lakeview, from this program. Both streets will be considered for the paving program next year. There was no public comment.

Mayor Bordman closed the public hearing at 7:56 p.m.

**MOTION:** Motion by Commissioner Sherman, and seconded by Mayor Pro Tem Boutros: To confirm Special Assessment Roll No. 892, to defray the cost of public street maintenance of all properties fronting and/or siding on the improvement within the 2019 Cape Seal, excluding

Wimbleton, between Woodward and Adams. (*Formal resolution appended to these minutes as Attachment A.*)

VOTE:           Yeas,           7  
                  Nays,           0

**07-190-19                   CAPE SEAL PROJECT CONTRACT AWARD**

DPS Manager Filipski presented the item and confirmed that the Request for Proposal made it clear that the City reserves the right to change the quantity/scope of work at any time.

Mayor Bordman noticed that Highway Maintenance and Construction, Inc. was the lowest bidder in five categories but twice as high in the manhole adjustment category. Mr. Filipski explained that manhole adjustments are always included in the City street maintenance bids as an alternate but rarely used. In this case, he does not anticipate using that category because the adjustments could be done in house by DPS staff if needed.

**MOTION:**     Motion by Commissioner DeWeese, and seconded by Commissioner Harris: Resolution approving the bid from Highway Maintenance and Construction, Inc. for services related to the 2019 Cape Seal Program, contingent upon the results of the related public hearing of necessity and confirmation of the special assessment roll, in amounts not to exceed the per-unit pricing as submitted; Double chip seal \$3.40/sq. yd., Single chip seal \$2.00/sq. yd., Slurry seal \$2.62/sq. yd., Pulverizing \$2.15/sq. yd., Street preparation \$400.00/ton and Manhole adjustment \$1000.00 each. Further, to authorize the Mayor and Clerk to sign the agreement on behalf of the City upon receipt of proper insurances.

VOTE:           Yeas,           7  
                  Nays,           0

**07-191 -19                   PUBLIC HEARING – PERNOI BISTRO PERMIT**

Mayor Bordman opened the public hearing at 8:00 p.m.

Planning Director Ecker presented the item.

The Planning Board recommended approval with added conditions. The applicant complied with those conditions and the plans were altered as a result.

Ms. Ecker confirmed for Commissioner Hoff that everything in the plan is in compliance, including proof of ownership.

Commissioner Nickita wanted to verify that owners understood that there would be no outdoor seating between November and April. Ms. Ecker confirmed.

Commissioner Nickita, in reference to the exterior front canopy, asked if anything conflicts with VIA signage. Ms. Ecker indicated that VIA has been identified and designed as such. She went on to say that this is a private VIA and everything conforms to the ordinance.

Commissioner Nickita persisted with whether there was some coordination of signage to not conflict with VIA. Ms. Ecker assured Commissioner Nickita that VIA signage would come up as part of the Maple Road plan and what Pernois is doing will not preclude the City from doing that.

Commissioner Nickita noted that on the plan, seating would be very visible from the sidewalk. Ms. Ecker confirmed, heavy drapes and heavy large planters, which blocked the windows from the sidewalk in the past, would not be there. She also confirmed that the owners would not be allowed to add anything without coming before the commission for a SLUP amendment.

Commissioner Hoff asked about the protrusion on Maple shown on the site plan. Ms. Ecker explained that it is a bumped out window, and is not in the ROW. She also expressed that it currently exists and that there is no proposed outdoor seating on Maple.

Mayor Bordman asked if the canopy extends into ROW. Ms. Ecker confirmed that it does, but noted that it was existing and grandfathered in years ago. She also confirmed that the proposed curtains are sheer.

Mayor Bordman closed the public hearing at 8:22 p.m.

Mayor Pro Tem Boutros expressed his support for the project.

Commissioner DeWeese expressed that he hopes they are successful and that they will extend their hours into the lunch period in the future.

**MOTION:** Motion by Mayor Pro Tem Boutros, and seconded by Commissioner Hoff: To approve a Special Land Use Permit and Final Site Plan and Design Review for 310 E. Maple to allow the operation of a new bistro, Pernoï, in accordance with Article 7, Section 7.34 of the Zoning Ordinance; and to authorize the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and to approve the liquor license request of Nuovo Holdings, LLC that requests a transfer of interest in a Class C License to be issued under MCL 436.1521(A)(1)(B) and SDM License with Outdoor Service (1 Area) located at 310 E. Maple, Birmingham, Oakland County, MI 48009; and pursuant to Birmingham City Ordinance, to authorize the City Clerk to complete the Local Approval Notice at the request of Nuovo Holdings, LLC approving the liquor license transfer request of Nuovo Holdings, LLC that requested a Class C License be transferred under MCL 436.1521 (A)(1)(B) & SDM License with Outdoor Service (1 Area) located at 310 E. Maple, Birmingham, Oakland County, MI 48009.

VOTE:           Yeas,           7  
                  Nays,           0

**VII. REMOVED FROM CONSENT AGENDA**

Items removed from the consent agenda were addressed earlier in the meeting.

**VIII. COMMUNICATIONS**

None

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

Mayor Bordman read the following statement:

"To ensure we are operating in compliance with all applicable statutes governing public meetings during the period of the current ballot initiative, and ensuring everyone has the opportunity to share their comments, we will institute some rules for the meeting tonight as we have previously done.

- Each individual will be provided two minutes for public comment.
- Individuals that choose to advocate during this time may cause the broadcasting of the meeting to be paused, but all speakers will be allowed to complete their two minutes as long as they are not a disturbance to the meeting.

The City welcomes public comment and wants to ensure its obligations to comply with all governing statutes."

- Clinton Baller, 822 Shirley, objected strenuously to new policy:
  - The commission have not defined what does and does not qualify under this new rule.
  - He has not seen any deliberation and does not understand who made the new rule.
  - He is a party to a lawsuit filed today charging the Mayor and City Manager with violating the first and fourteenth amendment rights of Mr. Bloom and himself and violating the Open Meetings Act.
- Brad Host, 639 Puritan, distributed something (unidentified) to City Attorney Currier. In reference to the July 5 study of the parking structure, he asked why the study was not done before July 5, and why refurbishment was not considered.
- Beth Davidson, 600 W Frank St., said:
  - This is one of my first meetings.
  - I am disappointed in what the process has been regarding the new project and parking deck.
  - I am disappointed in the dialog and communication.
  - I am disappointed in the participation of this Board and the activities that have gone on here.
  - This has been steamrolled to the community; the vote has been pushed through.
  - I do not appreciate the quantity of mailers.
  - This whole process has been discouraging. The city does not have my support for this project.
- Dianne McKeon, 555 Townsend, said:

- I sat on this commission for 8 years.
- I am truly disappointed with the amount of mailers that I have received.
- Today I received my tenth mailer saying to ignore the lies with Commissioners quoted.
- I am disappointed in the reaction from the City Commission and City Attorney.
- David Bloom, 5091 Stanley, said on Memorial Day I attended the ceremony in Shain Park. Our mayor, Patty Bordman, made a speech talking about the sacrifices that soldiers made in WWII. Millions of men and women have died defending our country and one of the things they were protecting was freedom of speech. Three City Commissioners are attorneys and Tim Currier is also an attorney. All have taken an oath to uphold the law. At the last meeting, the Commission violated our first amendment rights to speak and the Open Meetings Act. Attorney Currier disparaged Mr. Baller and me to the Detroit News. Our rights have been trampled on for the benefit of this project. We now have two federal lawsuits against this City because of this mess that this Commission has led. This is wrong. I would like to ask each of you if you go along with the shenanigans that this Commission has been engaging in.
- Brad Coulter, 498 Wimbleton, commented:
  - That he was very happy to see Wimbleton cape seal postponed in favor of improved streets.
  - In regards to the private/public partnership, the City needs to be more aggressive in asking for community benefits from the developers for phase 2.
  - The fair market value for ground leases should be the floor.
  - Funds should have been targeted for something for the City, for example targeting money for the seniors and youth of Birmingham.
- Paul Reagan, 997 Purdy St., asked Mr. Currier to reiterate the criteria for acceptable speech and asked what type of content constitutes political speech.
- City Attorney Currier reread his statement from the beginning of the meeting.
- Mayor Bordman referred everyone to the Michigan Campaign Finance Act, which defines "advocacy".
- City Manager Valentine responded to the question of why not refurbish rather than reconstruct the parking structure.
  - He explained that an analysis was done a few years ago as to which structures in the City allowed for the greatest opportunity for expanded parking capacity.
  - The decision was made at the time to pursue the North Old Woodward structure because it offered the greatest opportunity to expand parking and is the oldest in the City's parking system.
  - The structure is not failing; it is sound.
  - The façade is failing in regard to the ongoing maintenance required to keep the façade attached to the building.
  - Once the building was identified, for this project an analysis was still pursued for demolition purposes.
  - The intent was from the standpoint of having an existing footprint to accommodate a surface parking lot and garage for increased parking.
- City Attorney Currier added that the broadcast was not turned off tonight. Mayor Bordman thanked public participants for their courtesy.

<b>X.    REPORTS</b>
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**07-192-19                    COMMISSIONER REPORTS**

The City Commission will appoint one (1) alternate member to the Board of Zoning Appeals on September 16, 2019 to serve the remainder of a three-year term to expire February 17, 2020.

**07-193-19                    COMMISSIONER COMMENTS**

Commissioner DeWeese read the following statement:

"I am not a lawyer, but I have a sense when an interpretation or application of the law does not feel correct. I do not understand why the City Attorney directed the mayor to end the last City Commission meeting to stop some individuals expressing certain points of view. I do not understand the rationale for not allowing individuals to make comments on any topic in front of the City Commission. Virtually every comment made at a City Commission meeting is political in some form or another and is a form of political advocacy. Individuals expressing their opinions or concerns are not the City advocating or not for any topic. It is individuals so advocating. Based upon what you supplied such advocacy is legal per Michigan Campaign Finance Act Sec. 169.257 section 3(3) where "the production or dissemination of factual

information concerning issues relevant to the function of the public body” applies. The individuals were questioning the validity of information provided by the City and were trying to provide new information for consideration by the City Commission. Note that it is legal in section 3(d) for all individuals to have an equal opportunity to use the public facility to express their views.

To me, the City should not show favoritism or discouragement to any comments by individuals or groups advocating before it. I do not understand how a distinction can be made that some points of view (positive or negative) are not appropriate for public comment.

Comments made by individuals, negative or positive, provide an opportunity for the City to answer, if it chooses, with information and not advocacy by the City. If one chooses to be literal, the very fact that a person or group shows up at a City Commission and speaks is a use of public resources. Taken to the extreme, no one would be allowed to advocate a point of view at a City Commission meeting since public resources would be used even without it being broadcast.

None of the comments that were made for the individuals disallowed of making comments at the recent City Commission meeting are a violation of those listed as prohibited from any show produced for, with, or by BCTV. If BCTV feels that something is not appropriate, they can make the choice to not broadcast it. This is not the duty of the City or any governmental entity.

The basic notion of freedom of speech is the right to express any opinions without censorship or restraint. I am aware that this right is not absolute with common limitations or boundaries to freedom of speech being libel, slander, obscenity, pornography, sedition, incitement, fighting words, classified information, copyright violation, trade secrets, food labeling, non-disclosure agreements, the right to privacy, the right to be forgotten, public security, and perjury. None of these were involved with the persons not being allowed to speak at the City Commission meeting. Freedom of speech is a key concept in the US Constitution’s Bill of Rights and the United Nations’ Declaration of Human Rights. If any mistake is made in the interpretation of the laws or practice by government at any level, I believe it should favor openness and free expression.

To me the interpretation of law to prohibit “political advocacy” at televised public meetings is misplaced. I find it ironic that the denial of speech has strengthened the mistrust toward the City and is helping encourage a no vote on the bond issue. The City has the information needed to address the concerns without seeming so heavy-handed. I have always thought of Birmingham as a place where people can express their concerns without government interference.”

**07-194-19**

**CITY STAFF REPORTS**

Parking Utilization Report as submitted by Assistant City Manager Gunter.

**XI. ADJOURN**

Mayor Bordman adjourned the meeting at 8:50 p.m.

J. Cherilynn Mynsberge, City Clerk  
/vc



**07-189-19  
RESOLUTION CONFIRMING SPECIAL ASSESSMENT ROLL NO. 892**

- WHEREAS, To confirm Special Assessment Roll No. 892, to defray the cost of public street maintenance of all properties fronting and/or siding on the improvement within the 2019 Cape Seal as listed in the table above:
- WHEREAS, Special Assessment Roll, designated Roll No. 892, has been heretofore prepared by the Deputy Treasurer for collection, and
- WHEREAS, notice was given pursuant to Section 94-7 of the City Code, to each owner or party in-interest of property to be assessed, and
- WHEREAS, the Commission has deemed it practicable to cause payment of the cost thereof to be made at a date closer to the time of construction and Commission Resolution #07-178-19 provided it would meet this 22th day of July, 2019 for the sole purpose of reviewing the assessment roll, and
- WHEREAS, at said hearing held this July 22, 2019, all those property owners or their representatives present have been given an opportunity to be heard specifically concerning costs appearing in said special assessment roll as determined in Section 94-9 of the Code of the City of Birmingham,

NOW, THEREFORE, BE IT RESOLVED, that Special Assessment Roll No. 892 be in all things ratified and confirmed, and that the City Clerk be and is hereby instructed to endorse said roll, showing the date of confirmation thereof, and to certify said assessment roll to the City Treasurer for collection at or near the time of construction of the improvement.

BE IT FURTHER RESOLVED, that special assessments shall be payable in one (1) payment as provided in Section 94-10 of the Code of the City of Birmingham at six and one half percent (6.5%) annual interest.

I, Cherilynn Mynsberge, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on July 22, 2019.

Cherilynn Mynsberge, City Clerk

**07-191-19  
RESOLUTION  
SPECIAL LAND USE PERMIT  
PER NOI BISTRO  
310 E. MAPLE**

- WHEREAS, Per Noi filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a new bistro as defined in Article 9, section 9.02 of Chapter 126, Zoning, of the City;
- WHEREAS, The land for which the Special Land Use Permit is sought is located on the south side of E. Maple between Old Woodward and Woodward Avenue;
- WHEREAS, The land is zoned B-4, Business Residential, and is located within the Downtown Birmingham Overlay District, which permits bistros with a Special Land Use Permit;
- WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;
- WHEREAS, The Planning Board on June 12, 2019 reviewed the application for a Special Land Use Permit and Final Site Plan and Design Review for the proposed Per Noi bistro and recommended approval of the same for 310 E. Maple – Per Noi pending receipt of the following items and approval of those items by the Planning Department and the Chairman of the Planning Board:
- 1) An aerial photo of the site and at least 200 feet of the surrounding area.
  - 2) Removal of all isinglass and other enclosure systems from the outdoor dining area and the addition of a trash receptacle.
  - 3) Confirmation that no existing or proposed curbing will be present in the outdoor dining area.
  - 4) Submission of complete and consistent signage plans for review by the Planning Department and the Chair of the Planning Board to determine all sign requirements have been met.
- WHEREAS, The applicant has complied with all of the conditions noted by the Planning Board;
- WHEREAS, The Birmingham City Commission has reviewed the Per Noi Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;
- NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that Per Noi’s application for a Special Land Use Permit authorizing the operation of a bistro at 310 E. Maple in accordance with Chapter 10, Alcoholic Liquors, is hereby approved;
- BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted to allow the operation of a new bistro at 310 E. Maple with the following conditions:
- 1) Per Noi shall abide by all provisions of the Birmingham City Code; and
  - 2) The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest including, but not limited to, violations of the state law or Birmingham City Code.

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

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

I, Cherilynn Mynsberge, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on July 22, 2019.

Cherilynn Mynsberge, City Clerk