

BIRMINGHAM CITY COMMISSION MINUTES
JANUARY 14, 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

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

Administration: City Manager Valentine, City Attorney Kucharek, Police Chief Clemence, City Planner Cowan, Planning Director Ecker, Finance Director Gerber, City Engineer O'Meara, HR Manager Myers, City Clerk Mynsberge, Museum Director Pielack

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

01-001-19 ANNOUNCEMENTS

- The Birmingham logo concepts from Brownie Troop #76371 of Harlan Elementary School were recognized.
- Mayor Bordman's birthday was celebrated.
- The Baldwin Public Library is hosting a 2018 Income Tax Law Update on January 29th, from 7:00 until 8:00 p.m. CPA Tom Hill will present. Register at www.baldwinlib.org or by calling 248-554-4650.

01-002-19 APPOINTMENTS TO THE PUBLIC ARTS BOARD

The Commission interviewed current Board members Linda Wells and Rabbi Boruch Cohen.

MOTION: Motion by Commissioner DeWeese:

To appoint Linda Wells to the Public Arts Board, as a regular member, for a three-year term to expire January 28, 2022.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

MOTION: Motion by Mayor Pro Tem Boutros:
To appoint Rabbi Boruch Cohen to the Public Arts Board, as a regular member, for a three-year term to expire January 28, 2022.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

01-003-19 APPOINTMENT TO THE PARKS AND RECREATION BOARD

The City Commission interviewed new applicant Dominick Pulis.

MOTION: Motion by Commissioner Hoff:
To appoint Dominick Pulis to the Parks and Recreation Board, as an alternate member, for the remainder of a three-year term to expire March 13, 2020.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

01-004-19 APPOINTMENTS TO THE HISTORIC DISTRICT STUDY COMMITTEE

The City Commission interviewed new applicants Jacob German and Colleen McGough.

MOTION: Motion by Commissioner Hoff:
To appoint Jacob German to the Historic District Study Committee as a regular member to serve the remainder of a three year term to expire June 25, 2021.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

MOTION: Motion by Mayor Pro Tem Boutros:
To appoint Colleen McGough to the Historic District Study Committee as a regular member to serve the remainder of a three year term to expire June 25, 2021.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

01-005-19 APPOINTMENT OF ALTERNATE HEARING OFFICER

Applicant Karen Liddle was unable to attend. The interview will be rescheduled.

City Clerk Mynsberge administered the Oath of Office to the appointees.

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.

01-006-19 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Commissioner Hoff:
 - Item I; Service agreement with Great Lakes Roofing Inc., to provide Roofing Repair/ Replacement Services
 - Item K; Sculpture Loan Addendum
 - Item M; Woodward Ave. & Maple Rd. Traffic Signal Replacement Mast Arm Style Upgrade
 - Item N; S. Eton Rd. Signing & Pavement Marking Improvements Contract #3-19

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita: To approve the Consent Agenda, with Items I, K, M, and N removed, and with special recognition of the service of Francis Rodriguez and Alexander Jerome.

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

 Nays: None

- A. Resolution approving the City Commission meeting minutes of December 10, 2018.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated December 12, 2018 in the amount of \$850,309.68.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated December 19, 2018 in the amount of \$1,502,768.64.
- D. Resolution approving the warrant list, including Automated Clearing House payments, dated January 3, 2019 in the amount of \$2,825,233.54.
- E. Resolution approving the warrant list, including Automated Clearing House payments, dated January 9, 2019 in the amount of \$590,385.27.
- F. Resolution approving a request from the Birmingham Memorial Day Committee to hold the Memorial Day Service in Shain Park on May 27, 2019 from 10:00 – 11:00 am, contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

- G. Resolution accepting the resignation of Francis Rodriguez from the Board of Zoning Appeals as an alternate member, thanking him for his service, and directing the City Clerk to begin the process of filling the vacancy.
- H. Resolution accepting the resignation of Alexander Jerome from the Housing Board of Appeals, thanking him for his service, and directing the City Clerk to begin the process of filling the vacancy.
- J. Resolution setting a public hearing for February 11, 2019 at 7:30 p.m. to consider the following amendments:
 - 1. Ordinance amending Chapter 86, Article 1, Section 1.05, Permanent Business Sign and Broadcast Media Device Standards, to amend Subsection M to add application and maintenance requirements to window signage.
AND
 - 2. Ordinance amending Chapter 86, Article 1, Section 1.10, Overlay District Sign Standards, to eliminate the Overlay District Sign Standards.
AND
 - 3. Ordinance amending Chapter 126, Article 03, Overlay Districts, Specific Standards, Section 3.04, Downtown Overlay District to eliminate the Overlay Signage Standards.
- L. Resolution awarding the 2018-2019 Public Services contract totaling \$10,086.00 for Yard Services and Senior Outreach Services to NEXT under the Community Development Block Grant Program; and further, authorizing the Mayor to sign the contract on behalf of the City.

01-007-19 ITEM I. ROOFING REPAIR/REPLACEMENT SERVICES FOR ALLEN HOUSE AND HUNTER HOUSE

Museum Director Pielack explained:

- Because the Hunter House is an individually designated historic property in the Mill Pond historic district, no architectural changes can be made. Vents are not a current element of the architecture.
- It is possible vents could be included in the Allen House, but that would require additional research to see if it were allowable. The Allen House is also in the Mill Pond historic district.
- Because of the State and Historic District Committee requirements, the roofs have to be repaired in historically accurate ways. Without the roof vents, the manufacturer will only warranty the shingles for 10 years, as opposed to the usual thirty.
- The shingles being replaced are about twenty to thirty years old.

City Manager Valentine noted that the City is currently pursuing National Historic designation for the Allen House, which may also limit what kind of structural changes could be made to the roof.

Commissioner Hoff stated that while a ten year warranty is not very long, she would not want to do anything that could affect the historical designation of the Allen House.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Boutros:
To approve a service agreement with Great Lakes Roofing Inc., in the amount not to exceed \$ 35,007.00 to provide Roofing Repair/ Replacement services; \$24,287.00 to be charged to the Allen House Capital Improvement account #401-804.002-977.0000, and \$8,020.00 to be charged to the Hunter House Capital Improvement account #401-804.001-977.0000, and directing the Mayor and City Clerk to sign the agreement on behalf of the City.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

01-008-19 ITEM K. SCULPTURE LOAN ADDENDUM

Planning Director Ecker clarified that the four listed sculptures had clauses in their contracts that said the artist would sign a release to use photographs of the sculptures in promotional materials, but the releases were never signed. The City is currently attempting to get those releases signed.

In the meantime, the Public Arts Board would like to proceed with promotional materials featuring photographs of the sculptures for which the City does have releases.

City Planner Cowan explained that the Planning Department is working with City Attorney Currier to incorporate the clause allowing promotional photography of the sculptures in all future lease agreements.

Mayor Bordman provided typographical corrections in the agreement to the City Clerk.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner DeWeese:
To approve the addendums to the sculpture loan agreement for L.O.L., Windswept, and Eastern Hophornbeam to allow the City to use photos of loaned sculptures for promotional materials.

AND

Further, to direct the Mayor and City Clerk to sign the addendums on behalf of the City.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

01-009-19 ITEM M. WOODWARD AVE. & MAPLE RD. TRAFFIC SIGNAL REPLACEMENT MAST ARM STYLE UPGRADE

Commissioners were in favor of using the same mast arm style at Woodward and 14 Mile. Staff was directed to seek a collaborative payment arrangement with Royal Oak.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner DeWeese:
To approve the agreement with the Michigan Dept. of Transportation, Contract Number 18-5273, committing to the expenditure of \$79,900 to cover the cost differential of upgrading the traffic signal at Woodward Ave. & Maple Rd. to match the mast arm design currently used elsewhere within the Central Business District, and to direct the Mayor and City Clerk to sign the contract on behalf of the City. (*Formal resolution appended to these minutes as Attachment A*).

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

01-010-19 ITEM N. S. ETON RD. SIGNING & PAVEMENT MARKING IMPROVEMENTS CONTRACT #3-19 (P)

City Engineer O'Meara explained that there are a lot of features on S. Eton that were not part of the W. Maple project, including bike lanes, higher quality paint, and bumpout markings.

Chief Clemence confirmed PK Contracting is the same firm that did the W. Maple project.

Mayor Bordman expressed concern that there was only one bid received for this project. She requested that staff pursue more than one bid by publicizing projects beyond MITN for future projects.

City Engineer O'Meara explained that PK Contracting tends to do all pavement marking work in the area and noted interested companies would be checking MITN for projects.

City Engineer O'Meara said:

- He would reach out to Ferndale and Royal Oak to see if PK Contracting is the vendor doing similar work in those cities, or if there are other contractors involved.
- Taking two weeks to look into similar projects in Ferndale and Royal Oak should not pose a problem for the project.
- There would be time to re-bid the project and still complete it in 2019 if the Commission chooses to do so after City Engineer O'Meara looks into the similar Ferndale and Royal Oak projects.

City Manager Valentine explained that the bids may have been limited by the fact that this is a more intricate project than the standard lane painting project.

The Commission agreed to take no action and to hear City Engineer O'Meara's findings at the next meeting.

V. UNFINISHED BUSINESS

01-011-19 GREENWOOD CEMETERY PAYMENT PLAN POLICY

City Clerk Mynsberge presented her memo dated January 4, 2019.

Mayor Bordman said that in multiple plot purchases the City should consider requiring the monies be remitted to the City before the two year payment plan is complete.

Commissioner Sherman said he did not see why it would be difficult for the Contractor to remit monies in any circumstances before a two year payment plan is complete. He stated that these are the City's funds, that the Commission is responsible for the care of those funds, and that the City does not normally let a third party hold onto City funds and earn interest on them for two years.

City Manager Valentine explained that creating separate books in Finance and in the Clerk's Office to track these payments could cost more than the benefit gained by having the monies transferred immediately.

City Clerk Mynsberge stated the Perpetual Care Fund receives \$2,250 from each plot sold.

Mayor Bordman suggested that the City could require all payment plan monies be placed in an escrow account. She asked why, in paragraph six, the plot purchaser would need to know the breakdown of monies kept by the Contractor and the City. She explained that such information belongs in a contract with the Contractor, not in the payment plan policy for a plot purchaser.

Commissioner Harris agreed the relevant provisions are paragraphs one through five.

The Commission requested the relevant sections in paragraphs three and five be changed to "plot or plots" to indicate a purchaser is not restricted to only one plot.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Harris:
To amend the Operational Procedures, Conditions and Regulations for the Greenwood Cemetery to add Section IX. LOT SALES - PAYMENT PLAN POLICY as amended on January 14, 2019, Paragraphs 1-5 only. Further, to renumber the subsequent three paragraphs accordingly:

- X. LOT RESALE POLICY
- XI. SCHEDULE OF FEES AND CHARGES
- XII. REVISIONS

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

Commissioner Hoff asked that the Commission be made aware when a contractor is present at a Commission meeting so the Commission may ask questions.

Mayor Bordman suggested staff discuss an escrow account and the receipt of 75% of the sale by the City with the Contractor. She noted both could result in contract amendments.

VI. NEW BUSINESS

**01-012-19 SPECIAL LAND USE PERMIT AMENDMENT FOR 263 PIERCE –
 ELIE'S MEDITERRANEAN CUISINE-OWNERSHIP CHANGE**

Mayor Bordman opened the public hearing at 8:49 p.m.

Planning Director Ecker presented the item.

Police Chief Clemence confirmed that only Elie Mondalek's name would be on the liquor license moving forward.

Mayor Bordman closed the public hearing at 8:50 p.m.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese:
To approve the Special Land Use Permit Amendment for 263 Pierce – Elie’s Mediterranean Cuisine to reflect an ownership change from Tracey and Elie Mondalek to Elie Mondalek as sole owner. *(Formal resolution appended to these minutes as Attachment B.)*

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

**01-013-19 CONSIDERATION OF BIRMINGHAM FIREFIGHTERS
ASSOCIATION SEPTEMBER 18, 2018 GRIEVANCE**

Human Resource Director Myers presented the item.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To waive consideration of the Birmingham Firefighters Association Local 911 grievance of September 18, 2018.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

**01-014-19 CONSIDERATION OF BIRMINGHAM FIREFIGHTERS
ASSOCIATION OCTOBER 3, 2018 GRIEVANCE**

Human Resource Director Myers presented the item.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese:
To waive consideration of the Birmingham Firefighters Association Local 911 grievance of October 3, 2018.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

01-015-19 REQUEST FOR CLOSED SESSION

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Boutros:
To meet in closed session to A) discuss an Attorney/Client communication pursuant to Section 8(h) of the Open Meetings Act; and B) review pending litigation in the matter of 2400 Lincoln, LLC pursuant to Section 8(e) of the Open Meetings Act, MCL 15.261 – 15.275.

(A roll call vote is required and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)

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

City Manager Valentine stated the City did not anticipate any action following the closed session.

VII. REMOVED FROM CONSENT AGENDA

Items removed from the Consent Agenda were addressed earlier in the meeting.

VIII. COMMUNICATIONS

Mr. Craig Hall presented a request to modify a City ordinance to allow appeal of single family residence quarterly Storm Water Utility Fee, per his letter of January 2, 2019.

City Manager Valentine clarified that homeowners can get credits for a reduction on their storm water bill through improvements to their property.

Andrew Haig, 1814 Banbury distributed hard copies of a presentation to the Commissioners presenting a different methodology, questioned the difference in rates in neighboring communities, and asked how Birmingham calculates costs.

Andrew Sulich, 320 Lakeside, asked about a dual meter system.

Frederick Simms, 1486 Dorchester, said:

- The City has a combined sanitary and storm water system which was decided on 25 years ago, which is part of the problem.
- He has 57 trees on his property which do a lot for the City, and that perhaps there should be an exemption for pervious land.
- Some of the trees in the public right-of-way have roots that go right up to his property, so he is watering those too and should receive a credit for that.

City Manager Valentine clarified that the City's ordinance allows for appeal of the size of the lot for miscalculations although homeowners cannot appeal the class they are in. City Manager Valentine then introduced Mike MacDonald and Jim Surhigh, with Hubbell Roth and Clark, to explain how the ordinance was created and what it was designed to do.

City Manager Valentine noted the topic of dual water meters is on the agenda for the Commission's Long Range Planning meeting on Saturday, January 26.

Mr. Surhigh explained:

- Birmingham is almost entirely a combined sewer community, meaning the sanitary and storm sewers are combined.

- Royal Oak is combined, Warren is separate, and Bloomfield Township has a small portion of its community which is combined, for examples. Comparing Birmingham's billing to adjacent municipalities is therefore difficult due to the different circumstances each municipality faces.
- Birmingham's storm water incurs charges of over \$2 million annually from Detroit and the State.

City Engineer O'Meara said that more fair comparisons would be to the municipalities of Royal Oak, Pleasant Ridge, and Ferndale since they are largely combined sewer communities.

City Manager Valentine confirmed:

- The City's current method allows for less administrative overhead than some other potential ways of calculating costs, meaning the charges are closer to the true cost of water usage per residence instead of incurring additional significant administrative fees.
- Birmingham has been petitioning its representatives in Lansing to develop a Storm Water statute in order to provide additional guidance on the matter.
- There is an opportunity to amend the ordinance in the future, but City Manager Valentine recommends holding off until adoption of a state statute.
- The City's Long Range Planning meeting will be January 26, 2019 from 8:30 a.m. until approximately 2:30 p.m. in the Commission room.

Commissioner Nickita noted that this issue will be designated for a particular time on the Long Range Planning meeting agenda which will be posted on the City's website.

Mayor Bordman thanked the audience for attending and for their comments.

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

None

X. REPORTS

01-016-19 COMMISSIONER REPORTS

The City Commission will appoint one alternate member to the Board of Zoning Appeals on February 11, 2019.

The City Commission will appoint two regular members to the Housing Board of Appeals on February 11, 2019.

01-017-19 COMMISSIONER COMMENTS

Mayor Bordman expressed concern that Lululemon on Maple has an entire window covered with a sticker when the City ordinance requires windows not be blocked in a retail area. She asked staff to pursue the issue.

Commissioner Nickita agreed and also cited a storefront to the east of Panera which has a screened graphic covering its entire window. He suggested it may be against the spirit of the ordinance to cover an entire window with a screen, if not the letter, and asked staff to look into whether that is a loophole.

City Manager Valentine told the Commission that Lululemon received a variance from the Board of Zoning Appeals to fill in that particular window.

Mayor Bordman asked staff to look at how to prevent similar work-arounds or variances regarding this issue. She said Lululemon is using that window for storage, and that there are better solutions for storage.

Mayor Bordman suggested that Birmingham boards which are advisory in nature should have their names updated to reflect that information. She cited the Parks and Recreation Board and the Public Arts Board as examples. She said adding the word 'advisory' where appropriate would help board volunteers better understand the relevant boards' role in the government.

City Manager Valentine told Mayor Pro Tem Boutros that neon signs are already prohibited in the City. In addition, the Planning Board is in the process of reviewing sign standards to make them consistent throughout the City.

Commissioner Nickita said he would like the Planning Board to consider prohibiting illuminated "Open" signs in windows.

City Manager Valentine confirmed that could be added to the list of topics for the Commission and Planning Board to discuss in the future, although it will not be addressed as part of the upcoming public hearing on signage.

01-018-19

CITY STAFF

The Commission received the Parking Utilization Report as submitted by Assistant City Manager Gunter.

XI. ADJOURN

The meeting was adjourned to closed session at 9:54 p.m.

Mayor Bordman reconvened the regular meeting at 10:34 p.m. and, there being no further business, adjourned the meeting at 10:34 p.m.

J. Cherilynn Mynsberge, City Clerk

RESOLUTION 01-009-19

APPROVING CONTRACT #18-5273 WITH MDOT FOR UPGRADE OF TRAFFIC SIGNAL AT WOODWARD AVE. & MAPLE ROAD TO MATCH THE MAST ARM DESIGN CURRENTLY USED WITHIN THE CENTRAL BUSINESS DISTRICT

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

To approve the agreement with the Michigan Dept. of Transportation, Contract Number 18-5273, committing to the expenditure of \$79,900 to cover the cost differential of upgrading the traffic signal at Woodward Ave. & Maple Rd. to match the mast arm design currently used elsewhere within the Central Business District, and to direct the Mayor and City Clerk to sign the contract on behalf of the City. Funding will be charged to the Major Street Fund, account number 202-449.001-981.0100.

Further, to approve the appropriation and amendment to the 2018-2019 General Fund and Major Street Fund budgets as follows:

General Fund		
Revenues:		
Draw from Fund Balance		
101-000.000-400.0000		<u>\$79,900</u>
Total Revenue		<u>\$79,900</u>
Expenditures:		
Transfers Out – Major Street Fund		
101-999.000-999.0202		<u>\$79,900</u>
Total Expenditures		<u>\$79,900</u>
Major Street Fund		
Revenues:		
Transfers from Other Funds – General Fund		
202-000.000-699.0101		<u>\$79,900</u>
Total Revenue		<u>\$79,900</u>
Expenditures:		
Construction – Public Improvements		
202.449.001-981.0100		<u>\$79,900</u>
Total Expenditures		<u>\$79,900</u>

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

**RESOLUTION 01-012-19
SPECIAL LAND USE PERMIT AMENDMENT FOR 263 PIERCE – ELIE’S
MEDITERRANEAN CUISINE-OWNERSHIP CHANGE**

WHEREAS, Elie’s Mediterranean Cuisine filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to transfer ownership of the bistro as defined in Article 9, section 9.02 of Chapter 126, Zoning, of the City Code from the current owners Tracy and Elie Mondalek, to Elie Mondalek, as sole owner;

WHEREAS, The land for which the Special Land Use Permit is sought is located on the east side of Pierce Street between Martin and Merrill;

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 July 22, 2009 reviewed the application for a Special Land Use Permit and recommended approval with the following conditions:

- (1) The applicant clarify that business hours are to remain the same;
- (2) The applicant enter into a revised license agreement with the City for the use of the public right-of-way, and provide the required insurance.
- (3) The applicant sign a revised Bistro Contract;
- (4) The applicant appear before the City Commission for revised final site plan and SLUP amendment review;
- (5) The applicant comply with requests of City Departments.

WHEREAS, The Historic District Commission approved the exterior design changes and the proposed outdoor dining design and layout on July 15, 2009;

WHEREAS, The applicant is required to obtain an amended Outdoor Dining License from the City Clerk’s office for the proposed outdoor dining;

WHEREAS, The applicant has complied with all other conditions for approval as recommended by the Planning Board on July 22, 2009;

WHEREAS, The Birmingham City Commission has reviewed Elie’s Mediterranean Cuisine 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 Elie’s Mediterranean Bar/Grill application for a Special Land Use Permit authorizing the operation of a bistro at 263 Pierce 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 subject to the following conditions:

1. Elie's Mediterranean Bar/Grill shall abide by all provisions of the Birmingham City Code;
2. The Special Land Use Permit Amendment may be canceled by the City Commission upon finding that the continued use is not in the public interest;
3. The hours of operation for outdoor dining shall cease at 12:00 a.m.;
4. Elie's Mediterranean Bar/Grill shall provide for the removal of disposable materials resulting from the operation and maintain the area in a clean and orderly condition by providing the necessary employees to guarantee this condition, and by the placement of a trash receptacle in the outdoor seating area;
5. Elie's Mediterranean Bar/Grill shall maintain a license agreement for use of the public right-of-way with the appropriate insurance certificates; and
6. Elie's Mediterranean Bar/Grill shall enter into a contract with the City outlining the details of the proposed bistro option.

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, Elie's Mediterranean Bar/Grill 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 Elie's Mediterranean Bar/Grill to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit.