



## CITY of NOVI CITY COUNCIL

**Agenda Item 5**  
**November 13, 2012**

**SUBJECT:** Approval to refer to the Planning Commission to review and recommend Zoning Ordinance Text Amendments to apply Special Land Use standards for liquor license holders.

**SUBMITTING DEPARTMENT:** Community Development Department - Planning *Bau's*

**CITY MANAGER APPROVAL:** 

**BACKGROUND INFORMATION:**

Under the City's liquor license ordinance, Section 3-16, the City is required to approve all transfers of liquor licenses. Normally, the City Council reviews a liquor license transfer request after the City staff has completed a full review of an application (building, police, fire, etc.). The Michigan Liquor Control Commission (LCC) - part of the State's Department of Licensing and Regulatory Affairs (LARA) - recently issued a bulletin indicating that it will no longer require local government approval before issuing transfer licenses (as opposed to quota licenses). See attached excerpt from the agency's webpage.

These changes to the procedure for local government review are important because Novi's local background checks and City Council review are thorough and ensure review of the establishment and operators that sell a regulated commodity.

One alternative recommended for Novi is similar to the format Birmingham recently adopted for regulating bars and restaurant uses through Zoning Ordinance standards, which is to now regulate uses that sell alcoholic beverages as special land uses. Our initial thought for Zoning Ordinance provisions are that new bar or restaurant uses that request a liquor license would be subject to Special Land Use Review at the Planning Commission level. Existing license holders would be "grandfathered" in as non-conforming uses, at least until such time as there is a change in ownership of the restaurant/bar or of the license, or if there are significant changes to the site plan.

If the City Council is inclined to pursue Zoning Ordinance provisions to add standards for land uses that need a liquor license, then the recommended action below will direct the City Attorney's Office and Planning staff to coordinate with affected departments to prepare draft ordinance language for recommendation by the Planning Commission at a public hearing back to the City Council for consideration and adoption.

Please see the attached memorandum from the Public Safety Department with initial favorable comments for an ordinance amendment that would allow a mechanism for continued background checks for liquor license applicants.

**RECOMMENDED ACTION:** Approval to refer to the Planning Commission to review and recommend Zoning Ordinance Text Amendments to apply Special Land Use standards for liquor license holders.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Wrobel				

# Changes to the Michigan Liquor Control Commission License Application Process



Effective July 1, 2012, the Commission is changing the procedure for submitting applications to the Michigan Liquor Control Commission (MLCC), and obtaining approvals for licenses.



Approvals from local units of government are required only for the issuance of new licenses under MCL 436.1501. The Commission will continue to review all comments received under administrative rule R 436.1105(2), taking into consideration the opinions of the local residents, local legislative body, or local law enforcement agency with regard to the proposed business. The Commission will provide notice to the local legislative body of pending applications.

“We understand that communication, particularly with changes to the processes and procedures coming quickly, is very important, and we need to make sure that the public is informed on the changes that are taking place. While there certainly is some demand for the licensing process changes to be made immediately, we would like to advise that, while the

Commission is working diligently to create a smoother, faster, fairer, and more certain licensing process, we want to make sure we are doing our research, and making sure we fully understand the challenges and problems in the current process we have to correct,” said Chairman Andy Deloney.

New procedures effective July 1, 2012:

## Applications for New Licenses

- The first step in the application process for a new on-premises license is to submit the license application to the Commission, along with any license, permit, and inspection fees. This process will result in the immediate assignment of a request identification (RID) number by the Commission at the beginning of the application process. Additionally, this will allow the Commission to conduct an initial review of the application, to notify the applicant of deficient items, and to provide the applicant with the appropriate local and police forms, including blank fingerprint cards, where applicable.
- It will continue to be the responsibility of the applicant to directly submit requests for these local approvals to the local unit of government. The Commission cannot proceed with the licensing process or consider an application until that application is “complete,” as defined in MCL 436.1525(6). A completed application must include any information, records, approval, or similar item required by law or rule from a law enforcement agency or local unit of government.
- An application for a new license, which has not been previously issued by the Commission, requires approval of the local legislative body under MCL 436.1501(2) and the application will not be considered to be complete until such approval is received.”

## Applications for Transfer of Ownership, Transfer of Interest, or Transfer of Location of Existing Licenses

- An application for transfer of ownership of an existing license, transfer of interest in an existing license, or transfer of location of an existing license does not require approval of the local unit of government.

## Permits

- Applications for dance permits, entertainment permits, dance-entertainment permits, topless activity permits, and extended hours permits require approvals from both the local unit of government and local law enforcement agency, in addition to the Commission, under MCL 436.1916(10).

“We understand the importance of making sure that applicants are considered for licenses and permits as efficiently as possible, while making sure they are thoroughly vetted to the extent the law requires,” stated Deloney.

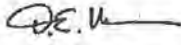
For more information about the MLCC, please visit [www.michigan.gov/lcc](http://www.michigan.gov/lcc). Follow us on Twitter [www.twitter.com/MILiquorControl](http://www.twitter.com/MILiquorControl), “Like” us on Facebook.

For more information about LARA, please visit [www.michigan.gov/lara](http://www.michigan.gov/lara). Follow us on Twitter [www.twitter.com/michiganLARA](http://www.twitter.com/michiganLARA), “Like” us on Facebook or find us on YouTube [www.youtube.com/michiganLARA](http://www.youtube.com/michiganLARA).

FROM LIQUOR CONTROL COMMISSION WEBPAGE

## MEMORANDUM



**TO:** DAVID E. MOLLOY   
DIRECTOR OF PUBLIC SAFETY/CHIEF OF POLICE

**FROM:** LIEUTENANT KEITH A. WUOTINEN

**SUBJECT:** SPECIAL LAND USE AND LIQUOR ESTABLISHMENTS

**DATE:** NOVEMBER 6, 2012

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### BACKGROUND:

In July, 2012, the Michigan Liquor Control Commission (MLCC) changed their operating procedures and/or their rules to no longer require local government review and approval for liquor license transfers. They have indicated that although they will no longer require local approval, that local units of government are still free to express their opinions under Rule 436.1105(2), however those opinions will not be binding. That rule is attached.

In the past, the MLCC had always required local approval, and allowed the local unit of government to conduct a background check on those involved, to help ensure that improper people (those with relevant criminal records or those who may have had a prior history of not being able to run a business under a liquor license without causing unlawful disruption to the community, or similar) were not moving licensed liquor establishments into their community.

One potential solution to this problem that has been suggested and used by at least one other community, Birmingham, is to rezone the various areas and require a special land use permit from the local unit of government for licensed liquor activity. This process, if adopted in Novi, would allow the City of Novi to continue to conduct the usual background checks that have always been conducted and help ensure the safety of the community by allowing some local regulation and control on who or whether these liquor license transfers are allowed to enter the community.

Adoption of such an ordinance would not be an expansion of the local regulation or control, but rather, would only serve to restore the same level of local review and control that was in place prior to July, 2012.

### IS SUCH AN ORDINANCE LAWFUL?

The inclusion of all or most licensed liquor establishments as a special land use (the Birmingham approach) appears to be a novel and relatively new approach to allowing Birmingham to regain local control and regulation, despite the recent changes that were made by the MLCC.

I was unable to find any specific case law or statutory law that would definitively prohibit such an approach. In the past, the Michigan courts have upheld some, and also struck down some, local regulations that impacted licensed liquor establishments. For example, a local resolution by a City that established priorities for license approval was held to be valid and not violate equal protection. *Jones v City of Troy*, 405 F Supp 464, (E.D. Mich-1975). Also, local units of government retain their police powers to regulate alcohol, subject to the MLCC where a direct conflict arises. See *Allen v Liquor Control Com'n*, 122 Mich App 718 (1982). However, in *Sherman Bowling Center v City of Roosevelt Park*, 154 Mich App 576 (1986), the court held that the MLCC pre-empted local control.

With regard to the more specific issue of zoning as it relates to the MLCC in this context, there is, again, nothing that would, at this time, specifically prohibit such an approach. Where adult entertainment establishments with liquor licenses are concerned, there has been some litigation in that area, however, the issues were a bit different than the present case.

Given the case and statutory law that I was able to locate on this specific issue, the approach being taken by Birmingham appears to be a reasonable one and is one that should be considered by Novi.

#### POLICE DEPARTMENT BACKGROUND CHECKS:

The Novi Police Department is especially well adept and familiar with conducting the requisite background checks related to these liquor license transfers (particularly since we were doing them prior to the July, 2012, change in position by the MLCC). The Novi Police Department should be included in the process, for background and related suitability investigations, for all licensed liquor establishments that are entering Novi, whether as a new license or a transfer license, or similar.

Therefore, if Novi does choose to adopt a zoning ordinance similar to what Birmingham has adopted, the background check requirements similar to what have been conducted in the past should be included as an integral part of the ordinance, and these matters can be handled by the Novi Police Department. In addition to the factors listed in Rule 435.1105 (attached below), factors such as the financial background and suitability of the applicant, the applicant's criminal history, prior history and experience in the business- including prior experiences at other locations, are all items that a comprehensive police background investigation can provide, thereby giving our City leaders the information they need to make an informed and appropriate decision about licensed liquor establishments.

Additionally, the sale of alcohol has always been, and continues to be, a pervasively regulated industry. Within this industry, such high levels of application, regulation, inspection, and suitability requirements are not new and indeed, are expected, by applicants and the community, to help ensure that the business of alcohol sales occurs in a responsible and safe manner.

**Status of MLCC taking local comments regarding transfers  
(From MLCC Bulletin 2012-12, June 21, 2012)**

"The Commission will continue to review all comments received under administrative rule R 436.1105(2), taking into consideration the opinions of the local residents, local legislative body, or local law enforcement agency with regard to the proposed business."

**R 436.1105 Application for license; denial; grounds.**

Rule 5. (1) An applicant for a license shall provide evidence in the application of, or demonstrate at a hearing, all of the following:

(a) Any of the following:

(i) If an individual, that the applicant is the legal age for the consumption of alcoholic liquor in this state.

(ii) If a partnership, that all partners are the legal age for the consumption of alcoholic liquor in this state.

(iii) If a privately held corporation, that all stockholders are the legal age for the consumption of alcoholic liquor in this state, unless the stock of the stockholders is held in a fiduciary relationship.

(iv) If a limited liability company, that all members are the legal age for the consumption of alcoholic liquor in this state.

(b) The existence of adequate legitimate and verifiable financial resources for the establishment and operation of the proposed licensed business in proportion to the type and size of the proposed licensed business.

(c) The existence of an adequate physical plant or plans for an adequate physical plant appropriate for the type and size of the proposed licensed business.

(d) That the location of the proposed licensed business shall adequately service the public.

**(2) The commission shall consider all of the following factors in determining whether an applicant may be issued a license or permit:**

(a) The applicant's management experience in the alcoholic liquor business.

(b) The applicant's general management experience.

(c) The applicant's general business reputation.

(d) The opinions of the local residents, local legislative body, or local law enforcement agency with regard to the proposed business.

(e) The applicant's moral character.

(f) The order in which the competing initial application forms are submitted to the commission; however, this subdivision shall not apply to an application for a resort license authorized by section 531 of 1998 PA 58, MCL 436.1531.

(g) Past convictions of the applicant for any of the following:

(i) A felony.

(ii) A crime involving the excessive use of alcoholic liquor.

(iii) A crime involving any of the following:

(a) Gambling.

(b) Prostitution.

(c) Weapons.

(d) Violence.

(e) Tax evasion.

(g) Fraudulent activity.

(h) Controlled substances.

(iv) A misdemeanor of such a nature that it may impair the ability of the applicant to operate a licensed business in a safe and competent manner.

(v) Sentencing for any of the offenses specified in this subrule after a plea of nolo contendere.

(h) The applicant's excessive use of alcoholic liquor.

(i) The effects that the issuance of a license would have on the economic development of the area.

(j) The effects that the issuance of a license would have on the health, welfare, and safety of the general public.

**(3) An application for a new license, an application for any transfer of interest in an existing license, or an application for a transfer of location of an existing license shall be denied if the commission is notified, in writing, that the application does not meet all appropriate state and local building, plumbing, zoning, fire, sanitation, and health laws and ordinances as certified to the commission by the appropriate law enforcement officials. The commission may accept a temporary or permanent certificate of occupancy for public accommodation issued by the appropriate officials as evidence of compliance with this subrule.**

History: 1979 AC; 1985 AACS; 1995 AACS; 1998-2000 AACS; 2004 AACS.



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN LIQUOR CONTROL COMMISSION  
ANDREW J. DELONEY  
CHAIRMAN

STEVEN H. HILFINGER  
DIRECTOR

## Bulletin No. 2012-12

DATE: June 21, 2012

TO: Local Units of Government, Local Law Enforcement Agencies, and Applicants for MLCC Licenses

FROM: Michigan Liquor Control Commission

SUBJECT: Changes to the License Application Process

This is an important notice about the application process for the Michigan Liquor Control Commission ("Commission"). Effective July 1, 2012, the Commission is changing the procedure for submitting applications to the Commission, and obtaining approvals for licenses. Approvals from local units of government are required only for the issuance of new licenses under MCL 436.1501. The Commission will continue to review all comments received under administrative rule R 436.1105(2), taking into consideration the opinions of the local residents, local legislative body, or local law enforcement agency with regard to the proposed business. The Commission will provide notice to the local legislative body of pending applications.

### I. Applications for New Licenses

The first step in the application process for a new on-premises license is to submit the license application to the Commission, along with any license, permit, and inspection fees. This process will result in the immediate assignment of a request identification (RID) number by the Commission at the beginning of the application process. Additionally, this will allow the Commission to conduct an initial review of the application, to notify the applicant of deficient items, and to provide the applicant with the appropriate local and police forms, including blank fingerprint cards, where applicable.

It will continue to be the responsibility of the applicant to directly submit requests for these local approvals to the local unit of government. The Commission cannot proceed with the licensing process or consider an application until that application is "complete," as defined in MCL



436.1525(6). A completed application must include any information, records, approval, or similar item required by law or rule from a law enforcement agency or local unit of government.

An application for a new license, which has not been previously issued by the Commission, requires approval of the local legislative body under MCL 436.1501(2) and the application will not be considered to be complete until such approval is received.”

## **II. Applications for Transfer of Ownership, Transfer of Interest, or Transfer of Location of Existing Licenses**

An application for transfer of ownership of an existing license, transfer of interest in an existing license, or transfer of location of an existing license does not require approval of the local unit of government.

## **III. Permits**

Applications for dance permits, entertainment permits, dance-entertainment permits, topless activity permits, and extended hours permits require approvals from both the local unit of government and local law enforcement agency, in addition to the Commission, under MCL 436.1916(10).

## **IV. Rescission**

Commission Bulletin 2012-05 is hereby immediately rescinded.

Please contact the Commission’s Licensing Division at (866) 813-0011 with any questions.

## NOTICE OF PUBLIC HEARING

### BIRMINGHAM CITY COMMISSION

### AMENDMENT TO ZONING ORDINANCE

Meeting - Date, Time, Location:	Monday, August 27, 2012, 7:30 PM Municipal Building, 151 Martin Birmingham, MI 48009
Nature of Hearing:	<p>To consider an amendment to the Zoning Ordinance, Chapter 126:</p> <ul style="list-style-type: none"><li>• To amend Chapter 126, Zoning, Article 2, Section 2.27 B1 (Neighborhood Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.</li><li>• To amend Chapter 126, Zoning, Article 2, Section 2.29, B2 (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.</li><li>• To amend Chapter 126, Zoning, Article 2, Section 2.31, B2B (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.</li><li>• To amend Chapter 126, Zoning, Article 2, Section 2.33, B2C (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.</li><li>• To amend Chapter 126, Zoning, Article 2, Section 2.37, B4 (Business-Residential) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.</li><li>• To amend Chapter 126, Zoning, Article 2, Section 2.39, MX (Mixed Use) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.</li><li>• To amend Chapter 126, Zoning, Article 6, Section 6.02(A), Continuance of Non-Conformity, to require existing and new establishments with alcoholic beverage sales (on premises consumption) to obtain a Special Land Use Permit upon change in ownership or name of establishment, or upon application for a Sign Review, Design Review and/or Site Plan Review.</li><li>• To amend Chapter 126, Zoning, Article 3, Table 3.07 Triangle Overlay Land Use Matrix to add alcoholic beverage sales (on premises consumption) as a permitted use with a Special Land Use Permit in the MU3, MU5, and MU7 zones.</li><li>• To amend Chapter 126, Zoning, Article 3, Table 3.07 Triangle Land Use Matrix to allow Bistro's with a Special Land Use Permit in the MU3, MU5, and MU7 zones.</li></ul>

	<ul style="list-style-type: none"> <li>▪ To amend Chapter 126, Zoning, Appendix A, Land Use Matrix to accurately correlate to the permitted uses of each zoning district.</li> <li>▪ To amend Chapter 126, Zoning, Article 2, Section 2.35, B3 (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.</li> </ul> <p>A complete copy of the proposed ordinance amendments may be reviewed at the City Clerk's Office.</p>
City Staff Contact:	Jana Ecker 248.530.1841 <a href="mailto:jecker@bhamgov.org">jecker@bhamgov.org</a>
Notice:	Publish: August 12, 2012
Approved minutes may be reviewed at:	City Clerk's Office

Should you have any statement regarding the above, you are invited to attend the meeting or present your written statement to the City Commission, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the hearing.

Persons with disabilities needing accommodations for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice) or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.



## MEMORANDUM

Community Development Department

**DATE:** August 20, 2012

**TO:** Robert Bruner, City Manager

**FROM:** Matthew Baka, Planning Specialist

**SUBJECT:** Public Hearing to consider amendments to Chapter 126, Zoning, Article 2, Section 2.27 B1, Section 2.29 B2, Section 2.31 B2B, Section 2.33 B2C, Section 2.37 B4 and Section 2.39 MX and Article 3, Table 3.07 to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit and to amend Article 3, Table 3.07 to allow Bistros with a Special Land Use Permit.

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Effective July 1, 2012, the MLCC changed the procedure for submitting applications to the Commission, and obtaining approvals for the licenses. Approval from local units of government is required only for the issuance of new licenses under MCL 436.1501. This means that eighteen (18) types of "On Premises Transactions" no longer require local legislative body approval, which includes both the transfer of location and ownership of a variety of "On-Premises" licenses and permits.

In response to these changes the Planning Division, in conjunction with the City Managers office, has drafted Zoning Ordinance amendments aimed at addressing these new changes in the Michigan Liquor Control Commission regulations and processes. The proposed amendments would require that any new or existing liquor license holders would be required to obtain a Special Land Use Permit, and thus City Commission approval, in order to change ownership or their name and in the event that an establishment seeks to obtain Design, Sign or Site plan review approval. The Planning Board conducted a study session discussion on this topic at the July 25, 2012 Planning Board meeting, during which the details of the state changes were discussed, and held a public hearing on the proposed ordinance changes at the August 8<sup>th</sup>, 2012 meeting. At the public hearing the Planning Board voted unanimously to recommend approval of the amendments to the City Commission. The Planning Division report and relevant meeting minutes are attached for your review.

### **Suggested Action:**

The Planning Board recommends approval of the following Zoning Ordinance amendments to the City Commission;

1. To amend Chapter 126, Zoning, Article 2, Section 2.27 B1 (Neighborhood Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.

2. To amend Chapter 126, Zoning, Article 2, Section 2.29, B2 (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
3. To amend Chapter 126, Zoning, Article 2, Section 2.31, B2B (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
4. To amend Chapter 126, Zoning, Article 2, Section 2.33, B2C (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
5. To amend Chapter 126, Zoning, Article 2, Section 2.35, B3 (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
6. To amend Chapter 126, Zoning, Article 2, Section 2.37, B4 (Business-Residential) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
7. To amend Chapter 126, Zoning, Article 2, Section 2.39, MX (Mixed Use) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
8. To amend Chapter 126, Zoning, Article 3, Table 3.07 Triangle Overlay Land Use Matrix to add alcoholic beverage sales (on premises consumption) as a permitted use with a Special Land Use Permit in the MU3, MU5, and MU7 zones.
9. To amend Chapter 126, Zoning Article 3, Table 3.07 Triangle Land Use Matrix to allow Bistro's with a Special Land Use Permit in the MU3, MU5, and MU7 zones.
10. To amend Chapter 126, Zoning, Article 6, Section 6.02(A), Continuance of Non-Conformity, to require existing and new establishments with alcoholic beverage sales (on premises consumption) to obtain a Special Land Use Permit upon change in ownership or name of establishment, or upon application for a Sign Review, Design Review and/or Site Plan Review.
11. To amend Chapter 126, Zoning, Appendix A, Land Use Matrix to accurately correlate to the permitted uses of each zoning district.



## MEMORANDUM

Community Development Department

**DATE:** August 1, 2012

**TO:** Planning Board

**FROM:** Matthew Baka, Planning Specialist

**SUBJECT:** Public Hearing to consider amendments to Chapter 126, Zoning, Article 2, Section 2.27 B1, Section 2.29 B2, Section 2.31 B2B, Section 2.33 B2C, Section 2.37 B4 and Section 2.39 MX and Article 3, Table 3.07 to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit and to amend Article 3, Table 3.07 to allow Bistros with a Special Land Use Permit.

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Effective July 1, 2012 the MLCC changed the procedure for submitting applications to the Commission, and obtaining approvals for the licenses. Approval from local units of government is required only for the issuance of new licenses under MCL 436.1501. This means that eighteen (18) types of "On Premises Transactions" no longer require local legislative body approval, which includes both the transfer of location and ownership of a variety of "On-Premises" licenses and permits.

On July 11, 2012, the Planning Board discussed making swift amendments to the Birmingham Zoning Ordinance aimed at addressing these new changes in the Michigan Liquor Control Commission regulations and processes. As a result, the Planning Board voted unanimously to set a public hearing date for August 8, 2012 to consider such amendments. In keeping with standard practice, the Planning Board directed staff to conduct a study session discussion on this topic at the July 25, 2012 Planning Board meeting during which the details of the state changes were discussed. At that meeting zoning ordinance amendments aimed at preserving City control over the location and operation of liquor licenses was presented. The proposed amendments would require that any new or existing liquor license holders would be required to obtain a Special Land Use Permit, and thus City Commission approval, in order to change ownership or their name and in the event that an establishment seeks to obtain Design, Sign or Site plan review approval.

### **Suggested Action:**

The Planning Board recommends approval of the following zoning ordinance amendments to the City Commission;

12. To amend Chapter 126, Zoning, Article 2, Section 2.27 B1 (Neighborhood Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.

13. To amend Chapter 126, Zoning, Article 2, Section 2.29, B2 (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
14. To amend Chapter 126, Zoning, Article 2, Section 2.31, B2B (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
15. To amend Chapter 126, Zoning, Article 2, Section 2.33, B2C (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
16. To amend Chapter 126, Zoning, Article 2, Section 2.35, B3 (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
17. To amend Chapter 126, Zoning, Article 2, Section 2.37, B4 (Business-Residential) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
18. To amend Chapter 126, Zoning, Article 2, Section 2.39, MX (Mixed Use) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
19. To amend Chapter 126, Zoning, Article 3, Table 3.07 Triangle Overlay Land Use Matrix to add alcoholic beverage sales (on premises consumption) as a permitted use with a Special Land Use Permit in the MU3, MU5, and MU7 zones.
20. To amend Chapter 126, Zoning Article 3, Table 3.07 Triangle Land Use Matrix to allow Bistro's with a Special Land Use Permit in the MU3, MU5, and MU7 zones.
21. To amend Chapter 126, Zoning, Article 6, Section 6.02(A), Continuance of Non-Conformity, to require existing and new establishments with alcoholic beverage sales (on premises consumption) to obtain a Special Land Use Permit upon change in ownership or name of establishment, or upon application for a Sign Review, Design Review and/or Site Plan Review.
22. To amend Chapter 126, Zoning, Appendix A, Land Use Matrix to accurately correlate to the permitted uses of each zoning district.

ORDINANCE NO. \_\_\_\_\_

**THE CITY OF BIRMINGHAM ORDAINS:**

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 02 DEVELOPMENT STANDARDS, SECTION 2.27, B1 (NEIGHBORHOOD BUSINESS) DISTRICT TO ADD ALCOHOLIC BEVERAGE SALES (ON-PREMISE CONSUMPTION) AS A PERMITTED USE REQUIRING A SPECIAL LAND USE PERMIT IN THIS ZONE DISTRICT.

Article 02, section 2.27 shall be amended as follows:

**Commercial Permitted Uses**

- bakery
- barber/beauty salon
- drugstore
- dry cleaning
- grocery store
- hardware store
- neighborhood convenience store
- office
- shoe store/shoe repair
- tailor

**Accessory Permitted Uses**

- alcoholic beverage sales\*
- kennel\*
- laboratory - medical/dental\*
- loading facility - off-street\*
- outdoor cafe
- parking facility - off-street\*
- sign

**Uses Requiring a Special Land Use Permit**

- **alcoholic beverage sales (on-premise consumption)**
- alcoholic beverage sales (off-premise consumption)
- child care center
- continued care retirement community
- independent hospice facility
- drive-in facility\*
- gasoline full service station\*
- skilled nursing facility



ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2012 to become effective 7 days after publication.

\_\_\_\_\_  
Mark Nickita, Mayor

\_\_\_\_\_  
Laura Broski, Clerk

ORDINANCE NO. \_\_\_\_\_

**THE CITY OF BIRMINGHAM ORDAINS:**

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 02 DEVELOPMENT STANDARDS, SECTION 2.29, B2 (GENERAL BUSINESS) DISTRICT TO ADD ALCOHOLIC BEVERAGE SALES (ON-PREMISE CONSUMPTION) AS A PERMITTED USE REQUIRING A SPECIAL LAND USE PERMIT IN THIS ZONE DISTRICT.

Article 02, section 2.29 shall be amended as follows:

**Commercial Permitted Uses**

- bakery
- bank
- barber shop
- beauty salon
- catering
- child care center
- clothing store
- delicatessen
- department store
- drugstore
- dry cleaning
- flower/gift shop
- food or drink establishment\*
- furniture
- greenhouse
- grocery store
- hardware store
- hotel
- motel
- neighborhood convenience store
- office
- paint
- party store
- retail photocopying
- school-business
- shoe store/shoe repair
- showroom of electricians/plumbers
- tailor
- theater\*

#### Accessory Permitted Uses

- alcoholic beverage sales (off-premise consumption)\*
- kennel\*
- laboratory - medical/dental\*
- loading facility - off-street
- outdoor cafe\*
- outdoor display of goods\*
- outdoor sales\*
- outdoor storage\*
- parking facility - off-street
- retail fur sales cold storage facility
- sign

#### Uses Requiring a Special Land Use Permit

- **alcoholic beverage sales (on premise consumption)**
- assisted living
- auto laundry
- auto sales agency
- bistro (only permitted in the Triangle District)\*
- bus/train passenger station and waiting facility
- continued care retirement community
- display of broadcast media devices (only permitted in conjunction with a gasoline service station)
- drive-in facility
- establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels within the Triangle District and on Woodward Avenue identified on Exhibit 1; Appendix C)
- funeral home
- gasoline full service station\*
- gasoline service station
- independent hospice facility
- independent senior living
- skilled nursing facility
- trailer camp

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2012 to become effective 7 days after publication.

\_\_\_\_\_  
Mark Nickita, Mayor

\_\_\_\_\_  
Laura Broski, Clerk

ORDINANCE NO. \_\_\_\_\_

**THE CITY OF BIRMINGHAM ORDAINS:**

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 02 DEVELOPMENT STANDARDS, SECTION 2.31, B2B (GENERAL BUSINESS) DISTRICT TO ADD ALCOHOLIC BEVERAGE SALES (ON-PREMISE CONSUMPTION) AS A PERMITTED USE REQUIRING A SPECIAL LAND USE PERMIT IN THIS ZONE DISTRICT.

Article 02, section 2.31 shall be amended as follows:

**Commercial Permitted Uses**

- auto sales agency
- bakery
- bank
- barber shop/beauty salon
- catering
- child care center
- clothing store
- delicatessen
- drugstore
- dry cleaning
- flower/gift shop
- food or drink establishment\*
- furniture
- greenhouse
- grocery store
- hardware store
- hotel
- motel
- neighborhood convenience store
- office
- paint
- party store
- retail photocopying
- school-business
- shoe store/shoe repair
- showroom of electricians/plumbers
- tailor
- theater\*

#### Accessory Permitted Uses

- alcoholic beverage sales (off-premise consumption)\*
- kennel\*
- laboratory - medical/dental\*
- loading facility - off-street
- outdoor cafe\*
- outdoor display of goods\*
- outdoor sales\*
- outdoor storage\*
- parking facility - off-street
- retail fur sales cold storage facility
- sign

#### Uses Requiring a Special Land Use Permit

- **alcoholic beverage sales (on premise consumption)**
- assisted living
- auto laundry
- bistro (only permitted in the Triangle District)\*
- bus/train passenger station and waiting facility
- continued care retirement community
- display of broadcast media devices (only permitted in conjunction with a gasoline service station)
- drive-in facility
- establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development (only permitted on those parcels within the Triangle District identified on Exhibit 1; Appendix C)
- funeral home
- gasoline full service station\*
- gasoline service station
- independent hospice facility
- independent senior living
- skilled nursing facility
- trailer camp

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2012 to become effective 7 days after publication.

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Mark Nickita, Mayor

\_\_\_\_\_  
Laura Broski, Clerk

ORDINANCE NO. \_\_\_\_\_

**THE CITY OF BIRMINGHAM ORDAINS:**

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 02 DEVELOPMENT STANDARDS, SECTION 2.33, B2C (GENERAL BUSINESS) DISTRICT TO ADD ALCOHOLIC BEVERAGE SALES (ON-PREMISE CONSUMPTION) AS A PERMITTED USE REQUIRING A SPECIAL LAND USE PERMIT IN THIS ZONE DISTRICT.

Article 02, section 2.33 shall be amended as follows:

**Commercial Permitted Uses**

- auto sales agency
- bakery
- bank
- barber shop/beauty salon
- catering
- child care center
- clothing store
- delicatessen
- drugstore
- dry cleaning
- flower/gift shop
- food or drink establishment\*
- furniture
- greenhouse
- grocery store
- hardware store
- hotel
- motel
- neighborhood convenience store
- office
- paint
- party store
- retail photocopying
- school-business
- shoe store/shoe repair
- showroom of electricians/plumbers
- tailor
- theater\*

Accessory Permitted Uses

- alcoholic beverage sales (off-premise consumption)\*
- kennel\*
- laboratory - medical/dental\*
- loading facility - off-street
- outdoor cafe\*
- outdoor display of goods\*
- outdoor sales\*
- outdoor storage\*
- parking facility - off-street
- sign

Uses Requiring a Special Land Use Permit

- **alcoholic beverage sales (on premise consumption)**
- auto laundry
- bus/train passenger station and waiting facility
- drive-in facility
- funeral home
- gasoline full service station\*
- gasoline service station
- trailer camp

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2012 to become effective 7 days after publication.

\_\_\_\_\_  
Mark Nickita, Mayor

\_\_\_\_\_  
Laura Broski, Clerk

ORDINANCE NO. \_\_\_\_\_

**THE CITY OF BIRMINGHAM ORDAINS:**

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 02 DEVELOPMENT STANDARDS, SECTION 2.35, B3 (OFFICE-RESIDENTIAL) DISTRICT TO ADD ALCOHOLIC BEVERAGE SALES (ON-PREMISE CONSUMPTION) AS A PERMITTED USE REQUIRING A SPECIAL LAND USE PERMIT IN THIS ZONE DISTRICT.

Article 02, section 2.35 shall be amended as follows:

**Commercial Permitted Uses**

- auto sales agency
- bakery
- bank
- barber shop/beauty salon
- catering
- child care center
- clothing store
- delicatessen
- drugstore
- dry cleaning
- flower/gift shop
- food or drink establishment\*
- furniture
- greenhouse
- grocery store
- hardware store
- hotel
- motel
- neighborhood convenience store
- office
- paint
- party store
- retail photocopying
- school-business
- shoe store/shoe repair
- showroom of electricians/plumbers
- tailor
- theater\*



Accessory Permitted Uses

- alcoholic beverage sales\*
- laboratory - medical/dental\*
- loading facility - off-street
- outdoor cafe\*
- outdoor display of goods\*
- outdoor sales\*
- parking facility - off-street
- retail fur sales cold storage facility
- sign

Uses Requiring a Special Land Use Permit

- alcoholic beverage sales (on premise consumption)
- auto laundry
- bus/train passenger station and waiting facility
- drive-in facility
- funeral home
- gasoline full service station\*
- gasoline service station
- trailer camp

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2012 to become effective 7 days after publication.

\_\_\_\_\_  
Mark Nickita, Mayor

\_\_\_\_\_  
Laura Broski, Clerk

ORDINANCE NO. \_\_\_\_\_

**THE CITY OF BIRMINGHAM ORDAINS:**

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 02 DEVELOPMENT STANDARDS, SECTION 2.37, B4 (BUSINESS-RESIDENTIAL) DISTRICT TO ADD ALCOHOLIC BEVERAGE SALES (ON-PREMISE CONSUMPTION) AS A PERMITTED USE REQUIRING A SPECIAL LAND USE PERMIT IN THIS ZONE DISTRICT.

Article 02, section 2.37 shall be amended as follows:

Commercial Permitted Uses

- auto sales agency
- bakery
- bank
- barber/beauty salon
- catering
- child care center
- clothing store
- delicatessen
- department store
- drugstore
- dry cleaning
- flower/gift shop
- food or drink establishment\*
- furniture
- greenhouse
- grocery store
- hardware store
- hotel
- motel
- neighborhood convenience store
- office
- paint
- party store
- retail photocopying
- school-business
- shoe store/shoe repair
- showroom of electricians/plumbers
- tailor
- theater\*

Accessory Permitted Uses

- alcoholic beverage sales\*
- laboratory - medical/dental\*
- loading facility - off-street
- outdoor cafe\*
- outdoor display of goods\*
- outdoor sales\*
- parking facility - off-street
- retail fur sales cold storage facility
- sign

Uses Requiring a Special Land Use Permit

- **alcoholic beverage sales (on premise consumption)**
- assisted living
- continued care retirement community
- independent hospice facility
- independent senior living
- skilled nursing facility

Uses Requiring City Commission Approval

- regulated uses\*

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2012 to become effective 7 days after publication.

\_\_\_\_\_  
Mark Nickita, Mayor

\_\_\_\_\_  
Laura Broski, Clerk

ORDINANCE NO. \_\_\_\_\_

**THE CITY OF BIRMINGHAM ORDAINS:**

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 02 DEVELOPMENT STANDARDS, SECTION 2.39, MX (MIXED USE) DISTRICT TO ADD ALCOHOLIC BEVERAGE SALES (ON-PREMISE CONSUMPTION) AS A PERMITTED USE REQUIRING A SPECIAL LAND USE PERMIT IN THIS ZONE DISTRICT.

Article 02, section 2.39 shall be amended as follows:

Commercial Permitted Uses

- animal medical hospital
- art gallery
- artisan use
- auto rental agency\*
- automobile repair and conversion
- bakery
- barber/beauty salon
- boutique
- child care center
- clothing store
- drugstore
- dry cleaning
- flower/gift shop
- food or drink establishment\*
- furniture
- greenhouse
- grocery store
- hardware store
- health club/studio
- interior design shop
- jewelry store
- kennel\*
- laboratory
- leather and luggage goods shop
- neighborhood convenience store
- office
- pet grooming facility
- photography studio
- shoe store/shoe repair
- specialty food store
- specialty home furnishing shop

- tailor
- tobacconist
- veterinary clinic

Accessory Permitted Uses

- alcoholic beverage sales\*
- dwelling - accessory\*
- garage – private
- greenhouse – private
- home occupation
- loading facility - off-street\*
- outdoor cafe\*
- outdoor sales or display of goods\*
- parking facility - off-street\*
- parking structure
- renting of rooms\*
- sign
- swimming pool – private

Uses Requiring a Special Land Use Permit

- **alcoholic beverage sales (on premise consumption)**
- bistros operating with a liquor license granted under the authority of Chapter 10, Alcoholic Liquors, Division 4 - Bistro Licenses
- church
- college
- dwelling - first floor with frontage on Eton Road
- outdoor storage\*
- parking structure (not accessory to principal use)\*
- religious institution
- school - private, public
- residential use combined with a permitted nonresidential use with frontage on Eton Road
- any permitted principal use with a total floor area greater than 6,000 sq. ft.

ORDAINED this \_\_\_\_\_ day of \_\_\_\_\_, 2012 to become effective 7 days after publication.

\_\_\_\_\_  
Mark Nickita, Mayor

\_\_\_\_\_  
Laura Broski, Clerk

ORDINANCE NO. \_\_\_\_\_

**THE CITY OF BIRMINGHAM ORDAINS:**

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 03 OVERLAY DISTRICTS, TABLE 3.07, TRIANGLE OVERLAY DISTRICT LAND USE MATRIX TO ADD ALCOHOLIC BEVERAGE SALES (ON-PREMISE CONSUMPTION) AS A PERMITTED USE REQUIRING A SPECIAL LAND USE PERMIT IN THE MU3, MU5 and MU7 ZONE DISTRICTS.

Land Use	Zones on Regulating Plan			
	ASF3	MU3	MU5	MU7
Commercial				
<b>Alcoholic beverage sales (on-premise consumption)</b>	-	<b>S</b>	<b>S</b>	<b>S</b>

ORDINANCE NO. \_\_\_\_\_

**THE CITY OF BIRMINGHAM ORDAINS:**

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 03 OVERLAY DISTRICTS, TABLE 3.07, TRIANGLE OVERLAY DISTRICT LAND USE MATRIX TO ALLOW BISTROS AS A PERMITTED USE REQUIRING A SPECIAL LAND USE PERMIT IN THE MU3, MU5 and MU7 ZONE DISTRICTS.

<b>Land Use</b>	<b>Zones on Regulating Plan</b>			
Commercial	ASF3	MU3	MU5	MU7
Bistro	-	PS	PS	PS

ORDINANCE NO. \_\_\_\_\_

**THE CITY OF BIRMINGHAM ORDAINS:**

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 06 ENFORCEMENT AND PENALTIES, SECTION 6.02(A), TO REQUIRE EXISTING AND NEW ESTABLISHMENTS WITH ALCOHOLIC BEVERAGE SALES(ON PREMISES CONSUMPTION) TO OBTAIN A SPECIAL LAND USE PERMIT UPON CHANGE IN OWNERSHIP OR NAME OF ESTABLISHMENT, OR UPON SIGN PERMIT AND/OR SITE PLAN REVIEW.

Article 06, section 6.02 shall be amended as follows:

**6.01 Nonconformance with Prior Ordinance**

A. Nonconformance with Prior Ordinance: A building or use which was not a legal nonconforming building, structure or use under the provisions of prior zoning ordinances shall not be a legal nonconforming building, structure or use permitted by the provisions of this Zoning Ordinance, except as may otherwise be permitted in the Zoning Ordinance.

**6.02 Continuance of Nonconformity**

A. Limitations: Any nonconforming building or use existing at the time of enactment or amendment of this Zoning Ordinance may be continued if maintained in good condition, but:

1. The use shall not be changed to another nonconforming use except as permitted by the Board of Zoning Appeals.
2. The use shall not be reestablished after discontinuance for 6 months.
3. The use or building shall not be extended or enlarged except as herein provided. Nonconforming residential buildings may be extended or enlarged, provided that the extension or enlargement does not itself violate any provision of the Zoning Ordinance. Where the extension or enlargement will violate any provision of the Zoning Ordinance, application for a variance shall be made to the Board of Zoning Appeals pursuant to Section 8.01(F).
4. The building shall not be rebuilt or repaired after damage exceeding 75% of the true market value of the building immediately prior to damage.
5. **Existing and new establishments with alcoholic beverage sales (on premise consumption) must obtain a Special Land Use Permit upon change in ownership or name of establishment, or upon application for a Design Review, Sign Review and/or Site Plan Review.**



**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, JULY 25, 2012  
City Commission Room  
151 Martin Street, Birmingham, Michigan**

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Minutes of the regular meeting of the City of Birmingham Planning Board held July 25, 2012. Chairman Robin Boyle convened the meeting at 7:30 p.m.

**Present:** Chairman Robin Boyle; Board Members Scott Clein, Carroll DeWeese, Bert Koseck, Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Student Representative Kate Leary

**Absent:** None

**Administration:** Matthew Baka, Planning Specialist  
Robert Bruner, Jr., City Manager  
Timothy Currier, City Attorney  
Jana Ecker, Planning Director  
Paul O'Meara, City Engineer  
Carole Salutes, Recording Secretary  
**07-121-12**

#### **STUDY SESSION**

##### **On-Premises Alcohol Sales**

**Consider requiring Special Land Use Permit ("SLUP") for all on-premises alcohol sales**

Mr. Baka stated that on July 11, 2012, the Planning Board discussed making swift amendments to the Birmingham Zoning Ordinance aimed at addressing new changes in the Michigan Liquor Control Commission ("MLCC") regulations and processes. As a result, the Planning Board voted unanimously to set a public hearing date for August 8, 2012 to consider such amendments. In keeping with standard practice, the Planning Board directed staff to conduct a study session discussion on this topic at the July 25, 2012 Planning Board meeting.

Effective July 1, 2012 the MLCC changed the procedure for submitting applications to the City Commission, and obtaining approvals for the licenses. Approval from local units of government is required only for the issuance of new licenses under MCL 436.1501. This means that 18 types of "On Premises Transactions" no longer require local legislative body approval, which includes both the transfer of location and ownership of a variety of "On-Premises" licenses and permits. As a result of these changes, the City no longer has the option of amending Chapter 10 of the City Code to require a contract similar to those required for bistros. A Zoning Ordinance amendment is the only option left that can give the City control over the location and operation of liquor licenses in the

City. The most appropriate tool for retaining the level of oversight desired by the City is the SLUP.

Accordingly, the following amendments are proposed to be heard at the August 8th hearing:

1. To amend Chapter 126, Zoning, Article 2, Section 2.27 B1 (Neighborhood Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
2. To amend Chapter 126, Zoning, Article 2, Section 2.29, B2 (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
3. To amend Chapter 126, Zoning, Article 2, Section 2.31, B2B (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
4. To amend Chapter 126, Zoning, Article 2, Section 2.33, B2C (General Business) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
5. To amend Chapter 126, Zoning, Article 2, Section 2.37, B4 (Business-Residential) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
6. To amend Chapter 126, Zoning, Article 2, Section 2.39, MX (Mixed Use) to allow alcoholic beverage sales (on premises consumption) with a Special Land Use Permit.
7. To amend Chapter 126, Zoning, Article 6, Section 6.02(A), Continuance of Non-Conformity, to require existing and new establishments with alcoholic beverage sales (on premises consumption) to obtain a Special Land Use Permit upon change in ownership or name of establishment, or upon application for a Sign Permit and/or Site Plan Review.

Chairman Boyle thought it would be valuable for the public hearing to know how other communities are responding to the changes coming out of Lansing.

Mr. Currier explained the governor has appointed new members to the Michigan Liquor Control Commission who have taken the Liquor Control Act and applied a strict interpretation to it which indicates there is no local government approval required for transfers of Liquor Licenses. However, this doesn't absolve the local businesses from the requirement to comply with local ordinances.

Mr. DeWeese asked what ability the City has to open a SLUP. Mr. Currier responded that establishments that are grandfathered will trigger a SLUP when they seek a change of ownership, transfer of location, site plan, or sign review that requires City approval.

Responding to concerns from Mr. DeWeese, Mr. Bruner advised that if an existing establishment that does not trigger a SLUP causes problems, the Planning Board

doesn't do anything. The city manager and city attorney handle it through the standards and procedures for revocation and non-renewal of Liquor Licenses contained in Chapter 10. Further, the Planning Board will handle applications from a new licensee, or from an existing licensed establishment that is making a change, in the same way they would any other SLUP review. There is nothing else needed in the Zoning Ordinance to give any more guidance than is already in the SLUP review in Article 7.

Mr. Bruner thought that applicants get a fair hearing from this board as well as from the City Commission and they don't have as much to fear as they may think.

Chairman Boyle opened up discussion from the public at 9:33 p.m.

Ms. Dorothy Conrad noted it is important for the City to get a handle on what is going on or else people might not want to come to Birmingham. Therefore, the additional oversight by the City is good for the existing licensees.

The chairman concluded by saying this matter will go forward to a public hearing at the Planning Board meeting on August 8.

**CITY OF BIRMINGHAM  
REGULAR MEETING OF THE PLANNING BOARD  
WEDNESDAY, AUGUST 8, 2012  
City Commission Room  
151 Martin Street, Birmingham, Michigan**

---

Minutes of the regular meeting of the City of Birmingham Planning Board held August 8, 2012. Chairman Robin Boyle convened the meeting at 7:30 p.m.

**Present:** Chairman Robin Boyle; Board Members Carroll DeWeese, Bert Koseck, Gillian Lazar, Janelle Whipple-Boyce, Bryan Williams; Student Representative Kate Leary

**Absent:** Scott Clein

**Administration:** Matthew Baka, Planning Specialist  
Robert Bruner, Jr., City Manager  
Timothy Currier, City Attorney  
Jana Ecker, Planning Director  
Carole Salutes, Recording Secretary  
**08-130-12**

**PUBLIC HEARING**

**On-Premises Alcohol Sales**

**Consider requiring Special Land Use Permit ("SLUP") for all on-premises alcohol sales**

- a) To amend Chapter 126, Zoning, Article 2, Section 2.27 B-1 (Neighborhood Business), Section 2.29, B-2 (General Business), Section 2.31, B-2B (General Business), Section 2.33, B-2C (General Business), Section 2.37, B-4 (Business-Residential) and Section 2.39, MX (Mixed Use) to allow alcoholic beverage sales (on premises consumption) in each zone district with a SLUP.
- b) To amend Chapter 126, Zoning, Article 3, Table 3.07 Triangle Overlay Land Use Matrix to add alcoholic beverage sales (on premises consumption) as a permitted use with a SLUP in the MU-3, MU-5, and MU-7 zones.
- c) To amend Chapter 126, Zoning Article 3, Table 3.07 Triangle Land Use Matrix to allow Bistros with a SLUP in the MU-3, MU-5, and MU-7 zones.
- d) To amend Chapter 126, Zoning, Article 6, Section 6.02 (A), Continuation of Non-Conformity, to require existing and new establishments with alcoholic beverage sales (on premises consumption) to obtain a SLUP Permit upon change in ownership or name of establishment, or upon application for a Sign/Design Review and/or Site Plan Review.
- e) To amend Chapter 126, Zoning, Appendix A, Land Use Matrix to accurately correlate to the permitted uses of each zoning district.

Chairman Boyle opened the public hearing at 8:41 p.m.

Mr. Baka advised that effective July 1, 2012 the Michigan Liquor Control Commission ("MLCC") changed the procedure for submitting applications to the City Commission,

and obtaining approvals for the licenses. Approval from local units of government is required only for the issuance of new licenses under MCL 436.1501. This means that 18 types of "On Premises Transactions" no longer require local legislative body approval, which includes both the transfer of location and ownership of a variety of "On-Premises" licenses and permits. As a result of these changes, the City no longer has the option of amending Chapter 10 of the City Code to require a contract similar to those required for bistros. A Zoning Ordinance amendment is the only option left that can give the City control over the location and operation of liquor licenses in the City. The most appropriate tool for retaining the level of oversight desired by the City is the SLUP.

Mr. Baka recalled that on July 11, 2012, the Planning Board discussed making swift amendments to the Birmingham Zoning Ordinance aimed at addressing new changes in the MLCC regulations and processes. As a result, the Planning Board voted unanimously to set a public hearing date for August 8, 2012 to consider such amendments. In keeping with standard practice, the Planning Board directed staff to conduct a study session discussion on this topic at the July 25, 2012 Planning Board meeting during which the details of the State changes were discussed. At that meeting Zoning Ordinance amendments aimed at preserving City control over the location and operation of liquor licenses was presented. The proposed amendments would require that any new or existing liquor license holders would be required to obtain a SLUP, and thus City Commission approval, in order to change ownership or their name and in the event that an establishment seeks to obtain Design, Sign or Site Plan Review approval.

Mr. Currier explained the process now will be the same as the bistros go through. Mr. DeWeese clarified that good operators who have shown that they know how to handle this kind of business should have no fears. Mr. Currier added the conditions put upon them would probably be no more onerous than what they are currently doing. With respect to those operators where there have been problems, the SLUP and contract give the City tools to deal with behavior other than non-renewal of their license or revocation. It allows some interim steps to try and modify behavior rather than shut the business down. Currently, the vast majority of operators are model citizens.

Discussion brought out that a change in sign lighting would require a sign review which would then trigger a SLUP. Slight alterations to seating for outdoor dining may only require administrative approval. But, if an establishment does not have outdoor dining and wishes to add it, that would require site plan review, and then in turn a SLUP.

Mr. Williams thought if a sign change is permitted within existing ordinances it should not trigger such an expensive process. Mr. Bruner explained the intent is to not be onerous; however a request for an alteration to the name on the sign outside could disclose that a major change is occurring to the business format inside. Mr. Williams noted he is not happy about it, but understands what the City is trying to achieve. It was explained that staff will look at a proposed sign and determine if it can be administratively approved. If there is any question, the proposal will be brought to the board.

The chairman invited comments from the public at 9:15 p.m.

Ms. Dorothy Conrad, 2252 Yorkshire, received clarification from Mr. Currier that the wording of Chapter 10 will be changed to say that any and all Liquor License transfers must be approved by the City Commission, including transfers within the City, transfers coming in from outside the City, and transfers of ownership.

Chairman Boyle noted this has implications for the work of this board as distinct from the work of the City. Procedures need to be put into place to ensure that the Planning board is not asked to take on non-planning related factors such as questions of impropriety or possible police actions.

**Motion by Mr. DeWeese**

**Seconded by Mr. Koseck that the Planning Board recommends approval of the following zoning ordinance amendments to the City Commission;**

- 1. To amend Chapter 126, Zoning, Article 2, Section 2.27 B-1 (Neighborhood Business) to allow alcoholic beverage sales (on premises consumption) with a SLUP.**
- 2. To amend Chapter 126, Zoning, Article 2, Section 2.29, B-2 (General Business) to allow alcoholic beverage sales (on premises consumption) with a SLUP.**
- 3. To amend Chapter 126, Zoning, Article 2, Section 2.31, B-2B (General Business) to allow alcoholic beverage sales (on premises consumption) with a SLUP.**
- 4. To amend Chapter 126, Zoning, Article 2, Section 2.33, B-2C (General Business) to allow alcoholic beverage sales (on premises consumption) with a SLUP Permit.**
- 5. To amend Chapter 126, Zoning, Article 2, Section 2.35, B-3 (General Business) to allow alcoholic beverage sales (on premises consumption) with a SLUP.**
- 6. To amend Chapter 126, Zoning, Article 2, Section 2.37, B-4 (Business-Residential) to allow alcoholic beverage sales (on premises consumption) with a SLUP.**
- 7. To amend Chapter 126, Zoning, Article 2, Section 2.39, MX (Mixed Use) to allow alcoholic beverage sales (on premises consumption) with a SLUP.**
- 8. To amend Chapter 126, Zoning, Article 3, Table 3.07 Triangle Overlay Land Use Matrix to add alcoholic beverage sales (on premises consumption) as a permitted use with a SLUP in the MU-3, MU-5, and MU-7 zones.**
- 9. To amend Chapter 126, Zoning Article 3, Table 3.07 Triangle Land Use Matrix to allow bistros with a SLUP in the MU-3, MU-5, and MU-7 zones.**
- 10. To amend Chapter 126, Zoning, Article 6, Section 6.02 (A), Continuance of Non-Conformity, to require existing and new establishments with alcoholic beverage sales (on premises consumption) to obtain a SLUP upon change in ownership or name of establishment, or upon application for a Sign/Design Review and/or Site Plan Review.**
- 11. To amend Chapter 126, Zoning, Appendix A, Land Use Matrix to accurately correlate to the permitted uses of each zoning district.**

**Motion carried, 6-0.**

VOICE VOTE

Yeas: DeWeese, Koseck, Boyle, Lazar, Whipple-Boyce, Williams

Nays: None

Absent: Clein

Chairman Boyle closed the public hearing at 9:25 p.m.