

## Birmingham City Commission Minutes

October 4, 2021

7:30 p.m.

Municipal Building, 151 Martin

Vimeo Link: <https://vimeo.com/event/3470/videos/610358498/>

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

Pierre Boutros, Mayor, opened the meeting with the Pledge of Allegiance.

### II. ROLL CALL

Alexandria Bingham, City Clerk, called the roll.

Present: Mayor Boutros  
Mayor Pro Tem Longe  
Commissioner Baller  
Commissioner Hoff  
Commissioner Host  
Commissioner Nickita  
Commissioner Sherman

Absent: None

Administration: City Manager Markus, City Clerk Bingham, Planning Director Dupuis, Finance Director Gerber, City Attorney Kucharek, Consulting City Engineer Surhigh, Parking Manager Weingartz, Fire Chief Wells

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

- The highly transmissible COVID-19 Delta variant is spreading throughout the nation at an alarming rate. As a result, the CDC is recommending that vaccinated and unvaccinated personnel wear a facemask indoors while in public if you live or work in a substantial or high transmission area. **Oakland County is now at the HIGH level of community transmission for COVID-19.** The City has reinstated mask requirements for all employees while indoors. The mask requirement also applies to all board and commission members as well as the public attending public meetings.
- The City Clerk's office encourages voters wishing to vote absentee for the November 2, 2021 election to return their absentee ballot applications as soon as possible. Precinct 6 Voters are reminded that their new polling location is the Baldwin Public Library, all precinct 6 voters should be receiving new voter ID cards in the mail soon with their updated precinct assignment.
- Present Alex Calderone with the "Pat Nagel Community Award"
- Cancellation of the 2021 Birmingham Fire Department Open House
- Commissioner Sherman's Birthday
- Legislative Updates from Senator McMorrow. City Staff requested that Senator McMorrow address: Regarding Virtual Meetings, Noise, Traffic Control, Walkability & Safety on Woodward, MDOT

Intelligent Transportation Systems, Road Funding, Stormwater Utility Legislation (currently in Senate, S.B. 593), Storm Drainage on Woodward to City Combined Sewers, and Firework Regulations.

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

**V. 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.

**10-258-21 Consent Agenda**

**MOTION:** Motion by Commissioner Sherman, seconded by Mayor Pro Tem Longe:  
To approve the Consent Agenda.

ROLL CALL VOTE: Ayes, Commissioner Sherman  
Mayor Pro Tem Longe  
Commissioner Hoff  
Commissioner Host  
Commissioner Baller  
Commissioner Nickita  
Mayor Boutros

Nays, None

- A. Resolution to approve the City Commission workshop meeting minutes of September 13, 2021.
- B. Resolution to approve the City Commission regular meeting minutes of September 13, 2021.
- C. Resolution to approve the City Commission regular meeting minutes of September 20, 2021.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated September 22, 2021, in the amount of \$1,715,367.22.
- E. Resolution to approve the warrant list, including Automated Clearing House payments, dated September 29, 2021, in the amount of \$484,824.36.
- F. Resolution approving the appointment of election inspectors, absentee voter counting board inspectors, receiving board inspectors and other election officials as recommended by the City Clerk for the November 2, 2021 General Election pursuant to MCL 168.674(1) and granting the City Clerk authority to make emergency appointments of qualified candidates should circumstances warrant to maintain adequate staffing in the various precincts, counting boards and receiving boards.
- G. Resolution authorizing the City Manager to cast a vote, on the City's behalf, for the three candidates for the Michigan Municipal League Liability and Property Pool Board of Directors for three-year terms, beginning January 1, 2022.

- H. Resolution to approve \$19,760 in Municipal Credits and \$30,962 in Community Credits from fiscal year 2022 to Next in support of their specialized transportation program; and further to direct the Finance Director to sign the Municipal Credit and Community Credit contract for fiscal year 2022 on behalf of the City.
- I. Resolution to purchase eight (8) APX6000 portable radios and four (4) APX6500 desk top control stations with required accessories, including installation costs, associated with the purchase from ComSource Inc. in the amount of \$99,794.30 from the State of Michigan MiDeal purchasing contract number 190000001544. Further, to authorize these budget expenditures from account number 101-336.000-971.0100.
- J. Resolution to approve the FY 2022 Emergency Management Performance Grant Work Agreement and accept the awarded FY 2021 EMPG funds totaling \$30,036.00. Further, to direct the Mayor to sign the agreements on behalf of the City and any required quarterly reports or surveys associated with the EMPG grant and to authorize the Fire Chief as the sub recipient authorized representative in order to sign any related EMPG documents on the City's behalf.
- K. Resolution to set a public hearing date of October 25, 2021 to consider the Special Land Use Permit, Final Site Plan and Design Review application for 210 S. Old Woodward – Zana – to allow the addition of a new food and drink establishment serving alcoholic beverages for on premise consumption and associated interior/exterior renovations.
- L. Resolution to set a public hearing date of October 25, 2021 to consider the Special Land Use Permit Amendment at 34977 Woodward – Hazel's – to allow a name change from "Hazel, Ravines & Downtown" to "Hazel's".
- M. Resolution to approve the purchase and planting of one hundred one (101) trees from Davey Tree Expert Company for the Fall 2021 Tree Purchase and Planting Project for a total project cost not to exceed \$45,543.00. Funds are available from the Local Streets Fund-Forestry Service Contract account #203-449.005-819.0000, the Major Streets Fund-Forestry Service Contract account #202-449.005-819.0000, the Local Streets Fund-Operating Supplies account #203-449.005-729.0000, the Major Streets Fund-Operating Supplies account #202-449.005-729.0000 for these services. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of the required insurance coverage.
- N. Resolution to purchase one (1) 2022 GMC Sierra 2500 HD 4x4 from Todd Wenzel Buick GMC of Westland through the State of Michigan MIDEAL extendable purchasing contract #071B7700184 in the amount not to exceed \$40,226.10. Funds for this purchase are available in the FY 2021-2022 Auto Equipment Fund account #641- 441.006.971.0100.
- O. Resolution to purchase one (1) 2022 GMC Sierra 2500 HD 4x4 from Todd Wenzel Buick GMC of Westland through the Michigan MIDEAL extendable purchasing contract #071B7700184 in the amount not to exceed \$40,226.10. Funds for this purchase are available in the FY 2021- 2022 Auto Equipment Fund account #641-441.006.971.0100.
- P. Resolution to purchase one (1) 2022 GMC Sierra 2500 HD 4x4 from Todd Wenzel Buick GMC of Westland through the State of Michigan MIDEAL extendable purchasing contract #071B7700184 in the amount not to exceed \$40,226.10. Funds for this purchase are available in the FY 2021-2022 Auto Equipment Fund account #641-441.006.971.0100.

**VI. UNFINISHED BUSINESS**

**VII. NEW BUSINESS**

**10-259-21 Public Hearing of Necessity for the Lakeview Ave Project #2-20(P) Water and Sewer Lateral Special Assessment District**

The Mayor opened the public hearing at 8:12 p.m.

CM Markus reviewed the City Special Assessment Ordinance in Section 94-9. He stated that some information was brought to the City's attention that raised concerns about the process that was followed in developing this assessment. He said the City was doing a legal review to see if a mistake arose in the process in 2020, and if the ordinance would allow for the remedying of that mistake at this point. CM Markus stated that the street assessment was handled correctly and that the questions remain regarding the water and sewer assessments. He recommended the Commission proceed with the Hearing of Necessity even if it is redundant, which he said would not harm the process. He said the City would then return to the Commission with a legal report before the subsequent Hearing of Confirmation. CM Markus stated that this information was being shared in the interest of full transparency.

CA Kucharek reviewed the difference between a Hearing of Necessity and a Confirmation of the Roll.

CCE Surhigh presented the item.

Public Comment

In response to Caryn Gallagher, CM Markus recommended that Ms. Gallagher contact CCE Surhigh about the flooding issues she was having in her basement.

David Lurie said he would like to see an itemized statement of the charges he was assessed for the project. He said that information should have been provided.

Commissioner Hoff told Mr. Lurie that information is available from the Engineering Department.

Christina McKenna Walton stated that more proactive communication on the part of the City would benefit future street improvement projects. She thanked everyone involved for their work on the project.

Amy Louwers concurred with Mr. Lurie and Ms. Walton. She said there needed to be more explanation of what the charges were for and how interest charges are applied. She also asked that Lakeview be made aware of the street sweeping schedule so residents can move their vehicles off the street on those days.

In reply to Mayor Boutros, Ms. Louwers said she had contacted DPS several times about the street sweeping schedule and received no reply.

Mayor Boutros said the City would look into the issue.

The Mayor closed the public hearing at 8:32 p.m.

**MOTION:** Motion by Commissioner Hoff, seconded by Commissioner Host:  
To create a special assessment district and to levy special assessments in accordance with benefits against the properties within such assessment 4 October 4, 2021 district. Said special assessment district shall be all properties within the district of 30 parcels as listed in the staff report.

AND

That the Commission shall meet on Monday, October 25, 2021, at 7:30 P.M., for the purpose of conducting a public hearing to confirm the roll for the replacement of water and sewer laterals within the Lakeview Ave. Paving Project area. (See full resolution in packet.)

ROLL CALL VOTE: Ayes, Commissioner Hoff  
Commissioner Host  
Commissioner Baller  
Commissioner Nickita  
Mayor Boutros  
Commissioner Sherman  
Mayor Pro Tem Longe

Nays, None

**10-260-21 Public Hearing for 160 W. Maple – Dick O’ Dows – Special Land Use Permit Amendment, Final Site Plan & Design Review**

The Mayor Pro Tem recused herself at 8:33 p.m. from this item because her spouse has a business relationship with the petitioner.

The Mayor opened the public hearing at 8:33 p.m.

PD Dupuis reviewed the item.

In reply to Commissioner Nickita, PD Dupuis reviewed the Planning Board’s decision to permit the glazing percentages in the front of the building to be reduced from 70% to 52%.

Commissioner Nickita said improving the current glazing is not a strong enough justification to allow deviation from the ordinance. He recommended that the Planning Board and Planning Department ensure they have other reasoning when a deviation from the ordinance is permitted.

PD Dupuis noted the Planning Board in this case said the outdoor dining in front of the building and the fact that the front facade is set back were the other reasons the Planning Board permitted the reduction to 52% glazing. He said they found those particular circumstances would sufficiently activate the street without needing to meet the 70% glazing requirement.

In reply to Commissioner Hoff, PD Dupuis stated that bifold doors are not considered sliding glass doors and are thus not prohibited by the ordinance. He also stated that the Planning Board believed that outdoor dining was meant to be a permitted use in an active via.

Commissioner Hoff stated that the list of permitted uses in an active via should be edited if the ordinance is inconsistent with the Planning Board’s understanding.

CM Markus and PD Dupuis confirmed for Commissioner Hoff that other establishments have outdoor dining permitted on public property.

Mitch Black, owner of Dick O’Dow’s, said:

- He intended the outdoor dining to be year-round;
- Firepits was placement approved by the Fire Department would continue to be used in the outdoor dining area; and,
- He did not see a need to install a fence in the front or to draw a line in the rear to delineate the boundaries of the outdoor dining area because he has remained a consistent and law-abiding business owner.

CM Markus noted that Dick O’Dow’s was not the only establishment being asked to indicate the limits of its outdoor dining in some way. He noted that the indication would not only be for Mr. Black but for patrons, other Dick O’Dow’s managers, and for code enforcement. He said that the applicant’s architect could likely come up with an inconspicuous design for the indication. He noted that it would increase the ease of administration on the part of the City.

Commissioner Baller noted the indication in the rear would be on public property. Consequently, he said that either Mr. Black could create an indication or the City would be within its rights to.

Commissioner Sherman noted that the requested demarcation would be no different than fences along the dining decks. He concurred with Commissioner Baller and CM Markus.

CM Markus confirmed for Mr. Black that the fence in the front could have an appropriately sized gap to allow ingress and egress.

Mayor Boutros concurred with CM Markus and Commissioners Baller and Sherman.

The Mayor closed the public hearing at 9:12 p.m.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Nickita:  
To approve the Special Land Use Permit Amendment, Final Site Plan and Design Review application for 160 W. Maple – Dick O’ Dows – to allow changes to the front façade and outdoor dining plan with the addition of a line in the rear indicating the area that has been authorized for use, and some kind of permanent barrier in the front with an opening for ingress and egress that will keep the tables on private property and not on the City sidewalk.

CM Markus confirmed the applicant would need to enter into an agreement with the City regarding the use of public property.

ROLL CALL VOTE: Ayes, Commissioner Sherman  
Commissioner Nickita  
Mayor Boutros  
Commissioner Hoff  
Commissioner Host  
Commissioner Baller

Nays, None

**10-261-21 Remote Electrical Power Shutdown Device Ordinance**

Mayor Pro Tem Longe rejoined the meeting at 9:16 p.m.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Nickita:

To adopt the proposed Ordinance to amend Chapter 54, Section 32 to require the installation of Emergency Power Shutdown Devices.

In reply to Commissioner Hoff, Fire Chief Wells explained that retrofitting current buildings' infrastructure to have Emergency Power Shutdown Devices installed is very resource intensive. He confirmed that the City would likely pursue that in the future, but wanted to ensure that at least new construction has Emergency Power Shutdown Devices installed from this point forward.

ROLL CALL VOTE: Ayes, Commissioner Sherman  
Commissioner Nickita  
Mayor Pro Tem Longe  
Mayor Boutros  
Commissioner Hoff  
Commissioner Host  
Commissioner Baller

Nays, None

**10-262-21 Audit Firm Selection**

FD Gerber reviewed the item.

Commissioner Hoff said that the Plante Moran's work for the City has been exemplary and that she would be supporting the proposed resolution.

Commissioner Nickita concurred, adding that the value of Plante Moran's institutional knowledge of Birmingham should not be underestimated.

FD Gerber said he was a contract for fiscal years 2022-2026 with optional years 2027 and 2028 because he anticipates retiring in three years and did not want his successor to have to immediately re-bid for auditing services.

Mayor Pro Tem Longe thanked CM Markus and FD Gerber for undertaking the RFP process. She said it was reassuring to see that the City was being charged appropriately. She noted that semi-regular RFP processes are a best practice.

Commissioner Sherman noted that the U.S. Government Accountability Office found in GAO-04-216 that "that mandatory audit firm rotation may not be the most efficient way to strengthen auditor independence and improve audit quality considering the additional financial costs and the loss of institutional knowledge of the public company's previous auditor of record, as well as the current reforms being implemented." Consequently, he said he would be supporting the City's proposed resolution.

**MOTION:** Motion by Commissioner Hoff, seconded by Commissioner Sherman:  
To award the audit services contract to Plante & Moran, PLLC, for fiscal years 2022- 2026 with optional years 2027 and 2028 and authorizing the Mayor to sign the contract on behalf of the City pending a mutually agreed upon contract.

In reply to CM Markus, FD Gerber stated that Staff was still looking at whether to pursue the five-year financial forecasting from Plante Moran.

Commissioner Baller noted that this RFP process resulted in a roughly 10% decrease in charges to the City for auditing services.

Public Comment

CA Kurcharek confirmed for David Bloom that the contract has termination provisions favorable to the City.

CM Markus added that there would be no penalties for a severance initiated by the City.

The Mayor thanked CM Markus and FD Gerber for their work on this item.

ROLL CALL VOTE:    Ayes,   Commissioner Hoff  
  Commissioner Sherman  
  Commissioner Nickita  
  Mayor Pro Tem Longe  
  Mayor Boutros  
  Commissioner Host  
  Commissioner Baller

Nays,   None

**10-264-21    Appointment of City Attorney**

CM Markus reviewed the item.

Commissioner Hoff thanked CM Markus for including the redlined copy and for his additions to the agreement. She said that Beier Howlett’s presentation was better than the other submittals and that she was supportive of the recommended resolution.

Commissioner Baller said he was glad the City Attorney position was bid out and a contract created. He said he was very surprised to learn initially that the City had not had a contract with Beier Howlett in a number of decades. He said Beier Howlett should have raised that issue with the City at some point, and that he hopes Beier Howlett provides that kind of council in the future.

**MOTION:**                    Motion by Commissioner Baller, seconded by Commissioner Hoff:  
To provide consent to the City Manager to appoint the law offices of Beier Howlett, P.C. as the City’s attorney, and acknowledging receipt of the Appointment Agreement the City Manager intends to enter into with the law offices of Beier Howlett, P.C.

Mayor Pro Tem Longe said she reviewed all the submitted materials and videos and concurred with the City Manager’s appointment.

Commissioner Host began by saying he believed CA Kucharek was providing the City with excellent services and that he hoped that continues. Commissioner Host then said that because of Beier Howlett’s advice to the Commission about curtailing public comment on July 8, 2019, the public lost trust in City Staff, Beier Howlett and in that Commission. He stated that the RFP for services should have been handled by an outside firm, and that City Staff’s handling of the RFP in-house would not help regain the public’s trust. Consequently he said he would not be able to support the motion.



Commissioner Sherman noted that the Commissioner directly effected by the occurrences of July 8, 2019 offered his full support of the City Manager’s appointment. He noted that the responsibility to select a City Attorney is assigned to the City Manager by City Charter. He noted that a number of other Commissioners described reviewing the submitted materials and concurring with the City Manager. He noted that CA Kucharek had also addressed the occurrences of July 8, 2019. He said he found the prior Commissioner’s rhetoric inappropriately divisive and not in the best interests of the community.

Commissioner Nickita reiterated the value of institutional knowledge and said Birmingham’s ongoing successes spoke to that value.

Commissioner Host noted that the lawsuit filed against the City because of July 8, 2019 cost the taxpayers almost \$125,000 and that none of the Commissioners sitting on the 2019 Commission spoke out on the issue during that time. He said the Commission needs to be trusted by the people.

Public Comment

Mr. Bloom said he was concerned that the public was not provided with any of the other law firms’ submitted materials to review. He stated he had other concerns about the process, including Beier Howlett’s rates and how well-publicized the RFP was. He opined that Beier-Howlett should have been fired after July 8, 2019. He said that while he respected CA Kucharek specifically he did not believe the City should be moving forward with Beier Howlett.

**10-263-21 Motion to Extend the Meeting for Ten Minutes**

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Nickita:

To extend the meeting for ten minutes.

ROLL CALL VOTE: Ayes, Commissioner Sherman  
Commissioner Nickita  
Mayor Pro Tem Longe  
Mayor Boutros  
Commissioner Hoff  
Commissioner Host  
Commissioner Baller

Nays, None

**10-264-21 (cont’d) Appointment of City Attorney**

ROLL CALL VOTE: Ayes, Commissioner Baller  
Commissioner Hoff  
Commissioner Sherman  
Commissioner Nickita  
Mayor Pro Tem Longe  
Mayor Boutros

Nays, Commissioner Host

**Commission discussion on items from prior meeting**

**Commission Items for Future Discussion.** A motion is required to bring up the item for future discussion at the next reasonable agenda, no discussion on the topic will happen tonight.

**VIII. REMOVED FROM CONSENT AGENDA**

**IX. COMMUNICATIONS**

**X. REPORTS**

- A. Commissioner Reports
  - 1. Notice of intention to appoint to the Board of Review
- B. Commissioner Comments

Commissioner Host recommended that residents take an opportunity to visit Zip US Up!, an art installation at the Baldwin Library. He then stated the City needs to pay more attention to supporting seniors.

Commissioner Sherman said that the television broadcast headers and text had an excessive number of typographical errors and that it reflected terribly on Birmingham. He asked that better attention be paid to proofing that text.

Commissioner Baller recommended that Commissioner Host provide a summary of the Ad Hoc Senior Services Committee's work at the next Commission meeting and that an inventory of organizations that provide senior services in the City be created.

- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff

CM Markus stated the City was aware of, monitoring, and working with Seaholm High School regarding its Do Not Drink Order.

- 1. Weingartz – Announcement of Hire

CM Markus welcomed Ryan Weingartz. Mr. Weingartz said he was glad to be joining the City as its inaugural Parking Manager.

- 2. Staff Report – Phase III Old Woodward

CM Markus briefly summarized the report and said it should be back in front of the Commission on October 25, 2021.

INFORMATION ONLY

**XI. ADJOURN**

Mayor Boutros adjourned the meeting at 10:13 p.m.

*Alexandria D. Bingham*

Alexandria Bingham, City Clerk  
/le