

Birmingham City Commission Minutes
September 13, 2021
7:30 p.m.
Municipal Building, 151 Martin
Vimeo Link: <https://vimeo.com/591369155>

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, City Planner Cowan, City Planner Dupuis, Operations Commander Grewe, City Attorney Kucharek, Consulting City Engineer Surhigh

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

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.
- Rail Safety Week 2021 Proclamation

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.

09-226-21 Consent Agenda

The following items were pulled from the Consent Agenda:

- Commissioner Hoff: Item L – 2021 Parking Structure Repairs – Construction Period Services
- Commissioner Baller:
 - Item F – Election Commission Designation of Representatives – Public Accuracy Tests for the November 2021 Election
 - Item G – Regional Urban Deer Management Plan – Oakland County

Mayor Pro Tem Longe noted she would abstain from voting on Item I because her spouse has a business relationship with the applicant.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To approve the Consent Agenda with the exception of Items F, G, and L and noting Mayor Pro Tem Longe’s abstention on Item I.

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

Nays, None

- A. Resolution to approve the City Commission meeting minutes of August 23, 2021.
- B. Resolution to approve the warrant list, including Automated Clearing House payments, dated August 25, 2021, in the amount of \$11,448,905.61.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated September 1, 2021, in the amount of \$1,427,355.50.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated September 8, 2021, in the amount of \$1,241,819.32.
- E. Resolution delegating to the Birmingham City Clerk and her authorized assistants, those being the members of her staff, the following duties of the election commission for the November 2, 2021 election:
 - Preparing meeting materials for the election commission, including ballot proofs for approval and a listing of election inspectors for appointment;
 - Contracting for the preparation, printing and delivery of ballots;
 - Providing candidates and the Secretary of State with proof copies of ballots;
 - Providing election supplies and ballot containers; and
 - Preliminary logic and accuracy testing.
- H. Resolution authorizing the IT department to convert the City’s Zoom subscription from a monthly payment plan to a yearly payment plan with a total yearly cost of \$6717.60. Funds are available in

the IT Connectivity fund account # 636-228.000-993.0700 This purchase is considered a sole source purchase pursuant to section 2-280(d) of the City Code.

- I. Resolution to set a public hearing for October 4, 2021 to consider 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.
- J. Resolution setting a public hearing on Monday, October 4, 2021, at 7:30 P.M., for the purpose of determining the necessity for the replacement of sewer and water services within the Lakeview Ave Paving project area.

Be it further RESOLVED, that the City Commission meet on Monday, October 25, 2021 at 7:30 P.M. for the purpose of conducting a Public Hearing to Confirm the Assessment Roll for the replacement of sewer and water services in the Lakeview Ave Paving project area.

- K. Resolution to award the 2021 Concrete Sidewalk Repair Program #3-21(P), to JB Contractors, Inc., contingent upon execution of the agreement and meeting all insurance and bonding requirements. In the amount of \$312,625.00, to be charged to the following accounts;

General Sidewalk	101-444.001-981.0100	\$ 156,312.50
Major Streets Fund	202-449.001-981.0100	\$ 18,757.50
Local Streets Fund	203-449.001-981.0100	\$ 75,030.00
Sewer Fund	590-536.001-811.0000	\$ 31,262.50
Water Service Fund	591-537.005-811.0000	\$ 31,262.50
Total		\$ 312,625.00

Also, to authorize the Mayor to sign the contract on behalf of the City.

09-227-21 (Item L) 2021 Parking Structure Repairs – Construction Period Services

Ops. Cmdr. Grewe confirmed for Commissioner Hoff that WJE would be overseeing the work on the parking structures. He stated that WJE’s evaluation process was reviewed in the structural assessment reports which were provided to the Commission at a previous meeting.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita: To enter into an agreement with WJE for construction period services in an amount not to exceed \$117,200.00; further, to approve the appropriation and amendment to the 2021-2022 Automobile Parking System Fund budget as outlined. Furthermore, to authorize the Mayor and City Clerk to sign the contract on behalf of the city.

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

Nays, None

09-228-21 (Item F) Election Commission Designation of Representatives – Public Accuracy Tests for the November 2021 Election

Commissioner Baller pulled this item to highlight the City complying with State election law and maintaining the integrity of elections.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
To approve the designation of Finance Director Mark Gerber, Assistant Finance Director Kim Wickenheiser, DPS Director Lauren Wood, Building Official Bruce Johnson, Assistant Building Official Mike Morad, Birmingham Museum Director Leslie Pielack, and Police Commander Scott Grewe as representatives for Election Commission members Mayor Pierre Boutros, Mayor Pro Tem Therese Longe, and Commissioners Clinton Baller, Rackeline Hoff, Brad Host, Mark Nickita and Stuart Sherman for the purpose of conducting the Public Accuracy Tests of the electronic tabulating equipment which will be used to count votes cast at the November 2, 2021 election.

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

Nays, None

09-229-21 (Item G) Regional Urban Deer Management Plan – Oakland County

Commissioner Baller pulled this item to highlight the City's involvement in the new regional urban deer management plan.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Hoff:
To seek the establishment of a regional urban deer management plan for Oakland County.

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

Nays, None

VI. UNFINISHED BUSINESS

09-230-21 Agreement for Managed Assigned Counsel Coordinator (MACC)

CA Kucharek presented this item.

Commissioner Hoff thanked CA Kucharek for her provision of the red line copies and said it was very helpful for understanding what changes were made.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Host:
To approve the Agreement for the Managed Assigned Counsel Coordinator (MACC) Under the Michigan Indigent Defense Commission (MIDC) between the City of Birmingham as the Lead Community for the District Control Units of the 48th District Court and Stephanie Ann Achenbach for the period of time from October 1, 2021 through September 30, 2022 and, to authorize the City Manager to sign on behalf of the City.

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

Nays, None

09-231-21 NEXT Interlocal Agreement

CA Kucharek presented this item.

Cris Braun, Director of NEXT, was also present.

Commissioner Hoff thanked CA Kucharek for meeting with appropriate representatives from the other involved municipalities. She also said the changes made from the last meeting improved the clarity of the agreement.

CA Kucharek stated that the City has no governance jurisdiction for NEXT since it is a 501(c) organization.

In reply to Commissioner Nickita, Ms. Braun stated that Birmingham increased its contribution to NEXT around 2014, and perhaps once again after that.

Commissioner Hoff noted that NEXT provides the City with statements regarding how funds are used.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Longe:
To approve the City of Birmingham's participation in an Interlocal Agreement for Joint Senior Services, which together with three (3) neighboring communities, articulates their intention to contribute money so that NEXT and its Board of Directors may rely upon these monies in order to serve the seniors residing in the governmental units, and to authorize the City Manager to sign the Agreement on behalf of the City.

Public Comment

Gordon Rinschler stated that this was a positive foundational step in documenting how the four participating municipalities have been contributing to NEXT and added that more work would be needed to continue supporting seniors in the community.

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

Nays, None

09-232-21 Amended Contract with SP Plus Corporation

Ops. Cmdr. Grewe reviewed the item. In reply to Commissioner Hoff, he stated that all fee structure remained the same from the previous contract to the proposed amended contract.

In reply to Commission comment, CA Kucharek confirmed that 'SP Plus' had been written in erroneously instead of 'the City' in at least one location in the contract. She said she would review the entire document and make any required corrections. She also said she found the current fee structure troublesome and would work with the new Parking Manager, once hired, to make revisions.

Commissioner Hoff asked CA Kucharek to also review the dollar amounts included in the contract to ensure there were no discrepancies.

In reply to Commissioner Baller, Ops. Cmdr. Grewe stated that the City was not currently being charged for the mobile app. He stated that the City was also not charged the remote management fee while there was free parking in the decks due to Covid-19.

CM Markus recommended that the Commission take no action to allow CA Kucharek to make the requisite changes.

CA Kucharek confirmed for Mayor Pro Tem Longe that the amended contract would change the term of the agreement in the City's favor.

The Commission took no action.

VII. NEW BUSINESS

09-233-21 Art on Loan Application for "Steel Horse" by Barry Harrison

CP Cowan presented the item and stated that the City received a majority positive responses from the poll conducted via Engage Birmingham about the sculpture and the placement of the sculpture.

Commissioner Hoff noted that there were almost 150 responses to the aforementioned poll.

In reply to Commissioner Hoff, CP Cowan noted the sculpture was being installed away from the sports field and parking area, but said there were some sharp edges. He stated that three of the sculpture's legs

would be bolted into the ground, and that installation would be reviewed and approved by the Engineering Department.

CP Cowan noted that the statue was confirmed to be appropriately insured by the City Attorney.

Both CP Cowan and CM Markus noted that the City cannot control whether individuals may attempt to climb art, trees, or other structures in City parks. CM Markus stated that the statue would be checked for sharp edges.

Mayor Boutros said he shared Commissioner Hoff's concern.

CP Cowan stated that DPS had reservations about providing lighting for the sculpture.

MOTION: Motion by Commissioner Nickita, seconded by Commissioner Host:
To approve the installation application of "Steel Horse" in Poppleton Park at Madison Ave and Woodward Ave under the City's Call-For-Entry program and to approve the payment of a \$2,000 stipend; \$1,000 is to be paid upon installation of the sculpture and an additional \$1,000 to be paid out at the end of the 3-year term, to be charged to the Public Arts Board account #101-299-000-811-0000.

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

Nays, None

09-234-21 2021 North Old Woodward Structure Repair Award

Ops. Cmdr. Grewe reviewed the item. He noted that most of the recommended repairs were immediate and near-term recommendations.

Commissioner Nickita estimated that between the repairs done since 2019 and the repairs recommended by WJE over the next five years the City's investment in repairs to the N. Old Woodward deck will be around \$5 million.

CM Markus noted that the amounts provided for the upcoming repairs are only estimates.

Commissioner Host noted that the structural assessment report provided to the Commission in 2019 found the N. Old Woodward deck was already \$6.5 million behind in normal maintenance at that time. He noted that estimate was two years prior to the current discussion.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To award the contract to Smith's Waterproofing for the proposed work at the North Old Woodward Parking Structure in the amount of \$891,303.00; further, to approve the appropriation and amendment to the 2021-2022 Automobile Parking System Fund budget as outlined. Furthermore, to authorize the Mayor and City Clerk to sign the contract on behalf of the city.

Automobile Parking Enforcement Fund

Revenues:

Draw from Fund Balance	<u>\$891,303.00</u>
(Account #585-000.000-400.0000)	
Total Revenues	<u>\$891,303.00</u>

Expenditures:

Capital Outlay – Buildings	<u>\$ 891,303.00</u>
(Account #585-538.005-977.0000)	
Total Expenditures	<u>\$891,303.00</u>

Commissioner Baller stated that it was imperative to begin the process of planning for that parcel. He said he was surmising that Commissioner Nickita’s questions stemmed partially from a concern about continuing to invest in a structure the City may not plan to maintain long-term, and said these decisions would be easier if the Commission had more clarity about its plans for the deck and the parcel.

Public Comment

Chris Shlark, Marketing Director of the Laborers International Union of North America (LiUNA), stated that all the bidders on this project except for Smith’s Waterproofing utilize LiUNA’s Department of Labor Certified Training and Apprenticeship program. He said that may be why Smith Waterproofing’s timing estimate for the project was 150 days instead of the 98 days proposed by the second lowest bidder, Ram Construction. He noted that LiUNA members also have healthcare and retirement benefits. He encouraged the Commission to “accept the most responsible bid to perform the work”.

Bobby Mazur, Ram Construction, disputed the award of the project to Smith’s Waterproofing, citing the fact that Smith’s Waterproofing is a non-union contractor. He stated that employees of Ram Construction pass drug tests and background checks. He stated that he did not believe that Smith’s Waterproofing has shown that they have done similar projects with the same scope of work and magnitude. He requested the Commission reconsider its award of the project, and recommended the City re-review Smith’s Waterproofing’s similar project list. He also echoed Mr. Shlark’s comment about Ram Construction’s shorter proposed project duration.

Daniel Libo, Ram Construction, echoed Mr. Shlark’s comment about Ram Construction’s shorter proposed project duration.

William Miller, Political Director for the Operation Engineers Local 324 and Oakland County Commissioner, said that as an Oakland County Commissioner he goes not just go with the lowest bidder, but with the lowest responsible bidder in order to be a good steward of taxpayer dollars. He asked the Commission to reconsider its award of the project.

Mr. Bloom echoed Commissioner Baller’s comment.

Commissioner Nickita noted that the N. Old Woodward deck is the oldest of the City's decks, and said he has always felt that there would be a better use for that site. He said he would reluctantly support the motion because he felt the City had already invested too much to repurpose the parcel in the near future. He said it was an unfortunate set of circumstances not in the best interest of the Downtown or in the development of that particular area.

Commissioner Baller spoke in favor of having a further discussion of Commissioner Nickita's points. He said he was interested in the City Manager's perspective as well.

CM Markus said his view was that the project should move ahead, and that the City needs the deck for the time being. He said that a lot of projects could potentially be developed there that would still require parking in that area.

The Mayor said the deck needed to be repaired in order to continue being operational while waiting for a potential future development.

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

Nays, None

09-235-21 Asphalt Resurfacing Project Contract #5-21 (P) Contract Award

CCE Surhigh was present regarding the item.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To award the 2021 Asphalt Resurfacing Project #5-21(P) to Pamar Enterprises Inc. contingent upon execution of the agreement and meeting all insurance and bonding requirements in the amount of \$1,476,831.04, to be charged to the accounts as listed in the report.

Commissioner Nickita said that while the repairs were necessary he would like to see the City also address some of the pedestrian, vehicular, visibility and adjacency issues in the area.

Commissioner Hoff said she was glad to see that residents of Latham were polled on Engage Birmingham about the project and that green space would be added to the area.

In reply to Commissioner Baller, CCE Surhigh said that if the City pursues the installation of sidewalks along Latham after this project, it would likely only require removing the section of the curb where the ramp needs to go. He explained that the resurfacing project should not rely on the addition of sidewalks since the road surface needs repair presently.

Commissioner Nickita said he was proud of the City's investment in seniors via its support of NEXT, and said he wanted more residents to be aware of the City's support of NEXT's work.

09-237-21 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.

MOTION: Motion by Commissioner Nickita, seconded by Commissioner Baller:
To discuss sidewalks as a policy issue.

Commissioner Baller recommended a joint meeting with the Multi-Modal Transportation Board.

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

Nays, None

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

X. REPORTS

- A. Commissioner Reports
 - 1. Notice of intention to appoint to the Board of Zoning Appeals
 - 2. Notice of intention to appoint to the Birmingham Shopping District Board
- B. Commissioner Comments

Commissioner Host thanked Staff for addressing the sidewalk safety issues on the south side of Oak between Lakeview and Lakeside.

Commissioner Host then referenced an article from the September 6, 2021 issue of Businessweek suggesting that parking should be priced according to market value, time of day, and the number of open spaces, and that the revenue should be spent on initiatives to better the surrounding community. He stated that there is no such thing as free parking, and thanked the City Manager for his attention to the matter of parking and the Parking Assessment District when the City Manager is also working on a number of other projects.

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

CM Markus stated that Nick Dupuis was elevated to the role of Planning Director and Brooks Cowan was elevated to the role of Senior Planner. He explained that the City would now be looking for an Assistant

City Planner and a Planning Intern. He stated that ACM Ecker would also continue working with the Planning Department in an advisory role over the next several months.

The Mayor congratulated PD Dupuis and SP Cowan on their appointments.

1. Public Hearings Memo
2. **Clerical Error in Zoning Ordinance Article 2, Section 2.40 MX (Mixed Use) Table 2.40.3 – Maximum Total Floor Area**

INFORMATION ONLY

XI. ADJOURN

Mayor Boutros adjourned the meeting at 9:32 p.m.



Alexandria Bingham, City Clerk
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