

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

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

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

II. ROLL CALL

Present: Mayor Bordman
Mayor Pro Tem Boutros
Commissioner DeWeese
Commissioner Harris
Commissioner Hoff
Commissioner Nickita
Commissioner Sherman

Absent: None

Administration: City Manager Valentine, City Attorney Currier, Acting City Clerk Arft, and City Planner Ecker

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

08-205-19 ANNOUNCEMENTS

- Commissioner Sherman celebrated a birthday, and the commission sang Happy Birthday.
- The Fire Department Open House will be held on Saturday, October 12th, 2019 at the Adams Fire Station, 572 S. Adams from 1:00 – 4:00 PM. Learn about fire safety and enjoy the many interactive displays and activities. For more information, visit www.bhamgov.org/fire.
- The Birmingham Museum's fall lecture series will continue on October 17th at 7:00 PM at the Baldwin Public Library with "The Levinsons: First Jewish Family in Birmingham". Special guests are Levinson descendants Senator Carl Levin and Representative Sander Levin who will be participating in the discussion of their family's legacy in Birmingham. Seating is limited. Registration is required for this free presentation by going to the Baldwin Library's website calendar.

08-206-19 APPOINTMENT TO THE DESIGN REVIEW BOARD

The Commission interviewed current Board member Natalia Dukas at a previous meeting and did not require her to return for this meeting. Current member Michael Willoughby was not present.

MOTION: Motion by Mayor Pro Tem Boutros:
To move forward with the appointments without interviewing Mr. Willoughby,

AND

To appoint Michael Willoughby to the Design Review Board, as a regular member, for a three-year term to expire September 25, 2022.

VOTE: Yeas, 7
Nays, 0

MOTION: Motion by Commissioner DeWeese:
To appoint Natalia Dukas to the Design Review Board, as a regular member, for a three-year term to expire September 25, 2022.

VOTE: Yeas, 7
Nays, 0

08-207-19 APPOINTMENT TO THE HISTORIC DISTRICT COMMISSION

MOTION: Motion by Mayor Pro Tem Boutros:
To appoint Michael Willoughby, not present, to the Historic District Commission, as a regular member, for a three-year term to expire September 25, 2022.

VOTE: Yeas, 7
Nays, 0

08-208-19 APPOINTMENTS TO THE BOARD OF ZONING APPEALS

There were three applicants seeking appointments to the Board of Zoning Appeals:

1. Charles Lillie
2. Francis Rodriguez
3. Adam Rubin

Mayor Bordman noted that two of the applicants are current members. The third applicant, Adam Rubin, did not understand that so many people reapply for their positions and withdrew his application. She urged him to continue seeking a City of Birmingham board to serve.

The commission interviewed Mr. Charles Lillie and Mr. Francis Rodriguez.

MOTION: Motion by Mayor Pro Tem Boutros:
To appoint Charles Lillie to the Board of Zoning Appeals for a three-year term to expire October 10, 2022.

VOTE: Yeas, 7
Nays, 0

MOTION: Motion by Commissioner Harris:
To appoint Francis Rodriguez to the Board of Zoning Appeals for a three-year term to expire October 10, 2022.

VOTE: Yeas, 7
Nays, 0

805-209-19 INTERVIEWS FOR THE MULTI-MODAL TRANSPORTATION BOARD ALTERNATE MEMBER

The commission interviewed Mr. Joseph Zane.

MOTION: Motion by Commissioner Hoff:

To appoint Joseph Zane to the Multi-Modal Transportation Board - Alternate position for a three-year term to expire October 27, 2022.

VOTE: Yeas, 7
Nays, 0

805-210-19 INTERVIEWS TO ADVISORY PARKING COMMITTEE (4 VACANCIES)

The following residents applied to serve on the Advisory Parking Committee:

1. Judith Paskiewicz, as a Professional Firm Member (previously interviewed)
2. Lisa Silverman, as a Resident

The commission interviewed Ms. Lisa Silverman.

MOTION: Motion by Commissioner Nickita:

To appoint Judith Paskiewicz to the Advisory Parking Committee as a representative of a professional firm for a three-year term to expire September 4, 2022.

VOTE: Yeas, 7
Nays, 0

MOTION: Motion by Commissioner DeWeese:

To appoint Lisa Silverman to the Advisory Parking Committee as a representative of residents for a three-year term to expire September 4, 4022.

VOTE: Yeas, 7
Nays, 0

Acting City Clerk Cheryl Arft, administered the Oath of Office to both Ms. Paskiewicz and Ms. Silverman.

805-211-19 INTRODUCTION OF GUEST

Mayor Bordman recognized State Representative Mari Manoogian in the audience. Ms. Manoogian informed the Commission about the new water testing procedures brought forth by the Safe Water Drinking Act.

City Manager Valentine briefly described the new testing procedures and shared the results of the new threshold for providing public advisories. He also expressed that under the new threshold, the City put out a public advisory to the residents. Everyone was referred to the City's website for additional information.

IV. CONSENT AGENDA

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

08-212-19 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

Commissioner Hoff: Item A – Resolution to approve the regular City Commission meeting minutes of September 23, 2019.

MOTION: Motion by Commissioner Sherman, Seconded by Commissioner Harris:
To approve the Consent Agenda excluding Item A.

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

- B. Resolution approving the warrant list, including Automated Clearing House payments, dated September 25, 2019 in the amount of \$8,284,484.48.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated October 2, 2019 in the amount of \$1,241,488.72.
- D. Resolution approving the appointment of election inspectors, absent voter counting board inspectors, receiving board inspectors and other election officials as recommended by the City Clerk for the November 5, 2019 Election pursuant to MCL 168.674(1), setting 10:00 a.m. as the start time for the Absent Voter Counting Board, 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.
- E. Resolution approving the recommended changes to the Articles of Incorporation for the Southeast Oakland County Water Authority, as approved by the SOCWA Board on August 21, 2019.
- F. Resolution awarding the Oak St. Sewer Rehabilitation Project, Contract #11-19 (S), to Bidigare Contractors, Inc., in the amount of \$221,600, to be charged to account number 590-536.001-981.0200.
- G. Resolution confirming the City Manager’s authorization for the emergency expenditure related to the repair of vehicle #42 by Southeastern Equipment Company in the amount of \$8,922.00 from the Auto Equipment Fund account #641.441.006-933.0200, pursuant to Sec. 2-286 of the City Code.

- H. Resolution setting Monday, October 28, 2019 at 7:30 PM for a public hearing to consider approval of a Zoning Amendment for Chapter 126, Zoning Ordinance, Appendix C, Exhibit 1, Licenses for Economic Development;

AND

Resolution setting Monday, October 28, 2019 at 7:30 PM for a public hearing for October 28, 2019 to consider approval of an amendment to Chapter 126, Zoning Ordinance, Article 2, Section 2.39 MX, Uses Requiring a Special Land Use Permit to allow the operation of establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 3, Licenses for Economic Development identified in Appendix C, Exhibit 1.

- I. Resolution setting Monday, October 28, 2019 at 7:30 PM for a public hearing to consider approval of a Special Land Use Permit and Final Site Plan and Design Review for Lincoln Yard at 2159 E. Lincoln to allow the use of an economic development liquor license to serve alcohol on premise and to occupy a building more than 6,000 square feet in size in the MX Zone.
- J. Resolution setting Monday, October 28, 2019 at 7:30 PM for a public hearing date to consider approval of a Special Land Use Permit and Final Site Plan and Design Review for 298 S. Old Woodward to allow the operation of the Daxton Hotel with the service of alcoholic liquors, in accordance with Article 7, Section 7.34 of the Zoning Ordinance.
- K. Resolution approving the Shain Park and City Hall Granite Paver Restoration Project to Superior Scape, Inc. in the amount not to exceed \$24,010.00. Funds are available from the Capital Projects Fund account # 401-751.001-981.0100 in the amount of \$15,000 and from the Capital Projects Fund account # 401-441.003-981.0100 in the amount of \$9,010.00. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City.

08-213 -19 (ITEM A) MINUTES OF THE REGULAR COMMISSION MEETING

Commissioner Hoff noted the following corrections:

- Page 10; top line should read "The improvements being offered for \$17,000 should be made and when the intersection is redesigned, make the adjustments."
- Page 10; last bullet, should read: "Mayor Bordman noted that the proposed change does not include a leading pedestrian interval."
- Page 7; 2nd bullet referring to comments made by Commissioner DeWeese, 4 lines down should read: "the commissioner went further to say."

MOTION: Motion by Commissioner Hoff, Seconded by Commissioner Nickita:
To approve the Minutes of the regular Commission Meeting with noted corrections.

VOTE: Yeas, 7
 Nays, 0

V. UNFINISHED BUSINESS

08-214 -19 Birmingham Bloomfield Art Center Annual Art Fair

Mayor Bordman recalled discussions at a previous Commission meeting about the Birmingham Bloomfield Art Center and where the annual Mother’s Day event would be held due to the planned construction on Maple Road.

- City Manager Valentine presented this item and called members of the Art Guild to address questions and concerns. He also expressed that alternative locations were examined and the only solution would be S. Old Woodward Ave. in lieu of the availability of Shain Park.
- Mayor Bordman received 7 emails asking whether or not the event would be continued.
- Commission Hoff asked if everyone was properly notified of the location change and was there any response.
 - Interim City Clerk Arft affirmed that timely notification was provided to the community and that the Clerk’s office did not receive any responses.
- Commission Hoff also expressed concern about where patrons would park.
 - Annie Van Gelderen, of the Arts Guild explained that there would be multiple valet sites and valet will use the Pierce St. and Peabody parking structures.
- Commissioner DeWeese suggested that Police services might be needed to allow right turns onto Lincoln from Woodward during this event.

MOTION Motion by Mayor Pro Tem Boutros, seconded by Commissioner DeWeese: To approve a request from the Birmingham Bloomfield Art Center to hold Art Birmingham on S. Old Woodward between approximately Bowers St. and Landon on May 9th–10th, 2020 contingent upon compliance with all permit and insurance requirements and payment of all fees and, further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

VOTE: Yeas, 7
 Nays, 0

VI. NEW BUSINESS

08-215 -19 SPECIAL LAND USE PERMIT FOR 117 WILLITS

Planning Director Ecker presented the item.

- Three separate restaurants with direct connect and one Class C license was proposed.
- Mayor Pro Tem Boutros asked about the exterior changes relative to entry and exit.
- Commissioner DeWeese asked about handicap accessible entrances.
 - Director Ecker confirmed that the entry and exit as well as handicap accessibility is all within the City’s code requirements.
- Commissioner Hoff asked have all of the department’s concerns been addressed. She also expressed concern about the proposed hours of operations due to the restaurants proximity to church, schools, and residential districts.
 - Director Ecker replied that all concerns by the department have been addressed and that because the business does not immediately abut to residential properties, the hours of operation proposed are permitted by current ordinances. She went on to say that because it is a Special Land Use Permit, the Commission may attach any conditions to the permit.
 - All residents were properly notified.

- Mayor Bordman found contradictions to the hours of operation and noted that residents live above the restaurant. She asked how the hours of operation could comply with the current ordinances.
 - Director Ecker pointed out that there are no restrictions when an establishment is not a bistro and have a regular Class C license.
 - Stephen Simon, owner, clarified the hours of operations for indoor and outdoor seating at all three of the restaurants.
- Commissioner Sherman suggested limiting outdoor dining hours to midnight, due to residents occupying units above the restaurant.
- Commissioner Hoff asked who owns the quota license and will the Sidecar location on Merrill St. remain on Merrill St.
 - Mr. Simon stated that Sidecar will stay on Merrill until 10/30/20, and ROJO will close at the end of the lease. The other two operations would open in 3-6 months. He also noted that the landlord of the new location owns the quota license and the restaurant would be using it for the duration of the lease.

There was a discussion about the clearances indicated on the plan and whether or not the clearances were sufficient for the flow of traffic and safe for the families of the City to walk.

- Planning Director Ecker explained that the clearance proposed meets the ordinance that is in place.
- Mayor Bordman and Commissioner Hoff agree that they would like to see the outdoor dining area decreased with fewer seats outside; they are concerned about the safety of pedestrians while walking on the street.
- Commissioner Nickita noted that there is a 5 ft. wide clearance around this location and is consistent with all of the other circumstances downtown and throughout the City. He does not feel that it had ever been a problem and does not see any reason to make adjustments to the plan. He expressed that he is comfortable with the current layout.
- Mayor Pro Tem Boutros expressed that he is very comfortable with the layout and is in favor of the plan as proposed and clarified.
- Commissioner DeWeese asked if the outdoor seating would be removed after the outdoor dining season is over. Mr. Simon affirmed.
- Commissioner Sherman is concerned with the entrance of Slice only having a 5ft clearance and believes that it could become a bottleneck of traffic.
- Mayor Bordman asked how would patrons waiting for seating be accommodated as to not obstruct the entrance.
 - Director Ecker addressed both Commissioner Sherman and Mayor Bordman's concerns.
- Commissioner Harris expressed that the proposed SLUP could be unilaterally cancelled if it is found not to be in the public's interest.
- Chief Clemence corrected the MLCC relative to the Class C Quota License.

MOTION Motion by Mayor Pro Tem Boutros, seconded by Commissioner Sherman:

To approve a Special Land Use Permit and Final Site Plan and Design Review for 117 Willits to allow the operation of three new food and drink establishments Shift / Sidecar /Slice, serving alcoholic liquors, in accordance with Article 7, Section 7.34 of the Zoning Ordinance;

AND

To authorize the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and approving the liquor license request of S-Three, LLC that requests a transfer of interest in **an existing Class C Quota License** and SDM License with New Outdoor Service and two new

quota license Additional Bar Permits located at 117 Willits, Birmingham, Oakland County, MI 48009;

AND

Furthermore, pursuant to Birmingham City Ordinance, to authorize the City Clerk to complete the Local Approval Notice at the request of S-Three, LLC approving the liquor license transfer request of S-Three, LLC that requested a Class C License be transferred as an existing Class C quota license & SDM License with New Outdoor Service and Two New Additional Bar permits located at 117 Willits, Birmingham, Oakland County, MI 48009.

Commissioner Nickita expressed that he is assuming reviews have been done by the planning board to insure compliance with all local ordinances relative to noise and order. Planning Director Ecker stated that this project is subject to the same noise/odor standards set forth for businesses immediately adjacent to single family zoned property; this circumstance is different because it is in a mixed residential/business zone.

Commissioner Hoff asked the owner how will this venture be different from his other location and will it be successful financially.

Mr. Simon feels that Sidecar has been very successful, unfortunately he was unable to come to acceptable terms in seeking a lease extension in its current location. Finding another location downtown to continue its success is a win for everyone involved. He also stated that it is financially successful.

Mayor Bordman called for public comment on this item.

- Julia Richie, 36 year resident, lives at the Willits on the curve above the outside seating area. She asked would there be a railing or has consideration been given to use of umbrellas.
 - Planning Director Ecker affirmed that there are 3 umbrellas planned and a rail.

VOTE: Yeas, 7
 Nays, 0

08-216 -19 PRESENTATION ON THE NEW WATER SAMPLING RULES UNDER THE MICHIGAN SAFE WATER DRINKING ACT

City Manager Valentine presented the item.

- Water sampling rules changed in 2018 for testing for copper and lead results throughout the State of Michigan.
- Higher thresholds were established to promote aggressive testing.
- All communities in the State must inventory existing service lines at residential properties.
- Inventory that has lead service lines must be abated at a rate of 7% per year.
- The public must be educated by the City on lead service lines.
- Mayor Bordman stated that there are about 9,000 homes in Birmingham. Many of them are old homes and when built the standard for service lines was a product that over time leached lead. The State now requires each City to find this type of line. If homes are found with lead service lines (pipes), the state requires the city to replace the pipes (from the City connection to the home) at the City's expense. The percentage of households with this type of service line is expected to be low, somewhere between 500-600 homes.

- Commissioner Harris asked if the abatement mandate would go into effect even if the lead contamination rate is low. City Manager Valentine affirmed.
- Commissioner DeWeese asked if the City would need owners' permission to go onto properties. City Manager Valentine affirmed.
- Commissioner Hoff asked how was testing done and were businesses included. City Manager Valentine expressed that DPS is aware of most of the homes with lead service lines and solicited those homes for sampling. At this time, residential properties are only covered by the new rule.
- The City provided water filters to residents recording high levels of lead.
- Oakland County is providing water filters to low income and high-risk homes. The requirements are outlined on the City's website.
- Mayor Bordman urged people listening to reach out to people that might qualify for the water filters and let them know to take advantage of this opportunity.
- Commissioner Harris asked if the homes without lead service lines but may have some type of lead in the home; would they be part of the sampling pool. City Manager Valentine stated that that type of circumstance would not be a part of the pool. but to visit the City's website at www.bhamgov.org/leadtesting.

08-217 -19 CLOSED SESSION REQUEST

MOTION by Commissioner Hoff, seconded by Commissioner DeWeese:

To meet in closed session to consider the City Manager's evaluation pursuant to Section 8(a) of the Open Meetings Act (Act 267 of 1976). A 2/3 roll call vote of the City Commission is not required to call a closed session permitted under Section 8(a).

VOTE: Yeas, 7
 Nays, 0

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

Mayor Bordman noted that the Commission received several communications thanking the City for their service to residents:

- Richard Martin said the City of Birmingham takes better care of residents than any other City in Michigan.
- Matthew McCartall, Adam Parsons, and Dr. Parsons (not related) echoed that everyone is good to work with.
- Mr. & Mrs. George Stern commended the Police Department for their service.

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

Betty Gusho, Lyonhurst St., commented on the 5g towers being erected around the City as follows:

- Health hazard
- Increased cancer risk
- Suggested that the Commission research this issue.

Brad host, 639 Puritan, wanted to encourage the residents to communicate with the Commission on a regular basis. He wants the Commission to consider allowing citizens to speak at the beginning and end of the meetings.

David Bloom, Stanley St., reported on the federal lawsuit that he and Mr. Baller had against the City, members of the Commission, City Manager, and Attorney Currier. He presented the two-page settlement and explained why He and Mr. Baller settled. He suggested an independent investigation be conducted. Mr. Bloom ~~also proposed an alternate street improvement option~~ provided the Commission with an alternate street improvement option (see Attachment A)¹.

X. REPORTS

- A. Commissioner Reports
 - Notice to appoint to Birmingham Shopping District, Historic District Study Committee, and the Public Arts Board.
- B. Commissioner Comments
 - DeWeese expressed his displeasure with personal attacks on candidates.
 - He has heard that the residents do not believe that the City was squeaky clean in the NOW project and suggested that an independent investigation be done.
 - Commissioner Nickita commented on the MML Conference and enjoyed attending. He also expressed that it was very interesting to collaborate on the many issues being dealt with across the state. He went further to say that he heard positive comments on how the City is a model to follow in terms of being able to decrease the tax rate for five years in a row while increasing services.
 - Mayor Bordman expressed that the MML Conference is a very worthwhile event.
 - Commissioner Hoff commended City Manager Valentine for taking advantage of the conference and the many learning opportunities that were afforded him.
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff

Mayor Bordman adjourned to closed session at 9:25 pm.

XI. ADJOURN

Cheryl Arft, Acting City Clerk
/vc

¹ Amended October 28, 2019.

ATTACHMENT A

Premise: This proposal would reduce costs to residents and spread costs over additional years to make it more affordable. It also provides flexibility for residents to choose asphalt or concrete in a compromise that is fair to the residents living on unimproved streets and the city at large. This proposal is also fair to residents who have already paid full fare for their street improvements.

- ❖ Use 20/30 year revenue bonds tied to property taxes for affected streets
 - Spreads out payments over 20-30 years instead of ten
 - Gets a very low interest rate which is much lower than city interest rate charged to residents
 - No lien on property as bond payment obligations stay with property not owner.

- ❖ Allow residents to choose asphalt or concrete paving – As a compromise if asphalt is chosen there should be a premium paid by residents which is then reinvested in a city road fund account to help defray more frequent maintenance and repair expenditures. The premium would presumably be less than the difference between concrete and asphalt
 - Residents can get an asphalt road for aesthetics and some cost benefit.
 - City gets extra revenue to defray future costs

- ❖ Have an annual sign up period for streets for each of next 3 years (2020, 2011, 2022)
 - Allows city to bundle paving projects for scale to get better contract bids for residents and reduces bonding costs

- ❖ Residents of each street should agree to participate with a clear majority of at least a 60%.
 - If a neighborhood circulated street petition obtains more than 50% of residents, the city should host a meeting for all residents.
 - At least 60% should be required to sign an official, city clerk managed petition, within 30 days of any public hearing to include the street in an annual bundle.