

BIRMINGHAM CITY COMMISSION MINUTES
NOVEMBER 25, 2019
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Pierre Boutros called the meeting to order at 7:30 P.M.

II. ROLL CALL

ROLL CALL: Present: Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman
Absent: None

Administration: City Manager Valentine, Assistant City Manager Gunter, City Attorney Currier, Acting City Clerk Arft, Assistant City Engineer Fletcher, Human Resource Manager Myers, Finance Director Gerber, DPS Director Wood, and Police Chief Clemence

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

11-273-19 ANNOUNCEMENTS:

- The City offices will be closed November 28th and 29th, 2019 for Thanksgiving.
- Small Business Saturday in downtown Birmingham is a day dedicated to supporting small businesses across the country. Shoppers are encouraged to enjoy extra perks and tackle their holiday shopping in Birmingham on Saturday, November 30th! Enjoy free parking in the structures and free two-hour valet parking from 10 AM to 6 PM at N. Old Woodward at Hamilton, and S. Old Woodward and Brown St.
- The Birmingham Santa Walk is also on Saturday, November 30th at 9:30 AM. Santa House will be open from 10:30 AM – 3 PM. Complimentary horse-drawn carriage rides will be offered from 11 AM to 3 PM. For more information, visit www.enjoybirmingham.com or call 248-530-1200 during business hours.
- Winter Market begins Friday, December 6th, 2019 at 4:00 PM in Shain Park, with the Tree Lighting ceremony in the park at 6:00 PM. Enjoy European food and drinks, gift items, holiday greens, crafts, ice sculptures, live reindeer, warming stations, a Kinderhaus children's activity area, the popular Santa House, horse-drawn carriage rides and live entertainment. More than 60 vendors will be at the event.

11-274-19 APPOINTMENT OF PIERRE BOUTROS, MAYOR TO BIRMINGHAM NEXT

MOTION: Motion by Commissioner Sherman:

To appoint Pierre Boutros, Mayor as the City Commission non-voting liaison to Birmingham NEXT.

VOTE: Ayes, 7
 Nays, 0
 Absent, 0

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.

11-275-19 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

Commissioner Hoff: Item H - Resolution awarding the Parking Lot 5 Outfall Repair, Contract #12-19 (S), to Angelo Iafrate Construction Company, in the amount of \$76,300, to be charged to account number 585-538.005-981.0100; and further approving the appropriation and amendment to the 2019-2020 Automobile Parking System Fund budget as presented.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To approve the Consent Agenda, excluding Item H, which was pulled from consent.

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

 Nays, None

- A. Resolution approving the Regular City Commission meeting minutes of November 11, 2019.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated November 13, 2019 in the amount of \$964,102.16.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated November 20, 2019 in the amount of \$864,281.94.
- D. Resolution approving the purchase of one (1) John Deere XUV 825M Utility Vehicle from Bader & Sons Co. through the State of Michigan MiDeal cooperative purchasing contract #071B7700085 in the amount of \$18,654.35 from the Auto Equipment Fund, account #641-441.006.971.0100.
- E. Resolution accepting the resignation of Therese Longe from the Parks and Recreation Board, thanking her for her service, and directing the City Clerk to begin the process of filling the vacancy.
- F. Resolution accepting the resignation of Clinton Baller from the Triangle District Corridor Improvement Authority, thanking him for his service, and directing the City Clerk to begin the process of filling the vacancy.

- G. Resolution authorizing the Mayor to sign the 2019 Program Year Community Development Block Grant (CDBG) Sub recipient Agreement on behalf of the City and approving the appropriations and amendment to the 2019-2020 CDBG Fund Budget as presented.
- I. Resolution approving the street light agreement between the City of Birmingham and DTE Energy Co. regarding the installation of streetlights at 298 S. Old Woodward Avenue. Further, directing the Mayor to sign the agreement on behalf of the City. All costs relative to this agreement will be charged to the adjacent owner.

11-276-19 (ITEM H) PARKING LOT 5 OUTFALL REPAIR

Commissioner Hoff expressed concern about the catch basins that become clogged. She asked Mr. Fletcher if the construction at Brookside was a contributing factor to the repairs needed in Lot 5, and if so, would the contractor be contributing to the cost of the repairs. Mr. Fletcher believes that the contractor is not responsible and that the timing of the repair is coincidental.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita: To approve the resolution awarding the Parking Lot 5 Outfall Repair, Contract #12-19 (S), to Angelo Iafrate Construction Company, in the amount of \$76,300, to be charged to account number 585-538.005-981.0100; and further approving the appropriation and amendment to the 2019-2020 Automobile Parking System Fund budget as presented.

VOTE:	Ayes,	7
	Nays,	0
	Absent,	0

V. UNFINISHED BUSINESS

None

VI. NEW BUSINESS

11-277-19 PUBLIC HEARING TO CONSIDER PY 2020 CDBG FUNDING

Finance Director Gerber presented this item.

Mayor Boutros opened the Public Hearing at 7:40 P.M.

Cara Lynch, therapist at Haven, requested CDBG dollars and presented information about the people in Birmingham who Haven provided services. Approximately 38 people were counselled, spoken to on the crisis line, or given educational material. The program also provides support to survivors of domestic abuse/violence. All of the services are free.

Commissioner Hoff asked how much the City of Birmingham has given Haven in the past to support their programs. Director Gerber offered that Haven had been funded through an outside agency contract. The amount budgeted for this year was \$2,000.

Mayor Boutros asked why the minimum of \$3500 for CDBG funding does not apply in this instance.

City Manager Valentine explained that it does apply, but Haven does not meet the stringent requirements set forth by the CDBG; therefore, the Commission has discretion on how to fund this project.

Mayor Boutros closed the Public Hearing at 7:44 P.M.

Commissioner Hoff expressed that she supports the work of Haven. Taking \$3500 from the CDBG funds to donate to Haven in effect would be taking it away from NEXT, which services more people in the community. She prefers to continue donating to local charities in the way that it has been done in the past.

Mayor Pro Tem Longe concurred with Commissioner Hoff. She felt that using CDBG funds for Haven would open the doors to other domestic violence organizations that have other avenues to raise funds. She believes that seniors are in more need of the grant funds to remedy actual health and safety issues.

Commissioner Baller agreed and wondered, as a new commissioner and member of the public, how much does the City give in charitable contributions annually and to what organizations.

City Manager Valentine explained that the City does not give money away; it contracts for services provided to the City in exchange for the funds. The information can be compiled and shared with the new commissioners.

Commissioner Baller would like to see that information published, maybe on the City's website.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita:
To authorize Finance Director Gerber to complete the 2020 Program Year Community Development Block Grant application and conflict of interest certification and authorize the Mayor to sign the application and conflict of interest certification and other documents resulting from this application on behalf of the City and submit them to Oakland County. The project(s) to be included in the application and the respective allocations of Community Development Block Grant Funds are as follows:

	APPROVED IN 2020 BUDGET
1. Public Services – Yard Services	\$ 7,327
2. Public Services – Senior Services	\$ 3,500
3. Minor Home Repair	<u>\$25,263</u>
TOTAL	<u>\$36,090</u>

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

Nays, None

11-278-19 PUBLIC HEARING TO CONSIDER RE-PROGRAMMING PY 2018 CDBG FUNDING

Finance Director Gerber presented this item. He explained that due to available funds left over from 2018, staff would like to reprogram the use of the extra funds for minor home repairs before they expire.

Mayor Boutros opened the Public Hearing at 7:50 P.M.

Mayor Boutros closed the Public Hearing at 7:51 P.M.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To authorize the Finance Director to submit a request along with the public hearing advertisement and City Commission resolution to Oakland County to reprogram the Community Development Block Grant (CDBG) program year 2018 funds in the amount of \$2,335 from Remove Architectural Barriers (Account 731619) to Minor Home Repair (Account 731227).

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

 Nays, None

11-279-19 48TH DISTRICT COURT 2020 PROPOSED BUDGET APPROVAL

Director Gerber presented this item.

Commissioner Hoff commented that she volunteers as a mediator at the 48th District Court. She observed that they did a beautiful job with the recent renovations to increase security. She asked for clarification on how the funds are distributed.

Director Gerber offered the following: While the budgeted funds, \$1.5M, are distributed to the Court on a quarterly basis, the general fund is reimbursed with the revenues, estimated \$1.3M for 2019, generated from Court fines. There is an estimated \$100,000 contribution from the general fund.

Commissioner Hoff also noted that the City of Birmingham’s court caseload has been increasing at a higher rate than neighboring communities have and wondered what is driving that trend.

Chief Clemence explained that is primarily due to stellar police work. While West Bloomfield is a larger community and are leading in both civil and criminal categories; Birmingham’s criminal cases and production is much higher than W. Bloomfield resulting in an increased caseload.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Longe:
To receive the 2020 proposed budget from the 48th District Court; and further, to approve the budget as submitted.

VOTE: Ayes, 7
 Nays, 0
 Absent, 0

11-280-19 GREENWOOD CEMETERY AGREEMENT

Assistant City Manager Gunter presented this item.

The proposed recommendation is to award Creative Collaborations, a venture of Cheri Arcome, the contract to operate the cemetery on behalf of the City. The key changes included in the agreement are as follows:

- An additional \$10,000 would be added to the Greenwood Cemetery budget for operation cost.
- 100% of lot sales will go to the Perpetual Care Fund.
- Full coordination of cemetery services would be the responsibility of Creative Collaborations.
- Moving toward a monthly flat fee arrangement as opposed to commission based sales.
- The agreement is a 6-month short-term arrangement to allow the GCAB time to discuss other potential options.
- A \$200 increase in burial service fees to be consistent with other Oakland County cemeteries.

Commissioner Hoff expressed concern for the cemetery that she has had for many years. For the benefit of the public and new commissioners, she offered additional historic information. The City operated the cemetery until 2012, when Mr. Brunner, the City Manager at the time, recommended hiring an outside consultant. In 2013 an RFP was issued for cemetery management services resulting in one response from Mr. Sloan, representing Elmwood Cemetery, who received the contract. Her concerns were further expressed about Ms. Arcome representing Mr. Sloan for the past six years and serving as the contact for the City of Birmingham; and now is proposing to do the same work with an increase in fees under a new name. Commissioner Hoff does not have confidence in Mr. Sloan who in her mind is represented by Cheri Arcome.

Assistant City Manager Gunter explained that Ms. Arcome worked as a subcontractor to Elmwood, and is an independent contractor, confirmed by Mr. Sloane. Her flat fee includes all services, and is separate from Elmwood. Ms. Arcome has a sexton and has the capacity to provide all services based on her experience with Greenwood.

Commissioner Sherman concurred with Commissioner Hoff. In researching Elmwood's board of directors, he found the officers and trustees listed on their website. Mr. Sloan is identified as a director who is a consultant to the board. With that noted, Commissioner Sherman questioned whether Mr. Sloan's letter was an effective termination on behalf of Elmwood Cemetery. He stated that Mr. Sloan does not seem to have the capacity as an independent consultant to terminate the contract. He further noted that Ms. Arcome is listed as the Director of Marketing for Greenwood, Glenwood, Birchwood, and staff of Elmwood cemeteries.

Ms. Arcome responded that she currently works in many capacities for Elmwood Cemetery. She manages Greenwood Cemetery for Elmwood, Glenwood Cemetery in Flint, and Birchwood Cemetery in Macomb. After December 1, 2019, Elmwood would continue to employ her to manage the other two cemeteries until January 1, 2020 at which time she will only manage Macomb Township Cemetery for Elmwood and manage Birchwood and Greenwood as Creative Collaborations.

Mayor Boutros stated that in summary, the commission is looking at Ms. Arcome as the subcontractor for the City of Birmingham. He asked Ms. Arcome what her role would be in trying to find a company to manage Greenwood in 6 months.

Ms. Arcome expressed that her conversations with the City, after it was clear that there was no path forward with Elmwood, was to find a solution for maintaining Greenwood seamlessly. In considering the City's capacity to manage the operations, she agreed to provide services on a month-to-month basis due to the timing of Elmwood's termination. She also expressed that her goal is to maintain total transparency and work with the City in any capacity to resolve this issue.

Mayor Boutros expressed appreciation for Ms. Arcome coming forward to help the City for the next six months with the management of the cemetery.

Commissioner Baller asked for the average number of burials per month or over the current year.

- As of September 30, 13 cremation burials and 10 full casket burials in 2019.
- As of September 30, \$84,000 in sales (28 graves sold), \$63,000 went to city
- With the proposed arrangement, all revenues will go to City.

Ms. Arcome offered that she deals with the Greenwood community several times a week.

Commissioner Hoff asked if she is going to work for or with Mr. Sloan and at which cemetery.

Ms. Arcome responded absolutely, and explained that Mr. Sloan is the Executive Director of Elmwood Cemetery, and Elmwood contracts to manage several other cemeteries including Birchwood, which she plans to continue managing. She further stated that if other cemeteries are added to Elmwood's portfolio, and if she is asked to manage the additions, she would.

Commissioner Baller asked if she has staff. Ms. Arcome said yes, part-time staff. The commissioner also asked to hear from Mr. Bancroft of Franklin Cemetery in Franklin.

Steven Bancroft, Franklin resident, manages Franklin Cemetery for the last four years. He was approached in August for information by City of Birmingham staff. Franklin is a private cemetery as opposed to a municipal cemetery that is owned by Franklin, and is operated through a purchased system that is not used by the City. When he did not respond to the RFP, he was asked by staff to consider the position outside of the RFP. He is retired and operates Franklin as a community service. He recommended that the City contract with Ms. Arcome due to the uniqueness of Greenwood and the specific needs of the community. He went on to say that Greenwood would be a complete learning curve for anyone new.

Mayor Boutros asked about the systems that Mr. Bancroft used for Franklin Cemetery. Mr. Bancroft described it as a complete system called Legacy Mark that included ground penetrating radar.

Commissioner Hoff asked Manager Wood if she was working for the City when DPS took care of the cemetery, Ms. Wood affirmed. Commissioner Hoff went on to say that there were not many burials because there were no plots available. Ms. Wood recalled burials that took time away from the regular maintenance of the City. She further talked about it being a joint venture between the City Clerk's office and DPS. The clerk took care of the administrative end and DPS took care of the grounds, maintenance, and burials.

Commissioner Hoff suggested that the number of burials have not increased but the creation of new graves created a new business of sales developed by Elmwood. Ms. Wood agreed with Commissioner Hoff and recommended that the City not engage in the cemetery business, as it is known today; with the exception of strict oversight of the contractor as a matter of good business practices.

Mayor Boutros shared the same concerns, as Commissioner Hoff.

Commissioner Hoff agreed that the City is in a very difficult position relative to Greenwood Cemetery and believes that the City has options, she noted that there are many historic cemeteries in Oakland County. She would like to hear more about the Legacy Mark program. She also noted that the GCAB has had ground penetrating radar as their number one goal for several years and asked why it had not been initiated. Commissioner Hoff suggested that the City move forward with the GPR that has been proposed by the GCAB. She further expressed that she has serious concerns about the 6-month contract that is

being proposed; considering that Winter is upon us and sales are highly unlikely during the winter months.

City Manager Valentine commented that the level of concern with this operation is understandable. He went on to state that when the City began the arrangement of bringing in a professional firm several years ago, it was to raise the level of service which has been achieved by hiring Elmwood. He asked, in going forward, does the City want to keep the bar raised or see it lowered. The opportunity is upon the City to continue service at the existing level that has been established but doing it in a different format. Contracting directly would have additional costs now that the contractor previously paid in the existing model. Realizing that the current model is unsustainable in the long term, a change must be made. The change being proposed would be an intermediary step demonstrating that the City can retain the level of service as a community to anyone at need by maintaining that consistent high level. The focus should remain on service.

Mayor Boutros asked if the staff is capable of providing this service. City Manager Valentine and Ms. Wood agreed that while staff are capable, it would be a struggle due to limited resources.

Mayor Pro Tem Longe commented that she thinks it is an appropriate course of action for the next 6 months. While the commission has heard from Ms. Wood about DPS's role and ability to take over, has it been considered from a service stand point the City Clerks availability to administer the cemetery. Given the fact that the City is in the process of hiring a Clerk, she feels it is not appropriate to put the burden back on the Clerk's office.

Commissioner Nickita expressed that the City is literally days away from a transitional point and do not have anything in place to accommodate what may come in December. He further stated that everyone must keep in mind that this is a sensitive process and the work must be done carefully and with preparation. Going forward, the City should evaluate the situation and identify a path to the future relative to Greenwood. He suggested that the GCAB be integrated into the process over the next 6 months, providing input that could be put in place. The bar has been raised and services should not be taken down.

MOTION: Motion by Commissioner Nickita, seconded by Mayor Pro Tem Longe:
To authorize the agreement with Creative Collaborations for a term of six months for an amount not to exceed \$22,800 and direct the Mayor to sign the agreement on behalf of the City.

AND

To increase burial fees for full casketed burials from \$1,200 - \$1,400 to be more consistent with industry standard rates.

AND

To approve the appropriation and amendment to the 2019-2020 General Fund budget as proposed.

Commissioner Hoff reiterated that she has lost confidence in this contractor, but she would support this motion for 6 months on the basis that other options are explored, staff makes contacts with Oakland Count historic cemeteries, analyze the Legacy program, and the GCAB is involved in the process. She did not want to see a burial come up on December 2 and the City has nothing in place to support it.

VOTE: Ayes, 7
 Nays, 0
 Absent, 0

11-281-19

CITY CLERK SELECTION SUB-COMMITTEE APPROVAL

City Manager Valentine presented this item.

Commissioner Nickita nominated Commissioner Sherman.
Commissioner Sherman nominated Commissioner Hoff.

MOTION: Motion by Commissioner Nickita, seconded by Commissioner Host:
To appoint a sub-committee comprised of Commissioners Sherman, and Hoff, the City Manager and the HR Manager to conduct the final interviews and recommend a finalist candidate for the position of City Clerk for approval by the City Commission.

VOTE: Ayes, 7
 Nays, 0
 Absent, 0

11-282-19 RESOLUTION TO MEET IN CLOSED SESSION PURSUANT TO SECTION 8(H) OF THE OPEN MEETING ACT

City Manager Valentine reviewed the provisions of the Open Meetings Act relative to closed session meetings for the new commissioners; and noted that action is only taken in open session.

Commissioner Nickita added that the only topic that may be discussed in closed session is that which is outlined on the agenda specifically for closed session.

No action is expected.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To meet in closed session pursuant to the Open Meetings Act Section 8(H) to consider material exempt from discussion or disclosure by state or federal statute.

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

 Nays, None

VII. REMOVED FROM CONSENT AGENDA

The item removed from the consent agenda was addressed earlier in the meeting.

VIII. COMMUNICATIONS

None

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

Brad Coulter, 498 Wimbleton, said on November 5, 2019 the three highest vote getters in the Commission Election were newcomers and two incumbents were not reelected. He believed that voters sent a clear message. They wanted change, transparency, honesty, and ethics from the commission. At the lame duck session, the commission addressed the severance package in the City Manager's employment contract. A number of residents spoke up that 24 months' severance was out of line and that 6-12

months was standard. He has never heard of any city in Michigan giving more than a 12-month severance. He summarized his research reciting his findings and finally requested three examples of cities in Michigan who have given their City Managers 1-3 years severance from Commissioner Sherman through Mayor Boutros to back up that the severance market is 1-3 years. He also asked if Commissioner Sherman would disclose the benchmarking information that was referenced when supporting the 1-3 year severance before the vote.

Commissioner Sherman reminded Mr. Coulter that he was present when City Manager Valentine went through the process of closed session and explained that topics discussed in closed session must remain in closed session.

Mayor Boutros reminded the public that all questions from the public and all answers to the public must go through the chairperson.

David Bloom spoke about the exhaustive research conducted by Mr. Coulter. He requested data that Mr. Sherman said existed. He believes that the residents of Birmingham deserve transparency and trust the commission to come forward with their data.

X. REPORTS

11-283-19 COMMISSIONER REPORTS

11-284-19 COMMISSIONER COMMENTS

Commissioner Hoff commented that a group of Birmingham citizens representing several different boards attended the Michigan Women’s Hall of Fame Gala to induct Martha Baldwin. It was a very nice event and the City of Birmingham had very good representation.

Commissioner Baller thanked Mr. Coulter for his research and believed that he raises some very important questions. While there is an expectation of transparency, maybe the commission should seek an opinion on whether facts presented in a closed session are never disclosed under any circumstances outside of that session. Commissioner Baller does not believe that Mr. Coulter’s request is unreasonable. He suggested that there were several assertions made; and it is only fair that the public see supporting documentation. He also suggested using recruiting activities to fill appointments insuring that the finest people are appointed to board positions.

Commissioner Host commented:

- People should be able to speak to the commissioners before the regular meeting starts and it should be an agenda item.
- The commission should consider changing how we go forward with unimproved roads to be more democratic about the process. Give people a choice between asphalt and cement.
- He expressed that he would like to retain an independent attorney to look at the issues pointed out by Mr. Coulter and clear the air.

Commissioner Nickita clarified there is a process that goes through the City Commission selecting the package that goes to the City Manager annually. He went on to say that Commissioners Hoff, Sherman, and himself, being involved in the contract negotiations for several City Managers, understand that there are several aspects to the contract discussions. It has many elements and a series of issues. It is done annually and consistently, and Commissioner Nickita does not think there is any question that this is done with the highest integrity. The discussions are a complicated part of the process, and cannot be discussed in open session.

Commissioner Baller commented that he does not think anyone is questioning the complexity of the process. The question is about the assertions that were made by the commission to justify the action.

Mayor Boutros explained that any discussion in closed-door session cannot be shared outside of that session. He noted that the contract is signed and in effect. The precedent that needs to be set forward is respect for rules and legal documents signed and approved by the City Commission.

Commissioner Host begged to differ with Mayor Boutros. He believes that the most important thing is the public trust.

11-285-19 CITY STAFF REPORTS

Assistant City Manager Gunter submitted the Parking Utilization Report.

11-286-19 INFORMATION ONLY

XI. ADJOURN

Mayor Boutros adjourned to Closed Session at 9:24 p.m. There will be no action.

Cheryl Arft, Acting City Clerk
/vc