

BIRMINGHAM CITY COMMISSION
OCTOBER 19, 2020
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.
VIRTUAL MEETING
MEETING ID: 655 079 760

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 Designee, called the roll.

PRESENT: Mayor Boutros (location: Birmingham, MI)
Mayor Pro-Tem Longe (location: Birmingham, MI)
Commissioner Baller (location: Birmingham, MI)
Commissioner Hoff (location: Birmingham, MI)
Commissioner Host (location: Birmingham, MI)
Commissioner Nickita (location: Westfield, IN)
Commissioner Sherman (location: Birmingham, MI)

ABSENT: None

Administration: City Manager Valentine, Planning Director Ecker, City Clerk Designee
Bingham

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

ANNOUNCEMENTS:

- The Clerk's Office reminded voters to turn in an absentee ballot application to vote by mail for the November 3, 2020 General Election. Voters should return their absentee ballot to the Clerk's Office as soon as possible via drop box or mail. Return postage for absentee ballots has been covered by the City for this election. Specific voting information and a preview of the ballot can be found at mi.gov/vote. The online and mail voter registration deadline was October 19, 2020. After October 19, 2020 new voters must register in person at the Clerk's Office.
- Commissioner Sherman's Birthday

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.

10-190-20 CONSENT AGENDA

The following items were pulled from the Consent Agenda:

Commissioner Hoff: Item A – City Commission Meeting Minutes September 21, 2020

Item N – Resolution authorizing the City Manager to sign the agreement with ASTI for the Brownfield Redevelopment Authority.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To approve the Consent Agenda with the exception of Items A and N.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Commissioner Host
Commissioner Nickita
Commissioner Baller
Commissioner Hoff
Mayor Boutros
Mayor Pro-Tem Longe
Nays, None

- B. Resolution approving the warrant list, including Automated Clearing House payments, dated September 23, 2020 in the amount of \$2,500,184.98.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated September 30, 2020 in the amount of \$1,179,039.25.
- D. Resolution approving the warrant list, including Automated Clearing House payments, dated October 7, 2020 in the amount of \$652,087.32.
- E. Resolution approving the warrant list, including Automated Clearing House payments, dated October 14, 2020 in the amount of \$1,838,762.55.
- 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 3, 2020 State General Election pursuant to MCL 168.674(1) and to grant 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 approving \$19,760 in Municipal Credits and \$19,416 in Community Credits from fiscal year 2021 to Next in support of their specialized transportation program; to approve \$11,000 in Community Credits from fiscal year 2021 to purchase and install a bus shelter (location to be determined); and further to direct the Mayor to sign the Municipal Credit and Community Credit contract for fiscal year 2021 on behalf of the City.
- H. Resolution authorizing the City Manager to cast a vote, on the City's behalf, for the four candidates for the Michigan Municipal League Liability and Property Pool Board of Directors for three-year terms, beginning January 1, 2021.

- I. Resolution approving the purchase and planting of one-hundred (100) trees from KLM Landscape for the Fall 2020 Tree Purchase and Planting Project for a total project cost not to exceed \$45,865.00. 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 and the Parks- Other Contractual Services account #101-751.000-811.0000 for these services. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.
- J. Resolution setting a public hearing of November 9th, 2020 to consider the proposed lot combination of 34350 Woodward and 907-911 Haynes, parcel # 19-36-281-022 and parcel # 19-36-281-030.
- K. Resolution setting a public hearing date of November 9, 2020 to consider the Special Land Use Permit and Final Site Plan for 768 N. Old Woodward – The French Lady – to allow the operation of a food and drink establishment in the O2 Zoning District.
- L. Resolution setting a public hearing date of November 9, 2020 to consider the Revised Final Site Plan and Design and Special Land Use Permit Amendment to allow the expansion of the existing Luxe bistro into the vacant storefront to the south.
- M. Resolution approving a special event permit as requested by the Lutheran Church of the Redeemer to display the Christmas Nativity in Shain Park beginning November 24th-December 31st, 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.
- O. Resolution approving the purchase of (20) FN15 SRP G2 carbine tactical rifles from Kiesler Police Supply via MiDEAL state contract pricing in the amount of \$19,380.00; further to authorize this budgeted expenditure from account number 101-301.000-734.0000.

10-191-20 (ITEM A) CITY COMMISSION MEETING MINUTES OF SEPTEMBER 21, 2020

Commissioner Hoff sought and received clarification regarding the difference between the withdrawn motion and the passed motion regarding Ordinances on pages seven and eight of the minutes.

In the third paragraph from the bottom of page six, Commissioners Hoff and Baller said the words “additional staff specifically to handle the platform and that it” should be added after “hire” and before “would”.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Longe:
To approve the City Commission meeting minutes of September 21, 2020 as amended.

Public Comment

None.

ROLL CALL VOTE: Ayes, Commissioner Host
Commissioner Nickita
Commissioner Baller

	Commissioner Hoff
	Mayor Boutros
	Mayor Pro-Tem Longe
Nays,	None
Abstain,	Commissioner Sherman

10-192-20 (ITEM N) RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT WITH ASTI FOR THE BROWNFIELD REDEVELOPMENT AUTHORITY

Commissioner Hoff asked what AKT Peerless previously charged the City and asked what Brownfield Projects are in the works with the City.

CM Valentine stated that since 2005 the City had paid AKT Peerless approximately \$89,000 for their services in reviewing Brownfield Redevelopment projects. He explained that the City has two pending Brownfield Projects: The Pearl on Old Woodward and the Art Van Headquarters at Oak and Old Woodward.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita: To authorize the City Manager to sign the agreement with ASTI for the Brownfield Redevelopment Authority.

Public Comment
None.

ROLL CALL VOTE:	Ayes,	Commissioner Hoff
		Commissioner Nickita
		Commissioner Sherman
		Commissioner Baller
		Commissioner Host
		Mayor Boutros
		Mayor Pro-Tem Longe
	Nays,	None

VI. UNFINISHED BUSINESS

None.

VII. NEW BUSINESS

10-193-20 Certified Local Government Grant Applications

Commissioner Host informed the Commission that his neighbor had inadvertently written the Commissioner's name on a petition supporting this item when in fact it was Commissioner Host's wife, Laura Host, who supported the petition. He mentioned this to clarify that he had no conflict of interest in regards to the matter.

City Planner Dupuis reviewed the item. He explained:

- That while a letter included in the agenda packet from the President of the Friends of the Birmingham Museum stated the City had personnel knowledgeable enough to complete the survey of little San Francisco, City Planner Dupuis thought this would be a good opportunity for

the Historic District Study Committee to receive professional training in historical survey practices through undertaking the survey.

- He was fairly sure that even if the grants were approved the City would be under no obligation to undertake the projects.
- He was not sure if there were any circumstances under which historical designation could be imposed on a property as an unintended result of undertaking these projects.

While a number of Commissioners acknowledged the value of historic preservation, a number of Commissioners also expressed concern regarding the possibility of historic designation being imposed on individual properties as a result of the proposed survey.

Commissioner Hoff noted the existence of other historic districts in the City where individual properties are not required to have historic designation.

Mayor Boutros recommended tabling the item until the Commission receives clarification as to whether historic designation could be imposed on individual properties as a result of these projects.

Commissioner Sherman asked for information regarding how the neighborhood residents would be informed of the survey.

Commissioner Baller said he saw no issue with the proposed design guidelines project.

Other Commissioners concurred with Commissioner Baller, and said they would prefer to table the vote on the reconnaissance survey until more information from the City was available.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Host:
To adopt a resolution in support of the grant application made to the Michigan State Historic Preservation Office for a reimbursement grant application for \$15,000 to develop updated historic design guidelines with an emphasis on new and emerging materials.

Public Comment

John Henke spoke as the Chairman of both the Historic District Committee and the Design Review Board. He stated that City Planner Dupuis had expended considerable effort to pursue these two grants on behalf of the City. He reminded the Commissioners that in the past the City has attempted to designate individual properties historic and that the practice has been abandoned. Mr. Henke stated the only goal is to better inform residents of the historic resources that exist. In reply to the Commissioners' concerns, Mr. Henke also confirmed there is no mandate from the grantor that would require any individual properties to be historically designated as an outcome of the survey. Given that, Mr. Henke recommended the Commission support both of the grant applications in the evening's vote on the item.

ROLL CALL VOTE:	Ayes,	Commissioner Baller Commissioner Host Commissioner Sherman Commissioner Nickita Commissioner Hoff Mayor Boutros Mayor Pro-Tem Longe
	Nays,	None

Commissioner Nickita said he would rather wait for more clarity on the survey because:

- The City's stance on the project should be clarified well in advance of potentially receiving the grant. Turning down an awarded grant could do damage to the City's credibility in future applications rounds.

- The residents of little San Francisco had not yet received sufficient information regarding the proposed project nor had they had sufficient opportunity to comment on the proposed project.
- Historic districts can restrict what homeowners are permitted to do to their homes even if their homes are not individually designated historic.

10-194-20 City Manager Recruitment Process

CM Valentine reviewed the item.

MOTION: Motion by Mayor Pro Tem Longe, seconded by Commissioner Host: To direct the administration to present a list of professional recruitment firms for the Commission to consider for administering a recruitment process and invite former Birmingham City Manager Thomas M. Markus for a discussion and interview to explore his interest in the City Manager position.¹

A number of the Commissioners expressed their regret that CM Valentine would be leaving the City, citing his integrity, thoroughness and consistency.

Commissioner Hoff spoke in favor of pursuing further conversation with Mr. Markus.

Commissioners Baller, Host and Sherman spoke in favor of the Mayor Pro Tem's motion. There was consensus that it would be appropriate to have information on the options available before proceeding with any particular hiring process and that this motion would allow for that.

CM Valentine said he could provide the Commission with the names of professional recruitment firms.

Mayor Boutros said he would handle scheduling a meeting between Mr. Markus and the Commission if this motion passed. He said he would also like further guidance from City staff regarding the options for the broader recruitment process.

Public Comment

David Bloom said that while he respected Mr. Markus, his view was that pursuing a conversation with Mr. Markus separate from the broader recruitment process would be moving backwards instead of forwards. He noted that Mr. Markus offered only a five year term, and stated that Birmingham generally prefers to retain their City Managers for longer than that. Mr. Bloom also said the 2016 Plan, which had been one of Mr. Markus' initiatives, ended up not being beneficial to the City since it generated the need for more parking which Mr. Bloom ventured would be built at taxpayer expense. Mr. Bloom noted that Birmingham is a desirable community and that it would not lack for qualified applicants.

Brad Coulter stated that the Birmingham City Manager position would likely be one of the most desirable job openings in the Midwest. Mr. Coulter agreed with Mr. Bloom that Birmingham would not lack for qualified candidates, and that Mr. Markus' offer should be considered as part of the broader recruitment process with Mr. Markus only receiving an offer for an interview if he was one of the final candidates selected.

¹ As amended at the October 26, 2020 Commission meeting.

Andrew Haig noted that he had sent a letter to the Commission which was not included in the evening's agenda packet. He said in the letter he spoke against giving Mr. Markus an interview outside of the broader recruitment process. Mr. Haig concurred with Mr. Bloom and Mr. Coulter as well.

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

10-195-20 Review Of Existing Noise Regulations

PD Ecker reviewed the item. She explained:

- The decibel levels in the ordinances have not been updated in at least 18 years.
- Some of the noise ordinances would need to be studied by the Planning Board with a subsequent recommendation from them to the Commission regarding how to proceed. Some of the noise ordinances, however, would not require PB study so the Commission could direct City staff to do research on those items and make recommendations.

Commissioner Host said drums were a major source of noise and that the City lacked a vehicular noise ordinance.

Commissioner Baller said he would like to consider creating a single policy statement about noise for the City. He said he would be interested in an overview of how other communities approach noise in their ordinances, in considering duration limits for noise, and in potentially adding noise level restrictions to some tools that currently do not have them in the ordinances. He said the Commission should consider consolidation of some of the noise ordinances and increased enforcement. He said his particular noise concerns were leaf blowers and Woodward and that he knew other residents had construction noise concerns.

CM Valentine said he would bring back further information.

Commissioner Hoff said she would like to review the record of noise complaints to determine how extensive these issues are.

Commissioner Nickita said the Commission would also need clarity on which noise issues may not have enforcement remedies available. He cited a loud vehicle as one example, since it would be difficult to determine the noise emitted by that single vehicle when it is on a road with other vehicles. He said that Police Chief Clemence would likely be able to provide the Commission insight on those possible enforcement issues.

Commissioner Sherman said he would also be concerned about what would be legally enforceable and recommended that the Commission receive guidance on that. He floated the idea of limiting the days on which landscaping tools could be used if it was not a legally tenuous option.

Mayor Pro Tem Longe said that in light of other Commissioner comments it would be beneficial to reach out to other communities to determine how enforceable their noise ordinances actually are.

10-196-20 Commission Discussion On Items From Prior Meeting

I. Commissioner Report Requests

Commissioner Sherman recommended creating a policy that limits the amount of City staff hours an inquiry by an individual Commissioner can take. He recommended that if an inquiry would go over that hour limit that the inquiry should be brought before the Commission by the inquiring Commissioner under 'Commission Items for Future Discussion' on the agenda, and it should then be decided on by the Commission as a whole as to whether to move forward with said inquiry or not. He said such a policy would serve the interests of transparency and responsible utilization of City resources.

Commissioner Host asked the Mayor what the current rules and procedures are for Commissioners seeking information from staff. He said that his understanding of the normal procedure is that a Commissioner goes directly to the City Manager to request any information said Commissioner seeks. Commissioner Host also said he expects that the City Manager would accurately report if the requested information-gathering by a Commissioner would be too onerous, either in terms of time or resources, to complete. He concluded by speaking in favor of Commissioner Baller's request to learn the breakdown by race of individual encounters with Birmingham police, and said the community had a right to know how well it is doing in terms of racial equity in that area.

Commissioner Hoff agreed the community deserved that information, but said that it should have come from a consensus of the Commission as a whole since they are the elected leaders of the community.

Commissioner Sherman concurred with Commissioner Hoff.

Commissioner Baller stated that his only inquiry to staff had been in December 2019 and was regarding whether records of the racial breakdowns of Birmingham Police Department encounters was kept by the City. He stated that at no time did he ask for a report on the records. He conjectured that staff generated this report of their own accord because of the general national political climate since the death of George Floyd in May 2020. Commissioner Baller said he:

- Had seen no documentation of how much time creating the report took for staff;
- Heard no concerns from any staff regarding how much time generating the report took; and,
- Had not been aware a report had been generated until he found out simultaneous to all the other Commissioners while reviewing the agenda in which the report was included.

He said that he would also have agreed with Commissioner Sherman's recommendation if there was evidence of abuse by individual Commissioners of the ability to ask questions of staff, but said that he had not yet seen any such evidence. Commissioner Baller asserted that each Commissioner should have the right to make inquiries to staff individually as elected officials of the City.

Commissioner Sherman reiterated his perspective.

Commissioner Nickita echoed Commissioners Sherman and Hoff's previous comments. Commissioner Nickita said issue is a concern because a number of inquiries had been made by individual Commissioners of the City Manager over the past number of months, and that the Commission as a whole should determine whether an inquiry should be pursued.

Mayor Boutros said he saw consensus among the Commissioners that they all must be respectful of staff's time and transparent in their information seeking. Mayor Boutros said there were a number of ways to do that and a policy was not likely necessary. He said that since there was broad consensus on the main points, he thought the meeting should move on to the next item.

II. Zoning

Commissioner Nickita said transitional zoning and the O2 and B districts, especially near Lincoln and Adams, should be reviewed at the Planning Board level in terms of allowed uses. He noted specifically

that the purchase of alcohol for offsite consumption is not allowed in the O2 at Lincoln and Adams but a block away a business in another zone is permitted to sell alcohol for offsite consumption.

Commissioner Sherman concurred with Commissioner Nickita. He said it would be worth reviewing the topic given how the City has evolved since the topic was last studied.

Commissioner Hoff said she would want to see a zoning map of which areas would be under discussion.

CM Valentine said the issue should return to the Commission in the near future just for them to provide their specific direction to the Planning Board.

10-197-20 Commission Items For Future Discussion

A motion is required to bring up an item for future discussion on the next reasonable agenda. No discussion regarding these topics will occur during the present meeting.

There were no items.

10-198-20 REQUEST TO MEET IN CLOSED SESSION IN ACCORDANCE WITH SECTION 8(C) OF THE OPEN MEETINGS ACT

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To discuss an Attorney/Client communication pursuant to Section 8(h) of the Open Meetings Act.

ROLL CALL VOTE:	Ayes,	Commissioner Sherman Commissioner Host Commissioner Nickita Commissioner Baller Commissioner Hoff Mayor Boutros Mayor Pro-Tem Longe
	Nays,	None

The City Commission adjourned to Closed Session at 9:57 p.m.

Mayor Boutros reconvened the meeting at 11:00 p.m.

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

None.

X. REPORTS

- A. Commissioner Reports - Notice of Intent to appoint to Planning Board, Multi-Modal Transportation Board, Birmingham Shopping District, Parks and Recreation Board
- B. Commissioner Comments

Commissioner Hoff spoke highly of her recent experience with the Greenwood Cemetery History Tour and recommended that all interested take part in the next tour when it is offered.

There was consensus among the Commission that the joint City Commission-Planning Board meeting, originally scheduled for the present evening, would not be rescheduled. Commissioner

Host said the meeting need not be immediately rescheduled, but that it should be held in January 2021.² The next regularly scheduled joint CC-PB meeting would be in June 2021.

Commissioner Sherman commended the Birmingham Fire Department on his experience partaking in their program Fire Ops 101. Commissioner Sherman thanked Chief Wells specifically for helping the Commissioner during his participation, and recommended that all interested participate the next time it is offered.

Commissioner Host said the Commission should consider reviewing the City's laws on short-term rentals.

- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
 - 1. Memo from PD Jana Ecker in regards to O2 and B2 Zoning Districts

INFORMATION ONLY

XI. ADJOURN

Mayor Boutros adjourned the meeting at 11:02 p.m.

² As amended at the October 26, 2020 Commission meeting.