

Birmingham City Commission Minutes

January 25, 2021

7:30 P.M.

Virtual Meeting

Meeting ID: 655 079 760

Vimeo Link: <https://vimeo.com/event/3470/videos/499487329/>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

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

II. ROLL CALL

Alexandra Bingham, City Clerk, 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: Birmingham, MI)
Commissioner Sherman (location: Birmingham, MI)

Absent: None

Administration: City Manager Markus, City Clerk Bingham, City Planner Cowan, City Attorney Currier, Planning Director Ecker, Police Operations Commander Grewe, Interim Human Resources Director/Assistant City Manager Hock, City Attorney Kucharek, Fire Chief Wells

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

Announcements

- The City Commission would like to congratulate Doug Koschik on his retirement and thank him for 30 years of service to the City.

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.

01-010-21 Consent Agenda

The following item was pulled from the Consent Agenda:

Commissioner Hoff: Item A – City Commission Minutes of January 11, 2021

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To approve the Consent Agenda with the exception of Item A.

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

Nays, None

- B. Resolution approving the warrant list, including Automated Clearing House payments, dated January 13, 2021, in the amount of \$6,902,069.88.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated January 20, 2021, in the amount of \$1,403,493.75.
- D. Resolution to set February 22, 2021 as the public hearing date for the Program Year 2021 Community Development Block Grant Program.

01-011-21 (Item A) City Commission Minutes of January 11, 2021

Commissioner Hoff noted a sentence was erroneously duplicated in the minutes. The sentence read "Commissioner Hoff complemented CP Dupuis' letter to residents." She said the sentence should remain on page five and should be struck from page ten.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Sherman:
To approve the City Commission meeting minutes of January 11, 2021.

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

Nays, None

VI. UNFINISHED BUSINESS

01-012-21 Greenwood Cemetery Grave Release

City Clerk Bingham reviewed the item.

Commissioner Hoff spoke in favor of determining whether originally plotted but unused graves in sections D-M might be available for reclamation. She expressed concerns that the continued addition of graves to sections B and C was having a congestive effect on the historic nature of the sections and landscaping and beautification efforts.

Commissioner Host concurred with Commissioner Hoff's that the City should determine what graves might still be available in sections D-M and then proceed accordingly.

MOTION: Motion by Commissioner Host, seconded by Mayor Pro Tem Longe:
To authorize the release of 14 plots available in Section C, Row 18-A for sale in Greenwood Cemetery. Furthermore the City Commission directs the Greenwood Cemetery Advisory Board to evaluate the grave site pricing and return with recommended changes prior to any further release.

Public Comment

In reply to Andrew Haig, City Clerk Bingham confirmed that Greenwood Cemetery can accommodate up to three cremated remains in one grave plot and smaller numbers of cremated remains in smaller or more irregularly-shaped grave plots.

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

Nays, None

01-013-21 Parking at The Pearl

City Planner Cowan summarized the item.

After Commission discussion the majority of the Commissioners agreed that the five parking spaces abutting The Pearl should be counted towards the required parking spaces.

There was some discussion as to whether there would be a way to limit the counting of those parking spaces to the current retail tenants, so that if the current tenants were to leave it would force The Pearl to either rent to less parking-intensive tenants or to appear again before the Commission for the counting of those spaces to continue. The conclusion was that there might be a way to do that but that the City's current ordinances are not set up for it.

As in the last discussion of this topic, the possibility of a shared parking agreement between the retail and residential uses of the building came up. Commissioner Hoff observed that the on-site parking had an excess of spaces currently designated for residential use.

It was explained that if the owner were to pursue a shared parking agreement they would have to conduct parking studies based on the use. It would also require a review by the Planning Board.

Commissioner Sherman said he would like the City to reconsider how it counts parking spaces towards parking requirements - if spaces counted towards commercial requirements are actually inaccessible to commercial users, for instance, they should not be counted.

Mayor Boutros said allowing the spaces to be counted in this case would benefit the Birmingham community.

Commissioner Host agreed with Mayor Boutros, saying he just wanted the counting of the spaces towards the parking requirements to be temporary in some way or contingent on the current retail lessees.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To approve the use of five parking spaces in the right-of-way adjacent to the property located at 856 N. Old Woodward to fulfill the parking requirements per Article 4, section 4.43 (G)(4) of the Zoning Ordinance.

Commissioner Baller said he would like to require the landlord to post signage directing retail customers to park inside the building before using the spaces on the street. He said he would be amenable to the signage being administratively approved. He asked if some of the residential parking could be used for commercial until the residential units were fully rented, and was told by Rick Rattner, attorney for the applicant, that the building is already nearing full occupancy.

Commissioner Host, Commissioner Hoff, and Mayor Pro Tem Longe agreed that it would be positive if the landlord posted signage encouraging customers to park inside the building before using the on-street parking.

Since the building still maintains some commercial parking spaces inside, Commissioner Baller said his support for the motion would be contingent on requiring the signage in order to encourage customers to park inside first.

Mr. Rattner asked that the one accessible parking space abutting the building be converted to a non-accessible space like the other five, since there are two accessible parking spaces for commercial use inside the building. This would result in a total of six on-street parking spaces being counted towards the requirements.

Public Comment

Mr. Bloom concurred with Commissioner Host's comments, saying it would also help protect other businesses whose customers might want to use the on-street parking spaces.

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

Nays, Commissioner Baller

01-014-21 Lot Combination - 34350 Woodward And 907-911 Haynes

City Planner Cowan reviewed the item.

After Commission discussion, there was consensus that CM Markus should continue to meet with the applicant to see if any compromise might be reached.

City Manager Markus said he would be most comfortable with a contract more similar to the one the City has with Walgreens. He said that while the document provided by the applicant in this case has some similarities to the Walgreens contract, it has too many add-ons he would be unlikely to move forward on. He said he was willing to continue conversations with the applicant. He said that he was also comfortable with rescheduling this matter to the Commission's March 22, 2021 meeting as long as City staff was afforded the flexibility to further postpone the conversation if appropriate.

Jason Canvasser, attorney for the applicant, emphasized that the document the Commission reviewed was meant to be a starting point for dialogue and not a proposed contract in full. He said Fred Lavery, the applicant, was interested in having further discussion about any of the aspects laid out in the document. Mr. Lavery confirmed this was the case.

Commissioner Baller opined that it was somewhat inflexible of the City to insist on businesses following the Plan for this area when the City has not moved forward on substantial aspects of the area Plan in over a decade. He said the City has to determine, especially in a pandemic-impacted economic climate that presents more challenges to all businesses, whether it wants to put in the effort to retain this business and then proceed accordingly.

Commissioner concerns regarding the proposal included:

- Whether the proposed land swap could be considered a sale, and if so, if it would be for a high enough value that it would require going to the residents to a vote for approval;
- The request that the City pay to remove all utilities from the Elm St. triangle in a swap;
- How the applicant would use the Elm St. triangle;
- How conducting the applicant-proposed land swap would affect the safety of the intersection at Bowers;
- How conducting the applicant-proposed land swap would affect businesses north of the intersection with frontage;
- The applicant's goal being a mixed-use, multi-level development on the land gained in the swap in ten years is not the same thing as a guarantee that would occur;
- That the City has a Plan for this area and zoning requirements and that those cannot just be set aside;
- That a surface parking lot is antithetical to the Plans for this area; and,
- The Commission being asked to weigh in on this applicant-proposal before the Planning Board and any other relevant boards had the opportunity for review.

Mr. Canvasser said the proposed land swap would create better long-term circumstances for Triangle Plan-aligned development. He said his letter to the Commission dated December 17, 2020 laid out in detail how that was the case.

Public Comment

In reply to Andrew Haig, CP Cowan confirmed that the plans would have to be checked with Oakland County and MDOT because they would potentially impact Woodward.

At 9:07 p.m. the Mayor opened the public hearing.

At 9:09 p.m. the Mayor closed to public hearing.

MOTION: Motion by Commissioner Host, seconded by Commissioner Nickita:
To postpone the proposed lot combination hearing to March 22, 2021 and to direct City staff and the City Attorney to continue negotiations with the applicant based on the issues noted and to return with detailed plans on any property to be conveyed, including details and estimated costs to remove or reroute any utilities, specific dimensions of the parcel proposed as a result of the lot combination, and any other details needed to evaluate the terms and conditions offered by the applicant.

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

Nays, None

VII. NEW BUSINESS

01-015-21 BFFA Local 911 Collective Bargaining Agreement

Interim Human Resources Director/Assistant City Manager Hock reviewed the item.

Commissioner Hoff said she appreciated how the changes for the following contract to be discussed, with the AFSCME Local 998, were marked in red. She asked that the practice be used for contract changes in the future.

Interim Human Resources Director/Assistant City Manager Hock said he would continue with that practice.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To approve the Settlement Agreement of December 21, 2020 between the City of Birmingham and BFFA Local 911 for a renewal of the collective bargaining agreement for a term of July 1, 2020 through June 30, 2023, and to authorize staff to execute a collective bargaining agreement consistent with its terms and conditions. Further, to authorize the transfer of the appropriate funds by the Finance Department for these expenditures.

Commissioner Sherman commended all involved parties for getting to agreement without arbitration and said he hopes the trend continues.

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

Nays, None

01-016-21 AFSCME Local 998 Collective Bargaining Agreement

Interim Human Resources Director/Assistant City Manager Hock reviewed the item.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Longe:
To approve the Settlement Agreement of December 23, 2020 between the City of Birmingham and AFSCME Local 998 for a renewal of the collective bargaining agreement for a term of July 1, 2020 through June 30, 2023, and to authorize staff to execute a collective bargaining agreement consistent with its terms and conditions. Further, to authorize the transfer of the appropriate funds by the Finance Department for these expenditures.

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

Nays, None

01-017-21 Corrected Employment Agreement for Thomas M. Markus

City Attorney Currier reviewed the item.

Commissioner Sherman recommended that the corrected agreement be amended and restated and that under Recitals it be made clear that it is replacing the current agreement.

City Attorney Currier agreed.

Commissioner Sherman then asked for clarification regarding parge four under Retirement.

CM Markus said he would vest, and that the following could be removed from the corrected agreement: "In the event the Employee has not vested in the employee and employer contributions at the end of the Employee's 2-1/2 years of employment, the City shall make an equivalent employer contribution to the ICMA deferred compensation pension plan (see Paragraph 5.B(ii)), on behalf of the Employee."

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita: To approve the corrected Employment Agreement for Thomas M. Markus and authorize the Mayor and Clerk to sign on behalf of the City.

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

Nays, None

01-018-21 Celebrate Birmingham Parade

City Clerk Bingham presented the item.

Commissioner Hoff told City Clerk Bingham that the Celebrate Birmingham Parade and the volunteer appreciation are two entirely distinct events. She said she would be happy to fill City Clerk Bingham in on the traditional differences between the events.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita: To approve the request from the Birmingham City Clerk's Office to create a virtual method of celebration and recognition to take place of the traditional Celebrate Birmingham Parade and Party for 2021 and to direct the City Clerk's office to create and distribute of a video, thank you letters and token of appreciation to all board and commission members on May 16, 2021, further pursuant to any minor modifications that may be deemed necessary by administrative staff.

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

Nays, None

01-019-21 Commission Workshops

City Clerk Bingham presented the item.

There was consensus that if the workshops started at 6 p.m. on meeting nights that the Commission meetings should stop at 10 p.m. The goal would be to have a lighter regular meeting agenda for those nights.

In response to a suggestion from Mayor Pro Tem Longe, the majority of the Commission also agreed that a motion could be used on workshop/meeting nights to extend the meeting by 15 minute increments past 10 p.m. if absolutely necessary, as is the practice of the Planning Board when a meeting continues until 11 p.m.

Commissioner Host said he was not in favor of a time limit.

Commissioner Hoff suggested that the Parks Bond be the first workshop.

Commissioner Baller said he was in favor of the Ice Arena being the first workshop.

Mayor Boutros said that he would be in favor of a required end time of 11 p.m. for all Commission meetings with the option of postponing items to the next meeting as necessary or extending the

meeting in 15 minute increments by motion per Mayor Pro Tem Longe's suggestion.

Mayor Pro Tem Longe explained that the Parks and Recreation priority list was developed in 2019 and was presented to voters in materials on the bond vote. She said the information was communicated to, and well known by, residents.

Commissioner Hoff expressed concern regarding the potential of not getting through City business on workshop nights.

Public Comment

Mr. Bloom and Mr. Haig both spoke in favor of there being a short break during Commission meetings, commenting that the work the Commission does is very difficult.

Mr. Bloom expressed concern about a hard stop in case petitioners are present for an item that would end up being heard after 10 p.m.

Mr. Haig recommended that petitioners also be encouraged to stick to a shorter time limit for their presentations.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To direct the City Manager and City Clerk to work with staff to prepare for the suggested workshops
AND
To direct the City Clerk to continue to maintain a list of desired workshops by the Commission
AND
To direct the City Clerk to coordinate with the Commission, City Manager and City Staff to schedule and notice future workshops as needed
AND
For the workshop meeting nights, for the meetings to end at 10 p.m.¹

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

Nays, Commissioner Host

Commission Discussion on items from prior meetings.

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.

01-020-21 Closed Session

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita:
To meet in closed session to discuss a written Attorney Client Privilege Communication pursuant to Section 15.3268(h) of the Open Meetings Act & to discuss pending litigation regarding Troyan v City of Birmingham and Delpiombo v City of Birmingham pursuant to Section 15.268(e) of the Open Meetings Act.

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

Nays, None

Commissioner Baller said that in general he wanted to ensure that the Commission maintains a high

¹ As amended at the February 8, 2021 meeting.

bar for justification of discussing matters in closed session. He said that while lawsuits make sense the Commission, for example, has no prior knowledge about the attorney-client communication to be discussed in this case and so does not know the appropriateness of discussing it in closed session before voting on the motion. He said that any Commissioner should have a right to object to discussing a matter in closed session if they adjourn to closed session and discover it would be more appropriate to discuss the matter in public.

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

A. Communication from David Bloom in regards to a nonpartisan stance.
David Bloom reviewed his communication.

City Attorney Currier noted that the City Charter requires non-partisanship from City appointees in their City-related work.

X. REPORTS

- A. Commissioner Reports
- B. Commissioner Comments

Commissioner Host spoke in favor of making senior services a higher priority in the community. He said he would like to see \$50,000 set aside in the upcoming City budget for a variety of senior needs.

Commissioner Sherman asked CM Markus to share any preliminary insights now that he had been with the City for three weeks.

City Manager Markus responded to Commissioner Hoff's concern about City business being delayed on workshop evenings. He explained that the consensus building and increased understanding that can occur in workshops would actually promote the efficient dispensation of City business in all other Commission meetings. He said he has used workshops to great success in other communities. He said he is working on making reports, issues, and resolutions more concise. As far as the length of meetings, he recommended that all Commissioners make efforts towards being more concise in their comments.

City Manager Markus said that in general City work is going fine but that there are a lot more issues than he had anticipated.

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

INFORMATION ONLY

XI. ADJOURN

The City Commission adjourned to Closed Session at 10:30 p.m.
Mayor Boutros reconvened the meeting at 11:20 p.m.

Mayor Boutros adjourned the meeting at 11:21 p.m.



Alexandria Bingham, City Clerk
/le