

Birmingham City Commission Minutes

March 8, 2021

7:30 P.M.

Virtual Meeting

Meeting ID: 655 079 760

Vimeo Link: <https://vimeo.com/event/3470/videos/515580935/>

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, Police Chief Clemence, City Attorney Kucharek, Planning Director Ecker, Finance Director Gerber, Interim HR Director/Assistant City Manager Hock, Building Official Johnson, City Attorney Kucharek, Deputy Treasurer Todd

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

Announcements

- Happy Birthday Commissioner Baller

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

Brief updates were provided by County Commissioner Chuck Moss.

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.

03-052-21 Consent Agenda

The following items were pulled from the Consent Agenda:

- Commissioner Hoff: Item A – City Commission Meeting Minutes Of February 22, 2021
 Item E – Updated Park Rules and Regulations
 Item H – Cost Participation Agreement with the Board of Road Commissioners of the County of Oakland
 Item I – Use of Personal Identification Numbers for Filing Personal and Property Taxes Electronically
- Commissioner Sherman:
 Item G – On-Street Parking at 670 S. Old Woodward

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To approve Consent Agenda items B, C, D and F.

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

Nays, None

- B. Resolution approving the warrant list, including Automated Clearing House payments, dated February 24, 2021, in the amount of \$4,908,727.09.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated March 3, 2021, in the amount of \$1,205,931.69.
- D. Resolution to approve the purchase and planting of eighty-three (83) trees from KLM Landscape for the Spring 2021 Tree Purchase and Planting Program for a total project cost not to exceed \$34,970.00. 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 the required insurance coverage.
- F. Resolution to approve the Program Year 2021 High Intensity Drug Trafficking Area (HIDTA) Sub recipient agreement between the County of Oakland and the City of Birmingham. Further, to authorize the Mayor and the City Manager to sign the agreement on behalf of the City.

03-053-21 (Item A) City Commission Meeting Minutes Of February 22, 2021

Commissioner Hoff noted the Commission did not vote to schedule a public hearing for Birmingham Sushi.

City Attorney Kucharek advised the Commission that at the March 22, 2021 meeting, if the restaurant has not cured the defect and a public hearing has to be set, the Commission should make a motion to set the public hearing for the same evening and to ask the owner to waive any complaint of defect of process. City Attorney Kucharek said it was very likely that the owner will have resolved the issue before then and that the public hearing would not have to be held.

PD Ecker confirmed she was working with counsel for Birmingham Sushi and that they had every intent to resolve their issues with the City before the March 22, 2021 meeting.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Sherman:
To approve the City Commission meeting minutes of February 22, 2021.

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

Nays, None

03-054-21 (Item E) Updated Park Rules and Regulations

Commissioner Baller said closing the parks at 10 p.m. would prohibit someone from taking the Quarton Lake Trail, for instance, when walking after 10 p.m. He ventured that might be overly stringent. He raised a similar concern regarding the prohibition of alcohol in the parks, noting that sometimes people partake in a glass of wine during concerts in Shain Park or in similar circumstances. He said that perhaps a full prohibition was overbroad.

CM Markus opined that it is generally more appropriate for the City's family-friendly parks to be alcohol-free.

CM Markus and City Attorney Kucharek noted that relying solely on public drunkenness laws for alcohol enforcement in the parks sets a very high bar for police intervention. City Attorney Kucharek explained a person's behavior would have to endanger themselves, another person, property or cause a public disturbance for police to intervene. She said it would likely be better if that kind of behavior was curtailed well before it reached that level.

Chief Clemence concurred with CM Markus and City Attorney Kucharek. He said that having a rule prohibiting alcohol in the parks allows Birmingham Police Officers discretion in enforcing the rule when called for.

DPS Director Wood confirmed for Commissioner Hoff that anyone fishing in a City lake would have to procure a fishing license from the State.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Longe:
To adopt the updated Park Rules and Regulations as submitted with recommended changes.

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

Nays, None

03-055-21 (Item G) On-Street Parking at 670 S. Old Woodward

Two Commissioners stated an item about parking allocations would ordinarily be an agenda item for the Commission and not a consent agenda item.

Dennis Cowan, attorney, and Frank Jarbou, owner, were present on behalf of the item.

Mr. Cowan stated that the proposed salon has a tracking system that shows that the building only ever reaches about a third of its occupancy at any given time. He said that Mr. Jarbou is working to revise the number of salon chairs being proposed down.

Commissioner Nickita noted the Commission could not make parking decisions based on likely occupancy. He said they had to make decisions based on maximum potential occupancy, and that not doing so could set a precedent.

The majority of Commissioners expressed concerns about the parking intensity required for a salon in that area. It was observed that there were a lot of other parking-intensive uses in the same area already. They were largely uncomfortable with counting the eight spots towards the overall parking requirements for the building before a shared parking agreement had been pursued.

CP Dupuis explained that even if Mr. Jarbou were able to finalize a shared parking agreement with a nearby building it would be unlikely to 'count' towards their parking requirements. The ordinance says that if a building enters into a shared parking agreement, the building with which the parking is shared has to be within 100 feet of the first building. CP Dupuis noted the closest building with which 670 S. Old Woodward could share parking is approximately 200 feet away.

Commissioner Baller noted that the Commission had been putting effort into supporting businesses during Covid-19, and said that since Staff recommended allowing the eight spaces to count towards the parking requirement he would support that recommendation.

MOTION: Motion by Commissioner Baller, with no second.

To approve the use of 8 parking spaces in the right-of-way adjacent to the property located at 670 S. Old Woodward to help fulfill the parking requirements per Article 4, section 4.43 (G) (4) of the Zoning Ordinance.

Motion failed for lack of a second.

Commissioner Sherman recommended that the discussion be postponed. He recommended the applicant attempt to obtain a shared parking arrangement before requesting the counting of the eight adjacent spots.

Commissioner Hoff recommended that the applicant finish determining the reduced number of salon chairs they intend to have in order to reduce the number of required parking spaces. She recommended they also pursue a variance from the Board of Zoning Appeals.

Mr. Cowan said the applicant will pursue a shared parking arrangement. He said they may still request the eight spaces from the Commission after that, and then would pursue a variance with the BZA.

03-056-21 (Item H) Cost Participation Agreement with the Board of Road Commissioners of the County of Oakland

In reply to Commissioner Hoff, Consulting City Engineer Surhigh said the water and sewer systems along this stretch of Cranbrook were not in need of repair. He stated that the traffic signal at Maple and Cranbrook would not be replaced.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Host:
To approve the Cost Participation Agreement with the Board of Road Commissioners of The County of Oakland, agreeing to pay the City's share of construction costs related to the road resurfacing and traffic signal improvements on Cranbrook Road between 14 Mile Road and Maple Road. The total amount of the City's share of the cost is \$166,799: with \$7,965 for traffic signal work to be charged to 202-303.001-971.0100, Major Street Fund Traffic Controls; and, \$158,834 for roadwork to be charged to the Major Streets Fund Public Construction, 202-449.001-981.0100. Also, to direct the Mayor to sign the agreement on behalf of the City.

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

Nays, None

03-057-21 (Item I) Use of Personal Identification Numbers for Filing Personal and Property Taxes Electronically

Commissioner Hoff noted the dates included in this item needed to be changed from March 15, 2021 to March 8, 2021.

City Clerk Bingham confirmed she would amend the dates.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Nickita:
To authorize the use of personal identification numbers acquired from the Michigan Department of Treasury as electronic signatures for the purpose of filing personal and property taxes that are filed electronically.

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

Commissioner Hoff
Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller

Nays, None

VI. UNFINISHED BUSINESS

None.

VII. NEW BUSINESS

03-058-21 Public Hearing – 219 Elm St. – All Seasons 2

The Mayor opened the public hearing at 8:31 p.m.

In reply to a question from Commissioner Baller, CM Markus confirmed that any monies paid by the owners of All Seasons 2 for additional parking would be put aside.

Mark Highlen, applicant, John Thompson, engineer, and Xander Bogaerts, architect, were present on behalf of the application.

In reply to a question from Mayor Pro Tem Longe, Mr. Highlen stated that the project's aim for LEED certification is to score well above the required 40 points in order to ensure certification is achieved. He said that they were aiming for the base level certification. He also confirmed that they would retrofit the building to achieve LEED certification if the project is not granted it after the first review.

In reply to CM Markus, PD Ecker confirmed that if the building were initially denied LEED certification, the applicant would be denied occupancy of the building until the LEED certification was granted.

The Mayor closed the public hearing at 9:07 p.m.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Baller:
To approve the Special Land Use Permit, Final Site Plan and Design Review application to allow the construction and operation of the All Seasons 2 independent senior living facility at 219 Elm St.

Commissioner Nickita said the approval of this project demonstrates the City's commitment to creating spaces where Birmingham residents can continue to age gracefully in the City.

Commissioner Nickita said he felt the information provided as part of the agenda item was somewhat insufficient in terms of representing the proposed building in context and demonstrating its potential impact on the surrounding area. He said that, in the future, all site plans, renderings, and other visual representations submitted to the Planning Department as part of an item should be included in the Commission's agenda packet for consideration of said item.

Public Comment

Paul Reagan noted that the support of the adjacent neighborhood association was cited in regards to the project. He asked where that support was documented.

PD Ecker noted that Doug Feehan, the president of the adjacent neighborhood association, had met with the applicant and expressed his approval of the updated designs.

CP Dupuis stated that Mr. Feehan spoke at the Planning Board review of this proposal and that his comments were documented in minutes and included as part of this item.

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

Nays, None

03-059-21 First Draft Master Plan Review and Adoption Process

CM Markus introduced the item.

Commissioner Host said it had been his preference since October 2020 to have the Commission and Planning Board meet and discuss the master plan before the writing of the second draft is commenced.

PD Ecker provided an outline of how the rest of the feedback and revision process for the master plan would work. She noted that all the proposed revisions to the first draft of the master plan would be reviewed by the Planning Board and then submitted to the Commission for their comment and review before the writing of the second draft begins. She said the Planning Board and the Commission would then have a joint meeting in Summer 2021 where they would also discuss the master plan.

MOTION: Motion by Commissioner Nickita, seconded by Commissioner Sherman:
To adopt Resolution #03-59-21 to affirm and approve the master plan review and adoption process from the first draft of the 2040 Plan to the final public hearing to consider adoption of the final draft of the Birmingham 2040 Plan.

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

Nays, None

03-060-21 Poverty Exemption and Updated Hardship Application

Deputy Treasurer Todd reviewed the item.

City Attorney Kucharek confirmed the process had been updated to reflect changes in state law.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Sherman:

To adopt a policy relative to the review and granting of poverty exemption by the City and the updated Hardship Application.

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

Nays, None

03-061-21 Emergency Repair Invoice Authorization for the Chester Street Parking Structure

The Commission had no comment on the item.

MOTION: Motion by Commissioner Sherman, seconded by Mayor Pro Tem Longe: To approve the October 21, 2020 invoice in the amount of \$9,360 and approval of the City Manager authorized emergency repair of the Chester Street Parking structure elevator agreements in the amount of \$11,611.

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

Nays, None

03-062-21 Continuation of COVID-19 Business Relief

Interim HR Director/Assistant City Manager Hock reviewed the item.

Commissioner Host said he would be fine with the proposed motion as long as the gate remained down at the structures so the City could collect more data on the parking structures' use.

Commissioner Sherman said that while he valued the need for data, the revenue report included as part of this item in the agenda packet sufficiently demonstrated the current dearth of use of the City's parking system.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita: To continue the Revised Temporary Signage Regulations due to COVID-19, to continue the Revised Temporary COVID-19 Off-Season Outdoor Dining Standards, and to waive parking fees charged for monthly permit parking holders and all other fees in all parking structures until June 30, 2021. All parking

fees including but not limited to monthly permit parking fees and gate fees shall resume effective July 1, 2021.

PD Ecker confirmed for Mayor Pro Tem Longe that the regular outdoor dining standards would resume on July 1, 2021. PD Ecker confirmed for Commissioner Nickita that the Planning Board would be adding year-round outdoor seating options to their action list.

Commissioner Baller noted that the discussion after the motion was made should pertain specifically to the motion. Regarding the motion, he said he was comfortable with the first two parts but not comfortable with the third. He said it would lead to the City foregoing too much money in parking fees especially when the state might be much more open by July 1, 2021. He also said that allowing the third part of the motion did not sufficiently address the ongoing issue of the lengthy permit parking waiting list.

Public Comment

John Henke spoke as an attorney for a number of Birmingham restaurants. He said that ending the Covid-19 business relief provisions on June 30, 2021 was shortsighted and contrary to what other local municipalities were doing. He recommended that the provisions be extended at least through Fall 2021, if not through the beginning of 2022.

Interim HR Director/Assistant City Manager Hock advised the Commission that they could elect to further extend these provisions at any point if they so choose.

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

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

- A. Temporary COVID-19 Outdoor Dining Resolution

Mayor Boutros acknowledged the City's receipt of the February 25, 2021 letter from Edward A. Fuller that was included in the evening's agenda packet.

Commissioner Host said he has been very disappointed to see certain Birmingham restaurants extend their outdoor seating to be in front of adjacent businesses without speaking to the other businesses' owners.

Commissioner Hoff asked if there was a way for the Commission to encourage restaurants to come to agreements regarding outdoor seating in front of their neighbors' businesses.

CM Markus said it would be most appropriate for restaurants to communicate with their neighbors about outdoor seating arrangements in the spirit of neighborliness. He acknowledged that the City's current provision as written does allow restaurants to create outdoor seating in the parking spots in front of adjacent businesses without any need for consent from the adjacent business owner. He said he would not have necessarily advised such a broad allowance had he been part of authoring the resolution.

- B. Communication from Cory "King" Holland
 - a) Communication by Stuart Sherman

City Manager Markus provided a brief overview of the correspondence received. He noted that two emails had been sent to the City by Mr. Holland for inclusion in the meeting's communications. Mr. Holland, citing his aphasia, requested a disability accommodation that included having both of his emails read into the record.

City Attorney Kucharek, having determined that Mr. Holland's request constituted a reasonable accommodation, read Mr. Holland's emails into the record.

03-063-21 Motion to Extend Meeting by 15 Minutes

Noting that the current meeting had overrun the agreed upon 10 p.m. time limit, Commissioner Baller recommended that the Commission authorize a 15 minute extension of the meeting.

MOTION: Motion by Commissioner Baller, seconded by Mayor Pro Tem Longe:
To authorize the present Commission meeting to continue until 10:15 p.m.

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

Nays, None

After the motion to extend the meeting, Commissioner Sherman offered a brief statement regarding Mr. Holland's emails.

X. REPORTS

- A. Commissioner Reports - Notice to Appoint (1) Architectural Review Comm., (2) Housing Board of Appeals, (3) Brownfield Redevelopment Authority
- B. Commissioner Comments
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
 - 1. 2nd Quarter Financial Report
 - 2. 2nd Quarter Investment Report
 - 3. 2020 Police Department Annual Report

INFORMATION ONLY

XI. ADJOURN

Mayor Boutros adjourned the meeting at 10:13 p.m.

Alexandria D. Bingham

Alexandria Bingham, City Clerk
/s/