

## Birmingham City Commission Minutes

June 14, 2021

7:30 p.m.

Virtual Meeting

Meeting ID: 655 079 760

Vimeo Link: <https://vimeo.com/event/3470/videos/554567339/>

### 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, 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, BSD Operations & Event Manager Brook, IT Manager Brunk, Police Chief Clemence, City Planner Cowan, City Attorney Kucharek, Planning Director Ecker, City Attorney Kucharek, Consulting City Engineer Surhigh, Deputy Treasurer Todd, Fire Chief Wells, DPS Director Wood

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

#### ANNOUNCEMENTS

- Common Ground proclamation and congratulations. Jeff Kapuscinski, representative for Common Ground, thanked the City for its ongoing partnership and support.

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

Rosanne Acciaioli voiced concerns about residents in the City having inadequate control of their dogs. She noted the danger the situation can pose to walkers and other dog owners. She asked the City to use its bulletin to remind dog owners of their obligations to prevent their dogs from impinging on others' safety, and asked the City to consider making up a list of walkers' rights.

**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.

**06-154-21 Consent Agenda**

The following items were pulled from the Consent Agenda:

Commissioner Sherman: Item H – Technology & Audio Visual Equipment Installation – Ice Arena

Commissioner Hoff: Item E – Upgrade Internet Connections to Parking Structures  
Item F – Engineering & Transportation Consultant Agreements

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Nickita:  
To approve Consent Agenda with the exclusion of Items E, F and H.

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

Nays, None

- A. Resolution to approve the City Commission meeting minutes of May 24, 2021.
- B. Resolution to approve the warrant list, including Automated Clearing House payments, dated May 26, 2021, in the amount of \$538,196.60.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated June 2, 2021, in the amount of \$625,182.63.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated June 9, 2021, in the amount of \$506,594.83.
- G. Resolution to waive the competitive bidding requirement and to authorize an expenditure in the amount of \$7,770.47 to POCO, Inc., for a past and urgent purchase to provide temporary traffic barricades to expand the lane closure on Pierce Street from July 2020 to January 2021; to be charged to the Major Streets Fund, account #202-449.003-937.0400.
- I. Resolution to approve the purchase of one (1) 2022 Ford F-350 4x4 Crew Cab from Gorno Ford through the State of Michigan MIDEAL extendable purchasing contract #071B7700181 in the amount not to exceed \$54,106.00. Funds for this purchase are available in the FY 2021-2022 Auto Equipment Fund account #641-441.006.971.0100.
- J. Resolution to award the 2020-2021 Public Services contract totaling \$36,377.00 for Yard Services,

Senior Outreach Services, and Minor Home Repair to NEXT under the Community Development Block Grant Program; and further, to authorize the Mayor to sign the contract on behalf of the City.

- K. Resolution to approve the appropriations and amendments to the fiscal year 2020-2021 budget as indicated in the staff report.
- L. Resolution to set a public hearing for Monday, July 12th, 2021 at 7:30 PM to consider the Special Land Use Permit, Final Site Plan and Design Review application for 239 N. Old Woodward – Bloom Bistro. (complete resolution in agenda packet)
- M. Resolution to set a public hearing for Monday, July 12th, 2021 at 7:30 PM to consider the Special Land Use Permit, Final Site Plan and Design Review application for 115 Willits – MARE Mediterranean. (complete resolution in agenda packet)
- N. Resolution to set a public hearing for Monday, July 12th, 2021 at 7:30 PM to consider the Special Land Use Permit, Final Site Plan and Design Review application for 176 S. Old Woodward – Sushi Japan. (complete resolution in agenda packet)

**06-155-21 (Item H) Technology & Audio Visual Equipment Installation  
– Ice Arena**

DPS Director Wood confirmed that this was an anticipated cost from when the Commission approved the contract with the general contractor. She noted that the report at the time mentioned other items that would have to be bid out separately, including this one. She said it was the last anticipated charge to the soft cost portion laid out in that approved documentation.

DPS Director Wood also explained that DTE had recently notified the City that the City would have to replace the electric line that goes from the pole on Lincoln to the Ice Arena. She noted that would be an estimated additional cost of \$75,000.

CM Markus said he would review the matter with DTE further to clarify whether the stated costs are entirely the City's responsibility.

DPS Director Wood stated that this installation was not a line item in the contract for the general contractor because neither the contractor nor their subcontractors specialize in these types of installations. She reiterated that the costs for this installation were included in the total Commission-approved amount for the Ice Arena.

DPS Director Wood stated that once the costs for the DTE line replacement are finalized those costs would come out of the bond funds.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Host:  
To approve the Technology and Audio Visual Installation services for the Birmingham Ice Arena Renovation project to Advanced Lighting and Sound (ALS) in the amount not to exceed \$45,067.00. Funds are available in the Capital Projects Fund account #401-901.001-977.0000 for this work. Further, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of the required insurance coverage.

ROLL CALL VOTE: Ayes, Commissioner Sherman  
Commissioner Host  
Mayor Pro Tem Longe

Commissioner Nickita  
Mayor Boutros  
Commissioner Hoff  
Commissioner Baller

Nays, None

**06-156-21 (Item E) Upgrade Internet Connections to Parking Structures**

IT Manager Brunk explained that Crown Castle's quote was for a 100mb line for each parking structure, as requested, whereas Clear Castle only offered one 100mb connection to City Hall. He noted that Crown Castle also handles the City's internet connection and that he would like to be working with a single vendor. He concluded by noting that Crown Castle also offers additional services that may be of benefit to the City in the future.

**MOTION:** Motion by Commission Hoff, seconded by Mayor Pro Tem Longe:  
To authorize the IT department to engage Crown Castle to upgrade the internet connection at each of the city parking structures for a term of 36 months with the monthly fee of \$570.00 charged to each of the 5 parking structure accounts. Total cost of \$2850.00 per month Total term cost not to exceed \$102,600.00.

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

Nays, None

**06-157-21 (Item F) Engineering & Transportation Consultants' Agreements**

CCE Surhigh stated that reasonable increases in costs for consultants tend to be three to five percent per year. He stated that since the last time these contracts were signed in 2018 MKSK's rates increased by 2.3% per year, F&V's rates increased by 3.7% per year, and OHM's rates increased by 2.8% per year. He affirmed that those were reasonable increases in costs.

**MOTION:** Motion by Commission Hoff, seconded by Commissioner Nickita:

1. Resolution to execute the Second Amendment to the MKSK Old Woodward Corridor Agreement to provide preliminary design development, public engagement, and detailed design input services in accordance with their June 2, 2021 proposal, for an amount not to exceed \$178,380.00, to be charged to the Major Street Fund account #202-449.001-981.0100; and to authorize the Mayor and City Clerk to sign the agreement on behalf of the City.
2. Resolution to execute the MKSK Multi-Modal Transportation Consultant Contract to provide as requested professional services related to multi-modal transportation reviews and participation with the Multi-Modal Transportation Board, for a three-year term, to be

charged to the Major Street Fund account 202-449.007-804.0100 and Local Street Fund account #203-449.007-804.0100 as appropriate; and to authorize the Mayor and the City Clerk to sign the agreement on behalf of the City.

3. Resolution to execute the Fleis & Vandenbrink Multi-Modal Transportation Consultant Contract to provide as-requested professional services related to multi-modal transportation reviews and participation with the Multi-Modal Transportation Board, for a three-year term, to be charged to the Major Street Fund account #202-449.007-804.0100 and Local Street Fund account #203-449.007-804.0100 as appropriate; and to authorize the Mayor and the City Clerk to sign the agreement on behalf of the City.
4. Resolution to execute the OHM Advisors Consulting Agreement to provide as-requested professional services including, but not limited to, construction engineering and administration services, for a three-year term, to be charged to the General Fund, Sidewalks account #101-444.001- 981.0100, Major Street Fund account #202-449.001-981.0100, Local Street Fund account #203- 449.001-981.0100, Sewer Fund account #590-536.001-981.0100, and/or Water Fund account #591-537.004-981.0100 as appropriate; and to authorize the Mayor and City Clerk to sign the agreement on behalf of the City.

#### Public Comment

In reply to Paul Reagan, CCE Surhigh stated that MKSK's services are as-requested. He stated that MKSK would be soliciting public feedback on the proposed designs for the S. Old Woodward project.

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

Nays, None

## **VI. UNFINISHED BUSINESS**

### **06-158-21 Public Hearing to consider a Special Land Use Permit, Final Site Plan & Design Review at 720 N. Old Woodward – Vinewood Kitchen & Cocktails**

The Mayor opened the public hearing at 8:10 p.m.

Mayor Boutros stated that the applicant was withdrawing their request for a bistro license at this time.

CM Markus noted that the applicant requested a reduction in the City's fees. CM Markus explained that between Staff and Board meetings numerous hours were spent on the review of this project, and consequently he was not recommending that the City offer a fee reduction.

PD Ecker stated that the City's fees for review of this project amounted to \$2800. She confirmed that the City had expended at least that amount in the process of conducting reviews of this project.

The Mayor closed the public hearing at 8:12 p.m.

**MOTION:** Motion by Commission Sherman, seconded by Commissioner Hoff:  
To remove this item from the agenda.

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

Nays, None

**06-159-21 Woodward Dream Cruise**

Fire Chief Wells presented.

He explained that the BSD would select which car clubs could use the space in the City as they do every year. He stated that the City would be maintaining a larger fire lane and having a more generally scaled-down event.

**MOTION:** Motion by Commission Hoff, seconded by Commissioner Nickita:  
To approve a scaled down participation in the annual Woodward Dream Cruise event for 2021 in the City of Birmingham, due to public health and safety concerns attributed to the COVID-19 pandemic, by managing the large crowds that any participation in the Dream Cruise naturally creates. (complete resolution in agenda packet).

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

Nays, None

**VII. NEW BUSINESS**

**06-160-21 Public Hearing for a Rezoning Request for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street from D3 to D4**

The Mayor opened the public hearing at 8:18 p.m.

The Mayor explained that due to improper noticing of the project by the applicant on the property it was being recommended that the item be postponed to a date certain of July 12, 2021.

City Attorney explained the issue with the lack of proper noticing in this case.

CM Markus said he would likely be recommending updates to the noticing process in the future. He noted that the requirement is to notice that a public hearing will be held, and said that further specifying the type of public hearing on the signage itself was likely making the process excessively difficult for both developers and Staff. CM Markus thanked Mr. Reagan for alerting the City to the noticing issue in this case.

Commissioner Sherman opined that the memo provided by Staff in the evening's agenda for this public hearing was initially somewhat confusing, in that it seemed to indicate that the lot split was again under consideration, when in fact this hearing was regarding the rezoning request.

Rick Rattner, attorney for the project, said he had nothing to add besides for a request that the public hearing be rescheduled to July 12, 2021.

Public Comment

David Bloom recommended that QR codes be added to the public noticing signs. He also said that the extra month could afford the City and the applicant more time to discuss matters of parking.

PD Ecker noted the City previously had QR codes on signs and public feedback indicated that they were not used.

CM Markus noted that if this project necessitated more parking in the future that parking could be added by specially assessing the benefitting property owners and the charging of permit and daily use parking fees. He said he could not foresee a situation in which the taxpayers would be charged for additional parking required by this development.

The Mayor closed the public hearing at 8:33 p.m.

**MOTION:** Motion by Commission Hoff, seconded by Commissioner Sherman:  
To postpone the public hearing for a Rezoning Request for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street from D3 to D4 to July 12, 2021.

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

Nays, None

**06-161-21 Public Hearing - Zoning Amendment to Economic Development License Map – 300-394 S. Old Woodward**

The Mayor opened the public hearing at 8:34 p.m.

PD Ecker stated that the same issue with noticing for the previous item existed for this item.

Rick Rattner, attorney for the project, told Commissioner Host that RH would be the owner of the property and is the developer of the property.

Public Comment

Mr. Bloom stated that an RH representative at a previous meeting had indicated that once the property was developed the property would be sold and then leased back by RH.

The Mayor closed the public hearing at 8:36 p.m.

**MOTION:** Motion by Commission Sherman, seconded by Commissioner Nickita:  
To postpone the public hearing for a Public Hearing - Zoning Amendment to Economic Development License Map – 300-394 S. Old Woodward to July 12, 2021.

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

Nays, None

**06-163-21 Temporary COVID-19 Off-Season Outdoor Dining Standards  
Expiration Date**

Police Chief Clemence reviewed the item.

Commissioner Host thanked Police Chief Clemence and Fire Chief Wells for their careful and comprehensive work on this item and the Woodward Dream Cruise item.

Police Chief Clemence estimated that at least a dozen parking spaces were presently occupied by temporary outdoor dining structures.

CM Markus said the alternative expiration date of September 10, 2021 would give restaurants until Labor Day 2021 with a bit of additional time to dismantle the decks.

PD Ecker stated that potential revisions to outdoor dining ordinances would be a topic of discussion at the upcoming joint meeting between the Planning Board and Commission scheduled for June 21, 2021.

Public Comment

Jennifer Hammond spoke in favor of extending the temporary outdoor dining standards through the summer.

Dulce and Ted Fuller spoke against maintaining the temporary outdoor dining standards.



John Henke spoke in favor of extending the temporary outdoor dining standards for another 12 weeks.

David Klein spoke against maintaining the temporary outdoor dining standards.

Gerard Marti spoke in favor of extending the temporary outdoor dining standards.

Joe Bongiovanni spoke in favor of extending the temporary outdoor dining standards.

Beth Hussey spoke in favor of extending the temporary outdoor dining standards.

Nino Cutaro spoke in favor of extending the temporary outdoor dining standards.

Kelly Allen spoke in favor of extending the temporary outdoor dining standards. She noted that Birmingham restaurateurs put together a petition of over 1,000 signatures supporting the extension of the temporary outdoor dining standards.

A number of Commissioners expressed concerns that temporary outdoor dining was creating obstacles and encroaching into the pedestrian walkways and yellow curb areas, taking up parking spaces, blurring the distinction between Class C and bistro licensees, creating unsafe storage situations, and blocking neighboring retailers.

Commissioner Nickita asked if there was a way to increase enforcement of safety and code issues without doing away with the temporary outdoor dining requirements entirely.

In reply to Commissioner Nickita, CA Kucharek stated that most of the issues listed were already addressed in Article 4 of the Development Standards of the Zoning Ordinance. She said a simplified motion, if the Commission were so inclined, would be to require that all establishments take down their outdoor dining walls and ceilings, comply with with outdoor dining standards, and comply with their outdoor cafe license agreements until September 10, 2021.

In reply to Mayor Pro Tem Longe, PD Ecker said that while the potential compromise under discussion could technically be implemented, it would not necessarily be practical. She said that managing the temporary outdoor dining operations so far had already taken up an inordinate amount of time, and enforcement and work on getting establishments in compliance would increase.

Chief Clemence noted that Staff considered hybrid options between letting the temporary outdoor dining standards expire and extending them, but that the consensus had been to let them expire.

In reply to Commissioner Baller, CM Markus said that the City would likely give restaurateurs two weeks after whichever date the Commission approved to comply with a reversion to the previous outdoor dining standards.

## **06-162-21                      Motion to Extend the Meeting**

**MOTION:**                      Motion by Commission Sherman, seconded by Commissioner Nickita:  
To extend the meeting for an additional 15 minutes plus the closed session.

Commissioner Sherman confirmed that this motion would forestall another motion to extend.

ROLL CALL VOTE: Ayes, Commissioner Sherman  
Commissioner Nickita  
Mayor Boutros  
Commissioner Baller  
Commissioner Hoff

Nays, Commissioner Host  
Mayor Pro Tem Longe

**06-163-21 Temporary COVID-19 Off-Season Outdoor Dining Standards  
Expiration Date (continued)**

In reply to Commissioner Nickita, PD Ecker confirmed that the Planning Board could begin crafting ordinance amendments to the outdoor dining standards after the upcoming joint Commission-Planning Board meeting.

Mayor Pro Tem Longe clarified that even with expedited work on the ordinance amendments they would not prevent the June 30, 2021 expiration of the temporary outdoor dining standards.

Commissioner Host noted that if the State was no longer limiting indoor capacity starting July 1, 2021 that it was most appropriate to let the temporary outdoor dining standards expire then.

Mayor Boutros said that Covid-19 was not yet over, and supported extending the temporary outdoor dining standards to September 10, 2021. He recommended that the Commission table the present discussion to their June 28, 2021 meeting and try to come up with a compromise motion similar to the potential one discussed by Commissioner Nickita and CA Kucharek. He said he would personally ensure that the necessary dialogues between restaurants and the City would occur to eliminate the mentioned areas of concern.

**MOTION:** Motion by Commission Hoff, seconded by Commissioner Sherman:  
To take no action. The current City resolution allowing Temporary COVID-19 Off-Season Outdoor Dining Standards would expire on June 30, 2021.

CM Markus stated for the Mayor Pro Tem that while the Commission could have additional discussion regarding this matter at its June 28, 2021 meeting, the Commission would have to give further direction to Staff in order to do more than that.

Commissioner Baller recommended that the restaurateurs contact the City to propose a solution.

Kara Bongiovanni stated that restaurant customers want to sit outside.

Mr. Bloom said that ending the temporary outdoor dining standards would be more fair to Class C licensees.

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

Nays, Commissioner Nickita

Mayor Boutros

**06-164-21 Postpone New Business Items D and E to Next Meeting**

**MOTION:** Motion by Commission Hoff, seconded by Commissioner Sherman:  
To postpone new business items D and E to the next meeting.

Commissioner Host said postponing those items would be unfair to those in the audience who were in attendance to discuss them.

ROLL CALL VOTE: Ayes, Commissioner Sherman  
Commissioner Nickita  
Mayor Boutros  
Commissioner Baller  
Commissioner Hoff

Nays, Commissioner Host  
Mayor Pro Tem Longe

**06-165-21 Closed Session**

**MOTION:** Motion by Commission Sherman, seconded by Commissioner Hoff:  
To meet in closed session to discuss a written Attorney/Client Privilege communication pursuant to MCL Sec. 15.268(h) of the Open Meetings Act regarding Birmingham Wine Shop, LLC, et al v City of Birmingham, et al; Oakland County Circuit Court Case No. 2021-186823-AA, and to discuss pending litigation, pursuant to MCL Sec. 15.268(e) of the Open Meetings Act regarding Birmingham Wine Shop, LLC, et al v City of Birmingham, et al; Oakland County Circuit Court Case No. 2021-186823-AA and to meet in closed session to discuss a written Attorney/Client Privilege communication pursuant to MCL Sec. 15.268(h) of the Open Meetings Act.

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

Nays, None

**(A roll call vote is required and the vote must be approved by a 2/3 majority of the commission. The commission will adjourn to closed session after all other business has been addressed in open session and reconvene to open session, after the closed session, for purposes of taking formal action resulting from the closed session and for purposes of adjourning the meeting.)**

The Commission went into closed session at 10:26 p.m.

The Commission reconvened into open session at 10:45 p.m.

**VIII. REMOVED FROM CONSENT AGENDA**

**IX. COMMUNICATIONS**

**X. REPORTS**

- A. Commissioner Reports
  - 1. Notice to appoint to the Retirement Board
  - 2. Notice to appoint to the Museum Board
  - 3. Notice to appoint to the Greenwood Cemetery Advisory Board
- B. Commissioner Comments
  - 1. Commissioner Hoff noted that the City would be returning to in-person Commission and Board meetings.
- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
  - 1. Return to In person City Commission & Board meetings, submitted by Fire Chief Wells
  - 2. Public comment during City meetings, submitted by City Attorney Kucharek

INFORMATION ONLY

**XI. ADJOURN**

Mayor Boutros adjourned the meeting at 10:45 p.m.



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Alexandria Bingham, City Clerk  
/le