

Birmingham City Commission Minutes

June 28, 2021

7:30 p.m.

Virtual Meeting

Meeting ID: 655 079 760

Vimeo Link: <https://vimeo.com/event/3470/videos/565897336/>

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

No one from the office of Senator McMorrow was in attendance.

APPOINTMENTS

06-166-21 Appointment of John Schrot to the Board of Ethics

The Commission interviewed John Schrot for the appointment.

MOTION: Nomination by Commissioner Hoff:

To appoint John Schrot as a regular member to the Board of Ethics to serve a three-year term to expire June 30, 2024.

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

Nays, None

06-167-21 Appointment of Jake German to the Historic District Study Committee

The Commission interviewed Jake German for the appointment.

MOTION: Nomination by Commissioner Hoff:
To appoint Jake German as a regular member to the Board of Ethics to serve a three-year term to expire June 30, 2024.

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

Nays, None

06-168-21 Appointment of Colleen McGough to the Historic District Study Committee

Colleen McGough was unable to attend the evening's meeting.

MOTION: Nomination by Commissioner Nickita:
To appoint Colleen McGough as a regular member to the Board of Ethics to serve a three-year term to expire June 30, 2024.

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

Nays, None

06-169-21 Appointment of Rick Wiand to the Building Trade Appeals

The Commission interviewed Rick Wiand for the appointment.

MOTION: Nomination by Commissioner Hoff:
To appoint Rick Wiand as a regular member to the Board of Building Trades Appeals as a regular member to serve a three-year term to expire May 23, 2024.

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

Nays, None

06-170-21 Appointment of Arya Afrakhtch to the Building Trade Appeals

The Commission interviewed Arya Afrakhtch for the appointment.

MOTION: Nomination by Commissioner Baller:
To appoint Arya Afrakhtch as a regular member to the Board of Building Trades Appeals as a regular member to serve a three-year term to expire May 23, 2024.

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

Nays, None

06-171-21 Appointment of Thomas Lindberg to the Building Trade Appeals

The Commission interviewed Thomas Lindberg for the appointment.

MOTION: Nomination by Mayor Pro Tem Longe:
To appoint Thomas Lindberg as a regular member to the Board of Building Trades Appeals as a regular member to serve the remainder of a three-year term to expire May 23, 2022.

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

Nays, None

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

Joey Curtis, owner of Bistro Joe's, asked the Commission to reconsider extending the temporary outdoor dining standards to allow restaurants the opportunity to recoup some of the money lost during the Covid-19 pandemic.

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.

06-172-21 Consent Agenda

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To approve the Consent Agenda.

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

Nays, None

- A. Resolution to approve the City Commission Workshop meeting minutes of June 14, 2021
- B. Resolution to approve the City Commission meeting minutes of June 14, 2021
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated June 16, 2021, in the amount of \$1,430,167.59.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated June 23, 2021, in the amount of \$722,368.00.
- E. Resolution to approve the service agreement with Next in the amount of \$122,940 for services described in Attachment A of the agreement for fiscal year 2021-2022, account number 101-299.000-811.0000, and further direct the Mayor and City Clerk to sign the agreement on behalf of the City.
- F. Resolution to approve the purchase of two (2) Toro 3555-D fairway mowers from Spartan Distributors, through State of Michigan extendable purchasing contract #071B0200329 at a cost of \$107,917.56 less the trade in amount of \$13,000 for a total expenditure of \$94,917.56. Funds for this purchase are available in the Auto Equipment Fund account # 641-441.006-971.0100.

- G. Resolution to approve the Cost Participation Agreement with Oakland County for the City of Birmingham to participate in the 2021 OAKSTEM Program. Further, to authorize the Director of Public Services to sign on behalf of the City of Birmingham the Cost Participation Agreement with Oakland County, for an amount not to exceed \$15,000, for planting street trees in Spring 2022.
- H. Resolution to allow the IT department to purchase the 36-month subscription for Enterprise Data protection and endpoint email and drive protection from Virtru for a total cost \$27,717.00 paid as a yearly subscription of \$9,239.00. Funds available in the IT Computer maintenance account: 636-228.000-933.0600
- I. Resolution to set a public hearing date for July 26th, 2021 to consider the Special Land Use Permit, Final Site Plan and Design Review application for 501 S. Eton – Whistle Stop to allow the operation of a bistro.
- J. Resolution to set public hearings on July 26, 2021 to consider the following amendments to Chapter 126, Zoning:
 - 1. Article 3, Section 3.04 (Specific Standards) to amend the Architectural Standards;
 - 2. Article 4, Section 4.90 (Window Standards) to amend storefront window requirements; and
 - 3. Article 9, Section 9.02 (Definitions) to redefine clear glazing and eliminate lightly tinted glazing.
- K. Resolution to set public hearings for July 26, 2021 to consider the following amendments to Chapter 126, Zoning:
 - 1. Article 4, Section 4.09 (Essential Services) to remove Roof Mounted Solar Electric Systems; and
 - 2. Article 4, Section 4.88 (Alternative Energy) to add amended Roof Mounted Solar Electric Systems language.
- L. Resolution to adopt a resolution for the City Commission to meet on Monday, July 26, 2021, at 7:30 P.M., for the purpose of conducting a Public Hearing of Necessity for the replacement of sewer and water services within the Townsend & Peabody Street Paving project areas.

Be it further RESOLVED, that the City Commission meet on Monday, August 9, 2021 at 7:30 P.M. for the purpose of conducting a Public Hearing on Confirmation of the Roll for the replacement of sewer and water services in the Townsend & Peabody Street Paving project areas.

VI. UNFINISHED BUSINESS

VII. NEW BUSINESS

06-173-21 American Rescue Plan Act

FD Gerber and CM Markus presented the item.

In reply to Commission inquiries, CM Markus explained:

- The City would still use the previously-allocated funds for this project since the total cost would be close to \$5 million. This will enable the City to complete the lead service line replacements faster than anticipated; and,

- The City will still apply for funds from the federal infrastructure plan if they become available. The City could come back and amend their funding plans if appropriate.

Commissioners Host and Nickita spoke in favor of this initiative.

MOTION: Motion by Commissioner Nickita, seconded by Commissioner Sherman:
To authorize the City Manager to use the City’s allocation of Coronavirus State and Local Fiscal Recovery Funds towards lead service line replacement.

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

Nays, None

06-174-21 Request for Direction Regarding Pending Litigation

CA Kucharek summarized this item.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Host:
To enter into a Consent Judgement in connection with the pending litigation entitled Birmingham Wine Shop, LLC et al v City of Birmingham, et al; Oakland County Circuit Court Case No.: 2021-186823-AA.

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

Nays, None

06-175-21 Commission discussion on items from prior meeting.

1. Food Trucks in Birmingham

PD Ecker introduced the topic.

It was noted during discussion that:

- Current ordinance would allow food trucks to operate currently in Birmingham as long as they are on private property;
- Current Birmingham restaurants could participate in operating food trucks as long as they follow ordinances if they desired;
- Ordinances would have to be changed if food trucks were to operate on public property;
- Ordinances relating to frozen confection vendors would also require changes if ordinances relating to food trucks change; and,

- A “trial period” would not be possible without amending ordinance.

Three Commissioners spoke in favor of exploring and implementing food trucks. CM Markus said he was also supportive of the idea if done appropriately.

CA Kucharek said she was unsure about the potential legality of limiting food truck operations to restaurants already operating brick-and-mortar establishments in Birmingham.

CM Markus said updating special event regulations might be an appropriate way to allow food trucks on a trial basis.

Some Commissioners expressed concern that food trucks would provide competition for existing Birmingham restaurants. Other Commissioners said that food trucks offer a sufficient enough difference from sit-down restaurants that they would be unlikely to be in competition.

Some concern was expressed as to whether there would be enough demand to attract and retain food trucks.

Some concern was expressed about pursuing allowing food trucks when restaurants are still recovering from the financial impacts of the Covid-19 pandemic. A few Commissioners recommended delaying the consideration a bit longer in order to avoid putting additional pressure on currently operating restaurants.

After Commission discussion, there was consensus to solicit resident feedback regarding food trucks via Engage Birmingham/Bang the Table.

Some Commissioners supported this item returning more formally after feedback is gathered from Engage Birmingham/Bang the Table. Others said it would be more appropriate to have another preliminary discussion of feedback gathered and potentially required legislative changes once that information is available.

Public Comment

Paul Reagan advocated for a swift change to the ordinances in order to allow food trucks in the neighborhoods. He said that if there was a reliable schedule of when food trucks would be present, it would promote neighborhood cohesion.

06-176-21 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.

None.

06-177-21 Closed Session Pursuant to the OMA at MCL §15.268(a)

(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.)

MOTION: Motion by Commissioner Host, seconded by Mayor Pro Tem Longe:
To meet in closed session pursuant to the OMA at MCL §15.268(a) for a performance evaluation of Mr. Markus at Mr. Markus' request that such performance evaluation be held in closed session.

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

Nays, None

The Mayor noted the Commission would go into closed session after the completion of the rest of the agenda.

The Commission went into closed session at 10:27 p.m.

The Commission reconvened into open session at 11:23 p.m.

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

Commissioner Host said he was glad that the Commission got to hear from the Planning Board instead of the Commission solely speaking first at the joint meeting. He said that more conversations allowing the advisory boards and public to speak first would help increase the public's trust in the Commission.

X. REPORTS

The Mayor requested a brief pause to the meeting at 9:03 p.m.

The meeting reconvened at 9:08 p.m.

A. Commissioner Reports

In reply to Commissioner Hoff, PD Ecker and CA Kucharek briefly described the purpose of social districts as permitted by MLCC.

Commissioner Host reviewed his submission to the agenda regarding parking.

Commissioner Baller said he wanted to see efforts towards improving Park Street between Maple and Hamilton.

CM Markus noted that he and Commissioner Baller met with the developer of 35001 Woodward to discuss potential improvements to that stretch of Park Street. He said the developer was willing to consider potential improvements. He also noted that the City's participation in these discussions in no way reflected

on the civil dispute between the developer of 35001 Woodward and the owner of Hunter House Hamburgers.

Commissioner Nickita said that if the City were to pursue improvements to that stretch of Park Street they should begin working with MDOT as early in the process as possible.

CM Markus said he would likely be bringing proposals for Park Street between Maple and Hamilton before the Commission in the near future.

Commissioner Nickita said he did not believe that the parking system was oversubscribed. He said the goal of a well-managed parking system would be to ensure that parking spaces do not sit empty. He said the parking system in Birmingham was good and that the City was working on improving it further.

Commissioner Host thanked CM Markus for organizing Commission workshops and for his hands-on approach to engaging issues that arise around the City. He continued that meetings on workshop nights should not end at 10 p.m. and that residential ordinances should be reviewed to ensure that new construction better adheres to the character of the neighborhood in which it is built.

Commissioner Sherman and Mayor Boutros congratulated the Police Department on its accreditation with the Association of Chiefs.

- B. Commissioner Comments
- 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

In reply to Commissioner Hoff, CA Kucharek confirmed that the City would not limit the public in attendance.

It was noted that if board and commission members wanted to advocate for the ability to attend meetings remotely, reaching out to their state elected officials would be the most effective way to do that.

In reply to Commissioner Host, Fire Chief Wells said that masks have been effective and that Commissioners and board members were welcome to wear masks during in-person meetings if so desired.

Public Comment

Andrew Haig wanted to know how the City could advocate for letting board and commission members attend meetings remotely when necessary.

- 2. Public comment during City meetings, submitted by City Attorney Kucharek

In reply to Commissioner Baller, CA Kucharek confirmed that the aggregate time for all public comment is unlimited but that the Commission does have the right to limit the length of comment of a single commenter.

- 3. City Commission Vote Revisited, submitted by City Attorney Kucharek

CM Markus and PD Ecker explained that when the State ended the indoor capacity limitations the City likely legally lost its basis for deviating from the ordinance to allow temporary outdoor dining standards. CM Markus recommended that the Commission's most appropriate option would be to let the temporary outdoor dining standards expire on June 30, 2021.

CA Kucharek concurred.

It was clarified that these changes would maintain outdoor dining in the same way it operated pre-Covid-19.

CA Kucharek stated that letters and emails would be going out to restaurateurs to clarify the requirements for the ending of the temporary outdoor dining standards.

Public Comment

Joe Bongiovanni expressed disappointment at the City's communication of the change in the outdoor dining standards. He also said he was not supportive of board and commission members attending meetings remotely.

Gerard Marti expressed disappointment at the ending of the temporary outdoor dining standards.

Mr. Curtis said he wanted to understand from where nearby municipalities were deriving their authority to permit enhanced outdoor dining allowances.

CM Markus said some municipalities may be using social districts, and others may not be aware that they may be in conflict with their own local ordinances. He said ultimately one would have to consult with the municipalities in question for clarification.

Mr. Curtis said he was concerned with Birmingham retaining its status as a restaurant destination.

CM Markus noted that the City is looking to update its outdoor dining ordinances.

4. Temporary COVID-19 Outdoor Structure Fire Code Violations, submitted by Fire Chief Wells
5. Parking Structure Debt, submitted by Finance Director Mark Gerber
6. City Manager's Report

CM Markus reviewed his report.

The Mayor thanked CM Markus for his reports. He said the reports offer the public and the Commission clarity and insight regarding the City's day-to-day operations.

INFORMATION ONLY

XI. ADJOURN

Mayor Boutros adjourned the meeting at 11:24 p.m.

Alexandria D. Bingham

Alexandria Bingham, City Clerk
/le