

## **Birmingham City Commission Minutes**

**August 9, 2021**

**7:30 p.m.**

**Municipal Building, 151 Martin**

**Vimeo Link: <https://vimeo.com/event/3470/videos/579682159/>**

### **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  
Mayor Pro Tem Longe  
Commissioner Baller  
Commissioner Hoff  
Commissioner Host  
Commissioner Nickita  
Commissioner Sherman

Absent: None

Administration: City Manager Markus, City Clerk Bingham, Police Chief Clemence, Assistant City Manager Ecker, City Attorney Kucharek, Consulting City Engineer Surhigh, Deputy Treasurer Todd

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

#### **ANNOUNCEMENTS**

The highly transmissible COVID-19 Delta variant is spreading throughout the nation at an alarming rate. As a result, the CDC is recommending that vaccinated and unvaccinated personnel wear a facemask indoors while in public if you live or work in a substantial or high transmission area. Oakland County is currently classified as a substantial transmission area. The City has reinstated mask requirements for all employees while indoors. The mask requirement also applies to all board and commission members as well as the public attending public meetings.

In The Park Summer Concerts are being held weekly in Shain Park on Wednesday evenings from 7 p.m. - 9 p.m. Upcoming groups include the following:

August 11th	Alan Turner
August 18th	Jill Jack
August 25th	Ben Sharkey
September 1st	Sun Messengers
September 8th	"The Byron Legacy Show" starring Bryon Cancelmo

The Police Department submitted a patrol vehicle to the Michigan Association of Chiefs of Police annual "Police Car of the Year" competition for 2021. The Department's current patrol vehicle graphics and color scheme were designed by a committee of volunteer department officers and implemented by Chief Clemence in 2017. The Police Department's patrol vehicle won second place in the State of Michigan for "Police Car of the Year" for 2021.

## **APPOINTMENTS**

### **08-206-21 Appointment of Thomas Guastello to the Corridor Improvement Authority**

The Commission interviewed Thomas Guastello for the appointment.

**MOTION:** Nomination by Mayor Pro Tem Longe:  
To concur in the Mayor's appointment of Thomas Guastello to the Corridor Improvement Authority as the regular member to serve the remainder of a four-year term to expire December 15, 2024.

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

Nays, None

### **08-207-21 Appointment of Amanda Fishburn to the Multi-Modal Transportation Board**

The Commission interviewed Amanda Fishburn for the appointment.

**MOTION:** Nomination by Commissioner Baller:  
To appoint Amanda Fishburn to the Multi-Modal Transportation Board as an alternate member to serve a three-year term to expire October 27, 2022.

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

Nays, None

### **08-208-21 Appointment of Jay R. Shell to the Museum Board**

The Commission interviewed Jay R. Shell for the appointment.

**MOTION:** Nomination by Commissioner Sherman:

To appoint Jay R. Shell to the Museum Board as a regular member to serve the remainder of a three-year term to expire July 5, 2024.

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

Nays, None

City Clerk Bingham swore in the appointees.

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

Andrew Haig recommended returning to virtual meetings again in light of the delta variant of Covid-19. He also asked that the City Manager’s report be moved to the beginning of the Commission meetings.

Ingrid Tighe gave recommendations for addressing the City’s recurring flooding issues. She stated Catalpa and Bird are two streets that have been particularly impacted.

CM Markus and Mayor Boutros notified Ms. Tighe that flooding in the City would be discussed at the end of the evening’s 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.

**08-209-21 Consent Agenda**

The following items were pulled from the Consent Agenda:

Commissioner Hoff: Item F – Legends of Tomorrow

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Host:  
To approve the Consent Agenda with the exception of Item F.

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

Nays, None

A. Resolution to approve the City Commission meeting minutes of July 26, 2021.

- B. Resolution to approve the warrant list, including Automated Clearing House payments, dated July 28, 2021, in the amount of \$8,073,706.41.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated August 4, 2021, in the amount of \$615,077.21.
- D. Resolution to approve a request from the Birmingham Bloomfield Art Center to hold Art Birmingham in Shain Park and on surrounding streets on May 7-8, 2022 contingent upon compliance with all permit and insurance requirements, as well as payment of all fees and, further pursuant to any minor modifications or event cancellation that may be deemed necessary by administrative staff leading up to or at the time of the event due to public health and safety measures.
- E. Resolution to approve a special event permit as requested by Schools Offer Support to hold the Strides for SOS road race September 26, 2021, 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, or event cancellation that may be deemed necessary by administrative staff leading up to or at the time of the event due to public health and safety measures.
- G. Resolution to authorize the creation of the Indigent Defense Fund for the purpose of accepting grant and local share funding and charging all MIDC plan-related costs to this fund; to authorize the Finance Director to sign the grant agreement with MIDC on behalf of the City; and to approve the appropriation and amendment to the 2021-2022 budget as follows:

**Indigent Defense Fund**

Revenues:

Intergovernmental Revenue	<u>\$532,550</u>
Total Revenues	<u>\$532,550</u>

Expenditures:

Indigent Defense Fund	<u>\$532,550</u>
Total Expenditures	<u>\$532,550</u>

- H. To authorize the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and to approve the liquor license request of Whistle Stop Diner, Inc. that requests a transfer of interest in a Class C License to be issued under MCL 436.1531(1) and new SDM License with Outdoor Service (1 Area) located at 501 S. Eton St, Birmingham, Oakland County, MI 48009.

Furthermore, pursuant to Birmingham City Ordinance, to authorize the City Clerk to complete the Local Approval Notice at the request of Whistle Stop Diner, Inc. approving the liquor license transfer request of Whistle Stop Diner, Inc. that requested a Class C License be transferred under MCL 436.1531(1) & new SDM License with Outdoor Service (1 Area) located at 501 S. Eton St, Birmingham, Oakland County, MI 48009.

- I. Resolution to approve an extension of the 2021 Sidewalk Trip Elimination Program through the addendum of the Contact #6-18 (SW) for the 2021 sidewalk program repair area, at 2018 contract prices, to Precision Concrete, Inc., in the amount of \$125,000.00, contingent upon submittal of the necessary bonds and insurance certificate. All costs shall be charged to account number 101-444.001-981.0100.

And to have the Mayor sign the approved contract addendum authorizing this work.

**08-210-21 (Item F) Legends of Tomorrow**

Police Chief Clemence said this event would not conflict with the setup of the Common Ground Art Fair in Shain Park.

**MOTION:** Motion by Commissioner Hoff, seconded by Commissioner Nickita:  
To approve a special event permit as requested by Child Safe Michigan to hold the Legends of Tomorrow gala at the Townsend Hotel September 17, 2021, 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, or event cancellation that may be deemed necessary by administrative staff leading up to or at the time of the event due to public health and safety measures. Additionally, to allow the use of a temporary liquor license for this event, 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.

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

Nays, None

**VI. UNFINISHED BUSINESS**

**VII. NEW BUSINESS**

**08-211-21 Public Hearing to Confirm S.A.D. for #895- Townsend Street Paving Project #6-21 (P), Water & Sewer Lateral Special Assessment**

The Mayor opened the public hearing at 7:57 p.m.

DT Todd and CCE Surhigh presented the item.

CCE Surhigh confirmed for Commissioner Hoff that only water and sewer laterals meeting the City's criteria for replacement would be replaced as part of this project.

The Mayor closed the public hearing at 8:01 p.m.

**MOTION:** Motion by Commissioner Nickita, seconded by Commissioner Host:  
To confirm Special Assessment Roll No. 895 (complete motion in agenda packet).

ROLL CALL VOTE: Ayes, Commissioner Nickita  
Commissioner Host

Mayor Pro Tem Longe  
Commissioner Sherman  
Commissioner Baller  
Commissioner Hoff  
Mayor Boutros

Nays, None

**08-212-21 Public Hearing for 300 - 394 S. Old Woodward and a portion of 294 E. Brown and a portion of 294 E. Brown Street – New Mixed Use 4 story Building, RH – Special Land Use Permit, Final Site Plan & Design Review**

The Mayor opened the public hearing at 8:02 p.m.

ACM Ecker reviewed the item.

Victor Saroki was present on behalf of the applicant team.

Commissioner Nickita noted that if not for the liquor license aspect of this request the project would otherwise be considered fully approved given its prior review and approval by the Planning Board.

Commissioner Hoff complimented Mr. Saroki on the renderings.

ACM Ecker stated that parking reviews show that there is more than adequate parking available on street and in both the Pierce and Peabody parking structures for RH employees and customers.

In reply to Commissioner Baller, Mr. Saroki confirmed: this RH would be substantially the same as other RH locations; and, the majority of the lights in the building would go out in the evenings after business hours.

The Commission and Staff discussed whether to require the underground parking area be used either for public parking or valet services as part of the SLUP.

While acknowledging that conditions two and six of the SLUP language could both be used to address potential future parking issues arising from the development, CM Markus stated that it is often easier for the City to set out its expectations explicitly in order to minimize any potential future confusion. Consequently, he was supportive of adding language to the SLUP to require that the underground area be used for parking.

CA Kucharek stated she worked with Gayle MacGregor, attorney for the applicant, to compose an eighth condition for the SLUP: "That RESTORATION HARDWARE is required to utilize the underground parking of 24 spaces for valet services or for the public to park at all times during operation of the business."

Commissioners accepted the recommended eighth condition.

The City Attorney recommended not including the hours of operation in the SLUP since doing so could mean that minor changes, such as holiday hours, could entail a SLUP violation.

Discussion also noted that condition two would allow the Commission to address future concerns about hours of operation should they arise.

Public Comment

Alessandro Dinello, Michael Sbrocca, Brandon Gorge, Jeffrey Kaftan, Samy Eid, Andrea Rehm, David Schostak, Jeff Schoenberg, Ingrid Tighe, Cathy Remske, J.C. Cataldo, and Patricia Beatty spoke in support of the project.

The Mayor closed the public hearing at 9:24 p.m.

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Nickita:  
To approve a resolution issuing a Special Land Use Permit and approving the Final Site Plan and Design Review application for 300 - 394 S. Old Woodward and a portion of 294 E. Brown to allow a new building for Restoration Hardware, including a restaurant operating with an Economic Development Liquor License with the addition of the recommended eighth condition specifying that the underground parking area must be used for public parking or valet services;

AND

To authorize the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and to approve the liquor license request of RH F&B Michigan, LLC that requests a transfer of interest in a Tavern License with new Outdoor Service (1 Area) to be issued under MCL 436.1501 located at 300-394 S Old Woodward, Birmingham, Oakland County, MI 48009;

AND

Furthermore, pursuant to Birmingham City Ordinance, to authorize the City Clerk to complete the Local Approval Notice at the request of RH F&B Michigan, LLC approving the liquor license transfer request of RH F&B Birmingham, LLC that requested a Tavern License with new Outdoor Service (1 Area) be transferred under MCL 436.1501 located at 300-394 S Old Woodward, Birmingham, Oakland County, MI 48009.

Commissioner Host thanked the City Attorney for her work on the SLUP language.

Commissioner Nickita said he was not concerned about parking moving into the residential areas, even as a resident of the nearby neighborhood. He said RH would catalyze development in the area and was glad to hear resident support for the project.

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

Nays, None

Mayor Boutros thanked everyone involved for their work on the project.

Mr. Saroki thanked the City on behalf of the applicant team.

Commission discussion on items from prior meeting.

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.

Commissioner Host recommended the City consider moving the City Manager’s report to the beginning of meetings, per Mr. Haig’s prior recommendation.

There was no support for Commissioner Host’s recommendation since the report is available in writing on the City website. Mayor Pro Tem Longe noted that the report was already being made more prominent on the City website per prior Commission request.

**MOTION:** Motion by Commissioner Nickita, seconded by Commissioner Hoff:  
To discuss how ordinances might address the use of shading devices by businesses in the City.

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

Nays, None

**VIII. REMOVED FROM CONSENT AGENDA**

**IX. COMMUNICATIONS**

**X. REPORTS**

- A. Commissioner Reports
  - 1. Notice to appoint to the Historic District Commission
  - 2. Notice to appoint to the Design Review Board
- B. Commissioner Comments

In reply to Commissioner Baller, CM Markus stated he would direct the Police Department to study how other communities choose where to locate crosswalks and to return to the Commission with the information.

Commissioner Host stated that Alexandria, Virginia does not charge veterans or retirees municipal property taxes and suggested Birmingham look into doing something similar.

CM Markus stated that the City used to do exchanges with other municipalities, including Alexandria, VA, and that those exchanges were very beneficial for the participants. He recommended the City consider resuming those exchanges if and when Covid-19 is more under control.

- C. Advisory Boards, Committees, Commissions’ Reports and Agendas
- D. Legislation



E. City Staff  
1. Update on Recent Rain Events

CCE Surhigh presented the report.

CM Markus stated:

- The City would be looking into issues in particular areas that might be exacerbating the flooding;
- The City would likely need to look at its ordinance requirements for pervious and impervious surfaces;
- Residents should avoid doing anything that introduces substantial amounts of water into their sewer systems, such as laundry, during significant rain events in order to reduce the chance of flooding; and,
- The City installed weather stations at both Fire Stations to in order to better track local weather and to use the data to make future recommendations.

Given the area's high water table, it was also noted that creating subgrade living spaces entails personal risk.

Mayor Pro Tem Longe noted that flooding is an issue throughout southeast Michigan.

CCE Surhigh asked residents to report their flooding issues to the Engineering Department if they have not yet done so.

Public Comment

In reply to Stacy Chambers, CCE Surhigh said he could make the additional exhibits from his report available on the City website.

In reply to Commissioner Baller, CCE Surhigh explained that flooding can sometimes occur on streets with updated sewers because sewers in the surrounding areas have not yet been updated.

Ms. Chambers asked if some kind of citizen representation could be created for flooding discussions.

Mayor Boutros reminded Ms. Chambers that all Commissioners are residents of the City.

Commissioner Baller said the present discussion evidenced the City's continuing investment in resolving the issue.

Ms. Chambers said that having the conversation three hours into the present meeting likely made the discussion inaccessible to many households.

Mayor Pro Tem Longe and Commissioners Host and Nickita all spoke about their experiences with flooding and the frustration it brings.

Commissioner Nickita noted that flooding has been a decades-long issue in the area and that the City was continuing its efforts to mitigate flooding's effects.

2. Qualifications for Appointment as a Museum Board Member

INFORMATION ONLY

**XI. ADJOURN**

Mayor Boutros adjourned the meeting at 10:39 p.m.

*Alexandria D. Bingham*

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Alexandria Bingham, City Clerk  
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