

Birmingham City Commission Minutes

October 3, 2022

Municipal Building, 151 Martin

7:30 p.m.

Vimeo Link: <https://vimeo.com/751471923>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Therese Longe, Mayor, opened the meeting with the Pledge of Allegiance.

II. ROLL CALL

City Clerk Bingham called the roll.

Present: Mayor Longe
Mayor Pro Tem Boutros
Commissioner Haig
Commissioner Host
Commissioner McLain
Commissioner Schafer

Absent: Commissioner Baller

Staff: City Manager Markus; City Clerk Bingham, Planning Director Dupuis, City Attorney Kucharek

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

Announcements

- The City continues to recommend the public wear masks while attending City meetings. All City employees, commissioners, and board members must wear a mask during meetings because adequate ventilation cannot be maintained. This is to ensure the continuity of government is not affected by an exposure to COVID-19 that can be prevented by wearing a mask. The City continues to provide KN-95 respirators and triple-layered masks for all in-person meeting attendees.
- The initial mailing of absentee ballots have been sent out by the Clerk's Office last week. If you know you have applied for an absentee ballot and have not received one yet, please contact the office for assistance. If you would like to request an absentee ballot and have not submitted an AV Ballot Application, you can do so at mi.gov/vote. Return your absentee ballot to the clerk's office as soon as possible via drop box or mail. To review your specific voting information and preview your ballot visit mi.gov/vote. The online and mail voter registration deadline is October 24. After October 24th new voters must register in person at the clerk's office.
- This Saturday, October 8th, from 1pm to 4pm, the Birmingham Fire Department will be hosting their annual open house. The day will be filled with many fire education opportunities, including a live vehicle extrication demonstration. This kid-friendly event will have face painting, popcorn, hot dogs, firehouse chili, and much more. The open house will take place at Station 1, located at 572 S. Adams Rd.

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

V. CONSENT AGENDA

10-247-22 Consent Agenda

The following items were pulled from the Consent Agenda:

Public: Item S – Set Public Hearing for 100 Townsend – Townsend Hotel – Special Land Use Permit Amendment (Ownership Change)

MOTION: Motion by MPT Boutros, Commissioner Host:
To approve the Consent Agenda excluding Item S.

ROLL CALL VOTE: Ayes, Mayor Longe
MPT Boutros
Commissioner Haig
Commissioner Host
Commissioner McLain
Commissioner Schafer

Nays, None

- A. Resolution to approve the City Commission meeting minutes of September 12, 2022.
- B. Resolution to approve the City Commission workshop meeting minutes of September 14, 2022.
- C. Resolution to approve the City Commission meeting minutes of September 19, 2022.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated September 21, 2022, in the amount of \$1,860,098.38.
- E. Resolution to approve the warrant list, including Automated Clearing House payments, dated September 28, 2022, in the amount of \$1,168,834.75.
- F. Resolution appointing election inspectors, absentee voter counting board inspectors, receiving board inspectors and other election officials as recommended by the City Clerk for the November 8, 2022 State Primary Election pursuant to MCL 168.674, and further grant the City Clerk the authority to make emergency appointments of qualified candidates should circumstance warrant in order to maintain adequate staffing in the various precincts, counting boards and receiving boards.

And

Authorize the use of the Oakland County absent voter counting board for the purpose of processing absent voting ballots on November 8, 2022, as prescribed in the terms and responsibilities previously agreed upon at the July 12, 2020 meeting by Commission resolution 07-120-20.

- G. Resolution designating Finance Director Mark Gerber, Assistant Finance Director Kim Wickenheiser, DPS Director Lauren Wood, Building Official Bruce Johnson, Assistant Building Official Mike Morad, Caitlin Donnelly, and Police Chief Mark Clemence as proxy representatives of Election Commissioners Mayor Therese Longe, Mayor Pro Tem Pierre Boutros, Commissioner Clinton Baller, Commissioner Brad Host, Commissioner Andrew Haig, Commissioner Elaine McLain, and Commissioner Katie Shafer, to conduct the Public Accuracy Tests of the electronic tabulating

equipment which will be used to count votes at Birmingham Precincts during the November 8, 2022 election.

- H. Resolution to designate City Engineer Melissa Coatta as the Street Administrator for the City of Birmingham in all transactions with the State Transportation Department as provided in Section 13 of Act 51.
- I. Resolution to approve the interlocal agreement between the City and Oakland County for a \$100,000 Local Government Critical Infrastructure Planning grant award. In addition, authorize the City Engineer to sign the interlocal agreement on behalf of the City and the City Clerk to witness. Funding for this project has been budgeted in accounts 590.0-537.000-811.0000 and 591.0-544.000-811.0000.
- J. Resolution confirming the City Manger's emergency authorization for the expenditure to replace the brakes on Ladder 1 for the cost not to exceed \$23,106.17 to be charged to the Fire Apparatus Maintenance account #101.0-336.000-933.0100.
- K. Resolution to approve the FY 2023 Emergency Management Performance Grant Work Agreement and accept the awarded FY 2022 EMPG funds totaling \$37,610.00 Further, to direct the Mayor to sign the agreements on behalf of the City and any required quarterly reports or surveys associated with the EMPG grant and to authorize the Fire Chief as the sub-recipient authorized representative in order to sign any related EMPG documents on the City's behalf.
- L. Resolution to approve the purchase of two (2) Toro Greensmaster Mowers as quoted from Spartan Distributors, a provider of specialized golf course equipment, located at 1050 N Opdyke Rd, Auburn Hills, MI 48326, through OMNIA Cooperative Purchasing Agreement #2017025, in the amount not to exceed \$82,121.52 for both mowers. Funds for this purchase are available in the FY 2022-2023 Auto Equipment Fund account #661.0-441.006.971.0100.
- M. Resolution to purchase a density meter sensor needed to repair the brine maker in the amount not to exceed \$7,321.79 from Casper's Truck Equipment. Funds for this purchase are available in the Equipment Maintenance Fund, account #661.0-441.006-933.0200.
- N. Resolution to approve the purchase agreement with CMP Distributors, Inc. for (15) Point Blank AX-Series Ballistic System Level II, AXII Ballistic Panels to include (1) Hi-Lite Concealable Carrier with SSBS Shoulder System and (1) Soft Trauma Plate, and (15) Point Blank 7" x 10" Multi-curve Speed Plates in the amount not to exceed \$12,435.00. In addition, to authorize the Mayor and City Clerk to sign the agreement on behalf of the City. Funding for this project has been budgeted in account 101-0.301.000-743.0000.
- O. Resolution recognizing DESIGNCONNECT, 512 Graten Street, Birmingham, MI 48009 as a 501(c)(3) non-profit organization for the purpose of obtaining a State of Michigan Gaming License with the State of Michigan Charitable Gaming Division. Furthermore, authorizing the City Clerk to complete the Qualification Information Form, forwarding it to the Charitable Gaming Division, Lansing, Michigan.
- P. Resolution to approve the request of Essco of Birmingham, LLC to transfer ownership in the escrowed Class C & SDM License located at 210 S. Old Woodward, Suite 100, Birmingham, Oakland County, Michigan to Zana Hospitality, LLC. Additionally, Zana Hospitality, LLC also requests a new Sunday Sales Permit (AM), New Sunday Sales Permit (PM) for the Class C – Spirits and Mixed Spirit Drink (PM), New Sunday Sales Permit (PM) for the SDM License – Mixed Spirit Drink, a New Catering Permit, a New Outdoor Service Area and a New Dance-Entertainment Permit.

Petrucci, of Petrucci Homes, would require a total of 34 parking spaces. He noted that there were presently 22 parking spaces available, which resulted in a 12 parking space deficit.

In reply to CM Markus, PD Dupuis confirmed that Petrucci Homes was informed that they would not be able to have a combination of uses that exceeds their available parking.

Commissioner McLain said she did not support allowing parking on Bennaville to count towards Petrucci Homes' parking requirements. She said that commercial parking has not been a regular occurrence on Bennaville in some time and would likely increase safety and other concerns.

MOTION: Motion by MPT Boutros, seconded by Commissioner Host:
To approve the right-of-way parking request for 33692 Woodward to permit 6 on-street parking spaces in the Woodward right-of-way to be counted towards the required off street parking requirements of the subject site pursuant to Article 4, Section 4.45 (G)(1).

VOICE VOTE: Ayes, Mayor Longe
MPT Boutros
Commissioner Haig
Commissioner Host
Commissioner McLain
Commissioner Schafer

Nays, None

10-250-22 The Birmingham Plan 2040 – Authorization of Required Distribution Period

CM Markus clarified that this was solely a vote on the distribution period, and not on the content of the 2040 draft Master Plan itself.

PD Dupuis presented the item.

CM Markus confirmed for Commissioner Haig that the City was making a strong effort to solicit public comment on the 2040 draft Master Plan.

PD Dupuis said the topic would be publicized in the City Manager's report, City newsletters, and on the City's social media channels.

MOTION: Motion by MPT Boutros, seconded by Commissioner McLain:
To authorize the required 63 day distribution period for the final draft of the 2040 Plan pursuant to the requirements of Article III, Section 125.3841 of the Michigan Planning Enabling Act and to notify the secretary of the planning commission to provide copies of the proposed master plan to all of the necessary entities pursuant to MCL 125.3841(2).

ROLL CALL VOTE: Ayes, Mayor Longe
MPT Boutros
Commissioner Haig
Commissioner Host
Commissioner McLain
Commissioner Schafer

Nays, None

10-251-22 City Manager Recruitment Search

CM Markus presented the item.

The Mayor commented positively on the Executive Recruitment document.

Commissioner Host said the City should be using a nationally-recognized executive search firm to conduct the recruitment. He opined that it would make the process more transparent. He said he did not believe that CM Markus would be reaching out specifically to qualified candidates.

CM Markus stated he had indeed commenced the process of reaching out to qualified candidates. He said his only interest was in Birmingham continuing to be a successful community. He stated he would provide the five to seven best candidates, but would not offer a recommendation on a City Manager candidate since hiring a City Manager is exclusively the Commission's purview. He stated that if the Commission requested additional candidates beyond the five to seven he could also provide that.

The Mayor noted that the Commission had already voted affirmatively to have CM Markus to conduct the executive search. She also noted that there were only eight months left before CM Markus' scheduled departure from the City.

Commissioner McLain said she also prioritized the transparency and legitimacy of the process, and noted that an executive search firm would likely be working to place candidates instead of working entirely for Birmingham's best interest. She said she voted to have CM Markus conduct the search because it would result in a transparent process. She said the Commission's responsibility is to hire the correct City Manager and to make sure that candidate is a good fit for the residents and for the Commission.

The Mayor concurred with Commission McLain about executive search firms working simultaneously to place candidates and on Birmingham's behalf, which has not necessarily worked well in the past.

MOTION: Motion by Commissioner Schafer, seconded by Commissioner McLain:
To direct City Manager Markus to conduct a formal recruitment for the City Manager position using the attached recruitment profile.

Commissioner Host reiterated his concerns about transparency, saying that this was not the correct approach.

ROLL CALL VOTE: Ayes, Mayor Longe
 MPT Boutros
 Commissioner Haig
 Commissioner McLain
 Commissioner Schafer

Nays, Commissioner Host

10-252-22 Request for Closed Session Under MCL § 15.268 Sec. 8(e) and MCL § 15.268 Sec. 8(h) of the Open Meetings Act

CA Kucharek summarized the item.

MOTION: Motion by Commissioner Host, MPT Boutros:
To meet in closed session to discuss pending litigation pursuant to MCL § 15.268 Sec. 8(e) of the Open Meetings Act regarding John Reinhart, et al the v City of Birmingham; U.S. District Court Case No.: 2:22-cv-11074-MAG-DRG.

ROLL CALL VOTE: Ayes, Commissioner Host
Mayor Longe
MPT Boutros
Commissioner Haig
Commissioner McLain
Commissioner Schafer

Nays, None

The Commission went into closed session at 8:40 p.m.

The Commission returned from closed session at 8:56 p.m.

Commission Items for Future Discussion

Commission Discussion On Items From A Prior Meeting

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

A. Fairway Sidewalk Letter

CM Markus noted that while the Multi-Modal Transportation Board recommended that sidewalks be installed on Fairway, the City does not presently have a project to add sidewalks to Fairway scheduled. He noted that significant further review would be required before such a project might occur.

X. REPORTS

- A. Commissioner Reports
 - 1. Notice of Intent to appoint: Triangle District Corridor Improvement Authority
 - 2. Notice of Intent to appoint: Board of Review
- B. Commissioner Comments

Commissioner Schafer reported that the first Quarton Elementary Slow Roll event went very well.

Commissioner Host raised concerns about whether the City had assessed members of the Parking Assessment District according to the number of spaces required for fully developed lots. He provided a handout to the Commissioners from the appendix of the 1980 Master Plan and asked that the handout be added to the record.

CM Markus noted that the City could add more parking spaces if needed and that the properties benefitting from the additional parking would be assessed. He noted that there was not presently a dearth of parking in Birmingham, despite some comments to the contrary.

Commissioner McLain reported that she and Commissioner Haig visited Adams Fire Department to prepare for a participatory firefighting experience on October 7, 2022.

- C. Advisory Boards, Committees, Commissions' Reports and Agendas
 - 1. Board of Ethics Advisory Opinion – Samuel Oh
 - a. Memo from City Attorney Mary Kucharek regarding the Advisory Opinion for Samuel Oh

Noting that the opinion was solicited as an advisory opinion and not a complaint, the Mayor asked the City Attorney whether it would be appropriate for the Commission to have a discussion about courses of action.

CA Kucharek answered in the affirmative, noting that Sec-325(b)(3) calls for the Commission to determine sanctions, if any, after the Ethics Board publishes its advisory opinion or hearing findings.

The Clerk said she would communicate the Ethics Board's findings to Mr. Oh.

In reply to the Mayor, CA Kucharek said she could only enumerate some possible sanction options. She said she could not recommend any potential sanctions. She emphasized that it was up to the Commission to determine whether and what sanctions should be applied.

CM Markus recommended that the Commission read the minutes and watch the recording of the relevant Ethics Board meeting. He said that after that time, the Commission could then determine whether a discussion and potential sanction(s) should be placed on the agenda.

The Mayor opined that it would be appropriate to have the discussion at a future meeting to demonstrate that the Commission honors the City's Ethics Ordinance. She noted doing so would also demonstrate that the Commission understands the obligation to both abide by the Ethics Ordinance and uphold it.

CM Markus and CA Kucharek both stated that the Commission was to determine whether additional action needed to be taken beyond the Ethics Board's conclusions, but was not to re-try to the matter.

The Mayor asked the Commissioners to do their due diligence so that a discussion could be held at a future meeting.

- D. Legislation
- E. City Staff
 - 1. Shirley Speed Survey

CM Markus summarized the topic.

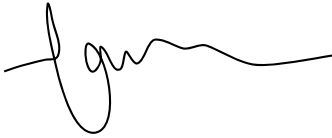
INFORMATION ONLY

XI. ADJOURN

Mayor Longe adjourned the meeting at 8:56 p.m.



Alexandria Bingham
City Clerk



Laura Eichenhorn
City Transcriptionist