

Birmingham City Commission Minutes
February 13, 2023
Municipal Building, 151 Martin
7:30 p.m.
Vimeo Link: <https://vimeo.com/797542695>

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 McLain
Commissioner Baller
Commissioner Haig
Commissioner Host
Commissioner Schafer

Absent: Commissioner Boutros

Staff: City Manager Markus; City Clerk Bingham, Operations and Event Manager Brook, BSD
Director Sheppard-Decius, Planning Director Dupuis, Assistant City Manager Ecker, City Attorney Kucharek

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

Announcements

- The City recommends members of the public wear a mask if they have been exposed to COVID-19 or have a respiratory illness. City staff, City Commission and all board and committee members must wear a mask if they have been exposed to COVID-19 or actively have a respiratory illness. The City continues to provide KN-95 respirators and triple-layered masks for attendees.
- The City of Birmingham, along with the nation, recognizes Black History Month in February. We celebrate the legacy of Black Americans whose power to lead, to overcome and to expand the meaning and practice of American democracy has helped our nation become a more fair and just society. The city continues to make significant progress in understanding the important history of Black families in early Birmingham, and remains committed to seeking opportunities to share the whole story of our community in the future.
- The Birmingham Police Department participated in a polar plunge fundraiser for the Special Olympics of Michigan that took place on February 4, 2023. Numerous members of the Police Department, two employees from the Clerk's Office and Mayor Pro-Tem Elaine McLain jumped into the icy waters of Walled Lake and raised over \$13,000 for the cause. Our Birmingham team was the third-highest grossing agency involved.
- The public meet and greet event will be this Wednesday, February 15, 2023 from 7:00 p.m. to 8:30 p.m. at Baldwin Public Library downstairs in the Rotary Room. The meet-and-greet was designated a Special Meeting of the Commission pursuant to Sections Six and Seven of the City's Charter. The Mayor and City Manager provided further information about the gathering. The City Manager Candidates are:

Troy Bell, former City Manager of Muskegon Heights, Michigan
Jana Ecker, Assistant City Manager of Birmingham, Michigan
Blaine Wing, Interim Village Manager of Sparta, Michigan

Following the Meet and Greet we encourage the public to give feedback on our candidates by visiting <http://engage.bhamgov.org>.

Appointments

02-015-23 Appointment to the Birmingham Area Cable Board

Donovan Shand was unable to attend for an interview. The Mayor noted that Mr. Shand was presently a regular member of the Cable Board.

MOTION: Nomination by MPT McLain:
To appoint Mr. Shand to the Cablecasting Board as a regular member to serve a three-year term expiring March 30, 2026.

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

Nays, None

02-016-23 Appointment to the Board of Zoning Appeals

The Commission interviewed Carl Kona for the position.

MOTION: Nomination by Commissioner Host:
To appoint Mr. Kona as an alternate member to the Board of Zoning Appeals to serve a three-year term to expire February 18, 2026.

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

Nays, None

CC Bingham swore in Mr. Kona.

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

V. CONSENT AGENDA

02-017-23 Consent Agenda

The following items were pulled from the Consent Agenda:

Commissioner Baller: Item J – Special Event Application: Birmingham Movie Nights

MOTION: Motion by Commissioner Baller, seconded by Commissioner Haig:
To approve the Consent Agenda excluding Item J.

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

Nays, None

- A. Resolution to approve the revised City Commission meeting minutes of January 9, 2023.
- B. Resolution to approve the City Commission Long Range Planning meeting minutes of January 21, 2023.
- C. Resolution to approve the City Commission meeting minutes of January 23, 2023.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated January 25, 2023, in the amount of \$2,219,383.97.
- E. Resolution to approve the warrant list, including Automated Clearing House payments, dated February 1, 2023 in the amount of \$459,227.17.
- F. Resolution to approve the warrant list, including Automated Clearing House payments, dated February 8, 2023 in the amount of \$2,940,323.27.
- G. Resolution to approve the construction project budget and award the two (2) 500,000 Gallon Radial Arm Tanks Exterior Overcoat and Miscellaneous Repairs #2-22 (W) to Fedewa Inc. in the amount of \$482,699.00. 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 the following accounts:

Fund Account	Fund ID Number	Project Award	10% Contingencies	Total
Water Fund	591.0-543.000-981.0100- Derby	\$209,699.00	\$20,969.90	\$230,668.90
Water Fund	591.0-543.000-981.0100 - Hunter	\$273,000.00	\$27,300.00	\$300,300.00
	Total Costs	\$482,699.00	\$48,269.90	\$530,968.90

- H. Resolution to set a public hearing date of March 13, 2023 to consider the Special Land Use Permit, Final Site Plan and Design Review application for 34350 Woodward Ave & 909-911 Haynes Street – Fred Lavery Porsche.
- I. Resolution to approve the purchase of a trailer attenuator from Truck & Trailer Specialties, Inc., located at 900 Grand Oaks Drive, Howell, MI 48843, through the MiDeal Cooperative Purchase Agreement #071B7700086, in the amount not to exceed \$32,275, in addition to authorize the Mayor and City Clerk to sign the agreement on behalf on the City. Funding for this purchase has

been budgeted in the FY 2022-2023 Auto Equipment Fund account #661.0-441.006.971.0100.

- K. Resolution to accept the resignation of Steven Kalczynski from the Advisory Parking Committee, to thank him for his service and to direct the City Clerk to begin the process of filling the vacancy.
- L. Resolution to accept the resignation of Patrick Rock from the Martha Baldwin Park Board, to thank him for his service and to direct the City Clerk to begin the process of filling the vacancy.

02-018-23 (Item J) Special Event Application: Birmingham Movie Nights

Commissioner Baller commented on the Commission’s interest in special events.

In reply to inquiry from Commissioner Baller, BSDD Sheppard-Decius and OEM Brook provided more information about the series.

Commissioner Schafer noted that having food at the series would be more successful if the advertising noted food would be available.

CM Markus provided brief insight into the funding and motivation for the series.

MOTION: Motion by Commissioner Baller, seconded by MPT McLain:
To adopt a resolution to approve a special event permit as requested by the Birmingham Shopping District to hold Birmingham Movie Nights on June 9, July 14, August 11, and September 8, 2023, 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.

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

Nays, None

VI. UNFINISHED BUSINESS

02-019-23 Code of Conduct

CA Kucharek and CM Markus presented the item.

Commissioner Haig recommended the Commission discuss the proposed Code of conduct once there was no pending matters before the Ethics Board.

In reply to the Mayor, CA Kucharek said she had no concerns about the Commission discussing the Code of Conduct while there was a pending matter before the Ethics Board because Code of Conduct and Ethics Ordinance matters were separate.

In reply to Commissioner Haig, CM Markus confirmed that this item was being returned to the Commission presently because the revisions from the last discussion of the item had been completed.

Commissioner Baller raised a number of concerns regarding the proposed Code of Conduct, including that the Code should be specific and that the City has many other sets of rules that already govern Commissioners' conduct. He recommended that anything new proposed by the Code of Conduct be added to another one of the City's documents instead of creating a new document with a new enforcement mechanism.

Commissioner Schafer said the proposed Code seemed intuitive to her and that it could be reduced to a few key points. She said if the Code needed to be codified so everyone would adhere to it, then she was willing to do that.

CM Markus spoke to some of the benefits of having a Code. CA Kucharek noted that there were a number of sections in the Code that do not appear elsewhere. She noted that while the present Commission may agree with the Code and find it intuitive, it was still appropriate to document agreed-upon expectations for future Commissioners.

The Mayor suggested that the Commissioners submit their notes on the Code to the City Manager for review and future discussion. It was decided that Commissioners could submit any relevant comments within 14 days directly to CM Markus.

Commissioner Host agreed that would be appropriate.

MPT McLain spoke in favor of creating a Code that the Commission would agree upon, stating that a more streamlined document could be appropriate if consensus was reached on that. She emphasized the importance of having a Code to guide behavior in a number of situations, including elections, and supported the development of a Code in a timely fashion.

MOTION: Motion by MPT McLain, seconded by Commissioner Haig:
To set a workshop at a time to be determined by the City Manager, with a requirement that Commissioners' written comments be submitted to the City Manager within 14 days.

CM Markus noted he would also share the Commissioners' comments with the City Attorney.

Public Comment

David Bloom spoke in favor of public participation at the upcoming workshop on this matter. He named a few concerns with the document, and said the document could likely be simplified. He said he would provide CM Markus and CA Kucharek with some sample language he thought might be useful.

The Mayor said Mr. Bloom's references could be provided to the Commissioners as part of the workshop.

CM Markus and CA Kucharek provided some further guidance on drafting a Code and what would be discussed at a relevant workshop.

There was brief discussion about whether the Code would qualify as a legal document.

In reply to Commissioner Baller, CA Kucharek said she would provide a copy of the proposed Code with sections unique to the Code highlighted.

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

Nays, None

VII. NEW BUSINESS

02-020-23 Public Hearing for 300 S. Old Woodward – RH – Special Land Use Permit Amendment, Final Site Plan & Design Review

The Mayor opened the public hearing at 8:55 p.m.

PD Dupuis briefly explained the request to postpone.

Seeing no public comment, the Mayor closed the public hearing at 8:58 p.m.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Schafer:
To postpone the public hearing and consideration of the Special Land Use Permit Amendment, Final Site Plan and Design Review application for 300 S. Old Woodward – RH – to February 27, 2023.

ROLL CALL VOTE: Ayes, Commissioner Schafer
 Commissioner Host
 Mayor Longe
 Commissioner Baller
 Commissioner Haig

Nays, None

02-021-23 Public Hearing to amend Article 4, Section 4.44, Article 3, Section 3.04, Article 3, Section 3.16, and Article 9, Section 9.02 to provide clear and enforceable outdoor dining standards

The Mayor opened the public hearing at 8:59 p.m..

PD Dupuis presented the item.

Seeing no public comment, the Mayor closed the public hearing at 9:02 p.m.

PD Dupuis, CA Kucharek, and CM Markus answered informational questions from the Commission.

Commissioner Baller recommended the Commission consider whether they wanted to be more permissive with legal non-conforming uses or more stringent with them.

The Mayor noted that some of the establishments in question would already be through their amortization period for their investments in outdoor non-conforming items.

Commissioner Baller asked whether there was a potential discrepancy between Article 4, Section 4.44(B)(5)(ii) and Article 4, Section 4.44(B)(5)(iii). He recommended that the City consider not requiring furniture to be brought in overnight in the winter months unless the furniture remains unused for an excess period of time.

It was noted that defining an excess period of time and enforcing that determination would be difficult for Staff.

Commissioner Baller recommended that 'limited' be removed from Article 4, Section 4.44(C)(5). He recommended that some exceptions be made for umbrella advertising Article 4, Section 4.44(C)(8)(i).

Commissioners Baller, Haig, Schafer, Host and MPT McLain said they were in favor of amortization.

Commissioner Schafer stated that the recommended ordinance amendments had been worked on for two years. She said that establishments were on notice about potential changes.

The Mayor said the solution for the furnishing zone was appropriate. She asked Staff how amortization might be included.

CM Markus said Staff could return with recommendations. He recommended the Commission consider a hybrid between amortization and a sunset clause which could prescribe the earliest date by which the changes must occur and the latest date, with a range dictated by the amortization schedule in between.

In reply to Commissioner Haig, PD Dupuis confirmed that all required reviews for outdoor dining would be conducted to ensure that all codes and zoning requirements will be met.

CM Markus advised the Commission to aim for a very good ordinance, with the understanding that ordinances nearly always require future revisions as a normal part of the process.

MOTION: Motion by Commissioner Baller, seconded by Commissioner Schafer:
To direct Staff to redraft the Outdoor Dining ordinance with the changes suggested and to postpone to February 27, 2023.

CA Kucharek summarized the changes as including the removal of Article 4, Section 4.44(B)(5)(iii), the inclusion of a reference to utilities in Article 4, Section 4.44(B)(3), the addition that 'inspections shall include but are not limited to' those referenced in Article 4, Section 4.44(C)(11), the removal of Article 4, Section 4.44(D)(1) and Article 4, Section 4.44(D)(2), and to introduce an amortization schedule that could prescribe the earliest date by which the changes must occur and the latest date, with a range dictated by the amortization schedule in between.

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

Nays, None

Commission Items for Future Discussion

02-022-23 Marijuana Ordinance

MOTION: Motion by Commissioner Host, seconded by MPT McLain:
To direct Staff to present a proposed marijuana ordinance at the next reasonable agenda.

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

Nays, None

Commission Discussion On Items From A Prior Meeting

Mayor Longe explained her advocacy for the establishment of an Ad Hoc Senior Services Committee.

CM Markus recommended the Commission table consideration of the formation of the Committee for the time being.

Mayor Longe agreed to do so, stating that she may raise the topic again in the future.

02-023-23 Resolution to meet in closed session to discuss the potential purchase of land pursuant to MCL§ 15.268 Sec. 8 (d) of the Open Meetings Act

MOTION: Motion by Commissioner Host, MPT McLain:
To meet in closed session to discuss the potential purchase of land pursuant to MCL§ 15.268 Sec. 8 (d) of the Open Meetings Act.

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

Nays, None

The Commission went into closed session at 10:12 p.m.

The Commission returned from closed session at 11:03 p.m.

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

X. REPORTS

A. Commissioner Reports

1. Notice of intention to appoint to the Architectural Review Committee
2. Notice of intention to appoint to the Planning Board
3. Notice of intention to appoint to the Advisory Parking Committee
4. Notice of intention to appoint to the Martha Baldwin Park Board
5. Notice of intention to appoint to the Ad Hoc Environmental Sustainability Board

The Mayor emphasized the new Ad Hoc Environmental Sustainability Board and encouraged members of the public to apply.

In reply to Commissioner Baller, CM Markus said he would speak to Staff to ensure that board opportunities were being publicized widely.

B. Commissioner Comments

MPT McLain reported on the Polar Plunge, noting that it had already raised \$1 million for the Special Olympics, and mentioned the Clerk's Office Staff's participation. She recommended that Commissioners watch the MML's recent 'Live at the League' because it focused on funding for middle-income housing. She also shared an interest in developing a day of service program for Martin Luther King, Jr. Day in Birmingham, and invited interested parties to collaborate with her on that.

- C. Advisory Boards, Committees, Commissions' Reports and Agendas
- D. Legislation
- E. City Staff
 1. Ongoing Communication with MDOT

ACM Ecker presented the topic. She noted that Ferndale Mayor Pianna put the slideshow together and was instrumental in the dialogue.

The Mayor and the City Manager noted that ACM Ecker contributed much to the success of the dialogue with MDOT thus far.

Commissioner Baller noted that face-to-face meetings with MDOT seemed to be important in advancing MDOT's understanding of Birmingham's needs.

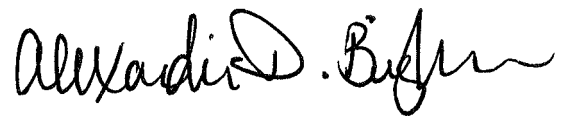
2. BSD 2022 Year in Review
3. Opiate Report

CA Kucharek presented the item.

INFORMATION ONLY

XI. ADJOURN

Mayor Longe adjourned the meeting at 11:05 p.m.



Alexandria Bingham, City Clerk



Laura Eichenhorn, City Transcriptionist