

BIRMINGHAM CITY COMMISSION MINUTES
JUNE 3, 2019
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Patty Bordman called the meeting to order at 7:30 PM.

II. ROLL CALL

Present: Mayor Bordman
Mayor Pro Tem Boutros
Commissioner DeWeese
Commissioner Hoff
Commissioner Nickita
Commissioner Sherman

Absent: Commissioner Harris

Administration: City Manager Valentine, City Attorney Currier, Communications Director Byrnes, Police Chief Clemence, Planning Director Ecker, DPS Manager Filipski, Finance Director Gerber, Building Official Johnson, City Clerk Mynsberge, DPS Director Wood

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

06-136-19 ANNOUNCEMENTS

The 2019 graduates of the Birmingham Citizens Academy were recognized and congratulated on completing the program. Mayor Bordman recognized City Manager Joe Valentine for starting the program. The certificates of graduation were distributed to the following people:

- Aljosa Krajisnik
- Michael McGillivray
- Noah Miller
- Paul J. Pereira
- Harvey Rosenberg
- Catherine Sherwin

Three participants completed the work, but were not able to attend the Commission meeting, and will be getting their certificates via mail:

- Joel Duncan
- Scott Wilson
- Shirley Wu-Wilson

Mayor Bordman continued with the remainder of the announcements:

- Birmingham Movie Night kicks off the season with a showing of Disney's Zootopia in Booth Park on Friday, June 14th. Pre-show entertainment begins at 7:30 p.m., and the movie begins at dusk.
- June 7th is National Gun Violence Awareness Day. Wearing of orange on that day is encouraged to raise awareness of gun violence in this country.
- This year marks the 100th anniversary of Michigan's ratification of the National Suffrage Amendment, which, on August 26, 1920, became the 19th Amendment to the U.S. Constitution, guaranteeing women the right to vote.
- The City Commission extends its thanks to Jonathan DeWindt for his service on the Historic District Study Committee and wishes him well in his future endeavors.

06-137-19 APPOINTMENT TO BOARD OF BUILDING TRADES APPEALS

Current member Brad Klein was interviewed by the City Commission.

MOTION: Motion by Commissioner Hoff:

To appoint Brad Klein as a regular member to the Board of Building Trades Appeals to serve a three-year term to expire May 23, 2022.

VOTE: Yeas, 6
Nays, 0

06-138-19 APPOINTMENTS TO THE HOUSING BOARD OF APPEALS

The Commission interviewed current member Robert Taylor and new applicant Wadette Bradford.

MOTION: Motion by Commissioner Hoff:
To appoint Robert Taylor as a regular member to the Housing Board of Appeals to serve a three-year term to expire May 4, 2022.

VOTE: Yeas, 6
Nays, 0

MOTION: Motion by Mayor Pro Tem Boutros:
To appoint Wadette Bradford as a regular member to the Housing Board of Appeals to serve a three-year term to expire May 4, 2022.

VOTE: Yeas, 6
Nays, 0

06-139-19 APPOINTMENT TO THE HISTORIC DISTRICT STUDY COMMITTEE

Current member Paul Beshouri was not in attendance

MOTION: Motion by Commissioner Sherman:
To appoint Paul Beshouri as a regular member to the Historic District Study Committee to serve a three-year term to expire June 25, 2022.

VOTE: Yeas, 6
Nays, 0

06-140-19 APPOINTMENT TO THE BOARD OF ETHICS

Mayor Bordman recused herself on the advice of City Attorney Currier.

Mayor Pro Tem Boutros took the Chair.

The Commission interviewed current member James Robb.

MOTION: Motion by Commissioner Hoff:
To appoint James Robb as a regular member to the Board of Ethics to serve a three-year term to expire June 30, 2022.

VOTE: Yeas, 5
Nays, 0
Recused, 1 (Bordman)

Mayor Bordman resumed the Chair.

06-141-19 APPOINTMENT OF HEARING OFFICER

The Commission interviewed current Hearing Officer Alexander Stotland.

MOTION: Motion by Commissioner Hoff:
To appoint Alexander Stotland as the Hearing Officer to serve a three-year term to expire June 30, 2022.

VOTE: Yeas, 6
Nays, 0

06-142-19 APPOINTMENT TO THE BOARD OF ZONING APPEALS

The Commission interviewed current alternate member Richard Lilley.

MOTION: Motion by Mayor Pro Tem Boutros:
To appoint Richard Lilley as a regular member to the Board of Zoning Appeals to serve the remainder of a three-year term to expire October 10, 2020.

VOTE: Yeas, 6
Nays, 0

- F. Resolution approving the service agreement with Cultural Council in the amount of \$4,200 for services described in Attachment A of the agreement for fiscal year 2019-2020, account number 101-299.000-811.0000, and further directing the Mayor and City Clerk to sign the agreement on behalf of the City.
- G. Resolution approving the service agreement with Next in the amount of \$107,944 for services described in Attachment A of the agreement for fiscal year 2019-2020, account number 101-299.000-811.0000, and further directing the Mayor and City Clerk to sign the agreement on behalf of the City.
- I. Resolution setting Monday, July 8, 2019 at 7:30 PM for a formal Public Hearing of Necessity related to the 2019 Cape Seal Program; further, setting Monday, July 22, 2019 at 7:30 PM for a formal Confirmation of the Special Assessment Roll related to the 2019 Cape Seal Program, contingent upon an affirmative determination of necessity.
- J. Resolution approving the change of the Greenwood Cemetery Advisory Board's reporting year from a calendar year to the City's fiscal year.

06-146-19 APPROVAL OF THE REGULAR CITY COMMISSION MEETING MINUTES OF MAY 20, 2019 (ITEM A)

Commissioner Hoff identified an error on page 6, last line; the Chair of the Public Arts Board's name is Barbara Heller not Miller.

MOTION: Motion by Commissioner Hoff, and seconded by Commissioner Nickita: To approve the Regular City Commission meeting minutes of May 20, 2019, as corrected.

VOTE: Yeas, 6
 Nays, 0

06-147 -19 APPROVAL OF OUTSIDE AGENCY SERVICE AGREEMENTS (ITEM H)

Commissioner Hoff, in reference to HAVEN, one of the social service organizations that the City supports, commented that the organization requested \$5,000 this year and \$2,000 was approved which is consistent with past approvals. After researching the donations of other municipalities in Oakland County, she found that Birmingham donates the least but has a high ratio of residents utilizing this organization. While she supports the approved amount, she would like this commission to consider increasing the City's contributions in the future to be in line with the other communities in Oakland County.

MOTION: Motion by Commissioner Hoff, and seconded by Mayor Pro Tem Boutros: To approve the outside agency service agreements for services described in Attachment A of the agreement for fiscal year 2019-20 with Birmingham Bloomfield Community Coalition in the amount of \$3,000, Birmingham Youth Assistance in the amount of \$18,000, Common Ground in the amount of \$1,500 and HAVEN in the amount of \$2,000 from account number 101-301.000-811.0000, further to direct the Mayor and City Clerk to sign the agreements on behalf of the City.

DISCUSSION: City Manager Valentine clarified that these are in fact service agreements and are paid according to the services received. So, with that in mind, staff will keep an eye on the services that are provided and insure that they are justified; if so, there will be more allocated for next year.

VOTE: Yeas, 6
 Nays, 0

06-148 -19 APPROVAL OF USE OF TWO PARKING SPACES AT MANSFIELD AND 14 MILE ROAD TO FULFILL PARKING REQUIREMENTS ITEM K

Commissioner Hoff said she has always, in the past and continues to be now, careful about assigning on-street parking to meet the requirements for a building, due to the tendency of owners to overbuild. In this case, two spaces on Mansfield street were requested. Commissioner Hoff asked if the immediate neighbors were notified, and were any comments received.

Planning Director Ecker replied that the immediate neighbors were not notified; it is not, in general, the practice of Birmingham to send notification for parking requirements. She also noted that there are two spaces on the other side of Mansfield that were credited to the property owner across the street. The property owner in this case is proposing to acquire space in a vacant surface lot that, currently, is not used for parking.

MOTION: Motion by Commissioner Hoff, and seconded by Commissioner DeWeese:
To approve the use of two parking spaces on the east side of Mansfield just north of 14 Mile Road to fulfill the parking requirements per Article 4, section 4.43 (G)(1) of the Zoning Ordinance for the property located on the NE corner of Mansfield and 14 Mile Road to be used for medical/dental office use, subject to the recommended repairs being completed as required by the Engineering Department.

VOTE: Yeas, 6
 Nays, 0

V. UNFINISHED BUSINESS

None

VI. NEW BUSINESS

06-149-19 PUBLIC HEARING TO CONSIDER A SPECIAL LAND USE AMENDMENT AND LIQUOR LICENSE OWNERSHIP CHANGE FOR TOAST – 203 PIERCE

Mayor Bordman opened the public hearing at 7:58.

Commissioner Nickita recused himself due to a current business relationship with one of the owners of the building as well as the applicant.

Planning Director Ecker presented the item.

Commissioner Hoff pointed out that on the special land use permit application, the hours of operation under outdoor dining facility differ from what was just presented. If the restaurant remains open for dinner, wouldn't the outdoor dining area stay open when weather permits?

Planning Director Ecker expressed that it was probably a mistake on the application and advised Commissioner Hoff to refer those questions to the applicant.

Attorney Kelly Allen, representing Toast, introduced Rita Bloom and Tony Micelli of Toast. Attorney Allen stated, in regard to Commissioner Hoff's question, a letter was submitted on April 18th and it reflected the hours that you see in the packet. The outdoor dining area will be open the same hours as the operation of the restaurant.

Mayor Bordman expressed that she was very pleased to see the willingness to make changes to the hours so that evening dining is available and said she will be supportive of the application.

Commissioner Sherman expressed that he was also very pleased and has no issue with the restaurant being closed some evenings at dinner time, but, he is a little concerned with closing at 8:00 or 9:00 p.m. on Thursday, Friday, and Saturday when there are a lot of people walking around and many restaurants are having their first seating. He asked the owners to consider staying open until 10:00 p.m. Thursday through Saturday.

Attorney Allen, owner representative, responded with a respectful no. In the past, there has not been a demand for dinner at Toast and that is why the hours were cut back. Ms. Bloom, partner, explained that they have tried many combinations of lunch and dinner without success. She added that they are going to continue to try and find a sweet spot for evening hours by putting a fun twist on breakfast at night.

Commissioner Sherman went on to advise the restaurant to stay open until "at least 8:00 p.m." He encouraged late hours on the weekend because the restaurant is a big space to have closed during the dinner hour. Commissioner Sherman also reminded the commission that the goal of the Bistro Ordinance was to enliven the streets and to bring traffic downtown. To have one bistro on Pierce Street with the lights off is not what the commission envisioned.

Mayor Bordman agreed with Commissioner Sherman's suggestion on the change of wording to allow the applicant to eventually grow the business and extend hours of operation.

Commissioner DeWeese expressed that by changing the agreement to read "minimum" hours of operation, the applicant has the flexibility to best serve the customer.

Mayor Pro Tem Boutros was supportive but struggled with the applicant limiting their hours. He wondered if it is a staffing issue and said he believes that they can be successful if marketing and advertising strategies are used to increase the dinner crowd.

Ms. Bloom explained that it is not a staffing issue, it is a brand issue. She explained that the brand is a breakfast and lunch bistro. Incorporating dinner into a strong breakfast brand suggests that people will double down on a restaurant for three meals. People generally go to the applicant for breakfast and lunch; it is going to be a struggle to push the hours that the Commission is requiring.

Commissioner Hoff supported approval of the proposal with the suggestions of other Commissioners. She also expressed confidence in what the restaurant owner says is best for her establishment.

Attorney Allen called attention to an error in the letter of April 18th, listing hours of operation on Sunday from 7am – 4 pm. The hours are 8:00a.m. – 4 p.m. on Sunday. She requested that the letter be amended to reflect the correction.

Commissioner Hoff asked if the applicant would consider staying in business without the bistro license. The answer was an emphatic no.

Maureen Sarle, 1585 Henrietta and 12 year Birmingham resident, stated that she likes Toast and asked Ms. Bloom if the applicant ever marketed breakfast for dinner. Ms. Bloom's response was yes.

Aljosa Krajisnik, a millennial, asked if dinner prices are similar to Leo's Coney Island (under \$10.00) which can attract people 24 hours per day.

Ms. Bloom explained her prices are more than \$10.00 for dinner but admitted to being on the lower end of Birmingham dinner prices.

Mayor Bordman closed the public hearing at 8:16 p.m.

MOTION: Motion by Commissioner DeWeese, and seconded by Mayor Pro Tem Boutros: To approve a Special Land Use Permit Amendment for 203 Pierce, aka Toast, to reflect an ownership change and change in the hours of operation, with the correction of Sunday hours to 8:00 a.m. until 4:00 p.m. and the amendment of language to read "the applicant shall maintain minimum hours of operation."

AND

To authorize the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and to approve the liquor license request of Toast Birmingham, LLC that requests a transfer of interest in a Class C License to be issued under MCL 436.1521(A)(1)(B) and SDM License with Outdoor Service (1 Area) located at 203 Pierce, 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 Toast Birmingham, LLC approving the liquor license transfer request of Toast Birmingham, LLC that requested a Class C License be transferred under MCL 436.1521 (A)(1)(B) & SDM License with Outdoor Service (1 Area) located at 203 Pierce, Birmingham, Oakland County, MI 48009. *Formal resolution appended to these minutes as Attachment A.*

VOTE: Yeas, 5
 Nays, 0

Commissioner Nickita returned to the session.

06-150-19 CLOSED SESSION

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita: To meet in closed session pursuant to the Open Meetings Act, Section 8(h) to consider material exempt from discussion or disclosure by state or federal statute.

(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.)

ROLL CALL VOTE: Ayes: Mayor Bordman
Mayor Pro Tem Boutros
Commissioner DeWeese
Commissioner Hoff
Commissioner Nickita
Commissioner Sherman

Nays: None

Pam Graham, alternate to the Parks and Recreation Board, wanted to weigh in on Item I. Mayor Bordman advised that it was approved with the Consent Agreement earlier in the meeting. Commissioner Hoff explained that the item was just to set a date for a public hearing, and advised Ms. Graham to come back on July 8, 2019 for the hearing.

City Manager Valentine stated that Item I has nothing to do with what the Unimproved Streets Study Committee is studying. Item I is the annual maintenance program for a small section of the cape seal streets.

VII. REMOVED FROM CONSENT AGENDA

Items removed from the consent agenda were addressed earlier in the meeting.

VIII. COMMUNICATIONS

None

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

None

X. REPORTS

06-151-19 COMMISSIONER REPORTS

The City Commission will appoint two regular members to the Birmingham Museum Board on July 8, 2019 for one three-year term to expire July 5, 2022.

The City Commission will appoint two regular members to the Greenwood Cemetery Advisory Board on July 8, 2019 for one three-year term to expire July 6, 2022.

The City Commission will appoint one regular member to the Historic District Study Committee on July 8, 2019 to serve the remainder of a three-year term to expire June 25, 2022.

XI. ADJOURN

Mayor Bordman adjourned the meeting to closed session at 8:21 p.m.

Mayor Bordman reconvened the regular meeting at 8:58 p.m. and adjourned the meeting at 8:58 p.m.

J. Cherilynn Mynsberge, City Clerk
/vc

**06-149-19
RESOLUTION
SPECIAL LAND USE PERMIT
AMENDMENT
TOAST RESTAURANT, 203 PIERCE**

WHEREAS, Toast Restaurant filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to transfer ownership of the bistro as defined in Article 9, section 9.02 of Chapter 126, Zoning, of the City Code from the previous owners, Regan Bloom and Thomas Bloom, who were husband and wife when Toast was originally licensed in 2008 to Toast Holdings, LLC, and to request a change in the hours of operation of the bistro;

WHEREAS, The land for which the Special Land Use Permit is sought is located on the east side of Pierce Street between W. Maple and Merrill;

WHEREAS, The land is zoned B-4, Business Residential, and is located within the Downtown Birmingham Overlay District, which permits bistros with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The Planning Board on April 24, 2019 reviewed the application for a Special Land Use Permit Amendment to reflect a change in ownership and to request a change in the hours of operation, and recommended approval of the amended SLUP for 203 Pierce - Toast, incorporating the hours in the letter of April 18, 2019 (as noted below), based on the fact that of the six items in the Zoning Code, Article 7, Section 7.2.7 Items One, Two, Three, Four, and Six remain unchanged and Item Five, which relates to compatibility and the spirit and purpose are well-satisfied by changing circumstances over time including the evening activation of Pierce Street;

WHEREAS, The Final Site Plan for 203 Pierce – Toast reviewed by the Planning Board on April 24, 2019 included the original approved seating plan with no changes to the number or placement of indoor or outdoor seats;

WHEREAS, The Birmingham City Commission has reviewed the Toast Restaurant Special Land Use Permit application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that Toast Restaurant’s application for a Special Land Use Permit authorizing the operation of a bistro at 203 Pierce in accordance with Chapter 10, Alcoholic Liquors, is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted to transfer ownership of the bistro from the previous owners, Regan Bloom and Thomas Bloom to Toast Holdings, LLC, and to request a change in the hours of operation of the bistro subject to the following conditions:

- 1) The applicant shall maintain minimum hours of operation as presented this evening: Sunday 8 a.m. – 4 p.m.; Monday - Tuesday 7 a.m. – 3 p.m.; Wednesday 7 a.m. – 8 p.m.; Thursday - Friday 7 a.m. – 8 p.m.; Saturday 8 a.m. – 9 p.m.;
- 2) The applicant execute a contract with the City of Birmingham for use of the right-of-way and obtain an outdoor dining permit from the City of Birmingham for use of the right-of-way;

- 3) The applicant comply with all requests of City departments;
- 4) The applicant pay for the removal and re-installment of the parking meter where the outdoor dining platform is located; and
- 5) The applicant execute a revised SLUP contract with the City.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, Toast Restaurant and its heirs, successors, and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of Toast Restaurant to comply with all the ordinances of the city may result in the Commission revoking this Special Land Use Permit.

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on June 3, 2019.

J. Cherilynn Mynsberge, City Clerk