I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Pierre Boutros called the meeting to order at 7:30 P.M.

II. ROLL CALL

Present: Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman

Absent: None

Administration: City Manager Valentine, Assistant City Manager Gunter, City Attorney Currier, Acting City Clerk Arft, Human Resource Manager Myers, DPS Director Wood, City Engineer Fletcher, Assistant City Engineer Bridges, Police Commander Grewe, Police Chief Clemence, City Planner Ecker, IT Director Brunk, BSD Executive Director Tighe, Building Official Johnson

III. PUBLIC COMMENT

The City of Birmingham welcomes public comment limited at the Mayor’s discretion on items that do not appear in the printed agenda in order to allow for an efficient meeting. The Commission will not participate in a question and answer session and will take no action on any item not appearing on the posted agenda. The public can also speak to agenda items as they occur when the presiding officer opens the floor to the public. When recognized by the presiding officer, please step to the microphone, state your name for the record, and direct all comments or questions to the presiding officer.

- Louis Meldman, 1825 Yosemite, lives with his wife Carole DeLong and they are both so delighted that the Commission has seen fit to take comment early enough in the evening so that they could stay up for it. He referenced their kids, Dr. and Mrs. Jason Schairer, 1444 Chesterfield, has to get up early to work and take the children to school at Quarton Elementary. He went on to say it is hard for all ages to stay up late at night, although appearing before this commission is a privilege and a pleasure. Mr. Meldman thanked everyone for their great work on this note alone.

- Betty Gusho, 1195 Lyonhurst, spoke about the small cell towers that would be emitting 5G once the infrastructure is put up. She read the following: “The small cell towers that are being installed in this community that will eventually support the 5G infrastructure are being put up on telephone posts in front of homes and schools resulting in mandatory exposure for all residents 24/7/365. It has not been proven safe,
Esthetically unpleasing, and will reduce property values. It is with the world's leading independent radio frequency scientist who have been studying this issue for decades that are coming out to alert policy makers that 5G wireless technology is not safe. The FCC exposure standards are in question and considered by these experts to be obsolete as the standards were set 20 years ago and is not protective of human health. Thousands of independent studies over more than 30 years show clear biological harm from radio frequency non-ionized radiation. No studies have been produced showing safety of 5G. Legislators have requested and are waiting for this proof from the telecommunication companies. Cities around the world are taking protective action for their citizens and communities and stopping the roll out of 5G until it is proven safe by independent researchers and studies. Cities in the US are creating protective ordinances that cover both radio frequency public exposure and municipal rights. Each telecom company has the right to install small cells every three to ten homes in every neighborhood and every five hundred feet in all public places. This means that everyone would be exposed to radio frequency 24/7/365 without proof that it is safe for our health. No one would be able to escape it. The effects are cumulative. Prior to going any further with 5G in Birmingham, she suggested that the City consult with the independent leading experts about the health and safety of 5G wireless who have offered to provide consulting to policy makers per request. She also suggested that the City consult with attorneys who are working on this issue and agree to work with municipalities. She went further to suggest town hall meetings to educate the public on small cells and get community input and feedback. Create a working group, board, task force of residents to review information on 5G small cell towers and present recommendations to the City. The City should provide line access to each current small cell location and frequency and areas where permits have been requested. She also recommended an organization called Protect to get help with right of ways. She offered a video on 5G and passed out booklets on the information.

- Stacy Barnes, Beverly Hills, is speaking out of concern for the implementation of 5G technology. Some, until recently knew nothing about cell phone towers and wireless devices had low levels of radiation. She discovered the information from her daughter's physician posting a picture on-line showing cell phone towers surrounding the football field at Seaholm. She then started noticing them around town. She went on to talk about her 14-year-old daughter Emma, who has PANDAS, a pediatric autoimmune disease for the past 7 years. She asked what the community leaders are doing to ensure that our children are safe. She went on to express what she knows about the current technology (3G and 4G).
  - Studies showing harmful effects.
  - Children and Children with chronic illnesses are the most vulnerable.
  - Radiation from Wi-Fi and cell towers can exert a disorganizing effect on the ability to learn and remember.
  - Destabilizing to immune and metabolic functions.

5G will not only utilize current 3G and 4G wireless frequency, it will add higher frequency in order to transmit data. Over 200 physicians and scientist have issued declarations calling for a moratorium on the increase 5G cell antennas citing human health effects and impact to wild life. The safety has never been tested. Lastly, do the benefits outweigh the risks? She urged the City to stop the rollout of 5G in this community and take the time needed to determine whether it is safe before implementing it.

- Ann Kozel, Royal Oak resident, expressed that she dittoed what the previous women said in their comments relative to 5G infrastructure.
ANNOUNCEMENTS
Restaurant week continues this week through January 31st, then continues Monday, February 3rd through Friday, February 7th. Please visit www.allinbirmingham.com for more information or call 248-530-1200.

APPOINTMENT TO THE PUBLIC ARTS BOARD
City Manager Valentine presented Jason Eddleston for re-appointment to the Public Arts Board as a regular member.

MOTION: Motion by Mayor Pro Tem Longe:
To appoint Jason Eddleston to the Public Arts Board as a resident member to complete a three-year term to expire January 18, 2022.

VOTE: Ayes, 7
Nays, 0

APPOINTMENT TO THE STORM WATER UTILITY APPEALS BOARD
The City Commission interviewed existing member James Partridge for re-appointment to the Storm Water Utility Appeals Board.

MOTION: Motion by Commissioner Sherman:
To appoint James Partridge to the Storm Water Utility Appeals Board as a regular member for a three-year term to expire January 31, 2023.

VOTE: Ayes, 7
Nays, 0

ADMINISTRATION OF OATHS
Acting City Clerk Arft administered the oath of office to the new appointees.

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.

APPROVAL OF CONSENT AGENDA
The following items were removed from the Consent Agenda:

- Commissioner Hoff  Item A, Approval of the January 13, 2020 City Commission Meeting Minutes.
- Commissioner Nickita  Item O, Professional Services Agreement with Hubbell, Roth & Clark, Inc.
- Commissioner Baller  Item N, IT System Improvements

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To approve the Consent Agenda, with the exception of Items A, G, N, and O.

ROLL CALL VOTE: Ayes: Mayor Boutros
Mayor Pro Tem Longe
Commissioner Baller
Commissioner Hoff
Commissioner Host
Commissioner Nickita
Commissioner Sherman
Nays: None

B. Resolution approving the warrant list, including Automated Clearing House payments, dated January 15, 2020 in the amount of $7,000,316.24.

C. Resolution approving the warrant list, including Automated Clearing House payments, dated January 22, 2020 in the amount of $325,763.51.

D. Resolution authorizing the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and to approve the liquor license request of Bus Bar, LLC that requests a transfer of Ownership and Location of an Original 550 Resort Class C and SDM Liquor License with Sunday Sales (AM and PM) to be issued under MCL 436.1531(2) with Outdoor Service (2 Area), New Entertainment Permit and 3 New Additional Bar Permits to be located at 2159 E. Lincoln, Birmingham, Oakland County, MI 48009. Furthermore, pursuant to Birmingham City Ordinance, authorizing the City Clerk to complete the Local Approval Notice at the request of Bar Bus, LLC approving the liquor license transfer request of Bus Bar, LLC that requested a Resort Class C and SDM Liquor License with Sunday Sales (AM and PM) be transferred under MCL 436.1531(2) with Outdoor Service (2 Area), New Entertainment Permit and 3 New Additional Bar Permits to be located at 2159 E. Lincoln, Birmingham, Oakland County, MI 48009.

E. Resolution approving the split award of the MITN cooperative bid of unleaded gasoline and diesel fuel for truck transport deliveries to RKA Petroleum Companies, Inc., 28340 Wick Road, Romulus, MI 48174 and Petroleum Traders Corporation, 7120 Inverness Way, Fort Wayne, IN 46804; and further, approving the award for tank wagon deliveries to RKA Petroleum Companies, 28340 Wick Rd., Romulus, MI, 48174 and Atlas Oil Company, 24501 Ecorse Road, Taylor, MI 48180; based on bid factors included in the respective bids for a two-year period from February 1, 2020 through February 1, 2022, with the option to extend the terms and conditions an additional two years, upon mutual consent. Funds for this purchase of gasoline and diesel fuels are budgeted in Auto Equipment Fund – Fuel Expense account #641-441.006-737.0000.

F. Resolution approving a request from the Huntington Disease Society of America-MI Chapter to hold Yoga in the Park in Shain Park on June 27, 2020 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.

H. Resolution approving a request from the Birmingham Shopping District to hold the 2020 Day on the Town special event on Saturday, July 25, 2020, using either Plan A or Plan B dependent on Maple Rd. construction as submitted in the application, and 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.

I. Resolution approving a request from the Birmingham Shopping District to hold the 2020 Birmingham Cruise special event, on Saturday, August 15, 2020 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.

J. Resolution approving a special event permit as requested by the Birmingham Shopping District to hold the 2020 Movie Nights on Fridays, June 12, July 17, and August 21, 2020, with rain dates scheduled on Saturdays, June 13, July 18, and August 22, 2020. Approval is 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.

K. Resolution approving a request from Common Ground to hold the Art Fair in Shain Park and on the surrounding streets on September 26 & 27, 2020 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.

L. Resolution authorizing the IT department to purchase the Security Subscription, Support and License renewals for the Palo Alto Firewall and Traps Server and endpoint clients from AmeriNet. The purchase price not to exceed $27,690.40. Funds are available in the IT Computer Maintenance fund account # 636-228.000-933.0600.

M. Resolution authorizing the IT department to purchase the License and support renewal for the ArcGIS software from ESRI Inc. Total cost not to exceed $9,332.19. Funds are available in the Computer Maintenance fund account # 636-228.000-933.0600.

01-022-20 APPROVAL OF THE JANUARY 13, 2020 CITY COMMISSION MEETING MINUTES (ITEM A).

Commissioner Hoff noted, on page 6, the vote on D5 Zoning reflected three ayes in error. The actual vote was four ayes. On page 5, she corrected the spelling of the attorney's name representing 555 from Rick Radner to Rick Rattner.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Sherman:
To approve the regular City Commission meeting minutes of January 13, 2020 as corrected.

VOTE: Ayes, 7
Nays, 0

01-023-20 APPROVAL FOR THE 2020 FARMERS MARKET (ITEM G).
Commissioner Nickita asked about the process of setting up the Farmers Market. He also asked if there are any new configurations planned due to recent expansion of the lot. Executive Director Tighe explained the process and expressed that the team conducted an after action review and
is planning to activate the spare space to offer healthy initiatives that are attractive to Birmingham residents.

Commissioner Hoff suggested that the BSD recruit more vendors to revitalize this event. Director Tighe expressed that the team is actively seeking ways to incentivize vendors to participate.

**MOTION:**  
Motion by Commissioner Nickita, seconded by Commissioner Hoff:  
To approve a request from the Birmingham Shopping District to hold the 2020 Farmers Market season beginning Sunday, May 3rd, 2020 to October 25th, 2020 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.

VOTE:  
Ayes, 7  
Nays, 0

**01-024-20  
APPROVAL AUTHORIZING THE IT DEPARTMENT TO PURCHASE DARKTRACE ENTERPRISE IMMUNE SYSTEM (ITEM N).**

Commission Baller pulled this item to express the importance of this very large expenditure and asked the City Manager to explain this item. City Manager Valentine gave an overview of the necessity for this expenditure to keep the City’s critical assets secure from ransomware attacks.

**MOTION:**  
Motion by Commissioner Baller, seconded by Commissioner Host:  
To approve the resolution authorizing the IT department to purchase the Darktrace enterprise immune system from SHI international using Michigan Master Computing Program Contract - 071B6600113-MiDEAL with a total purchase price not to exceed $239,292.00. Paid in 4 annual installments of $59,823.00 beginning 2020, and ending in 2023; purchase to be charged to account #636-228.000-973.0400; and further approving the appropriation and amendment to the fiscal year 2019-2020 Computer Equipment Fund budget.

VOTE:  
Ayes, 7  
Nays, 0

**01-025-20  
PROFESSIONAL SERVICES AGREEMENT WITH HUBBELL, ROTH & CLARK, INC. (ITEM O).**

Commissioner Hoff pulled this item because it is an outside firm being contracted to do residential site evaluation reviews previously done by City staff. She wanted to understand how the staff would be using their time in lieu of doing site evaluation reviews. Commissioner Hoff also asked would this service agreement only cover new builds. If not, what other type of work would be covered in the agreement. She also expressed concerns about the increase in fees that are being proposed.

Assistant City Engineer Bridges explained that the increase in construction activities and recent loss of staff to retirement has put a strain on current staff. This is an opportunity for the City to support staff in performing duties in a timely manner. She went on to say that the services will be primarily for new builds until it is established how much of the additions or accessory structures will be offered in this agreement. In terms of the increase in fees, Assistant City Engineer Bridges expressed that if this service remains in-house, it would cost more to provide than the fee for service would bring in to the City. The proposed fees in this service agreement is comparable to other communities to review and revise plans used in new builds.
City Manager Valentine clarified that the City was not covering cost previously and an adjustment was needed. In using this outside consultant, fees are adjusted to cover the cost. In addition, the City would be able to provide a guarantee of turnaround time on project reviews and demonstrate improved efficiencies.

**MOTION:** Motion by Commissioner Hoff, seconded by Commissioner Sherman:
Approving the resolution for the Professional Services Agreement with Hubbell, Roth & Clark, Inc. for Residential Site Evaluation Services for a 1-year term, extendable at the discretion of the City Commission up to three years. Further, to direct the Mayor and City Clerk to sign the agreement on behalf of the City.

**AND**

Resolution amending the Schedule of Fees, Charges, Bonds, and Insurance, in the Community Development section as indicated by the consultant fee proposal.

VOTE: Ayes, 7

Nays, 0

**VI. UNFINISHED BUSINESS**

None

**VII. NEW BUSINESS**

01-026-20 **ORDINANCE AMENDING PART II OF THE CITY CODE, CHAPTER 74 OFFENSES, ARTICLE I - GENERAL, SEC. 74-6**

Commander Scott Grewe presented the proposed amendment, which would replace the current ordinance with an updated version to include electric personal assistive mobility devices.

Commissioner Nickita expressed concerns that this amendment would mandate use of motorized devices to the sidewalk. As an urban designer, he found that bikes on the sidewalk are problematic especially in active pedestrian areas, and felt that motorized devices would be more problematic on the sidewalk.

Mayor Boutros and City Manager Valentine clarified the difference between the existing ordinance and the proposed amendment.

Commissioner Baller expressed that he would like to see a presentation clarifying the use of all motorized and non-motorized devices prior to a vote. His concern was being able to communicate the ordinance to the public with clarity.

Commissioner Hoff commented on the definitions and felt a diagram defining the devices and where they should be operated would be helpful.

Commissioner Nickita would like the street boundaries referenced to be defined and would need more clarity overall to support the suggested resolution.

City Manager Valentine offered to seek counsel to make the amendment clearer and bring it back to the commission later with more detail.

Mayor Boutros suggested that no action be taken and the commissioners agreed.
Commissioner Hoff noted that the current ordinance was not attached to the amendment. She felt it would be more helpful if it were included, with the changes highlighted when brought back to the commission.

Commissioner Baller expressed while safety is important, he does not want to discourage a good safe alternative form of transportation.

Commissioner Nickita suggested looking at the zoning ordinance to better align the amendment.

Public Comment:

Mary Neff, has a son who rides an electric skateboard, commented on the conflict he has had in using the device in the City. She would like to see clarity in the ordinance.

**01-027-20  ORDINANCE AMENDING PART II OF THE CITY CODE, CHAPTER 74 OFFENSES, ARTICLE VII.**

Commander Scott Grewe presented this amendment and stated that it would be in line with current State laws.

Commissioner Baller asked if the ordinance was a boilerplate or written by the City specifically for the Birmingham community.

Mary Kucharek, City Attorney’s office, expressed that it is in line with the State law. The language was not created by the City, but the City is duty bound to follow the new regulations regarding the use of marihuana.

Commissioner Hoff asked if this amendment is in addition to the existing City Code and asked why there is a different spelling of marihuana.

Ms. Kurcharek affirmed that it is in addition to the existing code and that both spellings of marihuana/marijuana are correct.

**MOTION:** Motion by Commissioner Baller, seconded by Commissioner Host: Approving an ordinance amending Part II of the City Code, Chapter 74–Offenses Against Public Morals, Division 5 – Controlled Substances, shall be amended to add Sec. 74-310 Marihuana Regulations. Furthermore, authorizing the Mayor and City Clerk to sign the ordinance on behalf of the city.

VOTE: Ayes, 7
      Nays, 0

**01-028-20  CHANGE ORDER #1 FOR THE OAK STREET SEWER REHABILITATION PROJECT.**

City Engineer Fletcher presented this item.

Mayor Boutros clarified that Bidigare Contracting is currently under contract with the City. This change order reflects additional worked requested by the City.
Commissioner Hoff reflected that at the last commission meeting, lead and copper compliance testing was approved for an amount that is very close to what is being proposed tonight. She asked what the difference is between the two services. She also asked if this is what it would cost to mitigate all identified properties.

City Engineer Fletcher explained that the first request was for testing and this request is for actual work to become compliant.

City Manager Valentine explained that testing revealed that the action level on the identified properties needed to be mitigated quickly and it is a relatively small project. However, moving forward, there will be a much larger project specified and the City would be working with multiple communities and the cost will drop considerably for the next round of abatements.

Commissioner Baller questioned if this is in fact the best price. City Manager Valentine affirmed that it is the best price.

**MOTION:** Motion by Commissioner Nickita, seconded by Mayor Pro Tem Longe: Approving Change Order #1 for the Oak Street Sewer Rehabilitation Project, Contract #11-19(S), to Bidigare Contracting, Inc., in the amount of $66,500, to be charged to account number 591-537.005-811.0000; and further approving the appropriation and amendment to the 2019-2020 Water Supply System Receiving Fund budget.

VOTE:  
Ayes, 7  
Nays, 0

**01-029-20 RESOLUTION TO MEET IN CLOSED SESSION**

**MOTION:** Motion by Commissioner Sherman, seconded by Commissioner Hoff: To meet in closed session to discuss pending litigation in the matter of Schneider v City of Birmingham pursuant to Section 8(e) of the Open Meetings Act, MCL 15.261 – 15.275.

ROLL CALL VOTE:

Ayes,  
Mayor Boutros  
Mayor Pro Tem Longe  
Commissioner Baller  
Commissioner Hoff  
Commissioner Host  
Commissioner Nickita  
Commissioner Sherman

Nays, None

No action was anticipated as a result of the closed session.

(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.)

**VIII. REMOVED FROM CONSENT AGENDA**
A. Commissioner Reports - None

B. Commissioner Comments

- Commissioner Host commented on 5G, and referenced Europe’s experience with this technology. He further suggested that there be an annual audit of RFP’s.
- Commissioner Baller asked about the status of the North Bates Street site and suggested it be included in the Master Plan.
- Mayor Boutros asked about Commissioner Baller’s plan for that site in lieu of a failed bond.
- Commissioner Hoff asked for clarification on the subject matter and Mayor Boutros clarified that the discussion was about the project that the City referred to as the NOW project. She went on to say that there has to be a discussion among the commission to set forth a plan for North Bates Street with a purpose. The initial plan was to address parking needs and expand parking; but the bond failed.
- Mayor Pro Tem Longe suggested including North Bates Street in the 20/40 draft.
- City Manager Valentine offered to get a proposal from DPZ to bring back before the commission with a clear understanding of the scope of work for the aforementioned site.
- Commissioner Nickita added that the commission is not prepared to discuss a plan for Bates Street at this meeting. The commission would have to be caught up with the background studies used to develop a plan to move forward.
- Commissioner Sherman found it interesting that a commissioner who was firmly opposed to any development on the NOW site and two other commissioners who were against the NOW project that was in place; now want to see the space better utilized with a project plan. He went on to question what types of uses these commissioners have in mind and, advised that a RFP would not lead to a plan before the commission has an opportunity for discussion.
- Commissioner Baller was clear that a community consensus, not just a commission consensus was required to identify the site use.
- Commissioner Sherman agreed.
- Mayor Boutros commented on the desire to develop that land and wants direction on how to move forward.
- Commissioner Hoff reminded everyone that DPZ was directed not to work on that piece of land as part of the Master Plan.
- City Manager Valentine offered that if the intent is to start a discussion on this property, this commission before moving forward with the consultant should define what is to be accomplished. Expectations must be clear.
- Commissioner Nickita expressed that there is a deficiency of 750 parking spaces in the City of Birmingham and there is no plan in place to address it. While many options were previously analyzed, Bates Street was the best option to address the needs of the City. He went on to say that the driver for new development must make sense and meet the demands and needs of the community. To do this properly, the discussion must continue with the City’s Planning Board so that all of the elements are being considered in planning a 4-acre parcel of land responsibly.
- Commissioner Nickita announced that Birmingham has received accolades recently being identified among nearly 200 cities studied as the #1 City in
Michigan to live. He went on to commend City Manager Valentine, boards and commissions, department heads, and staff for doing an exceptional job. He also, commended the former commissioners who were instrumental in getting Birmingham to this point.

C. Advisory Boards, Committees, Commissions’ Reports and Agendas
D. Legislation
E. City Staff

Mayor Boutros recessed to closed session at 9:18 P.M.

XI. ADJOURN

Mayo Boutros adjourned the meeting at 10:00 P.M.