

BIRMINGHAM CITY COMMISSION MINUTES
JUNE 24, 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 (arrived at 7:35 p.m.)

Absent: Commissioner Harris

Administration: Assistant City Manager Gunter, City Attorney Currier, Police Chief Clemence, Planning Director Ecker, DPS Manager Filipski, Finance Director Gerber, Building Official Johnson, City Clerk Mynsberge, DPS Director Wood, Library Director Koschik, Aaron Filipski, Carrie Laird, Austin Fletcher

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

06-153-19 ANNOUNCEMENTS

Mayor Bordman announced:

- City Offices and the Baldwin Public Library will be closed on Thursday, July 4th in honor of Independence Day.
- The City will hold an informational session on the proposed new parking structure plan on July 16th at 6:30 p.m. at the Birmingham Bloomfield Art Center located at 1516 S. Cranbrook Road.
- The concert in Shain Park this Wednesday, June 26, is Main Street Soul Pop Rock at 7p.m.
- The winner of this year's Chef's Clash at the Farmers Market on Sunday was Chef Devon from Flemings Steak House.

IV. 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.

06-154-19 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Commissioner Hoff Item K, Cartegraph CMMS Purchase
Item L, Booth Park Turf Hill Repair

Item O, Vehicle #1 Replacement

- Commissioner Nickita Item M, Park Street Paving Project

MOTION: Motion by Commissioner Nickita, seconded by Commissioner DeWeese:
To approve the Consent Agenda, excluding Items K, L, O and M.

ROLL CALL VOTE: Ayes: Mayor Bordman
 Mayor Pro Tem Boutros
 Commissioner DeWeese
 Commissioner Hoff
 Commissioner Nickita
 Commissioner Sherman
 Nays: None

- A. Resolution approving the Regular City Commission meeting minutes of June 3, 2019.
- B. Resolution approving the warrant list, including Automated Clearing House payments, dated June 5, 2019 in the amount of \$366,395.54.
- C. Resolution approving the warrant list, including Automated Clearing House payments, dated June 12, 2019 in the amount of \$1,622,930.08.
- D. Resolution approving the warrant list, including Automated Clearing House payments, dated June 19, 2019 in the amount of \$1,055,120.58.
- E. Resolution accepting the resignation of Rabbi Boruch Cohen from the Public Arts Board, thanking him for his service, and directing the City Clerk to begin the process of filling the vacancy.
- F. Resolution approving a special event permit as requested by Birmingham First United Methodist Church to hold Worship in the Park. Blessing of the Animals in Shain Park on August 18, 2019 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.
- G. Resolution approving the purchase of (3) workstations, (2) lateral files and (1) open shelving unit in the amount of \$8,705.71 from Partner Haus; further to authorize this budgeted expenditure from account number 101-215.000-972.00; and further to authorize and direct the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.
- H. Resolution approving the purchase for the 2019 Spring Light Pole Painting Project with Seaway Painting, LLC of 155 light poles and traffic signal poles in Downtown Birmingham in an amount not to exceed \$39,525.00. Funds are available in the Street Lighting Maintenance Account #202- 449.003-937.0500 for this purchase. Further, waiving the normal bidding requirements, as a sole source vendor Seaway Painting, LLC is a DTE selected contractor. Further, authorizing the Mayor and City Clerk to sign on behalf of the City upon the receipt of the required insurance.
- I. Resolution approving the Springdale Shelter Picnic Table Purchase in the amount not to exceed \$34,195.00 from Penchura, LLC. Funds are available from the 2018-2019 Capital Projects Fund account #401-751.000-981.0100 in the amount of \$25,000.00 and in the

2019-2020 Capital Projects Fund account #401-751.000-981.0100 in the amount of \$9,195.00 for this purchase. In addition, waiving the normal bidding requirements because Penchura, LLC provides pricing through a cooperative purchase program, HGAC Buy. Further, authorizing the Mayor and City Clerk to sign on behalf of the City upon the receipt of the required insurance.

- J. Resolution approving the purchase and installation of Green Basalt boulders with Rockworks, LLC, in the amount of \$21,950.00, to be located at Quarton Lake Park north of Oak Street along Oak, Lake Park Drive, Midland Street, and Lakeside Drive and Manor Park along Shepardsbush Rd. Funds are available from the Parks Capital Projects account # 401-751.000-981.0100 in the amount of \$21,950.00. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City.
- N. Resolution approving the purchase of two (2) Toro Sand Pro 3040s from Spartan Distributors, through the State of Michigan extendable purchasing contract #2017025 for a total expenditure of \$40,224.52 from the Auto Equipment Fund account #641-441.006-971.0100.
- P. Resolution approving the purchase of a Canon IMAGEPROGRAPH TX-3000 large-scale scanner/printer with an additional roller unit from Canon Solutions America, Inc. through the National Intergovernmental Purchasing Alliance for \$8,665.00 from account #101-371.000-971.0100.
- Q. Resolution setting a public hearing date for July 22, 2019 to consider approval of a Special Land Use Permit and Final Site Plan and Design Review for 310 E. Maple to allow the operation of a new bistro, Pernoï, in accordance with Article 7, Section 7.34 of the Zoning Ordinance.
- R. Resolution confirming the City Manager’s authorization for the emergency expenditure related to the repair of vehicle #160 by Jack Doheny Companies in the amount of \$10,894.97 from the Auto Equipment Fund account #641-441.006-933.0200, pursuant to Sec. 2-286 of the City Code.

06-155-19 CARTEGRAPH CMMS PURCHASE (ITEM K)

Commissioner Hoff asked for an explanation and break down of the fees presented.

DPS Manager Filipski explained that when he added the totals for year one and three, there were a couple of exceptions. Lucidy does not charge an annual fee during the first year; it is included as part of their implementation costs. There is a potential 2.5% increase, after each subsequent year.

MOTION: Motion by Commissioner Hoff, and seconded by Commissioner Nickita:
To approve the agreement between the City of Birmingham and Cartegraph Systems, LLC for the purchase, implementation, and support of the Cartegraph CMMS Solution, for an amount not to exceed \$76,800.00. Funds are available in the Sewage Disposal and Water System fund accounts #590-536.002-811.0000 and #591-537.005-811.0000. Further, to authorize the City Manager to sign the agreement on behalf of the City.

VOTE: Yeas, 6
 Nays, 0

06-156-19 BOOTH PARK TURF HILL REPAIR (ITEM L)

In response to questions from Commissioner Hoff, Parks & Recreation Manager Laird explained it would not be more cost-efficient to replace all of the turf at the same time. The worst sections are being addressed first. There is not a need at this time to repair the others. The sections will be flush and match. The section of the turf hill that is going to be replaced will be green, synthetic turf. About 40' of the pathway will be replaced with a color other than green or red.

MOTION: Motion by Commissioner Hoff, and seconded by Mayor Pro Tem Boutros: To award the Booth Park Turf Hill Repair project, including a portion of the synthetic turf and Poured-In-Place pathway to Michigan Recreational Construction, Inc., in an amount not to exceed \$27,593.00. Funds are available from Parks Other Contractual Services account # 101-751.000-811.0000 for \$27,593.00 for these services. Further, to authorize the Mayor and Clerk to sign the agreement on behalf of the City.

VOTE: Yeas, 6
Nays, 0

06-157-19 VEHICLE #1 REPLACEMENT (ITEM O)

Responding to Commissioner Hoff, DPS Manager Filipski explained the vehicle is used as an option for administrators for travel purposes as well as a loaner for the fleet division. It does not meet the high end of the rating; the fuel and brake line are rotted.

MOTION: Motion by Commissioner Hoff, and seconded by Commissioner DeWeese: To approve the purchase of one (1) new 2019 Ford Fusion from Gorno Ford through the State of Michigan Mi-Deal extendable purchasing contract #071B7700181 in the amount of \$18,678.00 from account #641-441.006.971.0100.

VOTE: Yeas, 6
Nays, 0

06- 158-19 PARK STREET PAVING PROJECT (ITEM M)

Commissioner Nickita asked for clarification of the crosswalk being in the middle of the block. The drawings do not reflect the crosswalks per discussion. Assistant Engineer Fletcher apologized for inadvertently presenting the wrong set of drawings. The crosswalks are in accordance with the approval of design, and included in the budget.

MOTION: Motion by Commissioner Nickita, and seconded by Mayor Pro Tem Boutros: To award the Park Street Paving Project, Contract #8-19 (P) to Koala-T Construction, Inc. in the amount of \$462,089.75, to be charged to the following accounts:

<u>Fund</u>	<u>Account Number</u>	<u>Costs</u>
Sewer Fund	590-536.001-981.0100	\$ 63,033.75
Water Fund	591-537.004-981.0100	\$ 500.00
Major Streets Fund	202-449.001-981.0100	\$ 265,966.00
Park Street Streetscape SAD	101-444.001-985.7800	\$ 132,590.00

Contingent upon execution of the agreement and meeting all insurance requirements.

VOTE: Yeas, 6
Nays, 0

V. UNFINISHED BUSINESS

None

VI. NEW BUSINESS

06-159-19 PUBLIC HEARING TO CONSIDER A SPECIAL LAND USE PERMIT AMENDMENT FOR SIDECAR SLIKER BAR AND ROJO – 150 & 280 E. MERRILL

Mayor Bordman opened the public hearing at 7:48 p.m.

Commissioner Nickita brought to the attention of the Commission that his son works at RoJo. The Commissioners agreed that is not a conflict.

Mayor Bordman, deviating from the agenda, recognized Rabbi Baruch Cohen, and thanked him for his tremendous contributions to the Public Arts Board. She explained Rabbi Cohen, with his family, has decided to move to Oak Park. On behalf of the City Mayor Bordman thanked him for his impact on the City, noting that many exciting ideas were grounded in his enthusiastic support and that he will be missed.

Planning Director Ecker presented the item.

In response to questions from Commissioner Hoff, Planning Director Ecker explained:

- The awnings and window paint will change to differentiate but join the two restaurants.
- The wall is still there but is shortened in the proposed plan.
- The restrooms and kitchen will remained shared.
- The front signage will remain the same.
- There is one owner and one liquor license between the two restaurants.
- The menu will be the same with a family friendly atmosphere.

Stephen Simon, owner of RoJo and Sidecar responded to questions from Commissioner Hoff:

- Side Car will continue serving hamburgers, sliders, and hot dogs.
- RoJo will continue in the Mexican menu fare.

Planning Director Ecker confirmed for Mayor Bordman that the deck at RoJo will remain and the expanded outdoor dining for Side Car will extend across the front of RoJo's.

Mayor Bordman closed the public hearing at 7:58 p.m.

MOTION: Motion by Commissioner DeWeese, and seconded by Mayor Pro Tem Boutros: To approve a Special Land Use Permit Amendment for 250 & 280 E. Merrill, to expand the existing Sidecar Slider Bar restaurant into a portion of the neighboring restaurant, RoJo, in accordance with Article 7, Section 7.34 of the Zoning Ordinance. *Formal resolution appended to these minutes as Attachment A.*

VOTE:	Yeas,	6
	Nays,	0

06-160-19 PUBLIC HEARING TO AMEND ARTICLE 3, SECTION 3.04(E)(12) OF THE ZONING CODE - BALCONY, RAILING AND PORCH MATERIALS IN THE DOWNTOWN OVERLAY DISTRICT

Mayor Bordman opened the public hearing at 7:59 p.m.

Planning Director Ecker presented the item.

Commissioner Hoff asked what are the negative factors of using glass.

- Planning Director Ecker answered that from a safety standpoint, it would still be subject to the building code requirements, which have to do with the amount of pressure that could be placed on it without breaking. It is a different type of glass, more sturdy to meet the code requirements.
- The issue from a Planning Board level, in contemporary modern looks people want glass and it is currently not permitted.

Commissioner Nickita asked, relative to type of glass, is there consideration to require glass be laminated at a certain height, as it is in cities such as Toronto, to prevent broken glass from falling. Planning Director Ecker replied that it was not discussed. She explained the ordinance was sent to department heads for comments, and no comments or concerns were submitted.

Commissioner Nickita wanted to bring awareness to the issue.

Mayor Bordman closed the public hearing at 8:05 p.m.

MOTION: Motion by Mayor Pro Tem Boutros, and seconded by Commissioner DeWeese: To approve an amendment to Article 3, Section 3.04(E)(12) of the Zoning Code to regulate balcony, railing and porch materials in the Downtown Overlay District. *Ordinance No. 2322 appended to these minutes as Attachment B.*

VOTE: Yeas, 6
 Nays, 0

06-161-19 PUBLIC HEARING TO AMEND ARTICLE 4, SECTION 4.54(B)(8) OF THE ZONING CODE – SCREENING MATERIALS FOR TRASH ENCLOSURES

Mayor Bordman opened the public hearing at 8:06 p.m.

Planning Director Ecker presented the item.

Commissioner Nickita requested clarification:

- Metal mesh is the right type of material to require.
- However, the proposed ordinance language requires “opaque” materials.
- Metal mesh is not “opaque” because of the small openings.
- The proposed ordinance expressly excludes chain link fencing. Chain link is technically metal mesh with large openings.
- “Opaque” does not appear to be the correct word.
- What is the appropriate term to convey the intent, and can it be exactly defined?

The City Commissioners were in favor of requesting the Planning Board to clearly define the materials for screening gates.

Mayor Bordman closed the public hearing at 8:15 p.m.

06-162-19 BALDWIN PUBLIC LIBRARY YOUTH SERVICES EXPANSION & RENOVATION

Building Official Bruce Johnson presented the item.

MOTION: Motion by Commissioner DeWeese, and seconded by Commissioner Nickita:
To approve the agreement with The Dailey Company for the Baldwin Public Library Youth Services Expansion & Renovation as described in the attachment A of the Request for Proposals, in the amount not to exceed \$1,910,000.00 from account #271-790.000-977.0000, and further to direct the Mayor and City Clerk to sign the agreement on behalf of the City.

VOTE: Yeas, 6
 Nays, 0

06-163-19 BIRMINGHAM N.O.W. PROJECT: CONSTRUCTION AGREEMENTS

Mayor Bordman made opening statements. Commissioner Sherman noted that only four Commissioners were present at the July 20, 2019 special workshop to discuss the agreements, and he feels the full Commission should be present to make a decision.

MOTION: Motion by Commissioner Sherman, and seconded by Commissioner Hoff:
To postpone this business until July 1 and request the clerk to notice a special meeting on that date in addition to the workshop.

VOTE: Yeas, 6
 Nays, 0

06-164-19 BIRMINGHAM N.O.W. PROJECT: RFP – OWNER’S REPRESENTATIVE SERVICES

Assistant City Manager Gunter explained that when the RFP is released it must include the approved construction agreement.

MOTION: Motion by Mayor Pro Tem Boutros, and seconded by Commissioner Sherman:
To postpone until July 1 and request the clerk notice a special meeting on that date in addition to the workshop

VOTE: Yeas, 7
 Nays, 0

06-165-19 FOURTH QUARTER 2018-2019 BUDGET AMENDMENT

Finance Director Gerber presented the item.

MOTION: Motion by Commissioner Sherman, and seconded by Commissioner DeWeese:
To approve the appropriations and amendments to the fiscal year 2018-2019 budget as follows:

Major Streets Fund:

<u>Expenditures:</u>		
Administration	202-191.202-802.0100	\$ 20
Snow & Ice Control	202-449.006-729.0000	(20)
Total Expenditure Adjustments		\$ 0

Local Streets Fund:

<u>Revenues:</u>		
Draw from Fund Balance	203-000.000-400.0000	\$ 90,020
Total Revenue Adjustments		\$ 90,020

<u>Expenditures:</u>		
Administration	203-191.203-802.0100	\$ 20
Maintenance of Streets and Bridges	203-449.002-981.0100	5,000
	203-449.003-702.0001	65,000
	203-449.003-729.0000	15,000
	203-449.003-941.0000	20,000
Street Trees	203-449.005-702.0001	5,000
Snow & Ice Control	203-449.006-729.0000	(20,000)
Total Expenditure Adjustments		\$ 90,020

VOTE: Yeas, 7
 Nays, 0

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

06-166-19 COMMISSIONER REPORTS

The City Commission will appoint one regular member to the Public Arts Board on July 8, 2019 to serve the remainder of a three-year term to expire January 28, 2022.

06-167-19 COMMISSIONER COMMENTS

Commissioner Nickita wanted to follow up on a recent agenda item relative to lot combinations. There were a series of criteria in the ordinance, and if the criteria were met, then the lot combination was approved. If a series of criteria can be approved and the Commission has no point of discussion relative to approval, then it should not come to the Commission. In his mind, that ordinance is flawed because there is no point bringing it to the Commission if we are unable to make a determination on it. The Commission needs to review the ordinance and refine it so that it has relevance at the Commission. Mayor Bordman agreed. She was not comfortable that the Commission had no discretion when the lot combination was presented.

XI. ADJOURN

Mayor Bordman adjourned the meeting at 8:29 p.m.

J. Cherilynn Mynsberge, City Clerk
/vc

**06-159-19
RESOLUTION
SPECIAL LAND USE PERMIT AMENDMENT
SIDECAR SLIDER RESTAURANT**

WHEREAS, Sidecar Birmingham, LLC has filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to change the approved site plan for Rojo and Sidecar Slider Bar restaurants and continue to operate the said restaurants with alcoholic beverage sales for on-premises consumption under Chapter 126, Zoning, of the City Code;

WHEREAS, The land for which the Special Land Use Permit amendment is sought is located on the south side of E. Merrill between Pierce and S. Old Woodward;

WHEREAS, The land is zoned B-4 and D-4, and is located within the Downtown Birmingham Overlay District, which permits restaurants with alcoholic beverage sales for on-premises consumption 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;

WHEREAS, No transfer in ownership of the existing restaurants from Sidecar Birmingham, LLC is proposed;

WHEREAS, The owner of Rojo and Sidecar restaurants, Rojo Five, LLC is now requesting approval of the Birmingham City Commission to allow site plan changes to the existing Rojo restaurant at 250 E. Merrill and the existing Sidecar restaurant at 280 E. Merrill;

WHEREAS, The Planning Board conducted a public hearing on the request on April 24, 2019 and continued the public hearing to May 8, 2019, and then on May 8, 2019 the Planning Board voted to recommend approval of the proposed Special Land Use Permit Amendment and Final Site Plan to the City Commission with the following conditions:

1. The applicant must add an outdoor trash receptacle to both the Sidecar outdoor dining area and the Rojo outdoor dining area and submit specification sheets on the proposed outdoor planter boxes prior to appearing before the City Commission for final approval; and,
2. The applicant must provide consistent elevations and plans prior to appearing before the City Commission.

WHEREAS, Birmingham City Commission has reviewed Rojo and Sidecar's Special Land Use Permit Amendment 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 Rojo and Sidecar restaurants' application for a Special Land Use Permit Amendment authorizing site plan changes at 280 E. Merrill at 250 & 280 E. Merrill 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 subject to the following conditions:

1. The applicant must add an outdoor trash receptacle to both the Sidecar outdoor dining area and the Rojo outdoor dining area and submit specification sheets on the proposed outdoor planter boxes prior to appearing before the City Commission for final approval;
2. The applicant must provide consistent elevations and plans prior to appearing before the City Commission;
3. Rojo and Sidecar restaurants shall abide by all provisions of the Birmingham City Code;
4. The Special Land Use Permit may be cancelled by the City Commission upon finding that the continued use is not in the public interest; and
5. Rojo and Sidecar restaurants enter into a contract with the City outlining the details of the operation of the restaurants.

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, Rojo and Sidecar restaurants and their 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 Rojo and Sidecar restaurants 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 24, 2019.

J. Cherilynn Mynsberge, City Clerk

**ORDINANCE NO. 2322
AMENDING ARTICLE 3, SECTION 3.04(E)(12) OF THE ZONING CODE - BALCONY,
RAILING AND PORCH MATERIALS IN THE DOWNTOWN OVERLAY DISTRICT**

THE CITY OF BIRMINGHAM ORDAINS: AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 3, SECTION 3.04(E)(12), ARCHITECTURAL STANDARDS, TO REGULATE BALCONY, RAILING, AND PORCH MATERIALS.

12. Balconies, railings, and porch structures shall be **glass**, metal, wood, cast concrete, or stone. **All materials must be compatible with each other and with the building, as determined by the Planning Board, Design Review Board or Historic District Commission.**

ORDAINED this 24th day of June, 2019 to become effective 7 days after publication.

Patricia Bordman, Mayor

J. Cherilynn Mynsberge, City Clerk

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held June 24, 2019, and that a summary was published in the Observer & Eccentric Newspaper on July 7, 2019.

J. Cherilynn Mynsberge, City Clerk