

Birmingham City Commission Minutes

July 12, 2021

7:30 p.m.

Municipal Building, 151 Martin

Vimeo Link: <https://vimeo.com/event/3470/videos/568732055/>

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Pierre Boutros, Mayor, opened the meeting with the Pledge of Allegiance.

II. ROLL CALL

Alexandria Bingham, City Clerk, called the roll.

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

Absent: Commissioner Baller

Administration: City Manager Markus, City Clerk Bingham, BSD Operations & Event Manager Brook, City Planner Cowan, City Planner Dupuis, Planning Director Ecker, Operations Commander Grewe, City Attorney Kucharek, Consulting City Engineer Surhigh

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

ANNOUNCEMENTS

The City Commission wishes Mayor Pro Tem Longe a happy birthday!

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

Paul Reagan opined that the Commission agendas tend to focus more on commercial matters than residential matters. He encouraged residents to run for elected office in the City if they would like to see more of a residential focus at the Commission level.

Oakland County Commissioner Chuck Moss shared his contact information and provided brief updates. He said that as a Birmingham resident he was also pleased with the City's emergency services response to the recent storms and thanked them for their work.

V. 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.

07-178-21 Consent Agenda

The following items were pulled from the Consent Agenda:

Commissioner Hoff: Item E – 2021 Birmingham Cruise

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To approve the Consent Agenda with the exception of Item E.

ROLL CALL VOTE: Ayes, Commissioner Sherman
 Commissioner Nickita
 Mayor Boutros
 Commissioner Host
 Mayor Pro Tem Longe
 Commissioner Hoff

Nays, None

- A. Resolution to approve the City Commission Joint Planning Meeting minutes of June 21, 2021.
- B. Resolution to approve the City Commission meeting minutes of June 28, 2021.
- C. Resolution to approve the warrant list, including Automated Clearing House payments, dated June 30, 2021, in the amount of \$1,855,327.66.
- D. Resolution to approve the warrant list, including Automated Clearing House payments, dated July 7, 2021, in the amount of \$825,847.61.
- F. Resolution to approve a request from the City of Birmingham Department of Public Services for a special event permit to hold the 2021 In the Park Concert series in Shain Park on the dates as presented, 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 to approve the TouchPrint 5600 cabinet booking station fingerprinting system purchase from IDEMIA, a sole source vendor, in the amount of \$18,094.00; further to waive normal bidding requirements and authorize this expenditure to the general fund police LEIN/CLEMIS expense account #101-301-000-731.0000.
- H. Resolution to authorize the IT department to purchase the components to upgrade the existing Mitel phone system and replace the ESNA Voicemail system as proposed, from BSB Communications. With a total cost of the upgrade, parts and labor not to exceed \$35,221.25 using funds in the network upgrade account 636-228.000-973.0400.
- I. Resolution to set a public hearing date for August 9, 2021 to consider the Special Land Use Permit, Final Site Plan and Design Review application for 300 - 394 S. Old Woodward and a portion of 294 E. Brown to allow a new building for Restoration Hardware, including a restaurant operating with an Economic Development Liquor License.

- J. Resolution to authorize the City Manager to cast a vote, on the City's behalf, for the five (5) candidates of the Michigan Municipal League Workers' Compensation Fund for four year terms, beginning October 1, 2021.

07-179-21 2021 Birmingham Cruise

BSD Operations & Event Manager Brook clarified that the whole geographic area described in the memo would be used for the event. She also stated that the 2021 Birmingham Cruise event would have a tiered teardown with a noon Sunday deadline for completion.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Longe:
To approve a request from the Birmingham Shopping District to hold the scaled-down 2021 Birmingham Cruise special event on Saturday, August 21, 2021, contingent upon compliance with all permit and insurance requirements and payment of all fees and, further, pursuant to any modifications or event cancellation that may be deemed necessary by administrative staff, leading up to or at the time of the event, due to health and safety measures.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Commissioner Nickita
Mayor Boutros
Commissioner Host
Mayor Pro Tem Longe
Commissioner Hoff

Nays, None

VI. UNFINISHED BUSINESS

VII. NEW BUSINESS

07-180-21 Public Hearing for a Rezoning Request for 300 - 394 S. Old Woodward and a portion of 294 E. Brown Street from D3 to D4

The Mayor opened the public hearing at 7:47 p.m.

PD Ecker presented the item.

Steve Sebastian, Vice President of Real Estate for RH, Victor Saroki, architect for the project, Paul O'Meara, traffic engineer for the project, and Rick Rattner, attorney for the project, spoke on behalf of the request.

Elise Wallace, Director of Gallery Openings for RH, and Michael Avellone, Director, Architecture & Design Galleries for RH were also present on behalf of the project.

In reply to Commissioner Hoff, Mr. Sebastian confirmed that RH has built about a dozen new buildings. He stated there are also 11 RH buildings with restaurants and an additional seven going through the process of being retrofitted with restaurants. He also confirmed that the restaurant is open to the public.

It was noted that RH employees would park in the City parking structures.

In reply to Mr. Rattner, CA Kucharek confirmed that a letter had been provided by the applicant team voluntarily making the rezoning contingent on limiting the structure to four stories. CA Kucharek read the letter into the record.

Commissioner Sherman noted that the peak parking usage times for RH are Saturdays, Sundays, and weekdays after 4 p.m., where the parking structures' peak usages are Tuesday, Wednesday, and Thursday 11 a.m. to 2 p.m. He stated that it was unlikely that there would be overflow traffic in the nearby neighborhoods as a result. He stated that the issue could be dealt with if it were to occur. He stated that excess valet parking would use the parking structures.

PD Ecker confirmed that it was not uncommon for the Commission to approve a rezoning before approving a site plan. She cited 420 E. Frank as one example where this occurred, and Commissioner Sherman cited Whole Foods as another.

In reply to Commissioner Nickita, PD Ecker confirmed that D3 and D4 allow for the same uses. This rezoning seeks to allow a fourth-floor restaurant instead of residential, and for the building to be one foot taller than would otherwise be allowed in D3.

Mr. Sebastian told Commissioner Host that Ron Boji is on the applicant team but would not be an owner of the development.

In reply to Commissioner Host, Mr. Saroki explained that the applicant team was pursuing the rezoning more to allow for the fourth-floor restaurant. He said the height of 69 feet was preferable to 68 feet but not as essential.

In reply to Commissioner Host, Mr. O'Meara stated that the traffic study used the standardized numbers for a furniture store and a restaurant to calculate impact.

Mayor Pro Tem Longe said she would like the Commission to recommend the APC consider residential permit parking and appropriate police enforcement for the residential areas near RH. She said she hoped to see RH advertise Birmingham's parking decks on its website in order to inform out-of-town visitors. Mayor Pro Tem Longe noted that when the Chicago location of RH opened there were initially issues between the nearby residents and RH. She cautioned the applicant team that she did not want to see the same initially contentious dynamic replicated in Birmingham.

Mr. Saroki said that the management of RH is responsive to neighbors' concerns. He noted that the Chicago RH is in a much more residential area than Birmingham's.

The Mayor Pro Tem said the Commission should also direct the Planning Board to make the rezoning process clearer, in terms of whether the preliminary and final site plans should be done before rezoning or whether the rezoning should be done before preliminary and final site plans. She said it would benefit the City and developers to have clarity of process.

Public Comment

Don Amalfitano, manager of Coldwell Banker, said he was concerned about traffic, parking and safety issues that could result from RH using their drive aisle. He said he would support RH installing gates on Coldwell Banker's parking lot instead to prevent unauthorized use.

Jim Arpin said he was concerned about the Parking Assessment District's (PAD) capacity and vendor parking for RH. He asked the City to consider assessing RH as part of the PAD.

Jeff Hockman, Chair of the BSD, spoke on behalf of the BSD in support of the RH development.

Mr. Reagan said he wanted the Commission to take preventative measures so that parking for RH would not adversely impact the nearby residential areas.

Andrew Haig expressed concern about sound carrying from the rooftop restaurant into the residential areas. He also spoke of the potential parking loss that would occur as part of Phase III of the S. Old Woodward project, and said that the RH plans needed to be re-reviewed in light of the Phase III plans.

Mr. Bloom expressed concerns about the development's potential impact on parking.

The Mayor closed the public hearing at 9:29 p.m.

Mr. Saroki stated that if issues arose with using the drive aisle at Coldwell Banker for the valet, the valet contingency plan would be to take Hazel, to Woodward, to Maple, to Brown to return vehicles. He noted that RH would generate the most vehicular traffic outside of Coldwell Banker's business hours. He also noted that since RH would host no special events the valet traffic would be very incremental.

PD Ecker noted that no gates on parking lots had been approved in her time with the City.

Mr. Amalfitano clarified that he would be hoping to dissuade anyone not visiting Coldwell Banker from using its parking lot or drive aisle.

Commissioner Sherman observed that the proposed motion for this item focused only on the proposed rezoning. He stated that the other concerns raised during the present discussion, such as parking and valet, would be more relevant to the potential future review of the Final Site Plan and SLUP.

Mr. Saroki confirmed that the applicant team would work out any potential valet issues. He reiterated that RH's use of parking would be on Saturdays and Sundays, and then after 4 p.m. on weeknights, which are low-demand times for the City's parking.

PD Ecker noted that the peak utilization of the nearby Pierce and Peabody decks in July 2021 was 65% between the hours of 10 a.m. and 2 p.m. on weekdays. She confirmed Commissioner Sherman's comments that this item only regards the rezoning of the parcel, and that the Final Site Plan and SLUP would be brought to the Commission in the future for its review if the project proceeds.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To approve the rezoning of the new parcel encompassing 300 – 394 S. Old Woodward and portions of 294 E. Brown from B-2 (General Business) and D-3 (Downtown Overlay) to B-2 (General Business) and D-4 (Downtown Overlay) conditional upon the building being done pursuant to the site plan, as voluntarily given by the applicant, pursuant to a letter dated and accepted July 12, 2021 by attorney Richard Rattner.

Commissioner Host said he wanted the applicant to reduce the building's requested height by a foot. He said there was no call for rezoning and that he would be voting against the motion.

Commissioner Nickita cited the recommendations of the Planning Board and Planning Staff, as well as his own review, to proceed with this item. He explained the rezoning was thoroughly considered and saw no reason to diverge from the recommendation.

MOTION: Motion by Mayor Pro Tem Longe, seconded by Commissioner Nickita:
To approve an amendment to Chapter 126, Zoning Ordinance, Appendix C, Exhibit 1, Licenses for Economic Development to include 300-394 S. Old Woodward and a portion of 294 E. Brown Street to be eligible for an Economic Development License.

ROLL CALL VOTE: Ayes, Mayor Pro Tem Longe
Commissioner Nickita
Mayor Boutros
Commissioner Hoff
Commissioner Host
Commissioner Sherman

Nays, None

The meeting paused at 10:19 p.m. for a brief break.

The meeting reconvened at 10:27 p.m.

**07-182-21 Public Hearing for 115 Willits – MARE Mediterranean –
Special Land Use Permit, Final Site Plan & Design Review**

The Mayor opened the public hearing at 10:27 p.m.

PD Ecker reviewed the item.

Nino Cutraro and Jay Feldman, owners, and Kelly Allen, attorney for the project, were present on behalf of the request.

In reply to Commissioner Hoff, PD Ecker confirmed that the Engineering Department had reviewed the outdoor dining proposal and had no objections to the plans.

In reply to Commissioner Hoff, Ms. Allen explained that the liquor license for this applicant is tied to the land through the lease.

PD Ecker confirmed that the hours of operation meet the City's requirements.

The Mayor closed the public hearing at 10:41 p.m.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Nickita:
To approve the Special Land Use Permit, Final Site Plan and Design Review application for 115 Willits – MARE Mediterranean;

AND

To authorize the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and to approve the liquor license request of Hospitality 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 (AM and PM) with Outdoor Service, and an Entertainment Permit located at 115 Willits, 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 Hospitality Birmingham, LLC approving the liquor license transfer

request of Hospitality Birmingham, LLC that requested a Class C License be transferred under MCL 436.1521 (A)(1)(B) & SDM License with Outdoor Service and an Entertainment Permit located at 115 Willits, Birmingham, Oakland County, MI 48009.

ROLL CALL VOTE: Ayes, Commissioner Sherman
Commissioner Nickita
Mayor Boutros
Commissioner Hoff
Commissioner Host
Mayor Pro Tem Longe

Nays, None

07-183-21 Public Hearing for 176 S. Old Woodward – Sushi Japan – Special Land Use Permit, Final Site Plan & Design Review

The Mayor opened the public hearing at 10:42 p.m.

PD Ecker presented the item. She noted that the Engineering Department requested changes to the outdoor dining plan.

John Gardner, architect for the project, was present on behalf of the application. He stated that plans complying with the Engineering Department's requests were submitted to the Planning Department on July 9, 2021. He explained that the four-top table to the north would remain, the two-top table to the south along the street side would be removed, the fence along the south side would be removed, the southernmost planter would be removed, and all outdoor dining items would be moved back an additional 12 inches from the street.

The Mayor closed the public hearing at 11:00 p.m.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Host:
To approve the Special Land Use Permit, Final Site Plan and Design Review application for 176 S. Old Woodward – Sushi Japan conditioned upon the changes that were stated.

In reply to Commissioner Nickita, PD Ecker explained that the Commission did not receive a copy of the updated site plans because the plans were submitted after the Wednesday noon deadline for agenda submissions and because she was out-of-office Monday afternoon when the updated plans were submitted.

CM Markus recommended that the approval be conditioned upon the changes that were identified during the discussion of the item.

ROLL CALL VOTE: Ayes, Commissioner Hoff
Commissioner Host
Commissioner Sherman
Mayor Pro Tem Longe
Commissioner Nickita
Mayor Boutros

Nays, None

**07-184-21 Public Hearing 239 N. Old Woodward – Bloom Bistro –
Special Land Use Permit, Final Site Plan & Design Review**

The Mayor opened the public hearing at 11:01 p.m.

CP Dupuis presented the item. He confirmed that the Planning Board was in favor of locating some of the outdoor seating in the via order to activate the via, per the activation overlay district goals. He also noted the location of the shared compactor to be used in the rear of the building.

The Mayor closed the public hearing at 11:06 p.m.

MOTION: Motion by Mayor Pro Tem Longe, seconded by Commissioner Host:
To approve the Special Land Use Permit, Final Site Plan and Design Review application for 239 N. Old Woodward – Bloom Bistro.

Commissioner Nickita spoke positively of the plan to locate some of the outdoor seating in the via, and said he would like to see other restaurants follow suit wherever possible.

The Mayor concurred with Commissioner Nickita.

ROLL CALL VOTE: Ayes, Mayor Pro Tem Longe
Commissioner Host
Commissioner Sherman
Commissioner Nickita
Mayor Boutros
Commissioner Hoff

Nays, None

**07-185-21 Evergreen-Farmington Sanitary Drainage District
Chapter 20 Section 471 Agreement**

Consulting City Engineer Surhigh introduced the item. Carrie Cox, chief engineer from the Oakland County Water Resource Commissioner's Office, presented the item.

MOTION: Motion by Commissioner Host, seconded by Commissioner Sherman:
To approve the Chapter 20 Section 471 Agreement with the Evergreen-Farmington Sanitary Drain Drainage District, agreeing to pay the City's share of apportioned costs related to the capital improvements described in said agreement. The total amount of the City's share of the cost is \$79,970: to be charged to 590-536.001-981.0100, Sewer Fund, Public Improvements. Also, to direct the Mayor to sign the agreement on behalf of the City.

ROLL CALL VOTE: Ayes, Mayor Pro Tem Longe
Commissioner Host
Commissioner Sherman
Commissioner Nickita
Mayor Boutros
Commissioner Hoff

Nays, None

07-186-21 Parking Structure Repairs

Ops. Cmdr. Grewe presented the item.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Host:
To approve the addendum to the Parking Structural Assessment Program with Wiss, Janney, Elstner Associates, Inc. (WJE) to include the design and bid documentation preparation of parking structure repairs, not to exceed \$50,000, to take place during the 2021 construction season. Furthermore, to authorize the Mayor and City Clerk to sign the contract on behalf of the city.

ROLL CALL VOTE: Ayes, Commissioner Hoff
Commissioner Host
Commissioner Sherman
Commissioner Nickita
Mayor Boutros
Mayor Pro Tem Longe

Nays, None

07-187-21 Closed Session Pursuant to the OMA at MCL § 15.268 Sec. 8(h)

(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.)

The Mayor explained that after consultation with the City Attorney he decided to recuse himself from this item based on a potential professionally-based conflict of interest.

MOTION: Motion by Commissioner Host, seconded by Commissioner Hoff:
To meet in closed session to discuss a written Attorney/Client Privilege communication pursuant to the OMA at MCL § 15.268 Sec. 8(h).

ROLL CALL VOTE: Ayes, Commissioner Host
Commissioner Hoff
Commissioner Sherman
Mayor Pro Tem Longe
Commissioner Nickita

Nays, None

Recused, Mayor Boutros

The Commission, with the exception of Mayor Boutros, went into closed session at 11:35 p.m.

The Commission reconvened into open session at 11:47 p.m.

Commission discussion on items from prior meeting.

None.

Commission Items for Future Discussion. A motion is required to bring up the item for future discussion at the next reasonable agenda, no discussion on the topic will happen tonight.

None.

VIII. REMOVED FROM CONSENT AGENDA

IX. COMMUNICATIONS

A. Letter from Birmingham Roast

CM Markus explained why he was not be supportive of granting an exception to the City's requirement that all Covid-19 related temporary outdoor dining structures be dismantled by July 14, 2021.

The Mayor echoed CM Markus' statement that the City no longer had to legal basis for extending the temporary outdoor dining regulations.

Commissioner Nickita also reiterated CM Markus' point that to make any exception could expose the City to legal liability.

CA Kucharek confirmed Commissioner Nickita's comment and added that the City's ordinances legally require the City to follow the ordinances as written. She said that outdoor dining in the City could change if and when changes to the ordinances are made.

X. REPORTS

A. Commissioner Reports

1. Notice to Appoint: Advisory Parking Committee

B. Commissioner Comments

Commissioner Host expressed disappointment with the Commission's discussion of food trucks at its previous meeting. He spoke in favor of requests for proposals for the position of City Attorney and for the conduction of the City's annual audit. He said he hoped future audits would focus more on the neighborhoods.

C. Advisory Boards, Committees, Commissions' Reports and Agendas

D. Legislation

E. City Staff

XI. ADJOURN

Mayor Boutros adjourned the meeting at 11:49 p.m.

Alexandria D. Bingham

Alexandria Bingham, City Clerk
/le