

BIRMINGHAM CITY COMMISSION MINUTES
JULY 25, 2016
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Rackeline J. Hoff, Mayor, called the meeting to order at 7:30 PM.

II. ROLL CALL

ROLL CALL:	Present,	Mayor Hoff Commissioner Bordman Commissioner Boutros Commissioner DeWeese Commissioner Harris Mayor Pro Tem Nickita Commissioner Sherman
	Absent,	None

Administration: City Manager Valentine, City Attorney Currier, Clerk Pierce, Assistant to the Manager Haines, DPS Director Wood, BPS Director Heiney, City Planners Ecker & Baka, Fire Chief Connaughton, Deputy Fire Marshal Campbell, Finance Director Gerber, Deputy Treasurer Klobucar, Police Chief Clemence

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

07-233-16 INTRODUCTION OF DEPUTY FIRE MARSHAL
Fire Chief Connaughton introduced the new Deputy Fire Marshal Joel Campbell.

07-234-16 RECOGNITION OF PEABODY FAMILY
The Commission presented a Proclamation to the Peabody Family in recognition of the forty-one years operating Peabody's Restaurant in the City of Birmingham.

07-235-16 APPOINTMENT OF THE HEARING OFFICER AND ALTERNATE HEARING OFFICER

MOTION: Motion by Sherman:
To appoint Alexander Stotland, 698 Hanna, as the Hearing Officer to serve a three-year term to expire June 30, 2019.

MOTION: Motion by Harris:
To appoint Patricia Papadopoulos, 1588 Bennaville, as the alternate Hearing Officer to serve a two-year term to expire June 30, 2018.

VOTE ON NOMINATION OF STOTLAND:
Yeas, 7
Absent, None

VOTE ON NOMINATION OF PAPADOPOULOS:

Yeas, 7
Absent, None

07-236-16 APPOINTMENT TO THE BIRMINGHAM SHOPPING DISTRICT BOARD

MOTION: Motion by Boutros:
To concur in the city manager’s appointment of Amy Pohlod, 912 S. Old Woodward (Bridal Couture) to the Birmingham Shopping District Board, as the business operator or property owner member, to serve the remainder of a four-year term to expire November 16, 2018.

VOTE: Yeas, 7
Absent, None

The Clerk administered the oath to the appointed board members.

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.

07-237-16 APPROVAL OF CONSENT AGENDA

The following items were removed from the consent agenda:

- Item C (Chemical/Fertilizer Purchases for Golf Courses) by Commissioner Bordman
- Item J (Trail Improvement Project) by Commissioner Boutros

MOTION: Motion by Sherman, seconded by DeWeese

To approve the consent agenda as follows:

- A. Approval of warrant list, including Automated Clearing House payments, of July 13, 2016 in the amount of \$908,197.85.
- B. Approval of warrant list, including Automated Clearing House payments, of July 20, 2016 in the amount of \$2,810,980.77.
- D. Resolution approving the amendment to the City of Birmingham Park Rules and Regulations as it pertains to Park Rule #10 and corresponding Birmingham City Code Chapter 78 – Parks and Recreation Article IV. Use of Parks Section 78-82. Closing hours. Language change is as follows:

The following city-owned or city-controlled areas shall be closed during the hours specified below. During such hours, no person shall enter into or remain in such property, except those persons whose presence is related to or in connection with a municipal activity or a project or activity which has been licensed to be operated or carried on within such public property, or persons who enter such property for the express purpose of parking or removing a vehicle legally parked upon such property and who, upon entering the parking area, immediately park or remove such vehicle. Such person shall not remain in the park for any other purpose.

- (1) Manor Park shall be closed from one hour after sundown to one hour before sunrise.
- (2) Adams Park shall be closed from 9:00 p.m. to 8:00 a.m.

- (3) Springdale Park hours shall coincide with Springdale Golf Course hours and park rentals. The closing of the park is up to the discretion of the City of Birmingham Representative on duty.
 - (4) Except as provided in subsections (1), (2) and (3) of this section, all City Parks shall be closed between the hours of 10:00 p.m. and 6:00 a.m.
 - (5) All public property not included in subsections (1), (2), (3) and (4) of this section shall be closed between the hours of 12:00 midnight and 6:00 a.m. For purposes of this section, public property shall be deemed to be property zoned as public property under the provisions of chapter 126.
- E. Resolution accepting the resignation of Diane Kowaleski from the Public Arts Board, thanking Ms. Kowaleski for her service, and directing the Clerk to begin the process to fill the vacancy.
 - F. Resolution accepting the resignation of Amanda Warner from the Multi-Modal Transportation Board, thanking Ms. Warner for her service, and directing the Clerk to begin the process to fill the vacancy.
 - G. Resolution setting Monday, August 22, 2016 at 7:30 PM for a public hearing to consider the amendments to Chapter 126, Zoning, Article 02, Sections 2.23, 2.27, 2.29, 2.31, 2.33, 2.35, 2.37, 2.39, Article 04, sections 4.12, 4.57, 4.67, 4.68, 4.69, 4.70, 4.71, Article 05, Sections 5.10, 5.12, 5.13, and Article 09, Section 9.02.
 - H. Resolution approving a request from the Birmingham Bloomfield Art Center to hold Art Birmingham in Shain Park and on the surrounding streets on May 13 – 14, 2017 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 submitted by the Birmingham Bloomfield Chamber, Junior League of Birmingham, and The Community House requesting permission to hold the annual Halloween Parade and Pumpkin Patch on Sunday, October 30, 2016 in downtown Birmingham, 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.

ROLL CALL VOTE: Yeas, Commissioner Bordman
 Commissioner Boutros
 Commissioner DeWeese
 Commissioner Harris
 Mayor Pro Tem Nickita
 Commissioner Sherman
 Mayor Hoff

 Nays, None
 Absent, None
 Abstention, None

07-238-16 CHEMICAL/FERTILIZER PURCHASES FOR GOLF COURSES

Commissioner Bordman expressed concern with the use of glyphosate on the golf courses as it is thought to be a dangerous chemical.

DPS Director Wood explained that the use of glyphosate is very limited and used for spot treatment of weeds generally around the parking lot area and in cracks.

MOTION: Motion by DeWeese, seconded by Bordman:

To approve chemical/fertilizer purchases for Lincoln Hills and Springdale golf courses from Harrell's for \$22,000, Residex Turfgrass for \$22,000 and Great Lakes Turf for \$8,000, minus the City using glyphosate on the golf courses. The total purchase from all vendors will not exceed a total of \$52,000. Funds will be charged to account numbers 584/597-753.001-729.0000.

Mayor Hoff questioned if there were any alternatives to the use of glyphosate. Ms. Wood explained that she will research and report back to the Commission. Commissioner Harris suggested that research at the state level be included in the report too.

Commissioner Sherman suggested it be approved for this year and ask staff to report back if there is an alternate that can be used for this year.

VOTE: Yeas, 6
 Nays, 1 (Sherman)
 Absent, None

07-239-16 TRAIL IMPROVEMENT PROJECT

Commissioner Boutros questioned if any consideration has been given to improving the trail connectivity for crossing Maple at Baldwin Road.

City Manager Valentine explained that there is a plan proposed for trail connections which calls for a north/south crossing at Maple. He stated that it is one of the elements that would require further study to determine exactly what the connection method will be. At this point, the proposal is to connect the trail from the sidewalk to the bridge.

Mr. Valentine suggested the concern of Commissioner Boutros be referred to the Multi-Modal Transportation Board. Mayor Pro Tem Nickita agreed that now is the time to review this for a potential solution.

Clinton Baller, resident, agreed that a crosswalk should be installed. He commented that the proposed trail improvement is not necessary and is a waste of money. He noted that the sign says it is the Rouge River Green Corridor and something that looks like asphalt will be installed. He noted that people are not walking where the proposed path will be installed.

In response to a question from Mayor Pro Tem Nickita as to why porous material will be used instead of the chip trail, Ms. Wood explained that the City received positive feedback on the navigability of the material. She noted that the proposed material is perfect for the existing condition and that there is a lot of maintenance with the chip trail.

Commissioner Boutros moved to approve the purchase and installation of Porous Pave by X Tier Inc. to improve connectivity to the Rouge River trail system in the amount not to exceed \$25,000. Further, waiving the normal bidding requirements due to X Tier Inc. being the sole source installer of this product. Funds are available for this project from the Parks – Other Contractual Services account # 101-751.000-811.0000. There was no second.

Commissioner DeWeese summarized the concerns expressed by the Commission which includes having consistency and durability. He noted that there are parts of the trail that are very soggy and that the path does not follow the foot pattern.

MOTION: Motion by DeWeese, seconded by Boutros:
That this be referred to the Parks and Recreation Board to look at options.

Mayor Pro Tem Nickita agreed that a path is needed for consistency. He stated that other items to consider is cost and maintenance and to consider something more permanent other than chips to address the soggy spots. Commissioner DeWeese noted that ADA accessibility should be considered as well.

VOTE: Yeas, 7
Nays, None
Absent, None

V. UNFINISHED BUSINESS

07-240-16 CURRENT PLANNING ISSUES DISCUSSION

City Planner Ecker explained that the Commission discussed the current planning issues at the joint workshop. This report is to get the Commission's formal direction to the Planning Board on each item.

(1) Transitional Zoning (TZ2 District)

The Commission discussed transitional zoning. Commissioner Sherman noted that the purpose of this agenda item is to solidify the Commission's direction on this topic to the Planning Board, not to re-discuss the issues. He stated that the question is whether the suggested resolution accurately reflects what the Commission wants the Planning Board to study.

MOTION: Motion by DeWeese, seconded by Sherman:

To direct staff to work with the Planning Board to prepare a narrative on the recent study of transitional zoning including the following:

- (i) What initiated the transitional zoning study;
- (ii) What options have been considered to date; and
- (iii) A comparison of existing O1 and O2 uses in relation to the proposed TZ2 uses.

And further, to direct the Planning Board to review the number and type of uses proposed to be permitted in TZ2, outline the next steps planned, and to conduct a public hearing with sufficient public notice to gather input on the proposed changes and develop a recommendation based on input received that can be forwarded to the City Commission.

VOTE: Yeas, 7
Nays, None
Absent, None

(2) Commercial Development Parking Requirements

City Planner Ecker explained that the Planning Board is looking for direction as to whether or not the Planning Board should review the parking requirements for private developments and potentially consider the possible reduction of parking standards for residential units and consider the multi-modal transportation projects that are going on in the region and whether those should affect the private parking standards and to direct staff to include a discussion on parking in the City-wide master plan.

MOTION: Motion by Nickita, seconded by DeWeese:

To direct the Planning Board to review the parking requirements for private developments, including but not limited to, considering the possible reduction of parking standards for residential units, and considering the impacts of multi-modal transportation options on the required number of parking spaces; and further to direct staff to include a discussion on parking requirements in the City-wide master plan update.

Clinton Baller, resident, suggested the Commission consider the provision of parking as something that is discussed in the master plan and in the context of a possible D5 new zone and how the City can get more public parking out of new developments. He stated that the concept is that density bonuses be offered.

VOTE: Yeas, 7
 Nays, None
 Absent, None

(3) Existing Commercial Non-Conforming Buildings

City Planner Ecker explained that if a review of all the buildings in town was done, one would find something slightly non-conforming on many of the buildings that were built, especially if they were built prior to the sixty's when the zoning ordinance came into effect. She noted specifically buildings such as the Merrillwood Building, Birmingham Place, and the 555 building in regards to the height and bulk of the buildings. She explained that the discussion at the workshop was that there should be some regulation in the zoning ordinance that allows for some maintenance or renovation to those types of buildings when they are already non-conforming. The City does have that for residential non-conforming now.

Mayor Hoff questioned whether renovation includes expansion as expansion is another issue. Ms. Ecker explained that it would be something for the Board to discuss.

Commissioner DeWeese noted that there are two elements – general language about what anyone could do for non-conformance and language that specifically applied to non-conforming and tell them what limits they can go to. That will give developers an opportunity to not always have to get exceptions.

Mayor Pro Tem Nickita commented that this is an issue that the Commission wants to address. He questioned if the City is looking at identifying a district or a series of buildings throughout the City. Ms. Ecker explained that this is to establish a procedure where if there was a non-conforming building in the City and whichever way it is non-conforming, it would give the owner a way to make changes to modernize that building.

MOTION: Motion by DeWeese, seconded by Bordman:

To review the non-conformance provisions pertaining to commercial buildings to provide specific requirements, considering a new zoning category or categories, that allow for changes to non-conforming buildings for the maintenance and renovation of existing buildings consistent with those permitted for residential buildings and structures.

Jerry Reinhart, representing the 555 Building, suggested this item be moved to the top of the priority list.

VOTE: Yeas, 7
 Nays, None

Absent, None

(4) Definition of Retail

City Planner Ecker explained that another topic frequently discussed is whether the definition of retail should be clarified to make it more specific to the types of things that one consider as traditional retail or leave it wider open so there are no vacancy issues.

In response to a question from Mayor Pro Tem Nickita, Ms. Ecker explained that the original discussion of retail downtown gives a basis for the Board to start from. She explained that the discussion would include where we wanted to go, did we accomplish it and where do we want to go from here. Commissioner DeWeese suggested that there be a measure of primary use versus secondary use as well.

MOTION: Motion by DeWeese, seconded by Boutros:

To direct the Planning Board to study the following:

- (i) To evaluate the success of the red line retail district in Downtown Birmingham to determine if the intended objectives are being met;
- (ii) To study the existing definition of retail in the Zoning Ordinance and recommend any needed amendments to the definition; and
- (iii) To review all retail-related requirements contained in the Zoning Ordinance and recommend any needed amendments.

VOTE: Yeas, 7
Nays, None
Absent, None

(5) Dormer Considerations

City Planner Ecker explained that the dormer issue is primarily on the residential side mostly with the habitable attic space. She explained the Building Department is looking for some guidelines that make the dormer guidelines very clear for residential and the definition for habitable attic.

MOTION: Motion by Nickita, seconded by Boutros:

To direct the Planning Board to review the dormer and habitable attic regulations in the Zoning Ordinance as they relate to current dormer construction trends in residential zoned districts. Specifically, to conduct a detailed public input and review process to:

- (1) Clarify the types of dormers permissible that project from second story roofs enclosing habitable attics;
- (2) Provide recommended width limitations for dormers projecting from second story roofs; and
- (3) Refine the maximum area regulations for habitable attics that would not count as a story.

VOTE: Yeas, 7
Nays, None
Absent, None

(6) Planning Board Action List

City Planner Ecker explained that given the direction tonight and the outcome of the joint meeting, the Planning Board wanted to know if the Commission would like the Action List tweaked in terms of the order of priorities.

~~The Commission discussed the items to be prioritized and agreed to the following priority order:~~

- ~~1. Dormers~~
 - ~~2. TZ2~~
 - ~~3. Non-Conforming Buildings~~
 - ~~4. Commercial Development Parking Requirements~~
- ~~Move item #9 after item #11 and keep the outdoor storage and glazing on the list.~~

Commissioner Harris suggested item 8 (Address allowable changes for commercial non-conforming buildings) and item 15 (Southern Downtown Overlay Gateway) be combined.

The Commission discussed the items to be prioritized. Mayor Hoff commented that the dormer issue addresses a residential situation. She stated that she is in favor of leaving it as #1. The Commission agreed that review of the dormer and habitable attic regulations should be #1 on the action list.

Mayor Pro Tem Nickita commented that one of the fundamental issues in the commercial district is the parking issue which is directly related to the zoning issue. It should be a high priority.

Mayor Hoff noted that item 2 (outdoor storage and display standards), item 3 (glazing standards), and item 4 (height in the MX District) are being addressed within a short period of time.

Mayor Hoff noted that the next item to be discussed is the zoning transition overlay. She expressed her support that it should be a priority because of the amount of time that has been spent on it.

Mayor Pro Tem Nickita stated that regardless of the amount of time spent on it, it is still going to be complicated. He commented that parking in the downtown and in the parking decks is a high priority. He noted that he does not see a lot of TZ developments coming in as much as he sees parking requirements and office square footages having an effect on the daily needs and concerns of the City. Therefore his priority is on parking considerations.

Commissioner Harris expressed support of TZ next because so much work has been done and it has been on the docket for so long and is ready to go.

The Commission agreed that the Zoning Transition Overlay (TZ2) would come next in the priority list.

Mayor Hoff noted the next items to be discussed include the parking requirements, definition of retail, and address allowable changes for commercial non-conforming building which is tied with the southern downtown overlay gateway. Ms. Ecker provided an explanation of each item. Upon brief discussion by the Commission, the Commissioners agreed to the following order: non-conforming buildings, parking requirements, and definition of retail.

The Commission agreed to move item 9 (consider looking at principal uses allowed and add flexibility (“and other similar uses”) after item 11 (S. Woodard Avenue Gateway Plan (Woodward Corridor Lincoln to 14 Mile Road).

MOTION: Motion by Sherman, seconded by Nickita:
To direct the Planning Board to revise their 2016-2017 Planning Board Action List to reflect the City Commission’s recent and pending directives as of July 11, 2016.

VOTE: Yeas, 7
Nays, None
Absent, None

VI. NEW BUSINESS

07-241-16 PUBLIC HEARING TO CONSIDER ORDINANCE AMENDMENT REGARDING GLAZING STANDARDS

Mayor Hoff opened the Public Hearing to consider amendments to Zoning Ordinance – Glazing Standards at 9:54 PM.

Planner Baka explained that there are three sets of standards that govern how window standards are applied in the City – for the downtown overlay, the triangle district, and for all other commercial properties in the City which includes the rail district. He explained that as the Planning Board was reviewing projects, they started seeing projects that were forced to obtain variances to accomplish the design or had to alter the design of the façade in order to gain approval without a variance.

Mr. Baka explained the recommendation to add a provision that would require glazing on not just the frontage lines, but also on any side of the building where there is a public entrance. In certain situations, specifically along Woodward where there are only two sides to the building and there are rear entrances, a lot of stores need storage rooms and back of house type of situations. The recommendation includes a minimum requirement of 30% on secondary entrances, which is half of what is required on the front. The other recommendation is that no blank walls longer than twenty feet that face a plaza, park, parking area or street.

Mayor Pro Tem Nickita stated that the ability to provide glass on a passageway is one of the fundamental goals that is trying to be achieved and should be included as well. He commented that it is identified in the 2016 Plan and is promoted throughout the retail is that glass must be clear. The City needs language that is enforceable and “lightly tinted” is not legally binding.

The Commission agreed to direct this back to the Planning Board to consider the changes as discussed.

The Mayor closed the Public Hearing at 10:16 PM.

07-242-16 REFINANCING OF BONDS

Finance Director Gerber explained the analysis by the City’s municipal finance advisor detailing where the City could save approximately \$960,000 by refinancing the City’s two park bonds. Additionally after the report was assembled, the City’s finance advisor noted that the 2004 sewer bond refunding could possibly be lumped into this as well.

Pat McGow, the City's bond counsel with Miller Canfield, explained that these are the only remaining three bond issues that the City has outstanding. He explained that the resolution would essentially refinance that debt by taking advantage of lower interest rates. He explained that each issue is refinanced for the same period as the existing issue so there is no stretching of the debt service.

MOTION: Motion by Sherman, seconded by DeWeese:

To authorized issuance of 2016 Unlimited Tax General Obligation Refunding Bonds:

WHEREAS, the City of Birmingham, County of Oakland, State of Michigan (the "City") has previously issued its 2004 Unlimited Tax General Obligation Refunding Bonds in the original principal amount of \$9,930,000 (the "2004 Bonds") to refinance a portion of the City's 2000 Unlimited Tax General Obligation Bonds which were originally issued to pay the cost of acquiring, constructing, furnishing and equipping sewer and drainage facility improvements, including new mains, replacement mains and other relief and rehabilitation improvements and related work together with all necessary rights of way, interests in land and all appurtenances and attachments; and

WHEREAS, the City has previously issued its 2006 Unlimited Tax General Obligation Recreation Refunding Bonds in the original principal amount of \$8,920,000 (the "2006 Bonds") to refinance a portion of the City's 2002 Unlimited Tax General Obligation Bonds which were originally issued to pay the cost of acquiring, constructing, furnishing, equipping and renovating parks and recreation improvements, including land acquisition, facilities acquisition and related site improvements in the City (the "Recreation Projects"); and

WHEREAS, the City has previously issued its 2008 Unlimited Tax General Obligation Bonds in the original principal amount of \$4,000,000 (the "2008 Bonds", together with the 2004 Bonds and the 2006 Bonds are referred to as the "Prior Bonds") to pay part of the cost of the Recreation Projects; and

WHEREAS, the City has been advised that it may achieve interest costs savings through the refunding of the Prior Bonds; and

WHEREAS, the Revised Municipal Finance Act, Act 34, Public Acts of Michigan, 2001, as amended ("Act 34"), permits the City to refund and advance refund all or part of the outstanding securities of the City; and

WHEREAS, it is the determination of the City Commission that the City should issue refunding bonds in the principal amount of not to exceed Fifteen Million Nine Hundred Thousand Dollars (\$15,900,000) to refund all or a portion of the Prior Bonds to achieve interest cost savings for the benefit of the taxpayers of the City.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Authorization of Refunding Bonds; Bond Terms, Bonds of the City designated 2016 UNLIMITED TAX GENERAL OBLIGATION REFUNDING BONDS (the "Bonds") are authorized to be issued in the aggregate principal sum of not to exceed Fifteen Million Nine Hundred Thousand Dollars (\$15,900,000) for the purpose of paying the costs of refunding all or a portion of the Prior Bonds, including the costs incidental to the issuance, sale and delivery of the Bonds.

The issue shall consist of bonds in fully-registered form of the denomination of \$5,000, or multiples thereof not exceeding for each maturity the maximum principal amount of that maturity, numbered consecutively in order of registration. The Bonds will be dated as of the date of delivery or such other date as determined at the time of sale by the City Manager or Finance Director (each, an "Authorized Officer"), be

payable on October 1st in the years 2017 to 2028, inclusive, in the annual amounts determined at the time of sale and may be subject to redemption in the manner and at the times and prices to be determined at the time of sale.

The Bonds shall bear interest at a rate or rates to be determined at the time of sale, payable on April 1, 2017 and semi-annually thereafter by check or draft mailed by the Transfer Agent (as hereinafter defined) to the registered owner of record as of the 15th day of the month prior to the payment date for each interest payment. The record date of determination of registered owner for purposes of payment of interest as provided in this paragraph may be changed by the City to conform to market practice in the future.

2. Execution of Bonds; Book-Entry-Only Form. The Bonds of this issue shall be executed in the name of the City with the facsimile signatures of the Mayor and Clerk of the City and shall have the seal of the City, or a facsimile thereof, printed or impressed on the Bonds. No Bond shall be valid until authenticated by an authorized officer or representative of the Transfer Agent. The principal of the Bonds shall be payable at the designated corporate trust office of The Bank of New York Mellon Trust Company, N.A., Detroit, Michigan, as registrar and transfer agent for the Bonds (the "Transfer Agent").

The Bonds may be issued in book-entry-only form through the Depository Trust Company in New York, New York ("DTC") and the Authorized Officers are authorized to execute such custodial or other agreement with DTC as may be necessary to accomplish the issuance of the Bonds in book-entry-only form and to make such changes in the Bond form within the parameters of this resolution as may be required to accomplish the foregoing.

Unless waived by any registered owner of Bonds to be redeemed, official notice of redemption shall be given by the Transfer Agent on behalf of the City. Such notice shall be dated and shall contain at a minimum the following information: original issue date; maturity dates; interest rates; CUSIP numbers, if any; certificate numbers (and in the case of partial redemption) the called amounts of each certificate; the redemption date; the redemption price or premium; the place where Bonds called for redemption are to be surrendered for payment; and that interest on Bonds or portions thereof called for redemption shall cease to accrue from and after the redemption date.

In addition, further notice shall be given by the Transfer Agent in such manner as may be required or suggested by regulations or market practice at the applicable time, but no defect in such further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as prescribed herein.

3. Transfer of Bonds. The Transfer Agent shall keep the books of registration for this issue on behalf of the City. Any Bond may be transferred upon such registration books by the registered owner of record, in person or by the registered owner's duly authorized attorney, upon surrender of the Bond for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form approved by the Transfer Agent. Whenever any Bond or Bonds shall be surrendered for transfer, the City shall execute and the Transfer Agent shall authenticate and deliver a new Bond or Bonds, for like aggregate principal amount. The Transfer Agent shall require the payment by the bondholder requesting the transfer of any tax or other governmental charge required to be paid with respect to the transfer.

4. Debt Retirement Fund; Defeasance of Bonds. The City Treasurer is hereby authorized to open a separate depository account with a bank or trust company designated 2016 UNLIMITED TAX GENERAL OBLIGATION REFUNDING BONDS DEBT RETIREMENT FUND (the "Debt Retirement Fund"), the moneys to be deposited into the Debt Retirement Fund to be specifically earmarked and used solely for the purpose of paying principal of and interest on the Bonds as they mature. All proceeds from taxes levied for the Debt Retirement Fund shall be deposited into the Debt Retirement Fund as collected. Commencing with the year 2017, there shall be levied upon the tax rolls of the City for the purpose of the Debt Retirement Fund each year, in the manner required by the provisions of Act 34, Public Acts of Michigan, 2001, as amended ("Act 34"), an amount sufficient so that the estimated collection therefrom will be sufficient to promptly pay, when due, the principal of and interest on the Bonds becoming due prior to the next annual tax levy; provided, however, that if at the time of making any such annual tax levy there shall be surplus moneys on hand in the Debt Retirement Fund for the payment of principal of and interest on the Bonds, then credit therefor may be taken against such annual levy for the Debt Retirement Fund.

In the event cash or direct obligations of the United States or obligations the principal of and interest on which are guaranteed by the United States, or a combination thereof, the principal of and interest on which, without reinvestment, come due at times and in amounts sufficient to pay the principal of and interest on the Bonds when due, shall be deposited in trust, this Resolution shall be defeased and the owners of the Bonds shall have no further rights under this Resolution except to receive payment of the principal of and interest on the Bonds from the cash or securities deposited in trust and the interest and gains thereon and to transfer and exchange Bonds as provided herein.

5. Use of Proceeds. The proceeds of the Bonds shall be used to pay the costs of issuance of the Bonds and to secure payment of the Prior Bonds as provided in this paragraph. Upon receipt of the proceeds of sale of the Bonds, the accrued interest, if any, shall be deposited in the Debt Retirement Fund for the Bonds. From the proceeds of the Bonds there shall next be set aside a sum sufficient to pay the costs of issuance of the Bonds in a fund designated 2016 UNLIMITED TAX GENERAL OBLIGATION REFUNDING BOND ISSUANCE FUND (the "Issuance Fund"). Moneys in the Issuance Fund shall be used solely to pay expenses of issuance of the Bonds. Any amounts remaining in the Issuance Fund after payment of issuance expenses shall be transferred to the Debt Retirement Fund for the Bonds.

The balance of the proceeds of the Bonds together with any moneys transferred by the City at the time of sale of the Bonds from the debt retirement funds for the Prior Bonds and any other available funds of the City, shall be held as cash or invested in direct obligations of or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America or other obligations the principal of and interest on which are fully secured by the foregoing (the "Escrow Fund") and used to pay principal of and interest on the Prior Bonds to be refunded (the "Refunded Bonds"). The Escrow Fund shall be held by a bank or trust company to be selected as escrow agent (the "Escrow Agent") pursuant to an escrow agreement (the "Escrow Agreement") which shall irrevocably direct the Escrow Agent to take all necessary steps to call for redemption the Refunded Bonds, including publication and mailing of redemption notices, on any call date, as specified by the City. The investments held in the Escrow Fund shall be such that the principal and interest payments received thereon will be sufficient, without reinvestment, to pay the principal of and interest on the Refunded Bonds as they become due pursuant to maturity or the call for redemption required by this paragraph. Following

establishment of the Escrow Fund, any amounts remaining in the debt retirement funds for the Prior Bonds shall be transferred to the Debt Retirement Fund for the Bonds. Each of the Authorized Officers is hereby authorized to select and appoint a bank or trust company qualified to serve as Escrow Agent and to negotiate the terms of and execute and deliver an Escrow Agreement on behalf of the City. Each Authorized Officer is authorized and directed to purchase or cause to be purchased, Escrow Securities, including United States Treasury Obligations – State and Local Government Series (SLGS), in an amount sufficient to fund the Escrow Fund.

6. Bond Form. The Bonds shall be in substantially the following form with such changes as may be required to conform to the final terms of the Bonds established by the Sale Order:

UNITED STATES OF AMERICA
STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF BIRMINGHAM

2016 UNLIMITED TAX GENERAL OBLIGATION
REFUNDING BOND

Date of		
Interest Rate	Maturity Date	Original Issue
	CUSIP	
Registered Owner:	October 1, 20__	_____ 1, 2016
Principal Amount:	Dollars	

The City of Birmingham, County of Oakland, State of Michigan (the "City"), acknowledges itself to owe and for value received hereby promises to pay to the Registered Owner specified above, or registered assigns, the Principal Amount specified above, in lawful money of the United States of America, unless redeemed prior to maturity, on the Maturity Date specified above with interest thereon until paid from the Date of Original Issue specified above or such later date to which interest has been paid, at the Interest Rate per annum specified above (computed on the basis of a 360 day year consisting of twelve 30-day months), first payable on April 1, 2017 and semiannually thereafter. Principal of this bond is payable at the designated corporate trust office of the Bank of New York Mellon Trust Company, Detroit, Michigan, or such other transfer agent as the City may hereafter designate by notice mailed to the registered owner not less than sixty (60) days prior to any interest payment date (the "Transfer Agent"). Interest on this bond is payable to the registered owner of record as of the 15th day of the month preceding the interest payment date as shown on the registration books of the City kept by the Transfer Agent by check or draft mailed by the Transfer Agent to the registered owner of record at the registered address. For prompt payment of this bond, both principal and interest, the full faith, credit and resources of the City are hereby irrevocably pledged.

This bond is one of a series of bonds aggregating the principal sum of \$_____, issued for the purpose of refunding all or part of the City's outstanding 2004 Unlimited Tax General Obligation Refunding Bonds, 2006 Unlimited Tax General Obligation Recreation Refunding Bonds and 2008 Unlimited Tax General Obligation Recreation Bonds.

[Insert redemption provisions]

This bond is transferable only upon the registration books of the City kept by the Transfer Agent by the registered owner of record in person, or by the registered

owner's attorney duly authorized in writing, upon the surrender of this bond together with a written instrument of transfer satisfactory to the Transfer Agent duly executed by the registered owner or the registered owner's attorney duly authorized in writing, and thereupon a new registered bond or bonds in the same aggregate principal amount and of the same maturity shall be issued to the transferee in exchange therefor as provided in the resolution authorizing this bond and upon the payment of the charges, if any, therein prescribed.

This bond is payable out of the City's Debt Retirement Fund for this issue and in order to make such payment, the City is required each year to levy taxes on all taxable property within the boundaries of the City for such payment without limitation as to rate or amount. It is hereby certified and recited that all acts, conditions and things required by law to be done, precedent to and in the issuance of this bond and the series of bonds of which this is one, exist and have been done and performed in regular and due form and time as required by law, and that the total indebtedness of the City, including this bond and the series of bonds of which this is one, does not exceed any constitutional, statutory or charter debt limitation.

This bond is not valid or obligatory for any purpose until the Transfer Agent's Certificate of Authentication on this bond has been executed by the Transfer Agent.

IN WITNESS WHEREOF, the City, by its City Commission, has caused this bond to be signed in the name of the City by the facsimile signatures of its Mayor and City Clerk and a facsimile of its corporate seal to be printed hereon, all as of the Date of Original Issue.

CITY OF BIRMINGHAM
County of Oakland
State of Michigan

By: Its: Mayor (SEAL)
By: Its: City Clerk
(Form of Transfer Agent's Certificate of Authentication)

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds described in the within-mentioned resolution.

Bank of New York Mellon Trust Company, Detroit, Michigan
Transfer Agent

By:
Authorized:

DATE OF REGISTRATION:

7. Negotiated Sale. The City Council has considered the option of selling the Bonds through a competitive sale and a negotiated sale, and pursuant to the requirements of Act 34, determines that a negotiated sale of the Bonds will allow more flexibility in accessing the municipal bond market, and to price and sell the Bonds at the time that is expected to best achieve the most advantageous interest rates and costs to the City, and will provide the City with greater flexibility in structuring bond maturities and adjusting terms for the Bonds.
8. Bond Purchase Agreement; Delegation to Authorized Officer; Sale Order. The Authorized Officers are each hereby authorized to select an underwriter for the Bonds (the "Underwriter"), negotiate the sale of the Bonds with the Underwriter, negotiate and execute a Bond Purchase Agreement, execute a Sale Order specifying the final terms of the Bonds and take all other necessary actions required to

effectuate the sale, issuance and delivery of the Bonds within the parameters authorized in this resolution.

9. Adjustment of Bond Terms. The Authorized Officers are each hereby authorized to adjust the final bond details as set forth herein to the extent necessary or convenient to complete the sale of the Bonds and in pursuance of the forgoing are each authorized to exercise the authority and make the determinations pursuant to Sections 315(1)(d) of Act 34, including but not limited to determinations regarding interest rates, prices, discounts, maturities, principal amounts, denominations, date of issuance, interest payment dates, redemption rights and other matters within the parameters established by this resolution; provided that the principal amount of Bonds issued shall not exceed the principal amount authorized in this resolution, the interest rate per annum on the Bonds shall not exceed six percent (6.00%) per annum, the Bonds shall be sold at a price not less than 98.00% of their par value, the underwriter's discount shall not exceed 0.5% of the par amount of the Bonds and the refunding of the Prior Bonds shall result in net present value savings to the City.
10. Tax Covenant. The City shall, to the extent permitted by law, take all actions within its control necessary to maintain the exemption of the interest on the Bonds from general federal income taxation (as opposed to any alternative minimum or other indirect taxation) under the Internal Revenue Code of 1986, as amended (the "Code"), including, but not limited to, actions relating to any required rebate of arbitrage earnings and the expenditure and investment of Bond proceeds and moneys deemed to be Bond proceeds.
11. Continuing Disclosure Undertaking. The City agrees to enter into an undertaking for the benefit of the holders and beneficial owners of the Bonds pursuant to Rule 15c2-12 of the U.S. Securities and Exchange Commission and the Authorized Officers are each hereby authorized to execute such undertaking prior to delivery of the Bonds.
12. Authorization of other Actions. The Authorized Officers are each hereby authorized and directed to (a) approve the circulation of a preliminary official statement describing the Bonds and to deem the preliminary official statement "final" for purposes of Rule 15c2-12 of the SEC; (b) approve the circulation of a final official statement describing the Bonds and to execute the same on behalf of the City; (c) obtain ratings for the Bonds; and (d) do all other acts and take all other necessary procedures required to effectuate the sale, issuance and delivery of the Bonds.
13. Bond Counsel. Miller, Canfield, Paddock and Stone, P.L.C. is hereby approved as bond counsel for the Bonds, notwithstanding periodic representation in unrelated matters of parties or potential parties to the transaction contemplated by this resolution, including the Underwriter.
14. Financial Advisor. The City hereby appoints Bendzinski & Co. as financial advisor with respect to the Bonds.
15. Rescission. All resolutions and parts of resolutions insofar as they conflict with the provisions of this resolution be and the same hereby are rescinded.

ROLL CALL VOTE: Yeas, Commissioner Boutros
Commissioner DeWeese
Commissioner Harris
Mayor Pro Tem Nickita
Commissioner Sherman

	Commissioner Bordman
	Mayor Hoff
Nays,	None
Absent,	None
Abstention,	None

**07-243-16 ORDINANCE AMENDMENT
COMBINATION OF LAND PARCELS**

City Planner Ecker explained that the ordinance would add a review process for the consolidation of lots. She explained that the review process would require City Commission approval, a public hearing where everyone within 300 feet would be noticed, submit a plot plan or drawing to scale of the property and adjoining property for 500 feet in all directions in order to get a sense as to the character of the neighborhood and whether what they are proposing would fit in as a whole. In addition, the applicant would have to draw in the proposed building envelope showing the front, side and rear setbacks.

In response to a question from Mayor Hoff regarding the fee, Ms. Ecker explained that the fee for a lot split is \$200.00 per lot affected. It is recommended that if this is approved, the fee be the same as the lot split.

Mayor Pro Tem Nickita commented that until the City is at the point of doing a master plan study to identify areas where this might be approved, this is a solid stop/gap situation to allow flexibility to allow it if we see fit and not if it is detrimental to the neighborhood.

Clinton Baller suggested the Commission consider not as conditions exist, but as originally platted when considering a new lot combination.

MOTION: Motion by Nickita, seconded by Sherman:
To adopt an ordinance amending Chapter 102, Subdivisions, of the Birmingham City Code to add a new Article V - Combination of Land Parcels to create regulations governing the approval of residential lot combinations in the City of Birmingham and to add "including the original plat configuration" to Section 102-82(1).

VOTE: Yeas, 7
 Nays, None
 Absent, None

07-244-16 2017 BISTRO SELECTION PROCESS

City Planner Ecker explained that in recent years, there have been comments by the Commission that it would rather see bistros in the rail district or the triangle district. The proposed resolution would amend the existing policy to add that for this year, if the Commission recommends any bistros to move forward to the full review process, at least one of them must be in the rail district or the triangle district.

The Commission agreed that a strong message was already sent last year during the bistro selection process and took no action.

**07-245-16 LICENSE FOR RIGHT-OF-WAY OCCUPANCY
BY TEMPORARY BUILDING WALL TIE-BACKS AND H PILES
AT 369-397 N. OLD WOODWARD**

City Attorney Currier explained that the Brookside Development has asked for a special Earth Restraining System (ERS) with respect to the construction of the foundation and the walls of the structure. He explained that they will be going two stories underground for the garage and they are adding 38 additional parking spots. He explained that temporary building wall tie-backs is a form of support that is drilled through the wall on an angle into the ground which holds the wall in place while the foundation sets. Afterwards the tie-backs are cut at 84 inches below grade and left in place. If the Bates Street extension is done, the tie-backs could be removed at that time. Additionally, they have agreed to be assessed 100% for all the streetscape improvements adjacent to the southerly property line. He noted that if the Bates Street extension is ever undertaken, they have already placed, in escrow, a deed that giving the City additional property on the that southerly line for the Bates Street extension.

Commissioner DeWeese suggested City staff start examining other ways to give incentives to encourage developers in the mixed-use areas to provide additional parking which would take the load off of the City directly and helps everyone.

MOTION: Motion by Boutros, seconded by Bordman:
To approve the license for Right-of-Way Occupancy by a temporary building wall tie-backs and H-piles.

VOTE: Yeas, 7
Nays, None
Absent, None

**07-246-16 BIRMINGHAM BRAND DEVELOPMENT
REQUEST FOR PROPOSAL**

Assistant to the Manager Haines explained the proposed Request for Proposal detailing the scope of work to update the City's graphics and logos. She explained the composite of the proposed Ad Hoc Birmingham Brand Development Committee which would review the proposals.

Mayor Hoff commented on a company from out of state that was hired for the wayfinding plan which had no knowledge of the Birmingham area. Commissioner Bordman shared Mayor Hoff's concerns and requesting local firms be notified. She pointed out that there are several companies in Birmingham that should be personally notified. Commissioner Boutros agreed.

City Manager Valentine explained the requirement to bid competitively if the cost exceeds \$6,000.00.

Clinton Baller, resident, commented that this could be done for a lot less money and effort than as proposed. He suggested that it could be done with volunteers.

Mayor Pro Tem Nickita commented that there are firms who have expressed interest in achieving this. He stated that the Commission needs to be definitive in what it is asking for.

After further discussion on the potential cost of the rebranding, Mr. Valentine suggested that language be drafted to solicit proposals from local firms to determine what the cost may be.

MOTION: Motion by DeWeese, seconded by Harris:

To approve the creation of an Ad Hoc Birmingham Brand Development Committee (BBDC) for the purpose of reviewing and making a recommendation to the City Commission for the rebranding of the City logo; and further, including 1 member of the Parks and Recreation Board, 1 member from the Birmingham Shopping District, 1 member from the Planning Board, (to be appointed by their respective boards), two members at large in the City, and Mayor Hoff and Commissioner Nickita.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**07-247-16 CLOSED SESSION REQUEST
 ATTORNEY/CLIENT PRIVILEGE COMMUNICATION**

MOTION: Motion by Sherman, seconded by Nickita:
To meet in closed session to discuss an attorney/client privilege communication in accordance with Section 8(h) of the Open Meetings Act.

ROLL CALL VOTE: Yeas, Commissioner DeWeese
 Commissioner Harris
 Mayor Pro Tem Nickita
 Commissioner Sherman
 Commissioner Bordman
 Commissioner Boutros
 Mayor Hoff
 Nays, None
 Absent, None
 Abstention, None

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

07-248-16 COMMUNICATIONS

The Commission received a letter from the Birmingham Theater regarding a liquor license.

Janet Lankes, representing the Birmingham Theater, explained the request to obtain a movie theater only liquor license to stay competitive with other theaters. She explained the renovations that have already taken place in the theater.

City Manager Valentine explained that the City does not currently have a category for this type of license. If the Commission agrees to move forward with the request, staff would come forward with SLUP language. He noted that two theaters would qualify – Birmingham 8 and the Village Players. He noted the third theater in the City currently has a liquor license.

Commissioner Boutros commented that the theater has been in the City since 1927 and the City should find a way so it stays a landmark in the City.

Commissioner Hoff expressed concern with creating a category and setting a precedent.

Commissioner Harris agreed that it is a landmark, but would like more concrete information from the applicant with discussion and their position laid out.

The Commission agreed to request that staff put together options for the Commission to review.

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

X. REPORTS

07-249-16 COMMISSIONER REPORTS

The Commission intends to appoint members to the Multi-Modal Transportation Board and the Public Arts Board on August 8, 2016.

07-250-16 COMMISSIONER COMMENTS

Commissioner Boutros shared a letter received from Congressman Trott inviting students interested in exploring the requirements to attend the military academy to a reception for additional information.

07-251-16 CITY STAFF REPORTS

The Commission received the response to cemetery questions submitted by City Clerk Pierce.

The Commission recessed to closed session at 11:32 PM.
The Commission reconvened in open session at 12:19 AM.

XI. ADJOURN

The meeting adjourned at 12:19 AM.

Laura M. Pierce
City Clerk