

BIRMINGHAM CITY COMMISSION MINUTES
SEPTEMBER 25, 2017
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Mark Nickita called the meeting to order at 7:30 p.m.

II. ROLL CALL

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

Administration: City Manager Valentine, City Clerk Brown, Police Chief Clemence, City Attorney Currier, City Planner Ecker, DPS Manager Filipski, City Engineer O'Meara, BSD Director Tighe, DPS Director Wood

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

Mayor Nickita announced:

- The first session of the Fall Citizens Academy begins tomorrow evening at 6:00 PM in the City Commission Room. If you are interested in attending, you must register with the City Manager's office at 248.530.1807.
- The Farmers Market continues on Sundays through October 29th from 9:00 AM to 2:00 PM in Municipal Parking Lot #6 on N. Old Woodward.
- The Fire Department is hosting its annual Open House on Saturday, October 14th from 1:00 PM to 4:00 PM at 572 S. Adams.

09-256-17 APPOINTMENTS TO THE BROWNFIELD REDEVELOPMENT AUTHORITY

Dan Haugen and Harry Awdey were present and were interviewed by the Commission.

MOTION: Motion by Commissioner DeWeese:

To concur in the Mayor's appointment of Harry Awdey to the City of Birmingham Brownfield Redevelopment Authority as a regular member to serve the remainder of a three-year term to expire May 23, 2019.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

The City Clerk administered the Oath of Office to Harry Awdey.

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.

09-257-17 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Mayor Pro Tem Harris: Item B, Approval of Joint City Commission/Planning Board Workshop

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Hoff:
To approve the Consent Agenda, with Item B removed.

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

- A. Approval of City Commission minutes of September 11, 2017
- C. Approval of warrant list, including Automated Clearing House payments, of September 13, 2017 in the amount of \$1,063,737.15
- D. Approval of warrant list, including Automated Clearing House payments, of September 20, 2017 in the amount of \$17,647,605.35
- E. Resolution approving a request from the Birmingham Shopping District to hold the Winter Market, in Shain Park and surrounding streets from December 1 - 3, 2017 and to allow the use of temporary liquor licenses in Shain Park for this event, 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.
- F. Resolution approving a request from the Birmingham Shopping District to place the Santa House in Shain Park from November 22 to December 24, 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.
- G. Resolution setting Monday, October 16, 2017 at 7:30 PM for a Public Hearing to consider the proposed rezoning of 191 N. Chester from TZ1 (Transitional Zoning) to TZ2 (Transitional Zoning).
- H. Resolution approving the purchase of two (2) 2018 GMC Sierra 4x4 pickup trucks from Todd Wenzel Buick GMC through the Oakland County extendable purchasing contract #4850 in the amount of \$55,992.00 from account #641-441.006.971.0100.
- I. Resolution approving Change Order #1 to Florence Cement Co., in the amount of \$50,500 be authorized for the 2017 Asphalt Resurfacing Program, Contract #5-17(P), to provide

asphalt conditioning services and prepare the following sections of local streets for cape sealing:

Webster Ave. – Woodward Ave. to Adams Rd.

S. Worth Ave. – 300 Ft. North of Webster Ave. to Woodward Ave.

Further, approving the appropriations and budget amendment as follows:

Local Street Fund

Revenues:

Draw from Fund Balance #203-000.000-400.0000 \$26,955

Oakland County Local Road

Improvement Grant #203-000.000-583.0005 \$30,598

Total Revenue Adjustments \$57,553

Expenditures:

Public Improvements #203-449.001-985.7500 \$57,553

Total Expenditure Adjustments \$57,553

The Commission agreed to discuss items removed from the Consent Agenda at this time.

09-258-17 APPROVAL OF CITY COMMISSION/PLANNING BOARD JOINT WORKSHOP MINUTES OF SEPTEMBER 18, 2017 (ITEM B)

Mayor Pro Tem Harris explained that on the first page, in the last paragraph, there was a reference to Duany's 2016 review of a 2014 plan, but those years should be transposed – it was actually a 2014 review of the 2016 plan.

MOTION: Motion by Mayor Pro Tem Harris, seconded by Commissioner Boutros to approve the City Commission/Planning Board Joint Workshop minutes of September 18, 2017, as amended:

VOTE: Yeas, 7
Nays, 0
Absent, 0

V. UNFINISHED BUSINESS

09-259-17 ADOPTION OF BOARD OF ETHICS ADVISORY OPINION 2016-03

City Manager Valentine provided an overview of the issue:

- There was previous discussion on incorporating the Board of Ethics' opinion setting forth guidelines for Commissioners' appointments to non-profit organizations.
- Based on the Commission's conversation, it was best to incorporate the entire opinion by adoption of the Commission.

City Manager Valentine confirmed for Commissioner Hoff that Commissioners could serve as non-voting liaisons to non-profit boards if so appointed by the Commission, and explained that in addition to non-voting liaisons Commissioners could be appointed as voting members or non-voting members to non-profit boards.

City Manager Valentine continued that there are implications for each type of appointment as laid out in the advisory opinion, and that his understanding of the Commission's intention was to pursue the non-voting liaison position in order to avoid the potential conflicts of interest attendant to the other roles.

City Manager Valentine confirmed for Commissioner Hoff that:

- Future Commissions can choose to appoint Commissioners as non-voting liaisons to boards, but the adoption of the Board of Ethics' opinion in its entirety will allow the Commission leeway to make other types appointments as well.
- Per his understanding, this Commission seems to prefer non-voting liaison appointments.

Commissioner Bordman suggested that incorporating the entire advisory opinion:

- Allows future Commissions to provide future non-profits seeking appointments with the entire opinion so as to explain how the Commission may be choosing a particular appointment type; and
- Allows future Commissioners the same thorough understanding of the decision-making process around appointments as this current Commission has; and
- Provides the greatest amount of leeway to future Commissions.

Mayor Nickita added that while incorporating the entire advisory opinion does provide future Commissions with leeway, the current Commission's practice will also set precedent that will be considered by future Commissions.

Commissioner Bordman explained that:

- The NEXT board voted to change its bylaws to make its future Commissioner appointments non-voting liaison positions; and
- This opinion was shared with the other communities present at the most recent NEXT board meeting, which may help those communities in their decision-making process around similar types of appointments.

MOTION: Motion by Commissioner Bordman, seconded by Commissioner DeWeese: To adopt Advisory Opinion 2016-03 as guidance for Commissioners with respect to serving on community based organizations.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

09-260-17 SET PUBLIC HEARING TO CONSIDER ADDING DEFINITION OF PERSONAL SERVICES TO ZONING ORDINANCE

Commissioner Sherman said he would like to see the list the Planning Board made in their consideration of the definition of personal services before the Commission schedules a public hearing.

City Manager Valentine confirmed for Commissioner Sherman that the Planning Board's first meeting in November would be November 8, and that the Commission should ask to receive the Planning Board's list and notes by November 9 at the latest.

Commissioner Sherman clarified he does not want the Planning Board to hold another public hearing; rather, he wants the list the Planning Board had been working on to be provided to the Commission.

Commissioner Sherman explained to City Planner Ecker that he would like the list to be inclusive of the uses the Planning Board did and did not consider including in their definition of personal services.

Commissioner Bordman echoed Commissioner Sherman's comments, and added that in all the personal research she had conducted on personal services definitions in different communities, illustrative lists of uses were included. Commissioner Bordman continued that when the Planning Board provides the Commission with its list, it should also include pros and cons for including or excluding each use.

Commissioner DeWeese stated:

- He was similarly bothered by the lack of real-world examples, and this lack could lead to uncertainty in interpretation of the ordinance.
- He would like to see how all the businesses currently operating in the red-line retail district would be categorized, even with the understanding that those businesses are grandfathered in, so as to be able to refine how the definitions and uses should be applied.
 - He is not comfortable moving forward with a definition without a more concrete sense of this information.

Mayor Nickita summarized that he was hearing the Commissioners call for more specific examples and information from the Planning Board.

Commissioner Hoff pointed out:

- The Planning Board was originally hesitant in providing a list because every use would have exceptions.
- Other approaches might be more consistent with the Commission's desire to promote vibrant, active businesses in the City's retail areas.
- Giving the Planning Board sufficient leeway to explore other approaches might be beneficial.

Mayor Nickita stated that the Commission seemed to be addressing two related issues: use issues and application issues. Citing Lululemon as an example, Mayor Nickita explained that if they, as a retail business, decided to put an office desk in one of their windows, that would be both a use and an application issue.

Commissioner Hoff echoed Mayor Nickita's point, saying that Lululemon was a good example because they have frequent customers and less dynamic windows, which brings up difficulties with this ordinance and its application.

Commissioner Sherman reiterated that the topic before the Commission was whether to set a public hearing on the public services definition, or to send the topic back to the Planning Board with a request for further information.

Mayor Pro Tem Harris stated:

- This topic has been discussed in at least three joint sessions.
- He believes the Planning Board fulfilled the Commission's request to provide a definition for public services.
- The Commission now has a number of options, including:
 - Rejecting the definition;
 - Accepting the definition; or
 - Asking the Planning Board to generate a list of additional ways to create a vibrant and active downtown.

- He does not want to send the current definition back to the Planning Board for further elaboration.

Mayor Nickita:

- Agreed with Commissioner Hoff that asking for a list of uses may be complicated because exceptions will exist, but added that he also does not believe the Commission has been provided enough information by the Planning Board to move forward with crafting the ordinance.
- Preferred to receive a list from the Planning Board, even with the drawbacks of generating one, in order to address the issue of clarity around the ordinance's implementation.

Commissioner Hoff reminded the Commission that Chairman Scott Clein of the Planning Board called for further study of the definition before implementation, and that Chairman Clein did not likely intend that a list of uses would be sufficient substitute for that study.

Mayor Nickita replied that the Planning Board's recommendation of further study of the definition would be beneficial long-term, but would not resolve the short-term issue of current, appropriate implementation of the ordinance.

Commissioner DeWeese stated:

- His request for a list is in order to provide the Commission with concrete examples with which to work.
- He also agrees with Commissioner Hoff that the more pressing issue at hand is to figure out what rules or regulations should be applied to the first twenty feet of space in these types of zoning situations, and this is more than a use issue.
- There are some uses that may be technically prohibited, but would be more vibrant and interesting to passersby than other uses which are technically permitted but visually lacking, and that acknowledging these potential contradictions will allow the Commission to achieve its ultimate goal of making streets livelier, independent of the master planning process.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Bordman:

To send the issue of the definition of personal services back to the Planning Board for the purpose of providing the Commission with the list of uses discussed at the Joint City Commission/Planning Board meeting on September 18, 2017, have the Planning Board complete the list, including the rationale for each use's inclusion or exclusion, and submit the list by November 9 or earlier.

Commissioner Bordman asked to add "to provide rationale for including or excluding each use" to the motion.

Commissioner Sherman suggested the information may be in the Planning Board's minutes, and Commissioner Bordman replied she did not believe it was.

Mayor Nickita suggested that if this were to be added as an amendment, the request would need to be more specific. He added that requesting a pro and con list for every use considered may be cumbersome.

Commissioner Bordman said that maybe it would be more efficient to include pros and cons for categories instead of individual uses, and Mayor Nickita agreed.

Upon Mayor Nickita's request, City Clerk Mynsberge read the amendment proposed as: "You are sending this issue back to the Planning Board for the purpose of having them provide us with their list of uses discussed at the joint meeting, to have that list cleaned up, have it back to the Commission by November 8, and to include the rationale of the advantages and disadvantages for each category."

Mayor Nickita and City Manager Valentine agreed to change "cleaned up" to "completed".

Commissioner DeWeese stated:

- He would still like to have concrete examples of how the definition applies within Birmingham's redline retail district.
- The information could come from the Planning staff instead of the Planning Board.

City Manager Valentine suggested that Commissioner DeWeese's concerns could be addressed administratively. Mayor Nickita concurred that a presentation on the topic would be useful.

Commissioner Hoff stated she was still concerned because the Planning Board did not endorse its own definition, and therefore a list of rationales to build on the unendorsed definition would not be beneficial.

Mayor Nickita requested that further Commission comments be related to the motion.

Commissioner Boutros stated:

- Ultimately, in requesting a list, the Commission is asking the Planning Board to commence a limited study without appropriate time or resources.
- He believes the Commission should either accept the currently provided definition or not, and move forward from there.
- He believes a list with sub-items would only further complicate the issue.

Mayor Nickita reminded the Commission the motion on the table was to request further information from the Planning Board so as to clarify the ordinance, and that such a motion could be beneficial so the Commission does not continue to attempt performing work more appropriately carried out by the Planning Board.

Mayor Nickita explained to Commissioner Hoff that the intent of the motion was to provide a list of categories that fall within the definition of personal use, and the rationale for the uses' inclusion or exclusion. In this way, the Commission hopes to gain information as to how the ordinance may be more clearly implemented.

Commissioner Hoff stated she believes the motion just delays the Commission's effort towards cultivating vibrant and active streets.

Mayor Nickita replied that, while he agrees the issue has already been more delayed than he expected, this motion would only delay the process by an additional month, with a public hearing at the end of November instead of the end of October. He continued that doing so has the benefit of being as informationally complete as possible.

VOTE: Yeas, 4
 Nays, 3 (DeWeese, Harris, Hoff)
 Absent, 0

VI. NEW BUSINESS

09-261-17 RESOLUTION REQUIRING OATH OF SUPPORT FOR CITY ORDINANCES

From City Clerk Mynsberge and City Attorney Currier's staff report to City Manager Valentine dated September 13, 2017:

At the September 11, 2017 City Commission meeting, Commissioner Bordman noted the Oath of Office does not include adherence to city ordinances and asked that a way be found to include in the oath process a requirement to adhere to city ordinances.

The Birmingham City Charter, Chapter III, Section 31 specifies the language for the Oath, and changing the language itself requires a Charter amendment.

City Attorney Currier and City Clerk Mynsberge discussed the issue and agreed it is best addressed with a formal resolution by the City Commission requiring officers elected or appointed to any city office to take an additional oath to observe the City Charter and the Code of Ordinances. This oath, "I do solemnly swear (or affirm) that I will support the City of Birmingham Charter and Code of Ordinances in the performance of the duties of my office," would be administered immediately following the Oath of Office specified by City Charter.

Attorney Currier explained that requiring this oath by resolution will benefit the City by avoiding the need for an expensive Charter amendment election.

City Clerk Mynsberge confirmed for Commissioner Hoff that this oath would be in addition to the one currently administered to officials.

Commissioner Sherman said:

- If this additional oath is going to be added, it should be done correctly.
- He does not see an issue with the language already included in the Charter and the oath, which includes the "honest and efficient administration of the affairs of Birmingham".
- He believes the process currently being discussed would be very cumbersome.
- This discussion reminded him of a prior issue before the Commission regarding conflicts of interest where the disclosure of one's and one's parents' personal assets was proposed.

Commissioner Bordman replied:

- 'Honesty and efficiency' is not the same as saying one supports the Charter of the City, which officials say for the national and state constitutions.
- She was not clear why two separate signings would be required if the proposed oath is added to the administration of the already existing oath of office.
- She believes the language is important, because if it were not, it would not have been included regarding the national and state constitutions.

Commissioner Sherman stated:

- If the Commission wants officials to state that they support the City Charter, the Charter should be amended, rather than administering two separate oaths.
- The current oath does not specify that officials will uphold national or state laws; rather, the oath specifies the support of constitutions.
- For this reason, he suggested that adding support of the City Code of Ordinances, which are laws, to the oath would be in excess of what is being done on the national and state levels, since constitutions are not laws.

Commissioner Bordman replied that an Oath of Office containing support of the national and state constitutions is an agreement to support the laws included within those documents, and asked if Commissioner Sherman would prefer the language be changed to Charter instead of Code of Ordinances.

Mayor Nickita ventured that the discussion was not about whether the language was worthwhile, but rather how best to include the language.

Commissioner Sherman asked why the discussion is important if it is not important enough to merit a Charter amendment.

City Attorney Currier explained to Commissioner DeWeese:

- Administering the proposed oath with the current oath and having one signing is inadvisable because the first oath is Charter-mandated.
- Combining the two oaths runs the risk of giving the public the inappropriate impression that the Charter was changed without due process.
- Because the extant oath was mandated by Charter, and the proposed oath would be mandated by resolution, they should not be combined because they were not created or vetted in the same way.

City Attorney Currier affirmed for Commissioner Bordman that the proposed oath could be typed and sent home along with the Affidavit and Disclosure Statement required by the Ethics Ordinance (Ethics Affidavit), and could be reviewed, signed, and returned from there by the new city official.

Mayor Pro Tem Harris stated he would be inclined to support City Attorney Currier's solution, because he believes supporting the Charter and Code to be an important principle.

Commissioner Hoff added that if the proposed oath were taken home with the Ethics Affidavit, she would be inclined to support as well.

City Attorney Currier explained to Mayor Nickita:

- There is no problem with administering the oath in this way; and
- Both oaths are somewhat superfluous because a city official must obey national, state, and city laws.
- The existing oath is required by charter and serves to reiterate the commitment to uphold national and state laws, and that the proposed oath would serve the same purpose for city laws.

Commissioner Sherman suggested combining the proposed oath with the Ethics Affidavit so as to reduce the need for two signings. He emphasized that the oath takers are volunteers, and keeping it as simple as possible for them is worthwhile.

Commissioner Bordman questioned whether signing two separate forms would be sufficiently cumbersome so as to deter volunteers.

Mayor Nickita affirmed for Commissioner Boutros that if the proposed resolution is passed, future Commissions can make changes.

Commissioner Boutros added his voice to those in support of signing the oath at home along with the Ethics Affidavit.

Mayor Nickita echoed Commissioner Sherman's suggestion that the oath be added to the Ethics Affidavit so as only require one signature.

Commissioner Sherman asked if City Attorney Currier could make the changes and bring them to the next Commission meeting, and asked if the Ethics Ordinance would need to be revised.

Commissioner Bordman expressed belief that the proposed oath should remain separate and distinct from the Ethics Affidavit, since it is topically so.

Mayor Pro Tem Harris clarified that he did not support making the oath and the Ethics Affidavit one document; rather, he supported sending them home together and having them be signed one after the other.

Mayor Nickita then laid out for the Commission the two options before them:

- Request that the City Attorney and staff look into making the oath and Ethics Affidavit one document, or;
- Move forward with the oath and Ethics Affidavit as two separate documents requiring two separate signatures.

Commissioner Bordman strongly emphasized her belief that reading and signing the oath's single sentence, either before or after the Ethics Affidavit, would not be an impediment, and that further discussion was superfluous.

Mayor Pro Tem Harris agreed with Commissioner Bordman.

City Attorney Currier pointed out Section 2-321 of the Ethics Ordinance, The Responsibilities of Public Office, requires officials "to carry out impartially and completely the laws of the nation, state, and the city". He suggested a further oath to that effect may be redundant.

Commissioner Bordman replied that the section City Attorney Currier read is still lacking the word "support", and she wants to garner support for the City Charter.

MOTION: Motion by Commissioner Bordman, seconded by Mayor Pro Tem Harris:
To require an affirmation of support of the City of Birmingham Charter and Code of Ordinances as a supplemental document to be signed by appointed and elected officials along with the Ethics Affidavit and Disclosure statement:

"I do solemnly swear (or affirm) that I will support the City of Birmingham Charter and Code of Ordinances in the performance of the duties of my office."

Commissioner Sherman explained that he would be voting against the motion not because he does not value the idea, but because he believes it is already covered.

City Attorney Currier clarified for Mayor Nickita that, while the proposed oath would be repeating some of the language from the Ethics Ordinance, there is precedent for doing so and that it would help emphasize the importance of the issue to new office holders.

VOTE: Yeas, 6
 Nays, 1 (Sherman)
 Absent, 0

09-262-17 CREATION OF AD HOC UNIMPROVED STREET STUDY COMMITTEE

From City Manager Valentine's report to the City Commission dated September 18, 2017:

The City has roughly 90 miles of roads within its jurisdiction. These roads are categorized as either "improved" or "unimproved". Improved roads comprise the majority of roads in the City and are constructed by engineered design and include curbs and gutters to drain water runoff and are constructed of either a concrete or asphalt surface. Unimproved roads comprise roughly 26 miles of roads in the City and are constructed with a simple gravel base topped with a chip and slurry seal. The method of providing maintenance for unimproved roads is through a process called cape sealing. In Birmingham, cape seal is used as an inexpensive non-structural driving surface that provides an enhanced look and feel on what is essentially a gravel road. The process for maintaining these unimproved roads has been a growing concern from residents living on these streets given their lack of durability and maintenance cycle of every 7 to 10 years among other issues.

To best address the concerns with unimproved roads it is recommended to create an Ad Hoc committee to conduct a city-wide study of unimproved roads and develop a recommendation outlining a long term plan for addressing these roads. A resolution is attached providing for the creation of this Ad Hoc committee for this purpose. The focus of the Committee will be to review and evaluate unimproved roads while considering road durability, maintenance cycles, drainage, rights-of-way usage, traffic speeds and costs.

Commissioner Hoff stated:

- Her support for the ad hoc committee being proposed.
- Her belief the Committee will promote good relationships with the residents.

City Manager Valentine confirmed for Commissioner Hoff the Committee's goal will be to have recommendations for the Commission by December 2018 that could potentially be implemented during the 2019 construction season.

City Manager Valentine also explained:

- Residents living on unimproved streets have been advised as to their current options, which are:
 - Continuing with scheduled cape seal maintenance or,
 - Petitioning the City to improve their street.
- After the Committee makes its recommendations, the options may change.

Commissioner Bordman suggested the three members who are to be residents living on unimproved streets, as stated in 2.b) of the proposed resolution, should come from different parts of the City where possible, and that the Committee's goals, as stated in 3.b., should include taking resident preferences into account.

City Manager Valentine explained to Commissioner Bordman he had not sought to include someone from the MMTB because the Committee's purpose is a matter of policy, not design.

Commissioner Sherman said he did not think resident preference needs to be part of the Committee's goals, since the Committee is focused solely on creating general policy for the City. He proposed the appropriate time to solicit resident preference would be in the future as individual unimproved streets come up for future policy implementation. Mayor Nickita agreed.

Commissioner Bordman replied that City residents sometimes have very specific preferences for their neighborhoods, so it is important to find out what they want as the policy discussion is taking shape.

City Manager Valentine reported he intends to have public hearings on the Committee's recommendations. Commissioner Bordman felt having a public hearing after the Committee has completed its recommendations is too late in the process to be seeking public feedback.

Mayor Nickita explained this Committee is concerned only with fundamentals, and particulars like resident preferences would happen at another time. City Manager Valentine concurred.

Mayor Pro Tem Harris requested the scope outlined in paragraph 3 be expanded to include research into how neighboring municipalities fund their unimproved streets in order to find ideas for best practices.

Commissioner Boutros echoed Commissioner Hoff's enthusiasm for the formation of the Committee.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Hoff:
To adopt the resolution creating an Ad Hoc Unimproved Street Study Committee to conduct a city-wide study of unimproved roads and provide a recommendation to the City Commission outlining a long term plan for these roads, incorporating amendments made tonight. *Formal resolution appended to these minutes as Attachment A.*

City Manager Valentine explained appointments will be made after the positions are advertised and all applicants appear before the Commission for interviews.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

**09-263-17 RESOLUTION TO MEET IN CLOSED SESSION TO DISCUSS
ATTORNEY-CLIENT PRIVILEGE COMMUNICATION IN
ACCORDANCE WITH SECTION 8(H) OF THE OPEN MEETINGS ACT
(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.)

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

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

Mayor Nickita stated there would be no action following the closed session.

VII. REMOVED FROM CONSENT AGENDA

The items removed were discussed earlier in the meeting.

VIII. COMMUNICATIONS

None.

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

None.

X. REPORTS

09-264-17 COMMISSIONER COMMENTS

Commissioner DeWeese questioned the use of prime city streets such as Old Woodward for multi-day special events, noting:

- There is concern that these have a negative effect on businesses.
- Such events might be better hosted in Shain Park, behind or in front of City Hall, or behind the library.

Commissioner DeWeese suggested that as those events are relocated during the construction on North Old Woodward beginning next year, it might behoove the City to have those events remain in their reassigned locations.

Commissioner Bordman reported on her and Mayor Nickita's attendance at the Michigan Municipal League (MML) Conference in Holland, Michigan. Of particular interest was Holland's snow melt system, which is comprised of an electrical grid under the sidewalk. She noted Holland has their own energy park, which allows them to create hot water under the street.

Commissioner Bordman also addressed proposed statewide legislation to eliminate local zoning authority with respect to short-term rental properties, which are defined as leases running 28 days or less. This is a concern for Birmingham because it may create a loophole where landlords can change their leases to 28-day cycles so as to avoid ever having their properties be inspected by the City.

Mayor Nickita added:

- Zoning concerns in regard to rentals are related to Air-BnB as well, and this legislation will likely not be the end of discussions.
- The final session of the MML was with a woman from Colorado who spoke about the effect legalization of marijuana has had on the state. She presented an extensive list of issues that have arisen, including enforcement, deaths, other drug-related issues, and other concerns. Mayor Nickita stated the presentation did not paint a very positive picture. Mayor Nickita, and offered to provide a hyperlink to the presentation for anyone who is interested.

Mayor Nickita changed topics to address the City's biking infrastructure. He said he noticed a marked improvement in the availability of bike loops which sends a positive message about Birmingham's commitment to encouraging biking as an alternative mode of transportation.

Commissioner Bordman publically commended Chief of Police Clemence for saving a man from drowning and for his effort and care in carrying out his job. She said he is a role model for officers new and experienced, and thanked him for his service.

09-265-17 CITY STAFF REPORTS

The Commission received the Birmingham Brand Development-Update on City Logo Design report, submitted by Assistant to the City Manager Haines.

Commissioner Hoff stated that giving McCann half the money now is a very good resolution, and that this process has been handled very well. She inquired as to where the City would get its new logo, since McCann will provide the City with style guides once the new logo is completed.

Assistant to the City Manager Haines explained that the City has three options from McCann, some alternative designs, and all of McCann's project files which will allow the City to manipulate the designs.

XII ADJOURN

Mayor Nickita adjourned the meeting into closed session at 9:32 p.m. and reconvened the regular meeting at 10:02 p.m.

The regular meeting was adjourned at 10:02 p.m.

J. Cherilynn Mynsberge, City Clerk

RESOLUTION 09-262-17

CREATING AN AD HOC UNIMPROVED STREET STUDY COMMITTEE TO CONDUCT A CITY-WIDE STUDY OF UNIMPROVED STREETS AND PROVIDE A RECOMMENDATION TO THE CITY COMMISSION OUTLINING A LONG TERM PLAN FOR THESE STREETS.

WHEREAS, the City of Birmingham has roughly 90 miles of public streets throughout its jurisdiction; and

WHEREAS, included in the roughly 90 miles of public streets, the City of Birmingham has roughly 26 miles of unimproved streets, which receive a cape seal treatment; and

WHEREAS, unimproved streets require more frequent maintenance than improved streets and have been an increasing concern for residents living on them; and

WHEREAS, the City of Birmingham is desirous of conducting a city-wide study of its unimproved streets to develop a long term solution that considers such issues as road durability, maintenance cycles, drainage, Rights-of Way usage, traffic speeds, parking and costs; and

WHEREAS, the City Commission wishes to establish an Ad Hoc Unimproved Street Study Committee to review the City's unimproved street maintenance program and provide a long term plan to address these streets.

NOW THEREFORE BE IT RESOLVED that an Ad Hoc Unimproved Street Study Committee is hereby established to develop and recommend a long term plan for addressing the City's unimproved streets in accordance with the following:

1. The Committee will be Ad Hoc. The term of the Committee shall continue through December 31, 2018 and the Committee will cease functioning unless otherwise directed by the Commission at that time.
2. The City Commission hereby appoints a seven (7) member Ad Hoc Committee to be comprised of the following members.
 - a. Two members of the City Commission.
 - b. Three members comprised of residents living on an unimproved street representing different areas of the City.
 - c. One member comprised of a resident living on an improved street.
 - d. One member with a background in road design and maintenance.

The City Commission also hereby appoints the City Manager as an ex officio member of the committee and the City Manager may designate additional staff members and consultants to assist the committee in providing information and assistance as required.

3. The scope of the Committee shall be to develop a long term plan on how to best proceed in addressing unimproved roads in the City in accordance with the following:
 - a. Review the history and evolution of the road system in the City.
 - b. Review and evaluate the types of streets in the City while considering road durability, maintenance cycles, drainage, Rights-of-Way usage, traffic speeds, parking, resident preference and aesthetics.
 - c. Review and evaluate policies from neighboring communities for addressing unimproved streets.
 - d. Review the policies and procedures attributed to each type of street construction and maintenance method used by the City.
 - e. Review conditions where small sections of unimproved streets exist within a predominately improved block and provide recommendations.
 - f. Review conditions where large areas of unimproved streets exist within a neighborhood and provide recommendations.
 - g. Review and evaluate cost and budget implications of any proposed recommendations and include strategic funding alternatives.
 - h. Compile the Committee's findings and recommendations into a report to be presented at the end of the Committee's term.
4. The Committee may request professional services as may be required in the analysis of street design, maintenance and cost considerations.
5. The Committee is not authorized to expend funds or enter into agreements. All recommendations made by the Committee shall be in the form of a report to the City Commission.

All meetings of the Committee shall be open to the public. Agenda and minutes for all meetings shall be prepared.

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, do hereby certify that the above is a true and correct copy of a resolution adopted by the Birmingham City Commission at their regular meeting of September 25, 2017.

J. Cherilynn Mynsberge
City Clerk