

BIRMINGHAM CITY COMMISSION MINUTES
OCTOBER 16, 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, Senior City Planner Baka, IT Director Brunk, Communications Director Byrne, Police Chief Clemence, Fire Chief Connaughton, City Attorney Currier, City Planner Ecker, City Clerk Mynsberge, City Engineer O'Meara, Building Official Johnson, 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 last of the 2017 Farmers Market events will be on Sunday, October 22nd and October 29th from 9:00 AM to 2:00 PM in Municipal Parking Lot #6. On October 29th, special activities will include hayrides, Trick-or-Treating, corn shelling, live music, children's pumpkin crafts, and pumpkin carving demonstrations. For more information, visit www.enjoybirmingham.com or call 248.530.1200.
- The annual Halloween Parade and Pumpkin Patch happens on Sunday, October 29th. The Pumpkin Patch opens at 1:00 PM in Shain Park, followed by the Parade at 4:00 PM. For more information visit www.bbcc.com, or call 248.430.7668 or 248.644.3163.
- Tuesday, November 7th is Election Day in Birmingham. Polls will be open from 7:00 AM to 8:00 PM. Complete election information is available at www.Michigan.gov/VOTE. The City Clerk's Office will be open on Saturday, November 4th from 9:00 AM to 2:00 PM for issuing Absent Voter ballots.
- Celebrate the 90th anniversary of the Baldwin Public Library at a speakeasy-themed fundraiser on Friday, November 10th from 6:00 until 9:00 PM. Proceeds will be used for an expansion and renovation of the Youth Room. Tickets can be purchased at www.baldwinlib.org, or by calling 248.554.4683.
- The Veterans Day wreath laying ceremony is at 11:00 AM on Saturday, November 11th in Shain Park. The ceremony is sponsored by the Piety Hill Chapter of the D.A.R.

Mayor Nickita introduced the City's new Communications Director, Kevin Byrnes.

Mayor Nickita introduced Representative Mike McCready who provided a legislative update on changes to No-Fault Insurance happening in Lansing. Representative McCready spoke briefly about legislation aimed at regulating short term rentals.

Commissioner Sherman's birthday was celebrated.

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.

10-266-17 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Commissioner Boutros: Item O
- Commissioner Bordman: Items J and P

MOTION: Motion by Commissioner Boutros, seconded by Commissioner DeWeese:

To approve the Consent Agenda, with Items J, O, and P removed, the abstention of Commissioner Bordman on Item B noted, and the abstention of Commissioner Sherman on Item N based on conversation with the City Attorney noted.

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 25, 2017
- B. Approval of warrant list, including Automated Clearing House payments, of September 27, 2017 in the amount of \$1,095,419.23.
- C. Approval of warrant list, including Automated Clearing House payments, of October 4, 2017 in the amount of \$2,985,815.30.
- D. Approval of warrant list, including Automated Clearing House payments, of October 11, 2017 in the amount of \$1,005,737.68.
- E. Resolution authorizing the City Manager to cast a vote, on the City's behalf, for the four incumbent members of the Michigan Municipal League Liability and Property Pool Board of Directors for three year terms, beginning January 1, 2018.
- F. Resolution approving the appointment of election inspectors, absentee voter counting board inspectors, receiving board inspectors and other election officials as recommended by the City Clerk for the November 7, 2017 Election pursuant to MCL 168.674(1) and granting the City Clerk authority to make emergency appointments of qualified candidates should circumstances warrant to maintain adequate staffing in the various precincts, counting boards and receiving boards.

- G. Resolution approving the amendment to the professional services agreement with McKenna Associates, Inc. to provide for the use of a City vehicle by the Consultant's employees performing construction site code enforcement duties.
- H. Resolution approving the federal funds in the amount of \$20,310.00 for the 2017 Emergency Management Performance Grant period of 10/1/2016 to 9/30/2017. Further, directing the Mayor to sign the agreement on behalf of the City.
- I. Resolution authorizing the IT department to purchase 95 block hours of GIS support from Geographic Information Services, Inc. 2100 Riverchase Center, Suite 105, Birmingham, AL 35244, the total purchase not to exceed \$15,000.00. Funds are available in the IT GIS fund account # 636-228.000-973.0500.
- K. Resolution approving a request submitted by the Birmingham Jewish Connection to display a Menorah in Shain Park from December 12, 2017 – December 20, 2017, and to hold a lighting ceremony on December 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.
- L. Resolution setting Monday, November 13, 2017 at 7:30 PM for a Public Hearing to consider the proposed lot combination of 607 & 635 S. Bates.
- M. Resolution setting Monday, November 13, 2017 at 7:30 PM for a public hearing to consider the Final Site Plan and Special Land Use Permit Amendment for 505 N. Old Woodward to allow interior and exterior changes to the existing Salvatore Scallopini bistro at 505 N. Old Woodward.
- N. Resolution authorizing the Chief of Police to sign the MLCC Police Investigation Report (LC-1800) and approving the liquor license transfer for Whole Foods that requests a transfer of Class C License issued under MCL 436.1521(A)(1)(B) to be located at 2100 East Maple Rd., Suite B, Birmingham, Oakland County, MI 48009. Furthermore, pursuant to Birmingham City Ordinance, authorizing the City Clerk to complete the Local Approval Notice at the request of Whole Foods approving the liquor license transfer request of Whole Foods for the transfer of a Class C License to be issued under MCL 436.1521 (A) (1) (B) located at 2100 East Maple Rd, Suite B, Birmingham, Oakland County, MI 48009.
- Q. Resolution designating City Manager Valentine, Communications Director Byrnes, City Planner Ecker, Finance Director Gerber, Police Commander Grewe, City Engineer O'Meara, and BSD Director Tighe as representatives for Election Commission members Mayor Nickita, Mayor Pro Tem Harris, and Commissioners Bordman, Boutros, DeWeese, Hoff and Sherman for the purpose of conducting the Public Accuracy Test of the electronic tabulating equipment which will be used to count votes cast at the November 7, 2017 Election.

V. UNFINISHED BUSINESS

There was no unfinished business.

VI. NEW BUSINESS

10-267-17 PUBLIC HEARING TO CONSIDER THE REZONING OF 191 N. CHESTER FROM TZ1 TO TZ2

From City Planner Ecker's staff report to City Manager Valentine dated October 6, 2017:

The property owner of 191 N. Chester (The First Church of Christ, Scientist), is requesting the rezoning of the property from TZ-1 (Transitional Zone 1) to TZ-2 (Transitional Zone 2) to allow office use.

The subject site is located on the west side of N. Chester, with single family homes to the north and office/commercial buildings to the south (Integra Building) and east (McCann Worldgroup Building). The subject property is currently zoned TZ1 (Transitional Zoning), as well as C - Community Use in the Downtown Overlay District, due to its former use as a Church.

On September 13, 2017, the Planning Board conducted a public hearing to consider the requested rezoning. After much discussion, the Planning Board voted to recommend approval of the proposed rezoning to the City Commission.

The applicant has submitted a letter voluntarily offering to limit the use of the property at 191 N. Chester to office use only should the rezoning to TZ2 be approved. The applicant has also submitted numerous letters of support from the surrounding property owners.

City Planner Ecker continued:

- In 2015, the Commission created TZ1 and TZ3. TZ2 was added in the past year.
- 191 N. Chester was previously zoned as R4 – Residential, and then it was re-zoned to TZ1. TZ3 allowed too many uses on the site.
- Applicant would now like the property re-zoned to TZ2. TZ2 allows uses beyond residential, which are the only uses permitted by TZ1.
- Applicant is looking to keep the exterior of the building, and to re-build the inside as office space.
- A TZ1 designation is residential, and allows for three stories and a height of thirty-five feet. A TZ2 designation allows for more uses, but it only allows for two stories and a height of thirty feet.
- When an applicant applies for re-zoning, they must submit the following information:
 - An explanation of why the re-zoning is necessary for the preservation and enjoyments of the rights of usage commonly associated with property ownership;
 - An explanation of why the existing zoning classification is no longer appropriate;
 - An explanation of why the proposed re-zoning will not be detrimental to the surrounding properties;
 - A land survey.
- The current applicant explained that:
 - The building was determined not to be of interest to any religious institution, and also not tenable for residential adaptation.
 - Re-zoning the building for office use would preserve the current building, does not change the character of the neighborhood, and creates less traffic than a possible residential re-use.
- Planning staff performed a review of the application's adherence to existing zoning and Master Planning requirements for the site, an analysis of existing uses of the property within the general area, the suitability of the property in question to the uses permitted under the existing zoning classification, and the general trend of development in the area of the property in question, including any changes that have taken place in the zoning classification.
 - This area is considered part of a commercial piece on the edge of downtown, which according to the 1980 Master Plan "should be restricted to office and low-intensity commercial use" whenever possible. The currently submitted application is in line with this goal.
 - This area is also zoned according to the Downtown Birmingham 2016 Plan as C –

Community, which requires the City to retain and enhance the character and vitality of downtown, and make sure new architecture is compatible with old. Keeping the exterior of the building, as proposed in the application, is also in line with this goal.

- The Zoning Ordinance states that “the purpose of the Zoning Ordinance is to guide the growth and development of the City, in accordance with the goals, objectives, and strategies stated within the Birmingham Future Land Use Plan and the 2016 Plan.” The adaptive re-use proposed by the applicant supports the City’s growth, development, and re-use, and maintains the character of the neighborhood.
- Since there is a four-story office building to the south, the McCann Building to the east, and single family residential homes to the north and west, this proposed zoning change could be considered transitional between the high-density commercial business district on one side and the single-family low-density residential on the other side.
- With the current TZ1 zoning, the building in question could not be used for a religious institution without a use variance, since it is restricted to residential use.
- Several changes have occurred to office buildings in the area, and the only re-zoning in the area was the change of this building’s zoning designation from R4 to TZ1.
- Upon review of the aforementioned information, the Planning Department and the Planning Board recommended that 151 N. Chester be re-zoned from TZ1 to TZ2. The Commission should also consider whether to accept the applicant’s offer to restrict the use to office and commercial use only.

City Planner Ecker confirmed for Commissioner Hoff that 151 N. Chester is historical, but is not a historically-designated building, and that the parking would be built out into the basement of the building. City Planner Ecker also confirmed that if this re-zoning is granted, a much larger building could be built in this building’s stead later on.

Mayor Nickita explained that conditional zoning is a possibility in order to address concerns of what would be allowed, although the Commission has not taken that route before.

City Attorney Currier confirmed for Commissioner DeWeese that if any further construction were to occur in the future after this re-zoning, the construction would still need to adhere to both the greater zoning and whatever conditional zoning the Commission may apply.

City Planner Ecker confirmed for Mayor Pro Tem Harris that a Special Land Use Permit (SLUP) would be required for this use, and City Attorney Currier confirmed that if the building were to change hands, the conditions of the SLUP would have to be followed or they would need to be amended by the Commission at the request of the new owner.

Mayor Nickita opened the public hearing at 8:12 p.m.

Sam Surnow of the Surnow Company (320 Martin Street) explained that while many possibilities for the building were explored, the conclusion was that the building would need to be torn down in order to adhere to TZ1. The Surnow Company met with the building’s neighbors in March to solicit feedback, and the neighborhood overwhelmingly expressed its desire to keep the building.

Mr. Surnow explained that:

- Of the 16,000 sq. ft., an estimated 3,000 and 4,000 sq. ft. will be used for parking while the rest of the building is maintained;
- The Surnow Company would be willing to restrict traffic exiting the building so that employees could only make a right onto Chester;
- Fire suppression would be included in the parking lot, the building would be made wheelchair-accessible, and it would be brought up to code.

Mr. Biddison, the architect on this project from Biddison Architecture, explained:

- That the main floor would be maintained as public space, with former mechanical spaces being repurposed as storage for office users;
- The trusses may be changed from the inside into an additional useable level;
- An elevator would be added;
- Some stairs would be re-configured;
- And the windows would be maintained, but the floors would be re-positioned so the windows are at an appropriate height.

Mr. Biddison confirmed for Commissioner DeWeese that the parking lot would include about twelve spaces.

City Planner Ecker confirmed for Commissioner Hoff that:

- The Surnow Company can keep the existing roof lines within TZ2 because the building is grandfathered in, even if they decide to build up into the trusses to create a level.
- If the conditional zoning is not accepted, either a church or food and drink establishment could go into the building with a SLUP.
- The Surnow Company is considering permanent offices, not bistro offices similar to an application submitted by a previous group.

Lauren Stein spoke in support of the proposed project and re-zoning by the Surnow Company.

Susan Martin wholly supported renovating the existing building with the conditional zoning for business use only.

Mayor Nickita closed the public hearing at 8:36 p.m.

City Planner Ecker explained to Commissioner Hoff that information on traffic pattern changes will not be available until after re-zoning is approved.

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Bordman: To approve the rezoning of 191 N. Chester from TZ1 (Transitional Zoning) to TZ2 (Transitional Zoning) as recommended by the Planning Board on September 13, 2017 with the conditions as outlined in the letter dated October 5, 2017 from Chester Street Partners, LLC, A Surnow Company.

Mayor Nickita clarified that Birmingham does not usually re-zone in response to developer requests, but that this is a unique situation because:

- The requested zoning designation did not exist at the original time of zoning;
- To maintain the current zoning would essentially require the demolition of the current building and the construction of a higher density space, which is counter to Birmingham's goals, and;

- The Surnow Company offered to take on additional conditional zoning in order to maintain the intended use category long-term.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

10-268-17 298 S. OLD WOODWARD AVE. PERMANENT REMOVAL OF ON-STREET PARKING

From City Engineer O'Meara's staff report to City Manager Valentine dated October 5, 2017:

In June, the Planning Board issued preliminary site plan approval to the owner of the above property (owned by Lorient Capital, LLC), located at the NW corner of Brown St. The applicant has proposed the construction of a five-story hotel, containing 126 rooms, 17 long-term stay apartments, as well as banquet, restaurant, and lounge facilities on the first floor. Due to the nature of the business, Lorient has designed the plan to include 24-hour a day valet service at the front door, located on the S. Old Woodward Ave. frontage. The valet loading zone will occupy space that is currently used for on-street metered parking. Therefore, the valet operation will require the permanent removal of metered public parking.

On August 2, 2017 the Advisory Parking Committee voted to recommend to the City Commission the removal of eight on-street parking spaces at 298 S. Old Woodward Ave. to allow for the operation of a valet service by the adjacent property owner, in exchange for an annual payment of \$24,000 (at \$3,000 per meter) to be charged annually once the adjacent hotel is open for business.

City Engineer O'Meara added that:

- While the removal of metered parking is usually inappropriate within a systems viewpoint, Lorient took the proposal very seriously and considered the interests of adjacent businesses regarding the proposal.
- The Townsend Hotel's similar arrangement with the City serves as a precedent.
- The proposal includes an exit from the planned two-level basement garage.
- The applicant proposes building 56 parking spaces, and if additional spaces are required cars may need to be parked off-site.
- As this corner and the corner of Maple Road may be reconstructed in the near future following the City's three-phase reconstruction plan for downtown, if these eight spaces are removed the City will have a total loss of fifteen spaces.

City Engineer O'Meara confirmed:

- For Commissioner Boutros that the applicant believes they will need all eight meter-spaces across the frontage in order to run the valet;
- For Mayor Nickita that the amount of frontage being discussed is a little over 100 feet;
- For Commissioner Hoff that the driveway is a critical part of the plan; and,
- For Commissioner Bordman that the Townsend Hotel took seven spaces off Merrill Street for their valet, and an estimated three spaces for the front door of the original hotel.

City Planner Ecker explained:

- To Commissioner Hoff that 1¼ spaces of parking per unit are required if there are three or more room units available, and that as long as the applicant provides parking for residential units, they are not required to provide any additional spaces since they are in

the parking assessment district. The applicant is offering to provide 33 additional spaces that are not required.

- To Commissioner Bordman that the Parking Committee looked into finding parking alternatives to Old Woodward, but it was determined that using Old Woodward is the best option in order to maintain the speed and efficiency of the valet during high-traffic times.
- To Commissioner DeWeese that Brown Street was discussed extensively and did not receive favorable reviews from the Parking Committee as an alternative.

Commissioner Hoff stated that the eight metered spaces being discussed seem to hold a lot of value, and that the proposed building does not have a lot of parking.

Commissioner DeWeese explained that for every space of on-street parking removed the City will need to provide garage parking, and that the City is not getting a sufficient amount back for the use of public space. He continued that:

- The number of spaces removed should be considered carefully.
- While the applicant may want this much street space, they may not need this much space.
- The compensation estimates are based on an assumption that the meters would not be utilized full-time, which Commissioner DeWeese questions.

Commissioner Sherman offered that the amounts being considered are consistent with the application for parking while utilizing meters on the street, and requested that Chief Clemence come forward and explain the methodology for calculating the costs.

Chief Clemence clarified that the amounts represent the amount of revenue the City would make per year if there were metered parking there, and that these numbers represent the number of spaces that would have been available on Old Woodward after the re-design.

Mayor Nickita stated that the issue is whether the current standard of compensation is appropriate going forward, and that the Commission can direct the Advisory Parking Committee to take a look at that. He continued that a move to revise standards at this time, however, is not pertinent to the current proposal before the Commission.

Richard Rattner, developer, explained that:

- The biggest focus over many months of study was the maintenance of efficient traffic flow outside of the hotel.
- Both Birmingham's traffic consultants and Lorient put immense effort into making sure that the hotel would not stop traffic on Old Woodward. Adding a second level of underground parking to keep the valet process expedient and to keep the flow moving by having enough spaces on the street that lead to the underground garage are two of the ways the issue will be addressed.
- He believes Lorient's architects included a separate entrance and egress to promote internal traffic flow within the garage.
- The development will have as many valets as needed.

City Engineer O'Meara explained to Mayor Pro Tem Harris that the only spaces being removed are the ones needed to keep the driveway operating safely.

Commissioner Bordman stated concern that there would not be sufficient parking for the number of people the 4,823 sq. ft banquet room could contain.

Mr. Rattner explained that if there were a large event, the cars would be brought underground by a valet and then moved from the underground parking to a different parking facility off-site as necessary. This allows Old Woodward to be unobstructed.

Commissioner Sherman said Lorient should not need eight metered spots – or 110 ft. – cleared, when hotels in other cities are able provide valet service with fewer. He continued that requesting eight spots for valet, instead of one or two, is unnecessary and an attempt to plan for the occasional large event instead of the hotel's day-to-day operations.

Commissioner Bordman explained that while the goal of maintaining traffic flow on Old Woodward is commendable, the Commission is also tasked with looking out for the interests of pedestrians and retailers, both of whom may be negatively impacted by the loss of eight metered spots.

Mr. Rattner expressed understanding and stated he would not want to make a change to the number of spaces in his request until he can re-consult with the City's traffic engineers.

Commissioner Hoff suggested to Mr. Rattner that he revisit the project with an eye towards addressing the Commission's concerns, specifically:

- Increasing walkability, which is challenged with cars coming in and out on Old Woodward, and;
- The location of the valet entrance and exit from the garage.

Mayor Nickita added that the Commission can only grant what is necessary in the way of a request like this, and not what is desired. He suggested that the option of Brown Street be reconsidered. He finished that while the Commission seeks to prevent traffic congestion, they need to protect other City interests as well.

The Commission took no action.

**10-269-17 ORDINANCE AMENDMENT FOR HISTORIC DESIGNATION OF 927
PURDY**

From Senior Planner Baka's staff report to City Manager Valentine dated October 10, 2017:

In March of 2016 the owner of the house located at 927 Purdy, Luis Barrio, requested that the City Commission consider designating his home as a historic structure within the City of Birmingham. In accordance with this request, the City Commission passed a resolution directing the Historic District Study Committee to prepare a study committee report evaluating the home for historic designation as outlined in section 127-4 of the City Code, Establishing additional, modifying, or eliminating historic districts.

The committee has prepared a final report with its recommendations which is now ready for consideration by the City Commission for the establishment of a new historic district.

Senior Planner Baka provided history of the house and the owners. He then confirmed for Commissioner Hoff that while the house had aluminum siding at one time, wood siding has been restored on the home.

Mr. Barrio explained that upon purchase of his house he was not planning to request historical designation, but decided to pursue it once he learned of the house's history.

Commissioners DeWeese, Hoff, and Bordman spoke in support of the designation.

MOTION: Motion by Commissioner DeWeese, seconded by Commissioner Hoff:

To establish the home at 927 Purdy as a non-contiguous historic district in accordance with the requirements of section 127 of the Birmingham City code by amending Chapter 127, section 25 (20) to add 927 Purdy as a Historic District in the City of Birmingham. (*Appended to these minutes as Attachment A*).

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

10-270 -17 GLYPHOSATE REVIEW AND RECOMMENDATION

From DPS Director Wood's staff report to City Manager Valentine dated October 9, 2017:

In July 25, 2016 City Commission banned the use of glyphosate citywide on municipal properties.

This past year, while reviewing and evaluating the effects and impact of not using glyphosate and trying alternative products to care for the expanse of parks and public property we provide the following analysis and recommendations for future weed control.

August-October 2016: City staff tried 5% Vinegar mixed with salt and soap. We had very poor results. It took several applications and a drenching of the target weed. We explored the use of torching/burning the weeds in the limestone pathway at Barnum Park. We hired a contractor to perform weed control in an area along the railroad tracks using Imazapyr.

May 2017: City staff hand pulled, weed whipped, and scraped the weeds in the sidewalk areas in the downtown and parking lot areas, and landscape beds. We gave up on the 5% Vinegar solution. We struggled to keep up, and complaints from residents and businesses started coming in.

June-July 2017: More mechanical control by City staff. We just do not have enough people to pull weeds. We hired a contractor to perform invasive species control at Quarton Lake using Triclopyr, Garlon 3A. This works well for woody invasive plants, but not so well on the grasses and sedges that are found mixed in with other weeds in sidewalk cracks.

August 2017-Today: We came across another vinegar solution using a 30% Horticultural vinegar, Orange oil and soap. We tried it in select locations and it was successful. It burned the weed immediately, but requires more frequent applications as it is more of a contact burn, not systemic. The oil residue was hard on the spray equipment, clogging it, making it more labor intensive, with rinsing and washing required often. It is also very expensive. Staff continued using mechanical methods such as hand pulling in landscape beds.

How does the City use Glyphosate?:

Unlike crops for consumption, the City never mass applies this product. It is never applied to lawn areas, as it would kill the entire lawn.

City Staff that applies Glyphosate or any other chemical for weed control is certified through the State of Michigan as a Commercial Pesticide Applicator. Glyphosate is applied as a spot treatment application only, typically only in areas where it dries very quickly, such as parking lots, sidewalk cracks or walking paths. Once dry this chemical poses no risk of harm through the skin. Glyphosate is the most effective product for our uses in the City of Birmingham. It is applied in the wee hours of the morning (4:00 AM) to avoid foot traffic in the busy downtown area and to reduce any exposure to the public. The typical application for the entire downtown is approximately 15 cups. The carcinogen risk of glyphosate is linked to the eating of food that has been treated with glyphosate, not from uses by certified applicators treating very limited and specific locations.

Administration wishes to introduce glyphosate back into the City's program as a means of control for invasive plants, and for weed control in landscape beds, in parks where applicable, and sidewalk cracks and parking lots.

DPS Director Wood introduced Carrie Laird, a trained pesticide applicator and technical advisor for the City of Birmingham, and confirmed for Commissioner Hoff and Mayor Nickita that DPS' goal is to re-incorporate glyphosate as an option for controlling weeds and invasive species.

DPS Director Wood continued to Mayor Pro Tem Harris that the carcinogenic effects of glyphosate come from either ingestion or long-term exposure to the freshly applied pesticide. She reiterated that according to the report provided spot treatments performed with ample protection for trained city personnel applicators are unlikely to pose carcinogenic risk.

Commissioner Boutros:

- Commended DPS Director Wood on her report;
- Stated he prefers natural and organic weed control when possible, and;
- Expressed support for allowing the City the option of using glyphosate as a spot treatment.

DPS Director Wood told Commissioner Boutros that glyphosate takes between five and thirty minutes to dry, depending on the weather. She added that treatments would be applied in the warm months when the plant is actively growing.

Commissioner Bordman expressed appreciation of City staff who undertook the trial of weed control alternatives at her behest. She acknowledged that the use of glyphosate is controversial, and then she continued with an overview of her independent research on glyphosate:

- Glyphosate is used under other brand names, but is often known as Round Up.
- It is an herbicide, which means it kills any plant it touches.
- Glyphosate is often mixed with inert ingredients such as polyethoxylated tallow amine (POEA), a surfactant/detergent which allows the glyphosate to enter the plant because it lowers water's surface tension, allowing the plant to absorb the chemical more easily.
- The EPA does not list glyphosate as a carcinogen, but the European Food Safety Authority and the European Chemicals Agency note that glyphosate can cause eye damage and toxicity to aquatic life with long-lasting effects.

- The European Commission has permitted the use of glyphosate, but the European Parliament banned it.
- The International Agency for Research on Cancer, an independent branch of the World Health Organization (WHO), has classified glyphosate as a probable carcinogen, but the WHO does not classify glyphosate as a carcinogen.
- California banned the sale of glyphosate within the state, and local communities have banned it from their properties.
- Malta, Sri Lanka, the Netherlands, Argentina, Belgium and France have also banned the use of glyphosate.
- Scientific American published a study of POEA, and specified that its inclusion with glyphosate can amplify the likelihood of damage on human cells, even in the residual amounts found on lawns and gardens.
- Another study of POEA used Monsanto's recommended dose in ponds filled with tadpoles, and by the end of two weeks several of the tadpole species experienced mortality rates between 50 and 100 percent.

Commissioner Bordman concluded that, while much of the information is contradictory, she needs to prioritize health over convenience and safety, so she will not be supporting this motion.

Commissioner Boutros explained:

- That as a chemist he deals with hazardous materials every day and that appropriate preparation and precautions matter most.
- There is likely no danger to the public; the trained, certified technicians applying the glyphosate face most of the risk, which is minimal when using caution and following standard operating procedures.
- Without factoring in labor costs, alternative weed removal methods have proven to be about ten times costlier than the application of glyphosate.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Harris:

To allow the use of glyphosate as a means of control for invasive plants, weeds, and other nuisance vegetation in limited areas by trained and certified applicators in accordance with regulated application standards.

Commissioner DeWeese stated that he wants additional safety standards applied, including not leaving the area of application until the glyphosate has dried. He considers it under review, and supports the motion, but barely.

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

**10-271-17 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

VII. REMOVED FROM CONSENT AGENDA

10-272-17 WEST MAPLE ROAD POLE PAINTING PROJECT (ITEM J)

DPS Director Wood explained to Commissioner Bordman that several variables accounted for Seaway Painting, LLC requesting \$66 more for the painting of each pole than they did for a previous City project in 2014.

DPS Director Wood said she would be willing to try negotiating the price down.

Commissioner Hoff also questioned whether the poles on the Woodward median, which had been painted for \$188 per pole in 2014, were larger than the currently discussed poles on West Maple, which Seaway Painting LLC proposes to paint for \$254 per pole.

DPS Director Wood stated that she would account for variables in pricing more concretely in her next report.

City Manager Valentine explained that the Commission has the option of waiting for more information from Seaway Painting, LLC, but any further delay on the project will push its completion into spring 2018.

DPS Director Wood clarified City Manager Valentine's comment by explaining that if Seaway Painting, LLC began now and worked weekends, the project would be done mid-November, after which the weather becomes prohibitive for pole painting until the spring.

Commissioner Hoff suggested the Commission proceed with the motion, and reiterated that DPS Director Wood should speak with the contractor.

DPS Director Wood confirmed for Commissioner Boutros that fall is a great time of year for pole painting.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Boutros:

To approve the purchase for the painting of 72 light poles and traffic signal poles on West Maple Road with Seaway Painting, LLC in the amount not to exceed \$18,280.00. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances. Funds are available in the Street Lighting Maintenance Account #202-449.003-937.0500. In addition, waiving the normal bidding requirements because Seaway is a DTE selected contractor.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

10-273 -17 MERRILL STREET LIGHTING AGREEMENTS (ITEM O)

Commissioner Boutros stated he would like the lights put up for the holidays on Merrill Street to be kept year-round for the purposes of beautification of the street. He continued that he seeks input from the City, the Birmingham Shopping District, the managers and the owners of the buildings that will be affected.

Commissioner Hoff agreed that it is a good idea, but that the Birmingham Shopping District will need to perform and present research on the ramifications of this proposal before it is implemented.

BSD Director Tighe explained to Mayor Nickita that to her knowledge permanent lighting as such has not been previously discussed, but that BSD will look into the City and BSD budgets, and speak to business owners about potential interest.

Mayor Nickita added that if the lights are to remain for more than a few months, the proposal may call for a different system of lighting, which should be looked into.

City Manager Valentine explained that liability, issues of mounting, types of lighting, and questions of infrastructure would all need to be looked into as well.

MOTION: Motion by Commissioner Boutros, seconded by Commissioner Hoff:
To approve the Lighting Agreements with Essco of Birmingham and Merrillwood Collection, granting permission for the City for said lighting to be placed over Merrill Street during the 2017 holiday season, and further directing the Mayor to sign the agreement on behalf of the City.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

10-274-17 2017 SEWER LINING PROGRAM AWARD (ITEM P)

City Engineer O'Meara laid out the downtown areas in question for Commissioner Bordman, then explained that:

- The downtown work is expected to take less than a week, while the work for the entire contract will likely last until January.
- The contractor will avoid working on the busier nights of the week and wait to begin work until 10 PM so as not to impede customers of food service establishments.
- The plan had originally been to complete the Quarton Lake area between November and January, and the downtown areas during summer 2018. Due to a cost-saving opportunity through a direct bid to a lighting contractor, however, the schedule for completing the downtown aspect of the project has been moved up.
- Quarton Lake residents will not be notified until the project is approved, and the first aspect of the project entails cleaning and inspecting the sewers, which is very minimally disruptive.
- The odor associated with the work will only last as long as the manholes are open, and the more expensive odorless lining has been selected for the downtown area.

City Manager Valentine clarified that the Quarton Lake Homeowner’s Association is aware of the pending project, and that once the project is approved by the Commission a letter with details will be immediately released to the residents.

Commissioner Hoff commended City Engineer O’Meara on getting easement approvals from the majority of blocks.

City Engineer O’Meara explained that there has been a focus in the last year on getting the rest of the approvals, and that there are still a number of easements not yet granted south of Oak.

City Manager Valentine described the City’s efforts towards gaining the easements through:

- The neighborhood association;
- A letter writing campaign;
- Notification cards, and;
- Explanations as to why the easements are necessary to proceed.

Mayor Pro Tem Harris specified that the neighborhood association being referenced includes homes both north and south of Oak, and suggested that the communication could inform homeowners south of Oak about the importance of the easements so they can also receive infrastructure improvements like the homes north of Oak.

Commissioner Sherman referenced the Commission’s previous study of the issue, and explained that only two manhole covers will be open at opposite ends of the downtown, thus limiting the impact of the project.

MOTION: Motion by Commissioner Bordman, seconded by Commissioner DeWeese: To award the 2017 Sewer Lining Program, Contract #8-17(S), to Lanzo Lining Technologies North, of Roseville, MI in the amount of \$786,997.00, to be charged to the Sewer Fund as follows:

590-536.001-981.0100	\$100,887.00
590-536.001-981.0200	\$686,110.00

Further, granting a waiver of Section 50-74(b)(2) of the Birmingham City Code to Lanzo Lining Technologies North pertaining to the sewer lining proposed in the downtown area, which will allow the work to be done at those times of day that traffic demands are relatively light, and building occupancy is low.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

VIII. COMMUNICATIONS

10-275-17

Dennis and Jenny Hodges stated that if there is money left in the parks budget this year, they hope Adams Park beautification will be given priority.

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

None.

X. REPORTS

10-276 -17 COMMISSIONER REPORTS

The Commission will appoint alternate members to the Planning Board, and regular members to the Birmingham Shopping District Board on November 20, 2017.

The Commission will appoint members to the Ad Hoc Unimproved Street Study Committee on December 4, 2017.

10-277-17 CITY STAFF REPORTS

The Commission received the Parking Utilization Report, submitted by City Engineer O'Meara.

Commissioner Bordman talked about the NEXT report, and commented it reflects well on money the City expends there.

XII ADJOURN

Mayor Nickita adjourned the meeting into closed session at 10:54 PM, and stated no action was expected following the closed session.

The regular meeting was reconvened at 11:28 PM.

The regular meeting was adjourned at 11:28 PM.

J. Cherilynn Mynsberge, City Clerk

ORDINANCE NO. 2249

**THE CITY OF BIRMINGHAM ORDAINS:
AN ORDINANCE TO AMEND CHAPTER 127, HISTORIC DISTRICTS, OF THE CODE OF
THE CITY OF BIRMINGHAM:**

**TO AMEND CHAPTER 127, SECTION 127-25, HISTORIC DISTRICT BOUNDRIES, TO
ESTABLISH A NEW NON-CONTIGUOUS HISTORIC DISTRICT.**

Sec. 127-25. – Historic district boundaries.

The boundaries of the Shain Park historic district, the central business historic district, and the Bates Street historic district are as shown on the maps which are on file in the city clerk’s office. Such maps with all notations, references, and other information shown thereon are incorporated and are a part of this chapter.

Unless otherwise shown or noted in the following descriptions, the boundaries of all districts shall be lot lines and/or centerlines of streets or alleys or such lines extended.

(1) – (19) Unchanged

(20) Almeron Whitehead House Historic District (927 Purdy):

T2N, R10E, SEC 36 BUELL’S ADD LOT 41, ALSO W ½ OF VAC ALLEY ADJ TO SAME

ORDAINED this 16th day of October, 2017 to become effective 7 days after publication.

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held October 16, 2017, and that a summary was published in the Observer & Eccentric newspaper on October 29, 2017.

J. Cherilynn Mynsberge, City Clerk