

BIRMINGHAM CITY COMMISSION MINUTES
AUGUST 26, 2013
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

George Dilgard, Mayor, called the meeting to order at 7:30 PM.

II. ROLL CALL

ROLL CALL: Present, Mayor Dilgard
Commissioner McDaniel
Commissioner Nickita
Commissioner Rinschler
Commissioner Sherman
Commissioner Hoff (arrived at 7:37 PM)
Absent, Mayor Pro Tem Moore

Administration: City Manager Bruner, Attorney Currier, Clerk Broski, Assistant City Manager Valentine, Police Chief Studt, City Engineer O'Meara

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

08-242-13 APPOINTMENT OF VOTING DELEGATE FOR MICHIGAN MUNICIPAL LEAGUE CONFERENCE

MOTION: Motion by Rinschler, seconded by McDaniel:
To appoint Mayor Pro Tem Moore as City Commission voting delegate and Commissioner Nickita as alternate voting delegate at the Michigan Municipal League Annual Meeting to be held on September 18, 2013.

VOTE: Yeas, 5
Absent, 2 (Hoff, Moore)

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.

08-243-13 APPROVAL OF CONSENT AGENDA

MOTION: Motion by Sherman, seconded by Rinschler:
To approve the consent agenda as follows:
A. Approval of City Commission minutes of August 12, 2013.
B. Approval of warrant list, including Automated Clearing House payments, of August 14, 2013 in the amount of \$564,876.37.
C. Approval of warrant list, including Automated Clearing House payments, of August 21, 2013 in the amount of \$7,585,436.10.

- D. Resolution accepting the report from the City Engineer regarding the emergency purchase of contractual services for emergency stream bank repairs authorized by the City Manager pursuant to Sec. 2-286 of the City Code.
- E. Resolution approving Bulletin No. 3 as Change Order No. 1 to Contract No. 3-13(PK) (Park St. Parking Structure Restoration Project) with DRV Contracting, LLC for a total of \$93,990.00, and charging the funds to account #585-538.003-977.0000.
- F. Resolution approving the Commercial Natural Gas Purchase Contract with Constellation New Energy – Gas Division, LLC for natural gas. Further, directing the Mayor and City Clerk to sign the agreement on behalf of the City.
- G. Resolution approving the purchase of detectable warning plates for the 2013 Asphalt Street Resurfacing Project directly from EJ of Oak Park, MI for a cost of \$19,668.15, to be charged to account #203-449.001-981.0100; further approving the installation price of \$7,700.00 for Pavex Corporation to install the plates supplied by the City in lieu of their unit price bid of \$115.00 per square foot.
- H. Resolution approving the extension of the Pro Shop Lease Agreement for one (1) year with SkateWorks, LLC for pro shop services at the City of Birmingham Ice Arena for the period commencing September 3, 2013 and ending April 13, 2014, contingent upon receipt of proper insurances:
WHEREAS, the City of Birmingham ("City") and SkateWorks, Inc., LLC ("Lessee") entered into a contract entitled "Pro Shop Lease Agreement" ("Lease") wherein Lessee leased a portion of the Birmingham Ice Sports Arena for the operation of a pro shop; and
WHEREAS, the term of the contract was one (1) year, which expired on May 24, 2013; and
WHEREAS, paragraph 1 of the Lease provided that the parties may agree to extend the Lease for an additional one (1) year term; and
WHEREAS, there has been an indication from both parties that there is a desire to extend the Lease for the additional one (1) year term, which would be set to expire April 13, 2014.
NOW THEREFORE, BE IT RESOLVED that the City is agreeable to extending the Pro Shop Lease Agreement for an additional one (1) year term
BE IT FURTHER RESOLVED that all of the terms and conditions of the Pro Shop Lease Agreement shall apply to the extended term.
BE IT FURTHER RESOLVED that the City Manager is authorized and directed to communicate the City's approval of the extension with SkateWorks, Inc., LLC and take any necessary steps to effectuate the extension.
- I. Resolution accepting the resignation of Tom Spoto from the Traffic & Safety Board, thanking Mr. Spoto for his service, and directing the Clerk to begin the process to fill the vacancy.
- J. Resolution authorizing the Mayor and Clerk to sign the agreement authorizing Dixon Engineering, Inc., of Lake Odessa, MI, to perform inspections of the two water towers owned by the City of Birmingham, at a cost of \$4,710.00, charged to account #590-537.004-811.0000.

ROLL CALL VOTE: Yeas, Commissioner McDaniel
 Commissioner Nickita
 Commissioner Rinschler
 Commissioner Sherman
 Mayor Dilgard
 Nays, None
 Absent, 2 (Hoff, Moore)
 Abstentions, None

V. UNFINISHED BUSINESS

VI. NEW BUSINESS

**08-244-13 ORDINANCE AMENDMENT
 BEGGING, SECTION 74-2**

City Attorney Currier explained that the Michigan statute, which the City has taken authority for its begging ordinance, has been declared to be unconstitutional by the U.S. Court of Appeals, therefore, the City's begging ordinance must be repealed. He explained the difference between begging and disorderly conduct and the ordinances to protect citizens from those impeding traffic or blocking entrance to stores.

MOTION: Motion by Rinschler, seconded by Sherman:
To adopt an ordinance repealing Chapter 74 Offenses, Article I In General, Section 74-2, begging of Part II of the Code of the City of Birmingham.

VOTE: Yeas, 5
 Nays, None
 Absent, 2 (Hoff, Moore)

Commissioner Hoff arrived.

**08-245-13 ORDINANCE AMENDMENT
 MEETINGS, SECTION 2-26**

City Clerk Broski explained that the proposed ordinance amendment allows for flexibility in scheduling meetings to avoid any potential conflict of dates. She explained that the proposed resolution recognizes holidays on which City meetings will not be held.

MOTION: Motion by Sherman, seconded by McDaniel:
To adopt an ordinance amending Chapter 2 – Administration, Article II, City Commission, Section 2-26 Regular Meetings of Part II of the Code of the City of Birmingham.

- AND -

To establish legal holidays pursuant to Section 2-26 of the Birmingham City Code:
BE IT RESOLVED, by the City Commission of the City of Birmingham, Michigan, as follows: The City Commission does hereby designate the following as legal holidays pursuant to Section 2-26 of the Birmingham City Code:

New Year's Day	Independence Day	Eid al-Adha
Martin Luther King, Jr. Day	Labor Day	Thanksgiving
Ash Wednesday	Eid al-Fitr	Day after Thanksgiving
Passover	Rosh Hashanah	Hanukkah
Good Friday	Yom Kippur	Ashura
Easter Sunday	Sukkot	Christmas Eve
Shavuot	Shemini Atzeret	Christmas
Memorial Day	Simchat Torah	Kwanzaa
		New Year's Eve

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

**08-246-13 AMENDMENT TO CITY COMMISSION
 RULES OF PROCEDURE**

City Clerk Broski explained that the City Commission Rules of Procedure need to be amended to reflect the ordinance amendment regarding City Commission meetings. The following revisions

were recommended: to eliminate the reference that regular meetings are held every Monday, to re-word the closed meeting section to be consistent with the Open Meetings Act, to eliminate the reference that paper agendas are available at the library, and to eliminate the reference that board vacancies are published in the newspaper.

MOTION: Motion by Nickita, seconded by Rinschler:
To amend the City Commission Rules of Procedure as presented.

Dorothy Conrad suggested a paper copy of the agenda be available at the library.

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

08-247-13 2014 CITY COMMISSION MEETING SCHEDULE

City Clerk Broski presented the proposed 2014 City Commission meeting schedule. The Commission agreed to set a regular meeting on Thursday, April 3rd and the budget session on Saturday, April 26th.

MOTION: Motion by Nickita, seconded by Sherman:
To approve the schedule of regular City Commission meetings for 2014.

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

08-248-13 MASTER PLANNING CONSULTATION SERVICES

City Manager Bruner explained the proposal to have Andre Duany review and assess the 2016 Plan. If the Commission would like to consider this at a later date, the fee proposal would remain the same with the addition of airfare. Commissioner Hoff suggested staff review the plan for the Commission to discuss and determine where the City is currently and where it is going. Mr. Bruner suggested the item be discussed at the joint workshop with the Planning Board.

**08-249-13 CLOSED SESSION REQUEST
PENDING LITIGATION**

MOTION: Motion by Hoff, seconded by Nickita:
To meet in a closed session to consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation in accordance with Section 8(e) of the Open Meetings Act (Act 267 of 1976).

ROLL CALL VOTE: Yeas, Commissioner McDaniel
Commissioner Nickita
Commissioner Rinschler
Commissioner Sherman
Commissioner Hoff
Mayor Dilgard
Nays, None
Absent, 1 (Moore)
Abstentions, None

VII. REMOVED FROM CONSENT AGENDA

VIII. COMMUNICATIONS

08-250-13 COMMUNICATIONS

The Commission received the following communications:

- Oakland County Homeland Security Division regarding Siren Testing Results
- George Nyman regarding Brookwood St. Flooding and response from City Manager Bruner
- DTE Electric regarding Michigan Public Service Commission Notice of Public Hearing

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

08-251-13 OPEN TO THE PUBLIC FOR MATTERS NOT ON THE AGENDA

Patricia Andrews and Dorothy Conrad suggested the City form a cemetery board. Mr. Bruner explained that an advisory board will be proposed after the cemetery meeting on September 10th. Commissioner McDaniel suggested the proposal specifically define the duties of the board.

X. REPORTS

08-252-13 COMMISSIONER COMMENTS

Commissioner Rinschler presented an update on the Joint Library Building Committee.

08-253-13 CITY STAFF REPORTS

The Commission received the Engineering Project Update submitted by City Engineer O'Meara.

The Commission received the Pierce St. Parking Structure Expressparc Machine Replacement submitted by City Engineer O'Meara.

The Commission recessed to closed session at 8:01 PM.

The Commission reconvened in open session at 8:15 PM.

**08-254-13 DELANEY V CITY OF BIRMINGHAM
CONSENT JUDGMENT**

City Attorney Currier explained that the lawsuit was filed in July of this year and a consent judgment was negotiated.

MOTION: Motion by Rinschler, seconded by Sherman:

To approve the consent judgment in the amount of \$10,000 to Beth Delaney and \$10,000 to her counsel and to direct the City Attorney to sign the consent judgment on behalf of the City.

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

XI. ADJOURN

The Mayor adjourned the meeting at 8:17 PM.

Laura M. Broski
City Clerk