



Agenda: Battle Creek City Commission

Meeting Date: January 3, 2023- 7:00 PM

Location: City Commission Chambers

Chair: Mayor Mark A. Behnke

Title: Battle Creek City Hall - City Commission Chambers, 3rd Floor

ATTENDANCE

Commissioners

Mayor Mark Behnke

Commissioner Jim Lance

Commissioner Patrick O'Donnell

Commissioner Jake Smith

Vice Mayor Sherry Sofia

Commissioner Roger Ballard

Commissioner Jenasia Morris

Commissioner Carla Reynolds

Commissioner Christopher Simmons

City Staff

Rebecca Fleury, City Manager

Ted Dearing, Assistant City Manager

Mallory Avis, Transit Director

Travis Sullivan, Planner

Marcel Stoetzel, Deputy City Attorney

Shannon Bagley, Deputy Police Chief

Jill Steele, City Attorney

Alicia Greene, Deputy City Clerk

Eric McClure, Communications Specialist

Jonathan Baber, Deputy City Attorney

Bill Beaty, Fire Chief

Marcie Gillette, Community Services
Director

INVOCATION

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Commissioner Jake Smith.

ROLL CALL

CHAIR NOTES ADDED OR DELETED RESOLUTIONS

There were no added or deleted resolutions.

PETITIONS COMMUNICATIONS REPORTS

There were no petitions or reports.

A communication from Mr. John Kenefick was forwarded to all commissioners.

PUBLIC COMMENTS REGARDING CONSENT AGENDA AND RESOLUTIONS NOT ON CONSENT AGENDA

Joey Kejbou, attorney for businesses located at 477 W. Michigan Ave. and 327 Capital Ave., spoke on Resolutions 40 & 41, related to a Special Use Permits to allow an Adult Retail marihuana establishments. Mr. Kejbou requested the Mayor allow him extra time to speak, as he had two items to speak on.

Attorney Steele reminded the Mayor of the provision allowing him to grant additional time to an applicant or their attorney when speaking to the Commission regarding an application.

Mr. Kejbou spoke regarding Resolution 41, explaining the process of appearing before the Planning Commission. Mr. Kejbou stated the Planning Commission voted 4-3, not recommending approval to the City Commission. Mr. Kejbou noted the Planning Directors report to the Planning Commission recommended approval of the Special Use Permit.

Mr. Kejbou spoke to Resolution 40, noting support from the Planning Commission and requesting the application be approved.

Scott Harrington, local Realtor, spoke in support of resolution 41.

John Kenefick, 234 South Ave., shared concerns with Resolution 44 and the financial stability of Full Blast.

Whitney Hudson, local resident and General Manager of 327 SW Capital Ave., spoke in favor of Resolution 40.

Cindy Dian, 24 Poplar St., spoke in opposition to marihuana in the City of Battle Creek.

Mary Bourgeois, 231 Springview Dr., complimented Battle Creek Police and Fire Departments for being supportive and friendly while serving the community.

Jerry Steiner, 115 S. 26th Street, spoke in favor of marihuana in the City of Battle Creek.

(Limited to three minutes per individual)

COMMISSION COMMENT REGARDING MEETING BUSINESS

There were no Commission comments.

CONSENT AGENDA

Motion to Approve

Moved By: JAKE SMITH

Supported By: PATRICK O'DONNELL

Ayes: BALLARD, LANCE, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SIMMONS, SMITH, SOFIA

MOTION PASSED

Ambulance Report for November 2022

City Manager Report for January 3, 2023

CONSENT RESOLUTIONS

Motion to Approve

Moved By: JAKE SMITH

Supported By: PATRICK O'DONNELL

Ayes: BALLARD, LANCE, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SIMMONS, SMITH, SOFIA

MOTION PASSED

- 33 A Resolution seeking authorization for the City Manager to execute a METRO Act Bilateral Right-of-Way Telecommunications Permit with Crown Castle Fiber, LLC.

Motion to Approve

Moved By: JAKE SMITH

Supported By: PATRICK O'DONNELL

Ayes: BALLARD, LANCE, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SIMMONS, SMITH, SOFIA

MOTION PASSED

- 34 A Resolution seeking authorization for the City Manager to execute all necessary documents to reassign contract 2022-091B Minges Brook Pump Station Improvements project from Davis Construction, Inc., to RK Davis, Inc.

Motion to Approve

Moved By: JAKE SMITH

Supported By: PATRICK O'DONNELL

Ayes: BALLARD, LANCE, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SIMMONS, SMITH, SOFIA

MOTION PASSED

- 35 A Resolution authorizing the City Manager to remove Public Works Director Carl Fedders as the City of Battle Creek Street Administrator with the Michigan Department of Transportation, and replace him with Field Services Superintendent,

Todd Gerber.

Motion to Approve

Moved By: JAKE SMITH

Supported By: PATRICK O'DONNELL

Ayes: BALLARD, LANCE, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SIMMONS, SMITH, SOFIA

MOTION PASSED

- 36 A Resolution authorizing the City Manager to sign Contract No. 22-5540 with the Michigan Department of Transportation for improvements to the Union St Bridge over the Battle Creek River.

Motion to Approve

Moved By: JAKE SMITH

Supported By: PATRICK O'DONNELL

Comm Reynolds question for Jill gave guidance.

Ayes: BALLARD, LANCE, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SIMMONS, SMITH, SOFIA

MOTION PASSED

- 37 A Resolution appointing / renewal of 2 members to the North Central Neighborhood Planning Council (NPC # 2).

Motion to Approve

Moved By: JAKE SMITH

Supported By: PATRICK O'DONNELL

Ayes: BALLARD, LANCE, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SIMMONS, SMITH, SOFIA

MOTION PASSED

RESOLUTIONS NOT INCLUDED IN THE CONSENT AGENDA

- 38 A Resolution seeking approval for the City Manager to enter into six agreements with Binger Holdings LLC and the Battle Creek Tax Increment Finance Authority providing for the grant of permanent and temporary easements to the City for the purpose of a roundabout at the intersection of Skyline Drive, Hill Brady Road, and Logistics Drive.

Motion to Approve

Moved By: JAKE SMITH

Supported By: PATRICK O'DONNELL

Ayes: BALLARD, LANCE, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SIMMONS, SMITH, SOFIA

MOTION PASSED

- 39 A Resolution seeking to approve S17-22, a Special Use Permit to allow for a new child care center at 520 W. Michigan Avenue in a T-3 Neighborhood Commercial District pursuant to Sections 1240.13(C) and 1281.05 of the zoning code.

Motion to Approve

Moved By: JAKE SMITH

Supported By: PATRICK O'DONNELL

Ayes: BALLARD, LANCE, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SIMMONS, SMITH, SOFIA

MOTION PASSED

- 40 A Resolution seeking to approve S18-22 for a Special Use Permit to allow for an Adult Use Marihuana Retailer Establishment at 327 SW Capital Avenue (parcel #1530-00-059-0). The property is zoned T-3 Neighborhood Commercial Zoning District where marihuana retail centers can be allowed as a special use pursuant to Chapter 1240, Section 1240.13 and Chapter 1251 Sections 1251.23-24, 26.

Motion to Approve

Moved By: JAKE SMITH

Supported By: PATRICK O'DONNELL

Ayes: BALLARD, LANCE, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SIMMONS, SMITH, SOFIA

MOTION PASSED

- 41 A Resolution seeking to approve S19-2022, reapplication for a Special Use Permit to allow for an Adult Use Marihuana Retailer Establishment located at 477 W. Michigan Avenue. The property is zoned T-3 Neighborhood Commercial District pursuant to Chapter 1240, Section 1240.13, and Chapter 1251, Sections 1251.23-24, 26.

Motion to Approve

Moved By: JAKE SMITH

Supported By: PATRICK O'DONNELL

Attorney Steele, responding to Comm. Reynolds, provided clarifying information about Special Use Permits process, stating this is not a discretionary decision, if all factors set out in the ordinance are met then you shall approve the permit. Attorney Steele noted the Planning Staff report indicates they have been met all factors. Attorney Steele additionally stated, if denied an appeal is expected to be

filed in Circuit Court.

Attorney Steele, responding to Comm. Lance, confirmed the Planning Commission did not recommend approval and had receive the same Staff report, however the City Commission is the deciding body on this matter.

Marcia Gillette, Community Services Director, responded to a request by Comm. Simmons for additional explanation on the Planning Commissions decision. Ms. Gillette reviewed the Planning Commissions draft minutes and the eight (8) factor taken into consideration.

Ms. Gillette, provided an explanation in response to Vice Mayor Sofia, explaining prior to the 2020 Zoning Ordinance amendments a Special Use Permit was not required, however, with the changes a Special Use Permit to add the additional license for an Adult Use Provisioning Center is required.

Ms. Gillette noted, the 1000 foot buffer is measured property line to property line.

Mayor Behnke spoke in opposition to approval, noting the incoming daycare center and an existing adult daycare in the area.

Mayor Behnke corrected his vote, stating he had pushed the incorrect button in the voting module, as indicated in his verbal opposition the intent was to vote NO.

Deputy Clerk Greene corrected the vote, now noting Resolution 41 was not approved.

Attorney Steele agreed the correction would be allowed, as it was acknowledge and corrected quickly.

Ayes: BALLARD, MORRIS, SIMMONS, SMITH

Nays: LANCE, O'DONNELL, BEHNKE, REYNOLDS, SOFIA

MOTION FAILED

- 42 A Resolution seeking authorization for the City Manager to execute a Sponsor Contract, and all other related documents as approved by the City Attorney, for Municipal Airport PFAS Grant Funding.

Motion to Approve

Moved By: JAKE SMITH

Supported By: PATRICK O'DONNELL

Ayes: BALLARD, LANCE, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SIMMONS, SMITH, SOFIA

MOTION PASSED

- 43 A Resolution seeking acceptance of the proposal of best value for generators at three fire stations from Shouldice Industrial Manufacturers and Contractors, Inc., in a not-to-exceed amount of \$118,042.00.

Motion to Approve

Moved By: JAKE SMITH

Supported By: PATRICK O'DONNELL

Ayes: BALLARD, LANCE, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SIMMONS,

SMITH, SOFIA

MOTION PASSED

- 44 A Resolution seeking acceptance of the proposal of best value for Flash Flood Water Park Pool Resurfacing from Advanced Pool Services, Inc in a not-to-exceed amount of \$264,500.00.

Motion to Approve

Moved By: JAKE SMITH

Supported By: PATRICK O'DONNELL

Mr. Dearing responding to Comm O'Donnell, provided additional information on Resolution 44.

Mr. Dearing stated the pool was constructed in the mid to late 90's and some areas have been partially redone over the years. Mr. Dearing noted with Resolution 44 will not be a complete stripping but will be addressing problem areas with a life expectancy of approximately 5 years. Mr. Dearing noted the warranty is 1-2 years, however this also depends on the maintenance of the pool.

Comm Smith and Comm. Ballard requested additional information on the Full Blast property be provided to the Commission.

Ayes: BALLARD, LANCE, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SIMMONS, SMITH, SOFIA

MOTION PASSED

- 45 A Resolution seeking authorization for the City Manager to enter into a new Agreement with Battle Creek Community Foundation (BCCF) for continued police department grant administration services.

Motion to Approve

Moved By: JAKE SMITH

Supported By: PATRICK O'DONNELL

Comm. Morris, noted a perceived impropriety as she is employed by the Battle Creek Community Foundation, stating she has spoken to the City Attorney and no conflict exist.

Ayes: BALLARD, LANCE, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SIMMONS, SMITH, SOFIA

MOTION PASSED

- 46 A Resolution seeking authorization for the City Manager to enter into Inter-Agency Agreements related to State of Michigan Stormwater Permits with the following "Nested Jurisdictions": Kellogg Community College, Hart-Dole-Inouye Federal Center, Battle Creek Public Schools and Lakeview School District.

Motion to Approve

Moved By: JAKE SMITH

Supported By: PATRICK O'DONNELL

Ayes: BALLARD, LANCE, MORRIS, O'DONNELL, BEHNKE, REYNOLDS, SIMMONS, SMITH, SOFIA

MOTION PASSED

GENERAL PUBLIC COMMENT

Mayor Behnke requested, State House Representative, Jim Haadsma address the Commission.

Mr. Haadsma congratulated VOCES on their new child care center and voiced support for the Community Review Board (CRB).

Mr. Haadsma invited the public to join him on the 1st Saturday of each month for Coffee Hours, meeting at different locations in Calhoun County.

Cary Whitfield, 337 Carpenter Dr., provided an overview of the work done by the NAACP to develop and organize a CRB in the City. Mr. Whitfield stated, a proposal was developed and presented to City Manager Fleury and Police Chief Blocker in 2021. Mr. Whitfield will be presenting the proposal to the Human Relations Board (HRB) for review, their recommendation will be brought before the City Commission for consideration.

Rochelle Hatcher, Calhoun County Commissioner, 139 Ann Ave, voiced support for a CRB.

Jose Orozco Jr., VOCES Executive Director, spoke in support of several businesses and families reinvesting in the community and in opposition to Resolution 41..

Sam Gray, 245 Irving Park Dr. voiced opposition to Resolution 41, thanking the Commission on their vote. Mr. Gray stated they want a safe, family friendly, community.

Damon Brown, 78 Grand Ave, shared support for the creation of a CRB.

Lynn Ward Gray, 245 Irving Park Dr., spoke in support of a CRB, asking the City Commission to consider it strongly when brought before them.

Reece Adkins, 24 Poplar St., requested an update on the status of the old Kmart lot. Mr. Adkins requested the City honor retiring Police Chief Blocker and recognize his service to the City. Mr. Adkins thanked the Commission for their vote on Resolution 41.

Linda Whitfield, shared concerns with Police and public interactions, supporting the creation of a CRB.

Jerry Steiner, 115 S. 26th St, provided suggestions on the rising prices of City bus services.

Mary Bourgeois, 231 Springview, spoke in support of Resolution 44 and the creation of a CRB.

Cindy Dian, 24 Poplar St., supporting Mr. Steiner on bus services.

Jerry Logan, 10429 I Drive N., requested traffic sign changes at Port St. and 2nd St. and a signal change at Elm St. on to Michigan, asking for the removing of the no left turn on red signal.

John Kenefick, 234 South Ave, spoke regarding the citing for violations of sidewalk clearing on properties owned by the City of Battle Creek, Calhoun County, Calhoun County Land Bank and MDOT.

(Limited to three minutes per individual)

COMMISSION COMMENTS

Comm. Smith, asked if any data existed showing the correlation of marihuana facilities where there has been neighborhood deterioration as opposed to other types of businesses..

Comm. Ballard, voice support of Resolution 41, stating he had visited 5 shops personally, all where clean and following the rules.

Comm. Ballard noted his research of CRB's which shows a reduction of complaints once implemented in other communities.

Comm. Ballard stated, Transit prices are extremely low in Battle Creek as compared to other transit systems across the country.

Comm. Ballard noted, the new stop sign at Van Buren Hill has greatly reduced accidents.

Comm. O'Donnell thanked VOCES for bringing a new Day Care center to the community.

Comm. O'Donnell shared support for Full Blast being maintained.

Comm. O'Donnell thanked all the citizens and workers for the positive response to the last snow emergency, wishing everyone a Happy New Year 2023.

ADJOURNMENT

Mayor Behnke adjourned the meeting at 9:00 pm.

It is the desire of the City Commission to encourage public expression in the course of its meetings. Such expression can be integral to the decision-making process of the City Commission. It is the intention of the City Commission to respect the rights of persons addressing the Commission. Public comment periods are a time for citizens to make comments; they are not intended as a forum for debate or to engage in question-answer dialogues with the Commission or staff. Commissioners are encouraged not to directly respond to speakers during public comment periods. At the conclusion of the speakers remarks, the Mayor or individual Commissioners may refer a question to City staff, if appropriate. Also, individual Commissioners may choose to respond to speakers during the Commission Comment period. It is with these aims in mind, so as to promote decorum and civility and an orderly process for conducting its public meetings, that the following rules concerning public comments, consistent with applicable law, are adopted by the City Commission.

(1) Persons attending a regular or special Commission Meeting shall be permitted to address the City Commission in conformity with this rule. The opportunity to address the Commission shall be limited to the following:

(a) Persons desiring to address the City Commission are encouraged, but shall not be required, to fill out and turn in to either the City Clerk, Mayor, or presiding Commissioner, prior to the meeting, a comment card disclosing the following information: The person's name, address, and telephone number; the specific issue, topic or resolution the individual wishes to address.

(b) During public hearings when scheduled, speakers may present facts and opinions on the specific matter being heard by the Commission. A three-minute time limit is imposed per speaker. In the discretion of the Mayor or presiding officer, the

time limit for individual speakers may be lengthened or shortened when appropriate.

(c) During the consideration of specific ordinances when scheduled, speakers may present facts and opinions on the specific ordinance being considered by the City Commission. Speakers addressing the City Commission during this time shall limit their comments to the specific issue being considered. A three-minute time limit, which may be lengthened or shortened by the Mayor or presiding officer when appropriate, is imposed per speaker, per matter considered.

(d) During the public comment period on the consent agenda and resolutions not on the consent agenda, each speaker may address the Commission once, regarding anything on the consent agenda and resolutions not on the consent agenda, for a total not to exceed three minutes regardless of how many consent agenda items or regular resolutions the speaker is addressing, which time period may be lengthened or shortened by the Mayor or presiding officer when appropriate.

(e) During the General Public Comment portion of the meeting, speakers may address the City Commission on any matter within the control and jurisdiction of the City of Battle Creek. A speaker shall be permitted to address the City Commission once, for up to three minutes, during this portion of the meeting.

(f) Applicants or Appellants, as defined below, or an attorney retained to represent them, are not bound by the specific time limitations set out above but may have the amount of time deemed reasonably necessary by the Mayor or presiding official to present their case to the City Commission without violating the rules set out below in sub-section 4(a) through (g), with which they are obligated to comply.

(i) Applicant is defined an individual or business entity seeking a City Commission final decision on a matter for which the individual has made application to the City based upon a specific provision in a City Ordinance or state statute for permission to take a specific action;

(ii) Appellant is an individual appealing a decision of a City official or an inferior body based upon a specific provision in City ordinances entitling the individual to appeal the decision to the City Commission.

(2) An individual wishing to address the City Commission shall wait to be recognized by the Mayor or presiding Commissioner before speaking. An individual who has not filled out a card requesting to address the City Commission shall raise his or her hand and wait to be recognized by the Mayor or presiding Commissioner before speaking and shall identify themselves by name and address and, if appropriate, group affiliation for the record.

(3) Speakers shall address all remarks to the Mayor, or the presiding Commissioner or official, and not to individual Commissioners or staff members. Speakers shall not address their remarks to members of the public in attendance at the meeting.

(4) A speaker will be ruled out-of-order by the Mayor or presiding Commissioner and the Commission will continue with its business, and the speaker may be required to leave the meeting after having been ruled out-of-order for a breach of the peace committed at the meeting as permitted by the OMA, when the speaker violates above sub-section 3 or the following:

(a) Becomes repetitive or speaks longer than the allotted time;

- (b) Attempts to yield any unused portion of time to other speakers;
- (c) Engages in a personal attack upon a city employee, administrator or Commissioner only if the personal attack is totally unrelated to the manner in which the employee, administrator or Commissioner carries out their public duties or office;
- (d) Uses obscene or profane language;
- (e) Engages in slanderous or defamatory speech;
- (f) Uses derogatory racial, sexual or ethnic slurs or epithets relating to any individual or category of persons; or
- (g) Engages in conduct that interrupts or disrupts the meeting.

(5) Individuals attending City Commission meetings or workshops, excluding City staff, shall not pass the commission chambers bar upon which the podium is affixed (and which divides the audience section from the well of the chambers) without having been invited to do so by the Mayor or official presiding over the meeting, or after requesting and explicitly being granted permission to do so. Any individual violating this sub-section will be ruled out-of-order by the Mayor or presiding official and the individual may be required to leave the meeting for a breach of the peace committed at the meeting as permitted by the OMA.