

**CITY OF BIRMINGHAM  
BOARD OF ETHICS AGENDA  
DECEMBER 16, 2016 – 3:00 PM  
151 MARTIN, BIRMINGHAM  
CONFERENCE ROOM 202**

**I. CALL TO ORDER**

Sophie Fierro-Share, Chairperson

**II. ROLL CALL**

Cheryl Arft, Acting City Clerk

**III. APPROVAL OF MINUTES**

A. Approval of minutes of February 12, 2016

**IV. UNFINISHED BUSINESS**

**V. NEW BUSINESS**

- A. Advisory Opinion Request:
  - 1. 2016-03 City Commission request dated October 27, 2016
- B. Review of Ethics Ordinance (Chapter 2, Article IX)

**VI. PUBLIC COMMENT**

**VII. ADJOURN**

*NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.*

*Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al [\(248\) 530-1880](tel:248-530-1880) por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).*

**CITY OF BIRMINGHAM  
BOARD OF ETHICS MINUTES  
FEBRUARY 12, 2016 – 3:00 PM  
151 MARTIN, BIRMINGHAM  
CONFERENCE ROOM 202**

**I. CALL TO ORDER**

Sophie Fierro-Share, Chairperson, called the meeting to order at 3:05 PM.

**II. ROLL CALL**

Present: Ms. Fierro-Share  
Mr. Robb  
Mr. Schrot  
Absent: None

Administration: City Attorney Currier, Clerk Pierce

**III. APPROVAL OF MINUTES**

**MOTION:** Motion by Schrot, seconded by Robb:  
To approve the minutes of December 1, 2015 as amended.

**VOTE:** Yeas, 3  
Nays, None  
Absent, None

**IV. UNFINISHED BUSINESS**

**A. Review of Draft Opinion Advisory Opinion Request:**

**1. 2015-06 Advisory Opinion: City Commission referred question of September 21, 2015**

The Board discussed the draft opinion and made several minor revisions to the draft opinion.

**MOTION:** Motion by Robb, seconded by Schrot:  
To accept the advisory opinion as corrected.

**VOTE:** Yeas, 3  
Nays, None  
Absent, None

**V. NEW BUSINESS**

**A. Review of Draft Opinion Advisory Opinion Request:**

**1. 2015-07 Advisory Opinion: City Commission referred question of October 12, 2015**

The Board discussed the draft opinion. It was noted that this situation is an example of how the Board can deal with matters in an advisory nature.

**MOTION:** Motion by Robb, seconded by Schrot:  
To accept advisory opinion.

**VOTE:** Yeas, 3

Nays, None  
Absent, None

**B. Review of Ethics Ordinance (Chapter 2, Article IX)**

Ms. Fierro-Share discussed the words "morality" and "above reproach" used in Section 2.321. She suggested language be used that is more realistic and humane.

Mr. Robb commented that this section is aspirational and does not define the conduct. Mr. Currier questioned whose morals would be the standard. Mr. Schrot commented that morality cannot be legislated. He expressed support of a change to "ethical conduct".

The Board discussed whether moral conduct could be defined. Mr. Currier suggested this is a worthwhile discussion to hold with the City Commission. Ms. Fierro-Share commented that there is a distinct definition between morality and ethics. She stated that morality should not belong in the ethics ordinance as it is not within the Boards purview. By clarifying the language, it will clearly define the Boards limitations and tasks.

The Board recessed at 4:25 PM and reconvened at 4:30 PM.

In response to a question from City Manager Valentine, Mr. Schrot explained that the Board is contemplating making a recommendation to the City Commission to modify the ordinance as it relates to this provision to eliminate "morality" and substitute "ethical conduct" and remove "in both their official and private affairs". Mr. Robb noted that it is a conflict in the ordinance and would be difficult to apply.

Mr. Valentine explained that the intent of the ordinance is to ensure public trust. To remove that language does not change the intent.

The board agreed that Mr. Robb will write a letter to the Commission regarding the proposed change.

<b>VI. PUBLIC COMMENT</b>
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<b>VII. ADJOURN</b>
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The meeting adjourned at 5:15 PM.

Laura M. Pierce  
City Clerk



## MEMORANDUM

Office of the City Manager

**DATE:** October 27, 2016

**TO:** Joseph A. Valentine, City Manager

**FROM:** Joellen Haines, Assistant to the City Manager

**SUBJECT:** BYA Expectations of City Commissioner Appointee

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At the May 9, 2016 City Commission meeting, there was a resolution to determine the appointment of a city commissioner to the Birmingham Youth Assistance (BYA) Committee. As a result of the discussion, there was a request for more information from the BYA regarding the volunteer requirements of a BYA board member. Subsequently, the City Manager's Office received the attached email on May 12, 2016 with the requested information.

At the May 23, 2016 City Commission meeting, the Commission determined that more information was needed to understand the capacity of the Commission's role, and to determine if the appointment should be as a voting or non-voting member. Attached is the October 3, 2016 letter from the BYA clarifying their expectations of a city commission appointee.

The Commission also discussed at the May 23, 2016 meeting, having the Ethics Board provide an advisory opinion regarding a potential conflict of interest with City Commissioners serving as board members for community-based organizations that rely on city funding. If the Commission wishes to pursue this, an additional resolution has been prepared

Three resolutions have been prepared regarding appointment of a city commissioner to the BYA.

### SUGGESTED RESOLUTION:

To appoint \_\_\_\_\_ as a voting member of the Birmingham Youth Assistance General Citizens Committee,  
OR

To appoint \_\_\_\_\_ as a non-voting member of the Birmingham Youth Assistance General Citizens Committee,  
OR

To refer the following question to the Board of Ethics:

"Is there a conflict of interest with City Commissioners serving as board members for community-based organizations that rely on the City for funding, and what actions should be followed if they wish to serve on boards that make requests to the City Commission?"



## Birmingham Youth Assistance

2436 West Lincoln, Ste. F102

Birmingham, MI 48009

(248) 203-4300 FAX: (248) 203-4301

[office@birminghamyouthassistance.org](mailto:office@birminghamyouthassistance.org)

[www.birminghamyouthassistance.org](http://www.birminghamyouthassistance.org)

October 3, 2016

### Chairperson

Reuben Myers

### Vice Chairperson

Shelley Taub

### Secretary

Jill Reichenbach Fill

### Treasurer

Richard Stasys

### Past Chairperson

Christine Gannon

### Caseworker

Nikki Keller

### Members

Andrew G. Acho

Judith Adelman

Roy Bishop

Greg Burry

Det. Lee Davis

Mary Jo Dawson

Russ Facione

Jill Reichenbach Fill

Christine Gannon

Jason Gross

Det. Kate Long

Ann Nazareth Manning

Tom McDaniel

Reuben Myers

Dr. Daniel Nerad

Vicki Sower

Richard Stasys

Shelley Taub

James C. Van Dyke

David R. Walker

### Advisory Members

Sheriff Michael Bouchard

Jason Clinkscale

Connie Jaroh

A. Randolph Judd

David Rogers

Susan Rogers

Rachel Rotger

Anne Van Dyke

Mr. Joe Valentine, Manager

City of Birmingham

151 Martin

Birmingham, MI 48009

Dear Joe,

This letter will hopefully clarify BYA's expectations of a City Commissioner appointee to our General Citizens Committee (the GCC). There are three points to be made:

1. We hope that the Commissioner would attend as many of the nine GCC meetings per year as possible. The meetings, which are held at 8am on the second Thursday of months during which Birmingham schools are in session, generally last one hour.
2. As with all GCC members, we would hope that the appointed Commissioner would volunteer to participate in one or more of the many community outreach activities which BYA undertakes. We fully understand that such participation depends on the Commissioner's personal interests, available time and any potential conflict-of-interest considerations.
3. Consistent with the above point, we hope that the appointed Commissioner would support our fundraising activities. As with other BYA activities, such support is optional. However, we believe that fundraising is both a responsibility and a benefit to the community and it helps to publicize the work that BYA does.

We hope that this provides you and the Commission with the necessary information to proceed with the requested appointment.

Sincerely,

  
Reuben Myers  
BYA Chair

  
Richard Stasys  
BYA Treasurer

RM:RS:dmr

BIRMINGHAM

OCT 07 2016

CITY MANAGER'S OFFICE

**We are BYA! You are BYA!**

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Village of Beverly Hills \* Village of Bingham Farms \* Village of Franklin

Principal Funding by Oakland County Board of Commissioners



## MEMORANDUM

Office of the City Manager

**DATE:** May 19, 2016

**TO:** Joseph A. Valentine, City Manager

**FROM:** Joellen Haines, Assistant to the City Manager

**SUBJECT:** Follow-up on volunteer requirements pursuant to appointment of City Commissioner to the Birmingham Youth Assistance (BYA) General Citizens Committee

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At the May 9, 2016 City Commission meeting, there was a resolution to determine the appointment of a city commissioner to the Birmingham Youth Assistance (BYA) Committee. As a result of the discussion, there was a request for more information from the BYA regarding the volunteer requirements of a BYA board member. Subsequently, the City Manager's Office received an email on May 12, 2016 with the requested information (see attached email).

The involvement of a Commissioner with the BYA committee may at some point pose a conflict given the nature of the decisions that come before the City Commission. To avoid a potential conflict of interest, the Commissioner would have to recuse him or herself from voting on matters relating to the BYA if he or she was appointed a voting member of the BYA General Citizens Committee, or if the Commissioner was appointed as a non-voting member of the committee, the Commissioner would identify him or herself as a non-voting member of the BYA General Citizens Committee, and decide accordingly to recuse or not recuse depending on the topic.

Two resolutions have been prepared to offer the options listed above.

### SUGGESTED RESOLUTION:

To appoint \_\_\_\_\_ as a voting member of the Birmingham Youth Assistance General Citizens Committee, or

To appoint \_\_\_\_\_ as a non-voting member of the Birmingham Youth Assistance General Citizens Committee.



Joe Valentine <jvalentine@bhamgov.org>

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## City Commissioner volunteer for BYA

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**Birmingham Youth Assistance** <office@birminghamyouthassistance.org>

Thu, May 12, 2016 at 1:45 PM

To: Joe Valentine <jvalentine@bhamgov.org>

Cc: Chris Gannon <cgannon104@gmail.com>, Dick Stasys <rstasys@hotmail.com>, Jill Fill <jf02bps@birmingham.k12.mi.us>, Nikki Keller <kellerfox@gmail.com>, Reuben Myers <myersreuben@yahoo.com>, Shelley Taub <shelleytaub@comcast.net>

Hi Joe,

Sorry I haven't gotten back to you but I wanted to make sure that I had all correct information to give to you to take back to the commission for their next meeting. Our committee meets once a month, September thru June. Our meetings are usually scheduled for the second Thursday of the month (sometimes due to holidays and school vacations it may fall on a different Thursday). The meetings usually last about an hour, sometimes less. We meet in the BPS Administration Building next to Groves High School on 13 Mile & Cranbrook. Meetings start at 8:00 a.m.

As to additional service, we do ask they join one of our event committees. The commitment hours for that can vary depending on which committee it is.

The third thing that we ask is that our volunteers support our fundraising efforts, i.e. our RedRaisers.

Please let me know if you have any further questions.

Have a great weekend,  
Diedra

[Quoted text hidden]





## MEMORANDUM

Office of the City Manager

**DATE:** May 4, 2016

**TO:** Joseph A. Valentine, City Manager

**FROM:** Joellen Haines, Assistant to the City Manager

**SUBJECT:** Appointment of City Commissioner to the Birmingham Youth Assistance (BYA) General Citizens Committee

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The City Manager's Office received a letter on April 11, 2016 from the Birmingham Youth Assistance (BYA) organization requesting that the City of Birmingham Commission appoint a representative for the Birmingham Youth Assistance (BYA) General Citizens Committee.

We recognize that the involvement of a Commissioner with this committee may at some point pose a conflict given the nature of the decisions that come before the City Commission. To avoid a potential conflict of interest, the Commissioner would have to recuse him or herself from voting on matters relating to the BYA if he or she was appointed a voting member of the BYA General Citizens Committee, or if the Commissioner was appointed as a non-voting member of the committee, the Commissioner would identify him or herself as a non-voting member of the BYA General Citizens Committee, and decide accordingly to recuse or not recuse depending on the topic.

Two resolutions have been prepared to offer the options listed above.

### SUGGESTED RESOLUTION:

To appoint \_\_\_\_\_ as a voting member of the Birmingham Youth Assistance General Citizens Committee, or

To appoint \_\_\_\_\_ as a non-voting member of the Birmingham Youth Assistance General Citizens Committee.





## Birmingham Youth Assistance

2436 West Lincoln, Ste. F102  
Birmingham, MI 48009  
(248) 203-4300 FAX: (248) 203-4301  
[office@birminghamyouthassistance.org](mailto:office@birminghamyouthassistance.org)  
[www.birminghamyouthassistance.org](http://www.birminghamyouthassistance.org)

### Chairperson

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David R. Walker

### Advisory Members

Sheriff Michael Bouchard

Jason Clinkscale

Connie Jaroh

A. Randolph Judd

David Rogers

Susan Rogers

Rachel Rotger

Anne Van Dyke

April 7, 2016

Mr. Joe Valentine, Manager  
City of Birmingham  
151 Martin  
Birmingham, MI 48009

Dear Joe,

We are writing to request that the City of Birmingham Commission appoint a representative for the Birmingham Youth Assistance General Citizens Committee. Andy Harris has recently expressed an interest in BYA and we would be delighted to have him.

If that has changed, we would welcome whomever the Commission selects. As you know, we value our partnership with the city and we feel that by having an active member from the Commission on our board, we can work positively together and build on a great relationship.

If you or the commissioners have any questions, please contact our office at 249.203.4300 or by email [office@birminghamyouthassistance.org](mailto:office@birminghamyouthassistance.org).

Sincerely,

Reuben Myers  
BYA Chair

RM:dmr

BIRMINGHAM

APR 11 2016

CITY MANAGER'S OFFICE

**We are BYA! You are BYA!**

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**05-136-16                    APPOINTMENT TO THE  
HOUSING BOARD OF APPEALS**

**MOTION:**     Motion by Bordman:

To appoint Alexander Jerome, 1845 Hazel, to serve a three-year term on the Housing Board of Appeals to expire May 4, 2019.

**MOTION:**     Motion by DeWeese:

To appoint Robert E. Taylor, Jr., 3693 W. Bloomfield, Bloomfield Hills, to serve a three-year term on the Housing Board of Appeals to expire May 4, 2019.

VOTE ON NOMINATION OF JEROME:

Yeas, 6

Absent, 1 (Sherman)

VOTE ON NOMINATION OF TAYLOR:

Yeas, 6

Absent, 1 (Sherman)

The Clerk administered the oath to the appointed board members.

**05-137-16                    APPOINTMENT TO THE  
BIRMINGHAM YOUTH ASSISTANCE  
GENERAL CITIZENS COMMITTEE**

City Manager Valentine explained the option to appoint a City Commissioner as a voting member or a non-voting member.

The Commission requested additional information on what this position would encompass and agreed to postpone this decision until the next meeting.

**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.

**05-138-16                    APPROVAL OF CONSENT AGENDA**

The following items were removed from the consent agenda:

- Item E (Little Free Library program "Book Box" designs) by Commissioner Bordman
- Item H (West Nile Virus Fund Reimbursement Program) by Commissioner Bordman
- Item A (Budget Session Minutes of April 16, 2016) by Mayor Hoff
- Item B (Minutes of April 25, 2016) by Mayor Hoff
- Item G (Historical Museum & Park Bell Project) by Mayor Hoff

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

To approve the consent agenda as follows:

- C.     Approval of warrant list, including Automated Clearing House payments, of April 27, 2016 in the amount of \$574,829.23.
- D.     Approval of warrant list, including Automated Clearing House payments, of May 4, 2016 in the amount of \$316,104.85.

- F. Resolution approving the purchase of one (1) new 2016 Freightliner MT55 from Cannon Truck Equipment., using MI-Deal extendable purchasing pricing for a total expenditure

In response to a question from Commissioner Sherman regarding the billing issue lawsuits, Mr. Nash explained that they are working with a group to get legislation to address this issue. City Manager Valentine pointed out that a solution is in the works and there is comprehensive effort underway to try to address multiple issues related to that challenge.

**05-163-16                      APPOINTMENT TO THE  
GREENWOOD CEMETERY ADVISORY BOARD**

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

To appoint Margaret Suter, 1795 Yosemite, to the Greenwood Cemetery Advisory Board to serve the remainder of a three-year term to expire July 6, 2016.

VOTE:            Yeas, 7  
                     Absent, None

**05-164-16                      APPOINTMENT OF THE CITY COMMISSIONER MEMBER TO THE  
BIRMINGHAM YOUTH ASSISTANCE GENERAL CITIZENS  
COMMITTEE**

The Commission discussed the option of serving as a voting or non-voting member on the Birmingham Youth Assistance General Citizens Committee.

The Commission discussed the potential conflict and recusal of a non-voting member and a voting member on the Committee. It was noted that there is an inherent conflict and the Commission should only act as liaisons on these boards. It was also noted that by making a Commissioner a non-voting member it still allows the Commissioner to give perspective and influence. It was stated that the Commissioner should not be advocating for the board, he/she should be looking out for the City.

Commissioner Bordman pointed out that an elected Commissioner's primary responsibility is to make decisions for the City and only secondarily to participate as an appointed member to an outside board. Therefore, recusal due to a conflict of interest should occur at the appointed board.

Commissioner Harris noted that the City has an ethics ordinance in place with criteria for when a Commissioner should recuse him/herself. Commissioner Nickita noted that part of the duties is to be a fundraiser advocate for the group. He questioned if that was an appropriate position for a Commissioner.

**MOTION:**     Motion by DeWeese, seconded by Nickita:

To appoint a representative as a liaison to the Birmingham Youth Assistance General Citizens Committee.

The Commission continued to discuss whether a liaison or a board member makes more sense. Commissioner Harris suggested a request for an advisory opinion be submitted to the Board of Ethics. City Attorney Currier explained that Section 2-324(b)(1) of the Ethics Ordinance reads that "No Official or employee of the City shall participate as an agent or representative of the City in approving, disapproving, voting abstaining from voting, recommending or otherwise acting upon any matter in which he or she has directly or indirectly a financial or personal interest".

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

Mayor Pro Tem Nickita stated that the best way to address this issue is to gain more insight from multiple organizations and return to the Commission to make a determination. He noted that the Board of Ethics would want to know the answers to the same questions posed by the Commission. More information is needed to understand the capacity of the Commissions role and then the role of voting or non-voting can be determined.

The Clerk administered the oath to the appointed Greenwood Cemetery Advisory Board member.

Absent, 1 (DeWeese)

Ms. Slanga was appointed. Mr. Rontal was not appointed.

The Commission discussed the board positions. It was noted that one of the criteria is a member with experience or expertise in visual or hearing impairment.

**MOTION:** Motion by Sherman:

To appoint Daniel Rontal, 926 Bird, as the mobility expertise member, to the Multi-Modal Transportation Board to serve a three-year term to expire March 24, 2017.

VOTE: Yeas, 6  
Absent, 1 (DeWeese)

Mr. Rontal was appointed.

**10-318-16 APPOINTMENT TO THE  
DESIGN REVIEW BOARD & HISTORIC DISTRICT COMMISSION**

**MOTION:** Motion by Boutros:

To appoint Dulce Fuller, 255 Pierce, as an alternate member, to serve a three-year term on the Design Review Board & Historic District Commission - to expire September 25, 2019.

VOTE: Yeas, 6  
Absent, 1 (DeWeese)

The Clerk administered the oath to the appointed board members.

**10-319-16 REQUEST FOR ADVISORY OPINION FROM THE  
BOARD OF ETHICS**

Mayor Hoff explained that the Commission has the option of appointing a member to the Birmingham Youth Assistance General Citizens Committee as a voting or non-voting member or to refer the following question to the Board of Ethics: "Is there a conflict of interest with City Commissioners serving as board members for community-based organizations that rely on the City for funding, and what actions should be followed if they wish to serve on boards that make requests to the City Commission?" The Commission agreed that this item should be considered by the Board of Ethics.

**MOTION:** Motion by Sherman, seconded by Nickita:

To refer this to the Board of Ethics and to ask staff look at the alternate language and the language in the agenda to try to craft exactly what we are looking for as the alternate language may be too specific and miss the generalities that may apply to other boards that Commissioners are appointed to. The language in the agenda may be a little too broad. In addition, to include a copy of the correspondence from the Birmingham Youth Assistance and the City Commission minutes which include previous discussions on this item.

Commissioner Harris noted that, in his experience, the issue posed to the Board of Ethics was verbatim the issue that the Board addressed in response to an Advisory Opinion request. He

questioned if the Board of Ethics has the flexibility to investigate the issue and frame it as there could be circumstances not covered by this language.

Commissioner Sherman noted that his motion was to have staff take a look at not only the alternate language that was prepared, but also the language that was in the agenda and arrive at some middle ground that does address a specific set of questions that we are asking that really apply to all the outside agencies where Commissioners are board members.

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

#### **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.

##### **10-320-16 APPROVAL OF CONSENT AGENDA**

The following item was removed from the consent agenda:

- Item A (Minutes of October 10, 2016) by Commissioner Bordman

Commissioner Sherman thanked Ms. Peabody for her service on the Advisory Parking Committee.

Commissioner Bordman disclosed that she sits on the Next Board and took no part in advising Next regarding Item F.

**MOTION:** Motion by Nickita, seconded by Bordman:

To approve the consent agenda as follows:

- B. Approval of warrant list, including Automated Clearing House payments, of October 12, 2016 in the amount of \$820,896.63.
- C. Approval of warrant list, including Automated Clearing House payments, of October 19, 2016 in the amount of \$1,502,574.38.
- D. Resolution authorizing the purchase of one Microsoft Surface Hub and associated mounting kit from CDW-G for a total cost of \$9,368.61 from account #101-371.000-971.0100.
- E. Resolution approving the contract for the Pembroke Park Lawn Repair project to Homefield Turf and Athletic, Inc. in the amount not to exceed \$12,500.00 from the Capital Projects Fund, account #401-751.001-981.0100. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City.
- F. Resolution awarding the 2016-2017 Public Services contract totaling \$18,584 for Minor Home Repair, Yard Services and Senior Outreach Services to NEXT under the Community Development Block Grant Program; and further, authorizing the Mayor to sign the contract on behalf of the City.
- G. Resolution accepting the resignation of Susan Peabody from the Advisory Parking Committee, thanking Ms. Peabody for her service, and directing the Clerk to begin the process to fill the vacancy.



- H. Resolution confirming the City Manager's emergency expenditure to engage the services of Rid A Leak to waterproofing the outside wall at the Detective Bureau at the lower level of City Hall with the expenditure in the amount not to exceed \$7,200.00. Cost will be charged to the City Hall And Grounds other contractual services account # 101-265.001-811.0000.

## ARTICLE IX. - ETHICS<sup>91</sup>

Footnotes:

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**Editor's note**— Ord. No. 1810, adopted May 19, 2003, states that the provisions of this article shall become effective July 21, 2003.

### Sec. 2-320. - Public policy.

Public office and employment are public trusts. For government to operate properly, each city official, employee, or advisor must earn and honor the public trust by integrity and conduct.

The city hereby declares that all city officials and employees must avoid conflicts between their private interests and the public interest. Public officials and employees must:

- (1) Be independent, impartial and responsible to the people;
- (2) Make governmental decisions and policy in the proper governmental channels;
- (3) Not use public office for personal gain.

To enhance public trust, the city must provide its officials and employees with adequate guidelines for separating their roles as private citizens from their roles as public servants.

This Code sets minimum standards of ethical conduct for all city officials and employees, elected or appointed, paid or unpaid. It proscribes actions incompatible with the public interest and directs disclosure of private financial or other interests in matters affecting the city.

(Ord. No. 1805, 4-28-03; Ord. No. 1810, 5-19-03; Ord. No. 1819, 1-12-04)

### Sec. 2-321. - Responsibilities of public office.

City officials and employees are bound to uphold the Constitution of the United States and the Constitution of the State and to carry out impartially and comply with the laws of the nation, state, and the city. City officials and employees must not exceed their authority or breach the law or ask others to do so. City officials and employees are bound to observe in their official acts the highest standards of ethical conduct and to discharge the duties of their offices faithfully, regardless of personal consideration, recognizing that their official conduct should be above reproach.

All city officials and employees shall safeguard public confidence by being honest, fair and respectful of all persons and property with whom they have contact, by maintaining non-partisanship in all official acts, and by avoiding official conduct which may tend to undermine respect for city officials and employees and for the city as an institution.

(Ord. No. 1805, 4-28-03; Ord. No. 1810, 5-19-03; Ord. No. 1819, 1-12-04; Ord. No. 2177, 3-28-16)

### Sec. 2-322. - Definitions.

*City official or employee* means a person elected, appointed or otherwise serving in any capacity with the city in any position established by the City Charter or by city ordinance which involves the exercise of a public power, trust or duty. The term includes all officials and employees of the city, whether or not they receive compensation, including consultants and persons who serve on advisory boards and commissions. The term does not include election inspectors and student representatives appointed to city boards or commissions.

*Consultant* means a person who gives professional advice or services regarding matters in the field of his or her special knowledge or training.

*Compensation* means any money, property, thing of value or benefit conferred upon or received by any person in return for services rendered or to be rendered to himself or herself or any other party.

*Financial interest* means any interest in money, property or thing of value or benefit.

*Immediate family* means a city official or employee, his or her spouse, parents or children.

*Official duties or official action* means a decision, recommendation, approval, disapproval or other action or failure to act, which involves the use of discretionary authority.

*Personal interest* means an interest arising from blood or marriage relationships or any business association.

*Private gain* means any interest or benefit, in any form, received by a city employee or official.

*Substantial* shall mean considerable in quantity or significantly great.

(Ord. No. 1805, 4-28-03; Ord. No. 1810, 5-19-03; Ord. No. 1819, 1-12-04)

#### Sec. 2-323. - Intention of code.

It is the intention of section 2-324 below that city officials and employees avoid any action, whether or not specifically prohibited by section 2-324, which might result in, or create the appearance of:

- (1) Using public employment or office for private gain;
- (2) Giving or accepting preferential treatment, including the use of city property or information, to or from any organization or person;
- (3) Losing complete independence or impartiality of action;
- (4) Making a city decision outside official channels; or
- (5) Affecting adversely the confidence of the public or the integrity of the city government.

The code of ethics is intended to be preventative and not punitive. It should not be construed to interfere with or abrogate in any way the provisions of any federal or state statutes, the City Charter, the city ordinances, or any rights and/or remedies guaranteed under a collective bargaining agreement.

This declaration of policy is not intended to apply to contributions to political campaigns, which are governed by state law.

(Ord. No. 1805, 4-28-03; Ord. No. 1810, 5-19-03; Ord. No. 1819, 1-12-04)

#### Sec. 2-324. - Promulgation.

##### (a) *Conflict of interest—General.*

- (1) No official or employee of the city shall divulge to any unauthorized person, confidential information acquired in the course of employment in advance of the time prescribed for its authorized release to the public.

- (2) No official or employee of the city shall represent his or her personal opinion as that of the city.
- (3) Every official or employee of the city shall use personnel resources, property and funds under his or her official care and control solely in accordance with prescribed constitutional, statutory and regulatory procedures and not for personal gain or benefit.
- (4) No official or employee of the city shall directly or indirectly, solicit or accept any gift or loan of money, goods, services or other thing of value for the benefit of any person or organization, other than the city, which tends to influence the manner in which the official or employee or any other official or employee performs his or her official duties.

Gratuities do not include fees for speeches or published works on legislative subjects and, except in connection therewith reimbursement for expenses for actual expenditures for travel, and reasonable subsistence, for which no payment or reimbursement is made by the city, invitations to such events as ground breakings, grand openings, charitable or civic events, or inconsequential gifts from established friends.

- (5) No official or employee of the city shall engage in a business transaction in which he or she may profit because of his or her official position or authority or benefit financially from confidential information which he or she has obtained or may obtain by reason of such position or authority.
- (6) No official or employee of the city shall engage in or accept employment or render services for any private or public interest when that employment or service is incompatible or in conflict with the discharge of his or her official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of his or her official duties.

This section shall not prohibit a part-time elected or appointed city official from engaging in private employment or business on his or her own time as a private citizen and where city business is not involved, subject to his or her disclosing such private employment or business on the public record for any matter on which he or she may be called upon to act in his or her official capacity, in accordance with Section 5 B below. He or she shall refrain from voting upon or otherwise participating in debate on any such matter.

- (7) No official or employee of the city shall participate, as an agent or representative of the city, in the negotiation or execution of contracts, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision, relating to any business entity in which he or she has, directly or indirectly, a financial or personal interest.
- (8) No official or employee of the city shall use, or attempt to use, his or her official position to secure, request or grant unreasonably any special consideration, privilege, exemption, advantage, contract or preferential treatment for himself, herself, or others, beyond that which is available to every other citizen.
- (9) It is recognized that various boards and committees are part of the plan of government for the city. As such, it is further recognized that by virtue of the various requirements for membership of the board, a member may be placed in the position of participating in a decision that may directly or indirectly affect his or her financial or personal interests. Therefore, those members of the various boards and committees in the city, as they may be established from time to time, may participate in such decisions provided that they act:
  - a. In furtherance of the public good;
  - b. In compliance with the duties of their respective boards; and,
  - c. In a manner consistent with subsection (8) of this section.
- (10) Determination of conflict of interest. A conflict of interest exists if:
  - a. The city official or employee has any financial or personal interest, beyond ownership of his or her place of residence, in the outcome of a matter currently before that city official or employee, or is associated as owner, member, partner, officer, employee, broker or

stockholder in an enterprise that will be affected by the outcome of such matter, and such interest is or may be adverse to the public interest in the proper performance of said official's or employee's governmental duties, or;

- b. The city official or employee has reason to believe or expect that he or she will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his or her official activity, or;
- c. The public official has any other prohibited interest as defined by state statutes relating to conflicts of interest.

(11) Subsequent conflict of interest. No official or employee of the city shall acquire any financial interest in or accept any employment concerning any project which has been granted approval by the city or any commission, board, department or employee thereof within one year of the official's or employee's participation in any manner in considering or recommending the approval or disapproval of said project.

(b) *Full disclosure.*

- (1) Responsibility to disclose. It shall be the responsibility of the official or employee to disclose the full nature and extent of his or her direct or indirect financial or personal interest in a matter before him or her.

No official or employee of the city shall participate, as an agent or representative of the city, in approving, disapproving, voting, abstaining from voting, recommending or otherwise acting upon any matter in which he or she has directly or indirectly a financial or personal interest. The official or employee shall, in such circumstances, recuse himself or herself from the matter before him or her.

(2) Disclosure of conflict of interest and disqualification.

- a. Any city official or employee who has a conflict of interest, as defined herein, in any matter before the city shall disclose such fact on the appropriate record of the city prior to discussion or action thereon and shall refrain from participating in any discussion, voting or action thereon, as follows, provided that such exceptions shall be observed as are permitted by law:
  - 1. A city commissioner shall disclose any conflict of interest and the nature and extent of such interest on the record of the city commission;
  - 2. A member of any city board, commission or committee shall disclose any conflict of interest and the nature and extent of such interest on the records of said board, commission or committee;
  - 3. A city employee who has a financial or other interest in a matter before the city commission or any city board, commission or committee and who participates in discussion with, or gives an official opinion to the city commission, or to such other city board, commission or committee relating to such matter, shall disclose on the records of the city commission or such other city board, commission or committee, as the case may be, any conflict of interest and the nature and extent of such interest.
  - 4. Otherwise, any appointed city official or employee shall address such a disclosure to the supervisory head of his or her department, and any elected city official shall address such a disclosure to the general public.
- b. If a city official, commissioner or employee who has a conflict of interest, as defined herein, in any matter before the city, and who discloses that conflict on the appropriate records but who refuses to refrain from discussion, deliberation or voting thereon, the matter under consideration shall be immediately referred to the board of ethics for a final determination as to the conflict in question and whether the official, commissioner or employee must refrain from discussion, deliberation, action or voting thereon.

- c. Within 20 days after election, employment, appointment, or the effective date of this ordinance, or any change in the facts set forth in the city official's or employee's previously filed disclosure statement, each city official and employee shall file with the city clerk an affidavit and disclosure statement. The city clerk shall provide each city official or employee with the required affidavit and disclosure statement form immediately upon his or her election, employment or appointment. The affidavit and disclosure statement does not apply to part-time and temporary employees of the city. Additionally, the disclosure requirements on this section do not apply to regular full-time employees below the level of assistant department head, except at the discretion of the city manager.
- d. The effective date for this ordinance shall be July 21, 2003.

(Ord. No. 1805, 4-28-03; Ord. No. 1810, 5-19-03; Ord. No. 1819, 1-12-04)

Sec. 2-325. - Violation, enforcement and advisory opinions.

(a) *Board of ethics.*

- (1) The city commission shall appoint a board of ethics, consisting of three members, as an advisory body for the purpose of interpreting this code of ethics.
- (2) The initial three members of the board of ethics shall be appointed for one-, two-, and three-year terms of office respectively, which shall begin on July 1, 2003. If appointed prior to July 1st, they shall begin their terms of office immediately and their terms shall include the additional time prior to July 1st. Terms of office shall expire on June 30th of the respective years.

Thereafter, all members shall be appointed to three-year terms, beginning July 1, so that only one member's term expires each year. A member shall hold office until his or her successor is appointed. The city commission shall fill a vacancy by an appointment for the unexpired term only.

- (3) The board of ethics shall be made up of residents of the city who have legal, administrative or other desirable qualifications.
  - a. The members of the board of ethics shall serve without compensation, and shall not be elected officials, persons appointed to elective office, full-time appointed officials or city employees, nor shall they be currently serving on any other city board or commission.
  - b. The board shall select its own presiding officer from among its members.
  - c. The board shall establish such procedures it deems necessary or appropriate to perform its functions as set forth in this article.

(b) *Functions of the board of ethics.* When there is a question or a complaint as to the applicability of any provision of this code to a particular situation, that question or complaint shall be directed to the board of ethics. It shall then be the function of the board of ethics to conduct hearings and/or issue an advisory opinion, as applicable.

- (1) Hearings. The board of ethics shall follow the following hearing procedure:
  - a. The board shall, within seven days after any matter is brought to its attention, set a date certain for hearing said matter.
  - b. The board shall, at least 28 days before the hearing date, send notice of such hearing, accompanied by a concise statement of the alleged breach of this code of ethics, to any person requested to appear before them, by certified mail, return receipt requested, to addressee only.

- c. Any person requested to appear before a board of ethics hearing may request one extension for a period not to exceed 28 days. Extensions thereafter will be granted only under extreme circumstances.
  - d. Any person requested to appear before a board of ethics hearing may be accompanied by his or her attorney.
  - e. All hearings at which any person shall be requested to appear shall be subject to the Open Meetings Act.
  - f. All findings of board hearings shall be published in permanent form and communicated to the city commission and the public, subject to the requirements of the Open Meetings Act.
- (2) Advisory opinions. All advisory opinions so issued shall also be published in permanent form and communicated to the city commission and the public, subject to the requirements of the Open Meetings Act.
- (3) After the board of ethics' advisory opinions and/or hearing findings have been published:
- a. The city commission shall be responsible for imposing any sanction for a violation of this Code on one of its members or any person appointed by the commission to any city board.
  - b. If it becomes necessary to seek the removal of a city official after the board of ethics' advisory opinion and/or hearing findings, the city shall follow the requirements for removal of a public official in accordance with the laws of the state.
  - c. The city manager shall be responsible for imposing any discipline for a violation of this Code on any employee of the city.

(Ord. No. 1805, 4-28-03; Ord. No. 1810, 5-19-03; Ord. No. 1819, 1-12-04)

Sec. 2-326. - Affidavit and disclosure statement.

Immediately following an election, employment or appointment of a city official or employee, the city clerk shall provide the individual with an affidavit and disclosure statement form. Within 20 days after election, appointment, employment or any change in the facts set forth in the city official's or employee's previously filed affidavit and disclosure statement, all city officials or employees shall file with the city clerk an affidavit and disclosure statement including the following:

- A. A disclosure statement responding in detail to the following questions:
- 1. To the best of your knowledge, do you or any members of your immediate family own any interest in real property located within the City of Birmingham, in land contiguous to the City of Birmingham, or in any area covered by a 425 Agreement to which the City of Birmingham is party?
  - 2. If your answer to question 1. is affirmative, to the best of your knowledge state the following information for each such interest owned:
    - (a) The nature of your interest in the real property;
    - (b) The location of the real property (for improved property, provide the street address; for unimproved property state its location in relation to existing streets), and;
    - (c) The property's permanent real estate tax identification number.
  - 3. To the best of your knowledge, do you or members of your immediate family own five percent (5%) or more of any business entity located in the City of Birmingham?
  - 4. If your answer to question 3. is in the affirmative, state the following, to the best of your knowledge:
    - (a) The name of the entity;



- (b) The address of the entity;
  - (c) The nature of your relationship to the entity, and;
  - (d) The date relationship commenced.
5. To the best of your knowledge, do you or any members of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit that is not reported in the prior answers.
6. To the best of your knowledge, have you or any members of your immediate family given or received any gifts, other than from immediate family members, the value of which exceeds \$50.00, within the last year, or since the effective date of this code, whichever time period is shorter, to or from any person or business or other legal entity doing business with the City, other than legal campaign contributions? If so, list the names and addresses of each donor or donee of each such gift and the date upon which it was made and the nature of the gift.
- B. An affidavit in which the City official or employee states: "I have read and I understand the Code of Ethics of the City of Birmingham and, to the best of my knowledge, I am not in conflict with its provisions."

Dated:

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public

\_\_\_\_\_ County, Michigan

My Commission Expires: \_\_\_\_\_

(Ord. No. 1805, 4-28-03; Ord. No. 1810, 5-19-03; Ord. No. 1819, 1-12-04)