

**CITY OF BIRMINGHAM
BOARD OF ETHICS AGENDA
FEBRUARY 6, 2017 – 4:00 PM
151 MARTIN, BIRMINGHAM
CONFERENCE ROOM 203**

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 December 16, 2016

IV. UNFINISHED BUSINESS

V. NEW BUSINESS

- A. City Commission Advisory Opinion Request dated October 27, 2016
1. Background information provided to City Commission on 10/27/16
 2. City Commission minutes dated 5/6/16
 3. City Commission minutes dated 5/23/16
 4. City Commission minutes dated 10/27/16
- 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
DECEMBER 16, 2016 – 3:00 PM
151 MARTIN, BIRMINGHAM
CONFERENCE ROOM 202**

I. CALL TO ORDER

MOTION: Motion by Mr. Robb, seconded by Mr. Schrot:
To appoint Mr. Schrot as temporary Chairperson of the meeting.

VOTE: Yeas, 2
 Nays, None
 Absent, 1 (Fierro-Share)

Acting Chairperson Schrot called the meeting to order at 3:10 PM.

II. ROLL CALL

Present: Mr. Robb
 Mr. Schrot
Absent: Ms. Fierro-Share
Administration: City Manager Valentine, City Attorney Currier, Acting Clerk Arft

III. APPROVAL OF MINUTES

A. Approval of minutes of February 12, 2016

MOTION: Motion by Robb, seconded by Schrot:
To approve the minutes of February 12, 2016.

VOTE: Yeas, 2
 Nays, None
 Absent, 1 (Fierro-Share)

IV. UNFINISHED BUSINESS

V. NEW BUSINESS

A. City Commission Referred Advisory Opinion Request 2016-03 dated October 27, 2016

City Manager Valentine explained the City Commission's request and provided background information from City Commission minutes of May 6, May 23 and October 27, 2016. The correspondence from Birmingham Youth Assistance was also provided. He explained that the commission had some reservation in regard to that request given the nature of potential conflicts that could arise from that relationship. The commission had discussion about what exactly was being requested of them as a commissioner or the expectations of them serving in this capacity as a commissioner. In this particular situation, it is the Birmingham Youth Assistance organization that presented the request. The conversation evolved into from any community-based organization that makes a request of the commission to serve in this type of capacity. What concerns should the commission have and how does that relate to any potential conflicts of interest where the requests come from organizations which may request funding from the city or put the commission in a position where they would be advocating on behalf of the

organization as a commissioner in regards to soliciting funds and things of that nature. A discussion included appointment as a voting member, a non-voting member, or a non-participatory information-sharing role, and there were differing views on that. There was discussion that perhaps this should be referred to the Ethics Board for an advisory opinion based on some specific questions. There were variations of those discussions, and the last meeting was October 27th at the commission level, and they were presented with three options to consider. The first one was to appoint someone as a voting member, the second one was to appoint as a non-voting member, and the third one was following up on their conversation about the advisory opinion to refer to Ethics board and get an opinion on the conflict of interest language. There was also a variation presented that the commission reviewed and thought it was too specific. Ultimately, direction was given to staff to filter through that conversation, and develop some questions based on the intent of the commission that could be presented to this board for clarification.

City Manager Valentine provided the questions to the members. He suggested that this meeting serve as an informational meeting to understand the background and intent, and review the questions for clarification in determining how to proceed.

Mr. Valentine confirmed for Mr. Robb that currently this applies to the board of Birmingham Youth Assistance and to the board of NEXT. Commissioner Bordman is currently a voting member of the NEXT board, and she has been recusing herself from discussions involving NEXT to try to avoid that conflict. Since there are two, and the commissioners felt there could be more in the future, it would be helpful to get clarification through an advisory opinion on how these board appointments relate to the conflict of interest language in the ethics ordinance and recommendation going forward on how to treat these specific questions with funding requests that go before them and for the benefit of making their determination in the future.

Mr. Robb provided background on his personal involvement on various boards, and discussed his fiduciary responsibilities to his employer as well as to the boards with which he is involved. Although he is not covered under an ethics ordinance in those situations, board members do have a fiduciary obligation to the organization.

Mr. Currier said one of the questions raised was, if being an elected official creates a higher fiduciary obligation than being appointed to a board. In other words, can one serve two masters, and if not, which one controls. Mr. Schrot said there is a distinction between commissioners and board members. In this respect, we are only dealing with commissioners. Mr. Schrot asked, as it relates to service on non-profit boards, is there a companion body of law that should be considered that impacts this issue, or a state ethics code that may relate as well. He thinks the board should have that information in order to address these questions.

Mr. Valentine clarified that the commission's intent was to have staff develop the questions for the board based on the conversations by the commission. He wanted the board to have the background of how this evolved, and what the considerations were to get to this point. He explained there has been quite a bit of conversation by the commissioners and several questions have been raised.

Mr. Schrot noted that the initial question seems to limit it to community-based organizations that rely on city funding, but he does not think it would be limited to those organizations or those issues, because requests could be other than economic.

Mr. Schrot noted it has been the practice of the commission to appoint commissioners to serve on the board of directors of certain community-based non-profit organizations. Mr. Valentine confirmed that is true for only those two organizations. He explained that historically, there has been a request from the boards. He explained that we have four new commissioners. He said Scott Moore had served with NEXT for perhaps a decade or more. Mr. Currier said Tom McDaniel served with Birmingham Youth Assistance for many years as well.

Mr. Schrot said he questions the practice of the appointments. Mr. Valentine said that the commissioners questioned it as well. Mr. Schrot noted that the board is not being asked to address that issue, but in the course of our discussions, the practice may need to be examined, because it may create problems for the individual who is appointed as a commissioner in wearing his or her city hat.

Mr. Valentine said that is why the commission wanted to take a broader approach, and ask whether it creates a conflict for any community-based organization in which the commission is asked to participate.

Mr. Robb asked who is appointing whom to what. Mr. Valentine said the city commission would appoint a commissioner to one of the boards. Mr. Robb said that is different. He explained there is a difference between being appointed personally while a commissioner. For example, if a commissioner chooses not to run for reelection and was the commission's appointee to BYA, does the seat on BYA become vacant upon the expiration of the term of office. Mr. Valentine said that in these cases, the representation came because of their role as a commissioner and being asked as a commissioner to serve in that capacity. Mr. Currier confirmed it is the city seat on the board. Mr. Robb and Mr. Schrot agreed there is a distinction.

Mr. Valentine said former commissioner McDaniel was the representative from the commission on the Birmingham Youth Assistance. When his term ended in November 2015 and new commissioners were elected, BYA asked Andrew Harris. Mr. Valentine was presented with that request, and he explained that it was the city commission's appointment and not the BYA's decision who is appointed.

Mr. Robb asked what is the basis for the decision to be made by the commission and not the community group. Mr. Valentine said if a commissioner is going to serve in his or her capacity as a commissioner, he or she must be appointed. These positions are all done at the approval of the commission. If someone is appointed to the MML or SEMCOG for example, that is done at the appointment of the commission. It is an official role, because the organization is asking for an official city commissioner to be in that role.

Mr. Robb said he is not sure the commissioner is in a conflict. He said there may be a political or broader question whether the city as the governmental entity, ought to have anyone who is some sort of official role in some other entity that transacts with the city.

Mr. Currier suggested we think of this as a city seat and the commission appoints someone to sit as a representative of the city. Traditionally, the commissioner would not participate in discussion of requests for funding at the board level, nor would they vote on it at the commission level. The question was asked is that a breach of fiduciary duty to the city being an elected official, and maybe a liaison and not a voting member at all is the correct approach.

Mr. Robb said the community organization has its own bylaws and those bylaws say who will be on the board, and the characteristics of that board member. He said maybe there is something in their bylaws that says there shall be one seat reserved for a city commissioner. Mr. Currier said historically that is the way it has happened, but this came into question for the first time other than simply disclose and recuse. The question became, is it even appropriate to be on the board and be a voting member.

Mr. Schrot said the appearance of impropriety is the problem, and in those discussions should there be a city seat, there probably should be discussion about the fact that that may result in the person being appointed having to recuse himself or herself from decision making and/or discussions on city matters that may relate to that non-profit because of public perception. And that would be whether or not it was a voting or non-voting position. That may include even the position of being a liaison, because if you are appointed by colleagues on the commission to be a liaison, that insulates one from the public perception a bit, but not entirely so. He continued that he thinks a commissioner has to be aware of that if they are even being considered for a position of appointment to a non-profit board. He was unaware of this practice, and in the course of the discussions, we need to consider whether or not that is appropriate. Other organizations may ask for a commissioner to serve on the board, now the city is arguably showing favoritism in providing manpower to certain non-profits and not others. As a general rule, it is better to be a non-decision making participant on the non-profit, because the commissioner is already charged with the duty of public service to the City of Birmingham, even before one begins engaging for a non-profit organization. That creates issues when one is already a member of a non-profit board, and then gets elected. It is a complex question.

Mr. Robb agreed, and said the city is arguably showing favoritism to certain organizations, but the commissioner is not. The commissioner is appointed by the city to be on the board and not for personal benefit. It may be a political question for the city. The commissioner is doing it for benefit of the city almost by definition because he or she has been appointed by the city to sit on that seat.

Mr. Valentine said then the question is the appointment, and is that appropriate in the context with the ethics ordinance. Mr. Robb said the ordinance talks about a person, not about the action of the city commission. The city commission can amend or repeal the ordinance at any time. The only thing that trumps is the city charter. If it is a question whether the city can do this, we have to look at the charter, or some statute.

Mr. Schrot agreed, but added his concern is the commission making the decision to fill the certain select non-profits. If a commission were to vote to appoint to a particular non-profit, is that violation of the ethics ordinance in any way. There would have to be some discussion as to why there is going to be an appointment to this non-profit vs. another. That is putting a commission in a difficult position because if he or she votes to appoint a commissioner to BYA, they have to justify that decision when another non-

profit comes along, and the commission refuses to appoint. Mr. Robb asked to whom they would justify it. Mr. Schrot said to the public in the election. Commissioners can act in a certain way, and whether or not that is approved by the public will be determined as to whether or not the commissioner is reelected or is recalled. Mr. Schrot thinks that in the course of our discussions, we have to be cognizant of the fact that the commissioners are aware that is not without risk or restriction that they would serve on a particular non-profit or that they would vote to provide a commissioner to a non-profit.

Mr. Currier said it is a broader question of whether a commissioner can be on any board, regardless of how he or she was appointed, that has dealings with the city, and then look at the details.

Mr. Schrot said we should look at that, and instinctively the answer is yes. To a certain extent, one level is the restriction by law, or otherwise by the ethics ordinance. Assuming not, the other extreme is to let the voters decide whether or not the conduct is appropriate. He said we have measures in the ethics ordinance for disclosure and for recusal. He thinks the commissioners are looking for better guidelines as to what they can and cannot do. Mr. Valentine agreed, and added that it is in relation to conflict of interest.

Mr. Valentine said if it is not prohibited by law, and it does not run afoul of the ethics ordinance to allow it, is there a conflict of interest or perceived conflict of interest as a result of it, and what are the considerations that should be given in that regard.

Mr. Schrot said that if someone were to say that there is no prohibition on serving, then one would get into a case by case basis as to whether or not it is a conflict of interest, and what are the measures for protection. He said the commissioner who may be on a non-profit has to recognize that he or she may be in a situation where they may be restricted as far as their participation in relation to the duties on behalf of the city and how is that going to be dealt with and received, because much of this will come down to judgment.

Mr. Schrot referred to an article from the Institute for Local Government titled "Commitment to Non-profit Causes and Public Service: Some Issues to Ponder", which he thinks is particularly good and will circulate it to everyone. It talks about issues and different scenarios including fundraising among others. We can provide some guidelines in this opinion regardless of what the questions may be. He was not aware of the practice of appointment. On the surface, it is pretty innocent and is benevolent.

Mr. Robb asked if the city commission approves a commissioner by a resolution after a commissioner has expressed some interest. He asked if the resolution stands legally on par with the ordinance. Mr. Currier said an ordinance is a legislative action that establishes law, and is not certain they are on the same par. A law is not changed when a resolution is passed.

Mr. Robb said he does not see conflict as to the particular fact here, realizing there may be a number of facts that are broader. This ordinance does not bar the city commissioner from appointing a commissioner to do city business by serving on a board.

Mr. Valentine said the commission knows that it can appoint. The question is should they, and what considerations should be given when and if it is done because of the conflict of interest.

Mr. Robb said there is no conflict of interest. He said the commissioner is essentially the city's agent. In response to Mr. Currier, Mr. Robb said if a commissioner, not appointed by the commission, is appointed by the organization, that commissioner is not doing city business. By virtue of the commissioner's position on the commission, he or she is important to the organization, and he or she has agreed to it, knowing he has an obligation to the city.

Mr. Valentine clarified that the seat is delineated by who the organization wants on their board. The organization can ask whomever they like to serve, and their idea is to appoint those who will have a positive influence on our organization, including the funding sources. Mr. Robb said the city recognizes that.

Mr. Schrot agrees with Mr. Robb that even though it may not be a city seat, it is a city action in making the appointment. He thinks that if the commissioner accepts the appointment, he or she has to be aware of the ramifications in relation to the ethics ordinance. The commissioner also has to be aware that if there is any business that the organization has before the city, he or she has to make a judgment as to whether or not he or she has to disclose or recuse himself or herself to the organization's board and to the city, so that the public is aware of that relationship.

Mr. Robb said the problem is the organization's problem, not a city's problem. The organization has a board member who has a higher fiduciary duty to the city. The organization has a board member who cannot be independent.

Mr. Schrot said if we take that approach unilaterally, we are exposing that commissioner to some risk which may not necessarily be an ethics violation, but the public may not know the commissioner was appointed to the non-profit by the city. The danger is political.

Mr. Valentine said the commission cannot take action on anything that is going to lock in a future commission, or that would impact anything in the future. In this case, it is a request from BYA for a commissioner to be appointed by the city. Typically, the resolution was to appoint the commissioner to the board. He asked if that is carte blanche for every issue that comes before that board to take a position on behalf of the city, without the city knowing what the issue is. Mr. Robb said it is. Mr. Currier said that is where reliance is on the appointee to come back to the city manager and commission for guidance. Mr. Valentine asked how much authority the commissioner actually has with the appointment. Mr. Robb said that without some restriction on the appointment, the commissioner has to vote because he is a board member. He has an obligation to that organization as well.

Mr. Schrot said the commissioner may have to say, without the distinction of being a voting member or a non-voting member, that he or she is a city commissioner and has some concern about being able to vote. This is risky for the commissioners, and when we deal with issues like appointment, it is risky for the city.

Mr. Schrot said is there a benefit to the city and to the individual commissioners to appoint a commissioner to a non-profit. Mr. Valentine said the organization obviously has a benefit by having a tie directly to a funding source. Mr. Schrot said there is a price to pay by the city by making that appointment, if nothing else it may restrict the appointment commissioner from participating in discussions and/or voting as it relates to the non-profit organization.

Mr. Robb said the appointed commissioner does also have a fiduciary duty to the non-profit board and that is a problem. It is a conflict on the board, not the city.

Mr. Robb said the safe answer is for the city to not appoint anyone to a non-profit board.

Mr. Schrot said it is the prudent action, and the rationale is that it creates a limitation on potential action by one of the city's decision-makers in relation to city business involving that non-profit. Mr. Schrot said the request could not only be financial, but for permitting for example.

Mr. Robb expressed concern about the board's jurisdiction.

Mr. Valentine asked if the influence of being a commissioner has any weight in the discussion requesting funds. He asked how does that play in if a commissioner, in his or her capacity as a board member, is asked for funds to support the organization.

Mr. Robb referred to the Section 2.324(10) of the Ethics ordinance which determines the existence of a conflict of interest, and said this situation does not pose a conflict according this section. He then referred to section 2.324(6) which discusses impairment of his or her independence of judgment or action in the performance of official duties. Mr. Robb sees a distinction between a commissioner being appointed by the city to a board, and a commissioner being appointed as a board member, but not by the commission. Section 2.324(4) discusses the influence factor.

Mr. Schrot said we need to determine whether or not the city intends to go forward with this practice of appointing. If it does, that is an entire discussion in and of itself, which is a major issue. If the city is not going to appoint, and the individual is going to act in his or her individual capacity, that is another question. Ideally, he said we should avoid this, rather than take all the time and effort to address this issue of the city appointing, we may want to draft a letter back asking for clarification as to what the commission's future practice would be.

Mr. Valentine said he envisions that the response would be tell us if it is a conflict or not, and then we can tell you if we are going to continue the practice or not.

Mr. Robb said this calls for a conversation with the commission. He does not see on this specific matter, a violation of the ordinance. He does see a potentially a political problem, a governmental process problem.

Mr. Valentine said this is what they struggled with as well. While some commissioners had interest in moving forward and thought the ordinance covered it with the opportunity to disclose and recuse, others thought that it was not sufficient, and the

commission should not do it. The idea was to ask for an advisory opinion interpreting the ordinance addressing these types of questions.

Mr. Schrot said it may beg the question as to whether or not a legal interpretation of the ordinance from the City Attorney is needed, as to when someone is appointed by the city, is the individual acting on behalf of the city and not as an individual. That would take some pressure and risk off of the commissioner.

Mr. Schrot said his concerns are over what laws may be applicable and may influence these issues. He referred to a section of the ILG article regarding fundraising, which says "using one's official position to, in essence, force donations to non-profits violates state and federal laws that prohibit extortion and protect the public's right to officials' honest services". He continued discussing the disclosure requirement. He does not know if disclosure requirements are a matter of law, and that may be beneficial to know because the law trumps ethics. Ethics is broader and more vague, and is a big net that catches people. Ethics violations can result in financial and/or penal consequences.

Mr. Robb recommends that the board identify any section of the ordinance that is implicated by the commission's questions initially, and then do a retrieval of whatever other literature is available on this topic that will help him and Mr. Schrot to come up with an opinion to give the commission, and see what statutes may apply. Mr. Schrot said the board may be reworking the ultimate issue(s) and not specifically answering the questions.

Mr. Schrot said that when asking the question "does a conflict of interest arise when a city commissioner is appointed by the commission to serve as a board member (voting or non-voting) for community-based organizations", it leads to the question, a conflict of interest by whom. Mr. Valentine said the conflict of interest is for the city commissioner. Mr. Schrot said that based on the discussions today, the answer is no. Mr. Robb agreed.

Mr. Schrot said that when the practice of appointment by the city commission occurs, what problems are being created for the commission by this appointment practice.

Mr. Valentine suggested the board should address the other questions because part of the conflict of interest is the issue of the solicitation of funds or donations arises.

Mr. Schrot agreed, but said that gets into the realm of whether the commissioner is acting at the behest of the city, or on his or her own behalf. Mr. Robb said it is absolutely on behalf of the city.

Mr. Valentine read paragraph 3 of the October 3, 2016 letter to him from Birmingham Youth Assistance which discusses the organization's fundraising activities and their expected level of involvement of the city appointee. He said there is a disconnect on that issue. There is some support for having someone serve, but there is lack of support for having people ask others for money. He said maybe that is the political decision, but that is really two points in the mind of the commission in terms of serving as the appointee, and actually being involved in fundraising. He said the BYA has described fundraising as voluntary, not necessary. If a commissioner does become involved in fundraising, under the ordinance, does a conflict develop as a result of that, given his or her role as a commissioner.

Mr. Robb said under his theory, no, because the city has already determined it is important to have a commissioner on that board knowing he or she may have to assist in fundraising for the organization. The commission has considered it beneficial to the city for the organization to be successful.

Mr. Valentine said that is the struggle. The commission is not comfortable making the appointment with that understanding.

Mr. Schrot and Mr. Robb both agreed the commission should not make the appointment.

Mr. Schrot said this gets to the fundamental question of whether or not the city should be appointing commissioners. He said the city can do so, but at its own risk, and puts their fellow commissioner at risk of a violation of law and of the ethics ordinance. The commissioner has to understand that there are restrictions on how he or she can be used by that organization. The fact that the organization is soliciting the city suggests that they are doing so for certain benefit, which is apparent. Whether or not the city wants to participate in that type of engagement, whether or not the city wants to be involved in a selection process as to which organizations it is going to support and which organizations it is going to reject, it can make that the decision. The city could decide it is going to do so on any basis. He said as far as he can see, it is not a good practice. He suggested trying to address the issue of the practice of appointment.

Mr. Schrot and Mr. Robb inquired about a time limit. Mr. Valentine said the first question was in April 2016, so time is not critical.

Mr. Schrot said the historical answer has been that the city wants to help. He commended the city commission for addressing this issue, and he understands why there are differences of opinion. He said when one spends time on this in looking at the appointment, that seems to be a much simpler issue that can and probably should be resolved. When an appointment is made, a commissioner is wearing the city's hat when serving on the non-profit board.

Mr. Schrot provided the IGL article to be distributed to everyone. He said Ethics ordinance Section 2-234(a)(4), (6), and (7) regarding conflict of interest, and subsection (b)(1) regarding disclosure are the most applicable ones.

Mr. Currier said it is also important to consider Section 2-323(2) and (3) regarding appearances. Mr. Robb suggested subsection (5) as well.

Mr. Schrot suggested it might be helpful to meet with the city commission to talk about the practice of appointment as an agenda item. Mr. Valentine suggested it would be helpful to have specific questions for them to prompt the discussion and get that feedback from them. Mr. Robb suggested the board do more research before meeting again as a board.

Mr. Valentine asked what additional research is needed to allow ample time to do so and prepare for the next meeting.

Mr. Robb suggested that one question is, assuming the city appointed someone to a board, and that commissioner is soliciting funds for the organization, is that a violation of the law. Mr. Schrot agreed the board needs to do more research.

Mr. Schrot asked if a commissioner is appointed to the BYA board by the city, when he or she speaks, are they speaking on behalf of the city. The second question is, does that individual provide an appearance of speaking on behalf of the city. He asked how is that impacted by the Ethics ordinance. He suggested that the individual cannot give the appearance of speaking on behalf of the city absent specific direction from the city commission, and in a matter of personal interest. His concern is that it may put that commissioner at risk.

Mr. Robb said the safest way is not do it, but suggested that is not good guidance. Mr. Currier suggested it may be good guidance.

Mr. Schrot suggested letting the individual decide whether or not he or she is going to be involved, rather than involving the city commission in the appointment to the organization. Mr. Schrot asked if the commissioner has some discretion in accepting the appointment. Mr. Valentine said no one has turned it down.

Mr. Robb suggested scheduling another meeting after he and Mr. Schrot have done more research. Suggested dates and time will be distributed by the Clerk's Office for some time during the second week of January.

Mr. Schrot suggested the board may be going off on a tangent when discussing the practice of appointment to the organization because that is a different question. He thinks some commissioners may want to preserve the practice. He would want to determine what the benefit is to the city by appointing a commissioner to an organization. Mr. Valentine suggested at a minimum it is for the sharing of information. The initiatives are driven by the organizations, not by the city. He thinks the commission should focus on the price the city has to pay for honoring the request.

Mr. Currier said this discussion has shown that there is major difference between a city appointment vs. an individual's appointment by the board. The clean answer is the city should not appoint, and if you are appointed by BYA, the commissioner is still governed by the Ethics ordinance. Mr. Robb said it is easier to deal with if he or she is appointed by BYA and not the commission.

Mr. Schrot suggested the board could say to be aware that there are legal and ethical restrictions and provide the potential issues. If an issue comes up that relates to the non-profit, the citizens that elected the commissioner see that they are deprived of the commissioner's representation. This can be a political issue. When the commission understands the negatives, they may not want to participate in the future.

Mr. Schrot asked if there is state law that regulates the commissioners. Mr. Currier noted the incompatibility of office statute, and the Home Rule Cities Act which contains required charter provisions and form of government. It deals with city structure. The commissioners are bound by the U.S. constitution, the state constitution, state law and the city charter. There is a state ethics law that applies only to state officials.

VI. PUBLIC COMMENT

VII. ADJOURN

MOTION: Motion by Robb, seconded by Schrot:

To adjourn the meeting.

VOTE: Yeas, 2
 Nays, None
 Absent, 1 (Fierro-Share)

The meeting was adjourned at 5:15 PM.

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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

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
www.birminghamyouthassistance.org

October 3, 2016

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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

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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

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>

City Commissioner volunteer for BYA

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

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
www.birminghamyouthassistance.org

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Vice Chairperson

Shelley Taub

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Sheriff Michael Bouchard
Jason Clinksale
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.

Sincerely,

Reuben Myers
BYA Chair

RM:dmr

BIRMINGHAM

APR 11 2016

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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. - ETHICS⁹¹

Footnotes:

--- (9) ---

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)