

**CITY OF BIRMINGHAM
BOARD OF ETHICS AGENDA
AUGUST 29, 2018 1:00 PM
151 MARTIN, BIRMINGHAM
CONFERENCE ROOM 202-203**

I. CALL TO ORDER

Chairperson Schrot

II. ROLL CALL

Laura Eichenhorn, Transcriptionist

III. APPROVAL OF MINUTES

- A. Approval of minutes of June 19, 2018

IV. UNFINISHED BUSINESS

V. NEW BUSINESS

- A. Consideration of Advisory Opinion Draft
 - 1. 2018-002 Advisory Opinion: Steven Kalczynski, Advisory Parking Committee
- B. Request for Advisory Opinion
 - 1. 2018-003 Advisory Opinion: Leslie Pielack, Birmingham Museum Director
- C. Consideration of Meeting Location

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).

I, J. Cherilynn Mynsberge, the duly appointed City Clerk for the City of Birmingham, certify this meeting notice was posted at all four entrances into the Municipal Building, and to www.bhamgov.org on August 23, 2018.

J. Cherilynn Mynsberge

**CITY OF BIRMINGHAM
BOARD OF ETHICS MINUTES
JUNE 19, 2018
151 MARTIN, BIRMINGHAM
CONFERENCE ROOM 202**

I. CALL TO ORDER

Chairperson Schrot called the meeting to order at 4:03 p.m.

II. ROLL CALL

Present: Sophie Fierro-Share
James Robb
John Schrot, Chairperson

Absent: none

Also Present: David Hohendorf, Complainant
Steven Kalczynski, Respondent
Mark Demorest, Attorney for Mr. Kalczynski

Administration: City Manager Valentine, City Attorney Currier, City Clerk Mynsberge

III. APPROVAL OF MINUTES

APPROVAL OF MINUTES OF JULY 17, 2017

Approval of the July 17, 2017 minutes was deferred to later in the meeting.

IV. UNFINISHED BUSINESS

V. NEW BUSINESS

A. HEARING ON ETHICS COMPLAINT

1. 2018-001 Complaint: Steven Kalczynski, submitted by David Hohendorf.

In a matter before the Advisory Parking Committee, the Daxton Hotel was represented by Mr. John Gaber of Williams, Williams, Rattner & Plunkett, P.C. In the interest of transparency, Mr. Robb disclosed that his wife is a partner in Williams, Williams, Rattner & Plunkett, P.C. as well.

Mr. Kalczynski, his attorney, and the other members of the Ethics Board had no objection to Mr. Robb serving in this Ethics Hearing.

Chairperson Schrot noted his previous service on the Advisory Parking Committee (APC). There were no objections to Chairperson Schrot participating in this Ethics Hearing.

There were no preliminary matters or motions.

Mr. Demorest explained:

- A hearing of the Ethics Board may not have been necessary because Chapter Two of the Board of Ethics Procedural Rules allows a City official or employee to request an advisory opinion of the Ethics Board.

- Mr. Hohendorf's complaint said "The issue of parking at the Daxton Hotel could end up before the APC and Mr. Kalczynski must recuse himself." Given this, Mr. Demorest said the nature of the complaint seemed to focus on whether recusal would be the correct action in the future as opposed to whether recusal should have occurred in the past.
- It would be helpful for Mr. Kalczynski to hear how he should handle himself if the issue of another hotel or restaurant comes before the APC.
- While a hearing may not have been necessary, since the Ethics Board has convened it may be most useful to complete the process.

The Ethics Board concurred that it is most useful to proceed at this time.

Mr. Hohendorf stated:

- He was not seeking punitive action against Mr. Kalczynski.
- An advisory opinion from the Ethics Board should have been sought by the Chairperson of the APC.
- He sought guidance for Mr. Kalczynski regarding potential future conflicts of interest; and,
- To notice the City that more should be done to address potential conflicts of interests for members of City boards in the future.

Mr. Hohendorf continued:

- The attorney for the Daxton Hotel (Daxton) raised the issue of a potential conflict of interest on the part of Mr. Kalczynski at a previous meeting of the APC.
- During said meeting, it was made clear that Mr. Kalczynski would not be recusing himself from the discussion or vote. Further, the Chair of the APC ventured Mr. Kalczynski's opinion was necessary to the discussion.
- The question of Mr. Kalczynski's potential recusal should have been brought before the Ethics Board at that time to determine proper procedure according to the Birmingham Ethics Ordinance.
- City Commissioners often recuse themselves from Commission business to avoid the appearance of a conflict of interest. Recently a member of the Birmingham Planning Board did not participate in a conversation or a vote regarding the Daxton Hotel to avoid the appearance of a conflict of interest.
- Section 2-324 of the Ethics Ordinance specifies recusal if "directly or indirectly there is a financial or personal interest."
- Mr. Kalczynski's position as the Director of the Townsend Hotel (Townsend) in Birmingham would seem to present a direct financial conflict of interest as it relates to the Daxton Hotel potentially opening in Birmingham.
- Article 10, Section 3-324, Article 6 specifically addresses officials and employees of the City and how she or he "should refrain from voting on, or otherwise participating in debates on, any such matters including matters that involve their private employment."
- Article 6 of the Ethics Ordinance includes 'employee' as a potential source of conflicts of interest. Mr. Hohendorf was not able to confirm whether Mr. Kalczynski has any ownership in the hotel, but ownership is also a potential source of conflicts-of-interest.
- The Manager of Valet Services at the Townsend Hotel may answer to Mr. Kalczynski as the Director of the Townsend Hotel, presenting another potential source of conflicts of interest.

- The Manager of Valet Services at the Townsend Hotel appeared before the Planning Board to speak about parking at the Daxton even when parking at the Daxton was not on the Planning Board meeting agenda, which Mr. Hohendorf saw as a demonstration of a conflict of interest on the part of Townsend employees, which include Mr. Kalczynski.

Mr. Kalczynski stated he:

- Does not have ownership in the Townsend.
- Receives a salary and a bonus dependent on the Townsend's performance in a given year.

Mr. Hohendorf said:

- Since Mr. Kalczynski's bonus is dependent on the Townsend's performance, Mr. Kalczynski has a vested interest in the Townsend's success.
- Mort Crim Communications was hired on behalf of the Townsend to:
 - Discourage the approval of the Daxton's liquor license; and,
 - Undermine the already-resolved decision of the Daxton's valet parking.

Mr. Demorest said that Mr. Hohendorf was straying far afield of the question at hand, which was whether Mr. Kalczynski should have recused himself from the APC's discussion of parking at the Daxton.

Mr. Hohendorf said he sought to clarify Mr. Kalczynski's relationship with the Townsend in order to get a clear definition of the potential conflict of interest.

Chairperson Schrot asked Mr. Hohendorf to rephrase his questions.

Mr. Hohendorf asked Mr. Kalczynski to explain the breadth of his role as the Director of the Townsend.

Mr. Kalczynski replied:

- The Townsend's valet services are provided by a subcontractor, not an employee of the Townsend. Given that, Mr. Kalczynski does not direct the Manager of Valet Services to attend City meetings.
- The aforementioned media campaign was at the behest of the owner of the Townsend, and Mr. Kalczynski was not involved.

Mr. Hohendorf reiterated that Mr. Kalczynski receiving a bonus contingent on the Townsend's performance is still relevant when considering a potential conflicts-of-interest.

Mr. Kalczynski specified that the Townsend's operating partner, David Sillman, was the one who retained the services of Mort Crim Communications.

It was Mr. Hohendorf's contention that the Chair of the APC should have sought an advisory opinion from the Ethics Board from the outset regarding this matter.

Mr. Demorest introduced himself and Mr. Kalczynski, specifying that Mr. Kalczynski:

- Is on the APC to represent the parking interests of large retailers in Birmingham;
- Has served on the APC for six years; and
- Is a well-respected businessman who takes his ethical obligations very seriously.

Mr. Demorest continued:

- The issue before the APC at the meeting in question was how the parking should be structured at the Daxton, not whether the Daxton should be built.
- Neither he nor Mr. Kalczynski believed Mr. Kalczynski had a conflict of interest as defined by City ordinances, nor does Mr. Kalczynski have a direct financial interest in whether another hotel opens in Birmingham.
- Subsection Nine of the Ethics Ordinance acknowledges the fact that members of various boards and committees may have interests that must be taken into consideration, and "It is recognized that various Board and Committees are part of the plan of government for the City. As such it is further recognized that by virtue of the requirements for membership for 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 various Board and Committees in the City, as they may be established from time to time, may participate in such decisions if they act in the furtherance of the public good, in compliance with the duties of the Board, and in a manner consistent with Subsection Eight."
- Subsection Eight talks about a City official using his or her position to gain some measure of privilege, consideration, exemption, and/or advantage.
- Mr. Kalczynski's expertise in the parking issues that arise for existing Birmingham businesses is why Mr. Kalczynski was chosen for the APC, and additionally Mr. Kalczynski has knowledge of Birmingham parking issues as a resident.
- Mr. Demorest and Mr. Kalczynski do not believe the Ethics Ordinance requires Mr. Kalczynski to have recused himself. Additionally, the Chair of the APC is a lawyer who advised Mr. Kalczynski that he did not have to recuse himself, especially because Mr. Kalczynski's input was desired by the APC.
- Mr. Kalczynski and Mr. Demorest remain interested in the Ethics Board's ruling.

Mr. Hohendorf had no further questions for Mr. Kalczynski or statements at this time.

Mr. Kalczynski replied to Mr. Demorest, explaining that Mr. Kalczynski:

- Joined the APC when he took over from the previous Managing Director at the Townsend. Mr. Kalczynski was in the process of becoming a resident of Birmingham and wanted to be involved in the City's civic life. Mr. Kalczynski joined the APC in September 2012.
- Had not seen any other business relating to hotels in front of the APC during his tenure on the board.

In continuing to respond to Mr. Demorest, Mr. Kalczynski recalled:

- The Daxton's attorney questioning whether Mr. Kalczynski should recuse himself during the APC's discussion of the Daxton's valet services.
- The Chair of the APC at the time stating that requesting Mr. Kalczynski's recusal was "preposterous", or something to that effect, because every member of every board has various interests regarding what transpires in Birmingham.
- The subsequent Chair of the APC agreed with the previous Chair's conclusions regarding Mr. Kalczynski's recusal being unnecessary.
- That the APC meeting in question explored the issue of valet service utilizing seven or eight parking spaces on South Old Woodward, and the traffic congestion that might occur as a result at the corner of South Old Woodward and Brown Street. There are currently 2,500 - 3,000 people on a waiting list for

parking in Birmingham, and the APC was being asked to advise the Commission to remove those seven or eight spaces on South Old Woodward to make room for the Daxton's valet services.

- Mr. Kalczynski voted "nay" on the issue, but the whole discussion proceeded fairly.
- When the Commission reviewed the APC's recommendation to allow the removal of those seven or eight spaces on South Old Woodward, the Commission disagreed with the recommendation and asked the Planning Board to explore the issue further.

Mr. Kalczynski stated that he:

- Neither benefited from his nay vote, nor expected to benefit from his nay vote.
- Would like to continue serving on the APC.
- Is very upset to be at this point and takes his ethical commitments very seriously.

Mr. Kalczynski clarified for Ms. Fierro-Share that:

- The members of the APC are all citizens of Birmingham who were looking to expand their civic involvement.
- At least two APC members are business owners who have had concerns regarding parking within Birmingham.
- He likely has the most direct experience with Birmingham parking issues due to the nature of his position at the Townsend.

Mr. Kalczynski told Mr. Robb that:

- The Townsend took no public position on the matter of the Daxton's parking.
- No one on the APC raised the issue of a potential conflict of interest regarding the matter.
- No motion was raised at the APC meeting regarding whether Mr. Kalczynski may have had a conflict of interest.
- Any new hotel in Birmingham would be a competitor to the Townsend.
- While Mr. Kalczynski understands the perception of a conflict of interest, that is not the reality.

Mr. Robb noted that perceptions of conflict of interest are part of the Ethics Ordinance, though actual conflict of interest is also a factor, so the issue remains complex.

In response to Chairperson Schrot, Mr. Kalczynski said:

- The APC had discussions about the possibility of removing street parking spaces for condominiums on Frank Street.
- The Townsend currently pays for some on-street parking spaces on Merrill that are used to conduct valet services. Mr. Kalczynski was aware of this at the time of the APC's vote regarding the Daxton.
- Valet service is most important to the Townsend Hotel during large events.
- Residents have said the City is in "crisis mode" with parking, and residents' concerns about parking have not improved since last year.
- He would have no problem if the Townsend had to relinquish its reserved spaces to help reduce the parking demand in Birmingham.
- He was not encouraged to join the APC by his employer.
- He has not learned any information since the vote that would have caused him to change his vote.

- He requested guidance on what types of businesses should be considered competitors of the Townsend and therefore more liable to bring up conflict of interest questions.
- He was aware of the local media coverage of perceived conflicts between the Townsend and the Daxton, and a reporter must have come up with the headline "Hotel Wars" in order to push an agenda.
- His role on the APC is to make recommendations, along with his fellow board members, to the City Commission regarding parking issues.
- He signed an Ethics document upon his appointment to the APC that said he was ethically bound to do the right thing.
- He had not read the Ethics Ordinance. He was aware of the Ethics Board. He has never participated in any ethics training offered by Birmingham.
- The Chairperson of the APC, to Mr. Kalczynski's knowledge, had never advised Mr. Kalczynski or any of the other APC members of the Ethics Ordinance.
- Mr. Kalczynski is now aware of the Ethics Board's advisory opinion concerning recusal, but was not at the time of the vote.

Mr. Kalczynski confirmed for Mr. Robb that:

- The Chair of the APC did not advise APC members that Birmingham provides ethics training.
- The title of 'Managing Director' means Mr. Kalczynski is the director of hotel operations at the Townsend.

Mr. Hohendorf noted:

- That despite Mr. Kalczynski's statement that he was not aware of Birmingham's Ethics Ordinance, the ethics agreement he signed upon his appointment to the APC states, "I have read and understand the Code of Ethics of the City of Birmingham."
- The Daxton Hotel, in terms of quality, would be a direct competitor to the Townsend Hotel.
- That as far as he understood, two or three City Commissioners opined that Mr. Kalczynski should not vote on issues of parking regarding the Daxton Hotel.
- This problem could have been avoided since, even without Mr. Kalczynski's vote, there was a quorum at the APC meeting in question.

Mr. Kalczynski said he was not aware of any City Commissioners suggesting he should not participate in the vote. He was only aware that the Chair of the APC encouraged Mr. Kalczynski to vote.

Neither Mr. Demorest or Mr. Hohendorf had further questions.

Chairperson Schrot called for closing statements.

Mr. Hohendorf said he would like to see the City periodically remind all City board and committee members about the Ethics Ordinance and their obligations to uphold it.

Mr. Demorest said:

- Mr. Kalczynski explained his reason for participating in the APC vote.
- He believes Mr. Kalczynski's participation in the APC vote is consistent with Birmingham's Ethics Ordinance. Mr. Kalczynski participated in the vote in good faith, and with the public good in mind.

- The Ethics Board must consider how far the expectation of recusal would go for perceived conflicts-of-interest. For instance, because the Townsend has a bar, should Mr. Kalczynski be expected to recuse himself from bar parking discussions as well?
- The use at Brown and Woodward will be more intense than what was previously there, which was one reason for Mr. Kalczynski's nay vote.

Mr. Kalczynski confirmed that his membership on the APC is as a representative of large retail within Birmingham.

Chairperson Schrot closed the proofs at 5:22 p.m. and commenced deliberation.

Mr. Robb said:

- The APC Chair's statement that there was no potential conflict of interest with this vote was preposterous.
- The Ethics Board has done a few different presentations covering topics such as the Ethics Ordinance, FOIA, the Open Meetings Act, parliamentary procedure and the differences between ethics and morals.
- In reply to Mr. Hohendorf, Mr. Robb noted the Ethics Board has offered these presentations three times.
- Mr. Robb is disheartened that at least one of Birmingham's volunteer committees has not seen fit to take advantage of the aforementioned presentations.
- While the question had not been raised, for purposes of confirming the jurisdiction of these ordinances, Mr. Kalczynski is considered a City official in his capacity as a member of the APC.
- He agrees with Chairperson Schrot that the Ethics Ordinance boils down to being a conflict of interest ordinance.
- Sections (9) and (10) of Section of 2-324 seem to be the sections most relevant to the matter at hand. Section (10) summarizes whether there is a conflict of interest. Mr. Robb read Sections 8, 9, and 10 aloud.
- Mr. Robb emphasized that:
 - The text of 10a states that one's interest has to be adverse to the public interest in proper performance of one's duties.
 - The text of 10b requires a City official to derive direct monetary gain or suffer direct monetary loss by reason of official activity, which Mr. Robb reasoned was unlikely as far as Mr. Kalczynski and the Daxton.
 - He did not see any other prohibited interest.

Ms. Fierro-Share said:

- It is a thin line because the boards seek people with expertise, and that expertise may sometimes interact with an issue which comes before the board. Therefore, the onus is on board members to make sure they are proceeding in the public interest.
- The sections of the Ethics Ordinance that Mr. Robb cited seem to be the most relevant to the situation.
- Mr. Kalczynski seems to have been acting in good faith when he chose to vote in his role as a large retail representative on the APC.

Chairperson Schrot stated for the record that the Ethics Board is required to furnish a written opinion, that fifteen years of written Ethics Board opinions are on the City

website, and that the Board should discuss developing an index so people can browse the opinions for reference.

Chairperson Schrot noted:

- The Code of Ordinances (Code) in Sec. 2-320 sets minimum standards for ethical conduct; and
- The code in Sec. 2-321 enjoins officials to avoid official conduct which may tend to undermine respect for City officials, employees, and for the City as an institution.
- Mr. Hohendorf's primary concern seems to be public perception of a conflict of interest.
- The following sections as having bearing on this case: the definitions of financial interest, personal interest, or private gain in Sec. 2-322 and the responsibility to disclose described in Sec. 2-324, specifically highlighting 2-324 (a)(2) and 2-324 (b).
- Two leading citizens are present in this meeting, this may be a policy issue, and additional training may be necessary for City officials.
- Public officials have lives outside their work, these conflicts will arise, and will require analysis.
- It was his understanding that the previously written Ethics Board opinion regarding recusal would be disseminated among all the Boards and Commission members, but it does not seem it has.
- The goals here are to:
 - Determine if there was a violation of the Ethics Ordinance in this case; and,
 - Make sure, if this is considered 'actually, apparently, or potentially' a conflict of interest issue, that it does not occur again within City boards or commissions in the future in order to maintain public trust and the integrity of government.

Mr. Demorest confirmed that Mr. Kalczynski would be well-served by having an advisory opinion from the Ethics Board and would request one if Mr. Hohendorf were to withdraw his complaint.

Mr. Robb said Mr. Hohendorf seemed to have brought this issue before the Ethics Board in good faith and that it was appropriate for him to bring it up.

Mr. Hohendorf said that if a citizen had been able to request an advisory opinion, he would have taken that route instead. Mr. Hohendorf continued that he would be comfortable withdrawing the formal complaint if there was a way to have an advisory opinion issued.

Chairperson Schrot said he did not believe this comes under rule 205 of the Ethic Board's procedures, so procedurally the Board would need a dismissal and then a request.

Mr. Robb said he tentatively, sticking close to the facts, did not believe there was a violation. Ms. Fierro-Share and Chairperson Schrot agreed.

Mr. Hohendorf was advised by the Board that he was under no obligation to dismiss the complaint and that the Board was ready, willing and able to consider the complaint should that be Mr. Hohendorf's preference.

Mr. Hohendorf reiterated that, had he been able to receive an advisory opinion without filing a complaint, that would have been his preference.

Chairperson Schrot said the Board notes Mr. Hohendorf would have preferred an advisory opinion without a formal complaint.

Mr. Demorest confirmed for Chairperson Schrot that Mr. Kalczynski requests an advisory opinion at this time.

MOTION: Motion by Mr. Robb, seconded by Chairperson Schrot: To dismiss case 2018-001, establish case 2018-002; and, have the record as established in case 2018-001 be adopted as the record in case 2018-002, as a request for an advisory opinion with the stipulation that the opinion for 2018-002 will look at the conduct that was part of the complaint in 2018-001, as well as giving advice for the future regarding this issue.

VOTE:	Yea,	3
	Nays,	0
	Absent,	0

Mr. Robb called for proofs for 2018-002.

Mr. Demorest said he had nothing further to add as long as the previous statements were considered.

City Attorney Currier said the Board may wish to consider the City Commission minutes from May 14, 2018 where this matter was discussed because the landscape changed from when Mr. Kalczynski viewed this as part of the APC in August. City Attorney Currier further specified that during the May 14, 2018 meeting, Mr. Carson, as a representative for the Townsend, came before the Commission to object to some of the aspects of the Daxton. While this would not have any bearing on Mr. Kalczynski's involvement in the matter, it may have bearing on the Ethics Board's opinion for how conflict of interest issues should be handled in the future since the Townsend is taking a more active role in conversations regarding the Daxton.

Mr. Kalczynski said that he believes there are two members of the Planning Board who are architects for a new hotel. He asked if members of other Boards are allowed to speak to each other about issues outside of meetings.

Mr. Kalczynski was told that members of other Boards do likely socialize outside of meetings, as long as those gatherings do not reach a quorum.

Ms. Fierro-Share noted that:

- Mr. Carson appeared before the City Commission to speak on the topic of a liquor license at the Daxton;
- Parking came up heavily during the meeting as well; and,
- Mr. Kalczynski was in the audience of that meeting.

Mr. Kalczynski said he was not aware of any other Townsend employees on Birmingham boards or commissions.

City Attorney Currier advised the Ethics Board that the May 14, 2018 Commission meeting minutes may or may not be relevant to their consideration, but he wanted to make sure they were aware of the Townsend's appearance at said meeting in regards to the Daxton.

The Ethics Board agreed:

- To look at the May 14, 2018 Commission meeting minutes.
- To provide some preliminary guidance for Mr. Kalczynski so he knows how to proceed prior to the Ethic Board's written opinion becoming available.

Chairperson Schrot recommended Mr. Kalczynski:

- Read the Birmingham Ethics Ordinance;
- Review the "Food for Thought" video that is available online; and,
- Read the opinions regarding recusal -- opinion 2003-03 and 2012-01.

Mr. Robb agreed with Chairperson Schrot and continued that:

- If there is an intra-Board dispute regarding a potential conflict of interest, it can be referred to the Ethics Board immediately as a referred question of disqualification. Then the Ethics Board can clarify whether a disqualifying conflict exists.
- Mr. Kalczynski must recuse himself from issues regarding the Townsend parking which come before the APC.
- Whenever an issue is brought before the APC, Mr. Kalczynski should go through the expectations of the Ethics Ordinance to make sure he is in line, or address the question with the Chair of the APC should that need arise.

Mr. Hohendorf noted that the ordinance recommends the Chair of a board anticipate a potential conflict and be proactive in addressing it.

Chairperson Schrot said:

- Prior to meetings, Board Chairs should reach out to the Ethics Board if the possibility of a conflict of interest is on the horizon. Then the Ethics Board will be able to issue an advisory opinion or a referred question of disqualification.
- Mr. Kalczynski is on notice that there is public perception of a direct competitor relationship between the Townsend and the Daxton.
- Mr. Kalczynski did not make sufficient full disclosure as required by the Ethics Ordinance.
- The Chair of the APC should not have made the call regarding a potential conflict of interest, and ultimately responsibility rests with the individual with the potential conflict of interest.
- "Often public officials honestly believe they are not being duly influenced by their personal stake in an issue. To the contrary, they may feel that their interest in the matter gives them a special insight into a subject. They may argue that they understand the problems of a downtown business because they own or manage one. Nevertheless it is very difficult for individuals to determine whether they are being fair where their self-interest is involved. Therefore the Ethics Ordinance prevents such partiality. The Ordinance is aimed at the perception, as well as the

reality, that a public official's personal interest may influence a decision. Even the appearance of impropriety undermines the public's trust that the process is fair. A public official is not absolved of his or her responsibility merely by being transparent about his or her stake in an issue. It is insufficient to make conflicts public. They must remove themselves from the decision-making process altogether. This includes discussion as well as voting. Abstention is only half of the requirement."

Ms. Fierro-Share left the meeting at 6:16 pm.

Chairperson Schrot continued:

- Mr. Kalczynski should determine his participation on a case-by-case basis. For instance, if his recusal would result in a lack of quorum, his participation may be more strongly weighted towards being in the public interest.
- Volunteer board members offer a significant service to the community, and tend to not have an appreciation of when the public may perceive a City official as engaging in a financial conflict of interest, a private conflict of interest, or private gain. This is why public officials sacrifice their private interest during their Board service. Public officials wear two hats because their private conduct is still a consideration, and public service must be prioritized over private interests.
- The public is not always right, but the purpose of having ethics in government is to instill trust in all government leadership. Government then serves as an example of integrity, which influences other individuals and their personal lives.
- Public officials, therefore, cannot and should not take certain risks. Regardless of what role one is filling on a Board, all members of a Board tend to have familiarity with the issues, and must trust the other Board members' expertise.

Mr. Robb said Opinion 2012-01 addressed the perception that recusal was happening too frequently. It must be considered that a recusal deprives the citizens of that board member's expertise. At the same time, it must be considered whether there may be a conflict, or the perception of conflict, for a board member vis-a-vis an issue coming before their board. If that is the case, the board member's continued participation in the decision risks undermining the public's trust in the decision.

Chairperson Schrot noted that in the 2012-01 case, it was made clear that a board member must give full disclosure regarding a potential conflict of interest, and that conflict of interest concern may be challenged by other members of the board.

MOTION: Motion by Mr. Robb, seconded by Chairperson Schrot:
To close, with the inclusion of the May 14, 2018 Commission meeting minutes, the proofs for 2018-002. (*Appended to these minutes as Attachment A*)

VOTE: Yeas, 2
 Nays, 0
 Absent, 1 (Fierro-Share)

The initial draft of the opinion was assigned to Chairperson Schrot.

APPROVAL OF MINUTES OF JULY 17, 2017

MOTION: Motion by Mr. Robb, supported by Chairperson Schrot:

To approve the minutes of July 17, 2017 as amended.

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

VI. PUBLIC COMMENT

None.

VII. ADJOURN

The meeting was adjourned at 6:37 p.m.

J. Cherilynn Mynsberge, City Clerk

BIRMINGHAM CITY COMMISSION MINUTES
MAY 14, 2018
MUNICIPAL BUILDING, 151 MARTIN
7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Harris called the meeting to order at 7:30 p.m.

II. ROLL CALL

ROLL CALL: Present,	Mayor Harris Mayor Pro Tem Bordman Commissioner Boutros Commissioner DeWeese Commissioner Hoff Commissioner Nickita Commissioner Sherman
Absent,	None

Administration: City Manager Valentine, City Attorney Currier, Senior Planner Baka, Communications Director Byrnes, Assistant City Planner Chapman, Planning Director Ecker, DPS Manager Filipski, Building Official Johnson, Assistant Building Official Morad, City Clerk Mynsberge, City Engineer O'Meara, Director of Public Services Wood

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

05-125-18 ANNOUNCEMENTS

Mayor Harris announced:

- The Celebrate Birmingham Parade and Party will be held Sunday, May 20th. The parade starts at 1:00 p.m., rain or shine, at the corner of S. Old Woodward and Frank and continue to Brown, Pierce, Martin, and Bates. The parade will be immediately followed by the Party in Shain Park with entertainment, games, food and fun for the entire family.
- A few artifacts have been uncovered beneath the pavement during the current Maple-Brown construction, including:
 - An inter-urban rail spike from the streetcar line used from 1890 – 1920.
 - A utilitarian bottle from 1890 – 1920 as well.
 - A Nesbitt's soda bottle from 1942 – 1952.

These items will be on display at the Birmingham Museum.

05-126-18 APPOINTMENTS TO THE BOARD OF BUILDING TRADES APPEALS

The City Commission interviewed David Force and Bradley Klein. Ronald White, a current member of the Board was unable to attend.

MOTION: Motion by Commissioner Sherman:

To appoint Ronald White to the Board of Building Trades Appeals as a regular member to serve a three-year term to expire May 23, 2021.

VOTE: Yeas, 7
Nays, 0
Absent, 0

MOTION: Motion by Commissioner Boutros:

To appoint David Force to the Board of Building Trades Appeals as a regular member to serve a three-year term to expire May 23, 2021.

VOTE: Yeas, 7
Nays, 0
Absent, 0

The Commission was in agreement to delay making an appointment for the vacant position until applicant Bradley Klein was able to attend an interview.

Wendy Zabriskie, a current member of the Authority, was unable to attend. Mayor Harris asked the Commission to concur with him in appointing Wendy Zabriskie.

Commissioner Hoff expressed concern that Ms. Zabriskie only attended one of three meetings in 2017. City Manager Valentine explained the Authority meets as needed and therefore members are sometimes unable to accommodate meetings scheduled with little advance notice.

MOTION: Motion by Mayor Harris:

To concur in the Mayor's appointment of Wendy Zabriskie to the Brownfield Redevelopment Authority as a regular member to serve a three-year term to expire May 23, 2021.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

05-128-18 APPOINTMENT TO THE MULTI-MODAL TRANSPORTATION BOARD

The City Commission interviewed Doug White.

MOTION: Motion by Commissioner Hoff:

To appoint Doug White to the Multi-Modal Transportation Board as a regular member to serve a three-year term to expire March 24, 2021.

VOTE: Yeas, 7
Nays, 0
Absent, 0

05-129-18 APPOINTMENT TO THE PLANNING BOARD

The City Commission interviewed Jason Emerine.

MOTION: Motion by Mayor Pro Tem Bordman:

To appoint Jason Emerine to the Planning Board as an alternate member to serve the remainder of a three-year term to expire November 2, 2020.

VOTE: Yeas, 7
Nays, 0
Absent, 0

The City Commission interviewed George Abraham, currently serving on the Board as an alternate member.

MOTION: Motion by Commissioner DeWeese:

To appoint George Abraham to the Cablecasting Board as a regular member to serve the remainder of a three-year term to expire March 30, 2021.

VOTE: Yeas, 7
Nays, 0
Absent, 0

The City Clerk administered the Oath of Office to the appointees.

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.

05-131-18 APPROVAL OF CONSENT AGENDA

The following items were removed from the Consent Agenda:

- Commissioner Hoff: Item N, Sidewalk Trip Hazard Elimination Services.
- Mayor Pro Tem Bordman: Item B, City Commission Budget Hearing Minutes, 04/28/18.
- City Manager Valentine: Item J, Oakland County West Nile Expense Reimbursement Request.
- City Manager Valentine: Item M, Set Public Hearing for 736 & 760 Pleasant Lot Combination. Application withdrawn by the applicant.

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

To approve the Consent Agenda, with Items B, J, and N removed, and M removed from the agenda in its entirety, and with special thanks to Michael Surnow for his service on the Multi-Modal Transportation Board, and to Cheryl Daskas and Rachel A. Woods for their service on the Birmingham Shopping District Board.

Mayor Harris	
Commissioner Hoff	
Commissioner Nickita	
Commissioner Sherman	
Nays,	None
Absent,	None

- A. Resolution approving the City Commission meeting minutes of April 23, 2018.
- C. Resolution approving the City Commission special meeting minutes of April 28, 2018.
- D. Resolution approving the warrant list, including Automated Clearing House payments, dated April 25, 2018 in the amount of \$562,763.31.
- E. Resolution approving the warrant list, including Automated Clearing House payments, dated May 2, 2018 in the amount of \$539,780.51.
- F. Resolution approving the warrant list, including Automated Clearing House payments, dated May 10, 2018 in the amount of \$781,428.52.
- G. Resolution accepting the resignation of Michael Surnow from the Multi-Modal Transportation Board as a Regular Member, thanking him for his service, and directing the City Clerk to begin the process of filling the vacancy.
- H. Resolution accepting the resignation of Cheryl Daskas from the Birmingham Shopping District Board, thanking her for her service, and directing the City Clerk to begin the process of filling the vacancy.
- I. Resolution accepting the resignation of Rachel A. Woods from the Birmingham Shopping District Board, thanking her for her service, and directing the City Clerk to begin the process of filling the vacancy.
- K. Resolution approving the purchase of uniforms with Contractors Clothing Company for the total amount not to exceed \$9,000 for fiscal year 2018-2019. Funds are available for this in the Public Services - Uniform Allowance account # 101-441.002-743.0000.
- L. Resolution setting Monday, June 4, 2018 at 7:30 PM for a public hearing to consider a Special Land Use Permit Amendment for 209 Hamilton Row/250 N Old Woodward – Emagine Palladium, to allow for the renovation and installation of a 35 seat private viewing theater.
- O. Resolution authorizing the purchase of the one model #D6626-1 bus shelter from account 401-901.020-971.0100 in the amount of \$21,927 from Enseicom, and further, waiving the normal bidding requirements as Enseicom is a sole source vendor for this product.
- P. Resolution awarding the contract for the Native Wet Meadow Planting Project to Cardno, Inc. in the amount not to exceed \$16,720.00. Funds are available in the Parks - Other Contractual Services account, #101-751.000-811.0000 for this project. Further, authorizing the Mayor and Clerk to sign the agreement on behalf of the City upon the receipt of required insurances.

05-132-18

**CITY COMMISSION BUDGET HEARING MINUTES - APRIL 28, 2018
(ITEM B)**

Mayor Pro Tem Bordman noted Mayor Harris' title on Page 8 under the Community Development Block Grant heading should be corrected from "Mayor Pro Tem" to "Mayor".

MOTION: Motion by Mayor Pro Tem Bordman, seconded by Commissioner Boutros: To approve the City Commission budget hearing minutes of April 28, 2018 as corrected.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

05-133-18

OAKLAND COUNTY WEST NILE EXPENSE REIMBURSEMENT REQUEST (ITEM J)

Mayor Pro Tem Bordman took the opportunity to remind residents to remove any standing water on their property, as it provides a breeding ground for mosquitos.

MOTION: Motion by Mayor Pro Tem Bordman, seconded by Commissioner Nickita: To approve the Resolution requesting reimbursement for the maximum allotment of \$2,648.39 for eligible mosquito control activity under the Oakland County's West Nile Virus Fund Program. *(Formal resolution appended to these minutes as Attachment A)*

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

05-134-18

SIDEWALK TRIP HAZARD ELIMINATION SERVICES (ITEM N)

City Engineer O'Meara said that only Precision Concrete, Inc. responded to the City's bid for sidewalk trip elimination services. Their specialty is a patented system for grinding which will deal with minor trip hazards. Larger issues will be dealt with in a different contract. A little over 700 locations will be addressed as part of this project.

MOTION: Motion by Commissioner Hoff, seconded by Commissioner Boutros: To award the 2018 Sidewalk Trip Hazard Elimination Program, Contract #6-18(SW) to Precision Concrete, Inc., in the amount of \$48,000.00, to be charged to the Sidewalk Fund, account number 101-444.001-981.0100, contingent upon execution of the agreement and meeting all insurance requirements. Further, approving an Amendment to the 2017-18 Fiscal Year Budget as follows:

Sidewalk Fund

Revenues:		
Draw from Fund Balance	#101-000.000-400.0000	\$48,000
Total Revenue Adjustments		\$48,000
Expenditures:		
Public Improvements	#101-444.001-981.0100	\$48,000
Total Expenditure Adjustments		\$48,000

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

V. UNFINISHED BUSINESS

None.

VI. NEW BUSINESS

05-135-18 PUBLIC HEARING TO CONSIDER NECESSITY FOR IMPROVEMENT – 2018 CAPE SEAL PROJECT – PUBLIC STREET IMPROVEMENT

Mayor Harris opened the public hearing at 7:51 p.m.

DPS Manager Filipski reviewed Director of Public Services Wood's memo to City Manager Valentine dated May 3, 2018 regarding the 2018 Cape Seal Project – Public Hearing of Necessity.

Mayor Pro Tem Bordman stated that she and Mayor Harris live within the cape seal project area. City Attorney Currier did not believe there was a conflict of interest, and the Commission concurred.

DPS Manager Filipski sent out two sets of notices regarding this public hearing, both of which explained the option of petitioning for an improved street . DPS has received phone calls regarding whether there would be parking restrictions, but there has not otherwise been much interest.

Dave Sillman said he did not recall receiving a proposal for improved streets.

DPS Manager Filipski clarified that improving streets has a higher up-front cost, and that there was a town hall meeting noticed and held to address all related concerns.

Bob Corry expressed opposition to the project due to the massive construction traffic occurring on his block of Fairfax. Mr. Corry emphatically stated he would see it as a waste of money at this time.

City Engineer O'Meara, at Commissioner DeWeese's request, explained the roads are in poor condition and that is why the project is proposed now. The work will be more extensive the longer it is delayed. Commissioner DeWeese encouraged residents to petition for an improved street.

Commissioner Sherman commented that the Ad Hoc Unimproved Street Study Committee will be working on a plan for improving streets in the future. The short-term alternative is residents petitioning for an improved street. Cape seal is just a temporary measure.

There being no further comment, Mayor Harris closed the public hearing at 8:02 p.m.

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

To approve the determination of necessity for the improvement to be known as 2018 Cape Seal Program-Public Street Improvement; further, to approve the cost estimates submitted by the Department of Public Services; further, to create a special assessment district and special assessments levied in accordance with benefits against the subject properties; further that the following method of assessment be adopted: 85% of front-foot costs for improvement are assessed on all property fronting the improvement; 25% of side-foot costs for improvement are assessed on all residential property siding the improvement; 85% of side-foot costs for improvement are assessed on improved business property siding the improvement and; 25% of side-foot costs for improvement are assessed on vacant business property siding on the improvement; further, to direct the City Manager to prepare the special assessment roll and present the same to the City Commission for confirmation at the public hearing on Monday, June 4, 2018 at 7:30 p.m.

Commissioner Nickita noted the Commission is doing the temporary solution because residents have not expressed interest in petitioning for improved streets.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

**05-136-18 PUBLIC HEARING TO CONSIDER THE SPECIAL LAND USE PERMIT
 AND FINAL SITE PLAN REVIEW – 260 N. OLD WOODWARD – THE
 MORRIE**

Mayor Harris opened the public hearing at 8:04 p.m.

Planning Director Ecker reviewed her May 3, 2018 memo to City Manager Valentine regarding The Morrie.

Planning Director Ecker confirmed the design accommodates the new sidewalk condition post-construction, including the required five-foot clearance.

Aaron Bellin, the owner of The Morrie, appeared before the Commission. Mr. Bellin said there will be a dance floor between the bar and booth seating.

Planning Director Ecker stated no dance floor was included in the plans submitted to the Planning Board.

Kevin Biddison, architect for The Morrie, appeared before the Commission. Mr. Biddison explained:

- A ten-by-ten foot area in front of the bar that would occasionally be cleared of tables to make space for dancing;
- The flooring in the Morrie will be concrete; and
- Soundproofing material would be applied to the ceiling and walls.

Mr. Bellin said:

- The Morrie will be open seven days a week, from 12 p.m. until 11 p.m. on weeknights, and Friday and Saturday until 2 a.m.
- There may be a cover charge depending on the band, ranging from \$5 - \$20.

Planning Director Ecker confirmed that the applicant specifically told the Planning Board there would be no dance floor at the Birmingham location of The Morrie, and no tables would be cleared to create a dance floor.

John Jonna, co-owner of Vinotecca Wine Bar, appeared before the Commission and offered a statement in support of The Morrie's opening.

Jordan Jonna, representing AF Jonna Development, L.L.C., the owners of the property at 260 N. Old Woodward, appeared before the Commission. Mr. Jonna stated:

- The Morrie in Royal Oak is not a nightclub. Rather, it creates a sing-along atmosphere with the bands, and "soft dancing".
- The space was formerly a theater and so already has some soundproofing.

City Manager Valentine said a recently adopted ordinance permits the City Manager to suspend activities at a business with a Special Land Use Permit (SLUP) and to require the owner to appear before the Commission for a public hearing should issues regarding the SLUP agreement arise.

Commissioner Boutros told the Commission that the Police Chief of Royal Oak wrote a complimentary email regarding The Morrie's operations in Royal Oak.

There being no further comment, Mayor Harris closed the public hearing at 8:21 p.m.

MOTION: Motion by Commissioner Boutros, seconded by Mayor Pro Tem Bordman: To approve the Special Land Use Permit and Final Site Plan Review for 260 N. Old Woodward – The Morrie, to allow the operation of a restaurant, serving alcoholic liquors, and providing live entertainment. (*Formal resolution appended to these minutes as Attachment B.*)

Mayor Pro Tem Bordman expressed concern with the discrepancy regarding the dance floor.

Owner confirmed for Commissioner Hoff that there will be valet parking.

Commissioner Nickita shared concern that the plans submitted are not fully accurate without depictions of the dance floor. When detail is missing from a SLUP, the City cannot assess a business' adherence to its permit in an on-going way.

Mayor Harris suggested a motion to amend to include the dance floor as part of the SLUP. Commissioner Boutros consented to this suggestion, and City Attorney Currier stated this would be legally valid.

Mayor Pro Tem Bordman drew City Attorney Currier's attention to a clause on the second page of the proposed SLUP reading "1. The Morrie shall be permitted to provide entertainment in accordance with their entertainment permit issued by the MLCC". Mayor Pro Tem Bordman asked for clarification as to what is allowed under such a permit.

City Attorney Currier said:

- Birmingham has either specifically licensed or prohibited dance floors, historically, as part of a business' SLUP. There have even been specific hours of permitted operation for dance floors required.
- Reliance on the general provisions of an entertainment permit to address the matter would be inadvisable.

Planning Director Ecker reiterated for Mayor Harris that The Morrie communicated in writing there would be no guest interaction with the band beyond singing.

Commissioner Sherman said the Commission could either send the application back to the Planning Board for review and possible amendment or adopt the SLUP with no dance floor and no dancing.

Mr. Bellin stated that he has been transparent about intended dancing within The Morrie throughout the application process.

Commissioner Sherman replied that the dance floor was not presented as part of the SLUP proposal. The Commission can only move forward on the information presented within an application.

Scott McDonald, general counsel to Mr. Bellin and stand-in for attorney Kelly Allen, clarified the MLCC requires a dance floor be clearly marked and suggested such delineation would be the second part of this application.

Commissioner Nickita replied that the SLUP must be specific because it is part of a contract with the City, and needs to be laid out clearly as part of the application. Commissioner Nickita then requested guidance from City Attorney Currier for the best way to move forward.

City Attorney Currier advised that:

- The Commission should approve the SLUP this evening if they see fit; and,
- Mr. Bellin should be required to appear before the Planning Board for the formulation of an amendment to the SLUP providing details regarding the dance floor and dancing at The Morrie.

Commissioner Sherman clarified this action would allow the applicant to move forward in their application process with the MLCC, while requiring the details necessary for a concrete SLUP with the City. City Attorney Currier concurred.

VOTE: Yeas, 7

Nays, 0
Absent, 0

**05-137-18 PUBLIC HEARING TO CONSIDER ZONING ORDINANCE
AMENDMENTS TO BISTRO ORDINANCE**

Mayor Harris opened the public hearing at 8:41 p.m.

Senior Planner Baka reviewed the joint Commission/Planning Board effort to consider possible amendments to the Bistro Ordinances, and the proposed Bistro Ordinance amendments as suggested by the Planning Board to the Commission.

Senior Planner Baka said the Planning Board recommended eliminating enclosed platforms for dining because another ordinance prohibits enclosures.

Mayor Pro Tem Bordman stated:

- If the desire is to require a platform with a railing, the language should read "platform with a railing".
- If Planning Board does not address rooftop dining so as not to encourage it, rooftop dining will be implicitly allowed by the lack of any language addressing the issue.

Planning Director Ecker explained that the Planning Board sought:

- To not be overbroad in the requirements for outdoor dining, rooftop dining, and parking for outdoor dining so as to encourage its development while still allowing its regulation through the SLUP application process.
- To maintain the difference between a smaller bistro license and a Class C license by prohibiting enclosed year-round outdoor dining for a Bistro.

Commissioner Nickita believed the prohibition on year-round outdoor dining insufficiently addresses the need to keep bistro-licensed restaurants smaller than Class C-licensed restaurants, especially since bistro licenses already technically preclude year-round outdoor dining.

Planning Director Ecker explained the Planning Board did not want to limit total outdoor seating by ordinance, but that the SLUP application process may allow the City to sufficiently limit the seating in a bistro-licensed restaurant on a case-by-case basis.

Planning Director Ecker confirmed that the proposals potentially allow bistro-licensed restaurants to have unlimited seating in the warmer months, and that this was the Planning Board's intent.

Commissioner Nickita stated:

- His concerns regarding seating capacity were enough for him to not move these amendments forward as currently proposed.
- A 42"-inch maximum rail would be sufficient, though he would like to see them smaller.
- Preventing the use of eisenglass around outdoor seating is a positive move to control seating capacity.
- It might be wise to codify platform standards.

Planning Director Ecker replied that when platforms were first discussed by the Planning Board in 2007, they decided to leave the requirements open so as not to inhibit creativity. She continued that the Commission could ask the Planning Board to revisit that, should the Commission see fit.

Commissioner Nickita clarified he does not seek to regulate design standards for platforms, but fundamental building standards such as size, materials, edge conditions, sleeper channels, non-skid texture and other related criteria.

City Manager Valentine stated that city staff can create a formalized platform standard for the Commission to review and potentially adopt.

Commissioner DeWeese said the intended benefits of the bistro were:

- Activation of the street;
- Focus on food and not alcohol; and,
- The creation of intimacy within a so-licensed restaurant.

Commissioner DeWeese continued that:

- Moving seating up to higher floors or rooftops fails to activate the street.
- He would like to see bistro licenses remain closer to their original intent.
- Different districts could potentially have different bistro requirements.

Mayor Harris suggested that the Commission could approve the proposed ordinance language and direct staff and the Planning Board to re-address outdoor seating issues.

Mayor Pro Tem Bordman said:

- A reconsideration of the outdoor seating issue may also affect the indoor capacity of a bistro-licensed establishment.
- There are enough other concerns that all proposed amendments should return to the Planning Board.

Commissioner Nickita said:

- The Planning Board should provide seating parameters, and not require the Commission to determine said parameters with every individual bistro SLUP application.
- He would be comfortable having the Planning Board review the amendments and send them back to the Commission.

Norman LePage, owner of Big Rock Chop House, voiced his support for the Commission's suggestions.

Senior Planner Baka told Mr. LePage that the bistro seating regulations increased from 65 indoor seats to 85 indoor seats in order to encourage more bistro applications in certain areas of the City.

Mayor Pro Tem Bordman told Mr. LePage that should any existing establishment come before the Commission seeking to change their SLUP bistro license, the Commission can require that the establishment come into alignment with the new bistro requirements.

Jeremy Sassoong appeared before the Commission and said:

- There should be a focus group to consider the difference between a bistro license and a Class C license.
- The City should clarify its standards for bistro licenses and other applications, because he feels he has been denied two licenses for subjective, not objective, reasons.

Joe Zane appeared before the Commission and said he would like to see bistro licenses granted in the Triangle District, even if it requires relaxing the standards a bit.

There being no further comment, Mayor Harris closed the public hearing at 9:24 p.m.

The Commission agreed to send the proposed ordinance amendments back to the Planning Board for reconsideration.

**05-138-18 PUBLIC HEARING TO CONSIDER ORDINANCE AMENDMENTS TO
 ALLOW HOTEL LIQUOR LICENSES IN THE B-4 ZONING DISTRICT**

Mayor Harris opened the public hearing at 9:25 p.m.

Planning Director Ecker provided a review of her May 2, 2018 memo to City Manager Valentine regarding the B-4 zoning district.

Commissioner Sherman suggested the Commission look at the Chapter 10 Liquor License first, decide on whether to move that forward, and then look at zoning aspects, so as not to confuse topics.

Planning Director Ecker explained that:

- An economic development license (EDL) is not being considered because an EDL is only permitted in specific locations.
- Expanding the geographic parameters of the EDL was previously considered by the Commission, but not enacted.
- The proposed ordinance amendment would require 100 hotel rooms in order to apply for a liquor license.
- The 100-room figure was set by the Planning Board in order to set a reasonable benchmark for economic investment on the part of the applicant.

Commissioner Boutros suggested there should be both a minimum investment amount and a minimum room number in the proposed hotel ordinance amendment in order to account for potential variables.

Planning Director Ecker said a new hotel property would likely meet a minimum investment requirement, but a rehab of a previously-existing hotel property might not. This would potentially disqualify the latter type of applicant from being able to apply for a hotel liquor license.

Commissioner Boutros recommended further study in order to prevent loopholes.

Commissioner Nickita agreed that the room number requirement merits further study and analysis.

Rick Rattner, representing The Daxton Hotel (The Daxton), appeared before the Commission and spoke in favor of the ordinance amendment, that it allows the development of first-class hotels in Birmingham and enhances a visitor's experience of the unique and pedestrian-friendly nature of the City.

David Berman, a representative of the group developing The Daxton, appeared before the Commission. Mr. Berman stated that in the three-year process of developing The Daxton, it has become clear that no luxury, boutique hotel operates with fewer than 100 rooms, and said it is a reasonable threshold.

Dave Marcus appeared before the Commission as the owner of the Holiday Inn in Birmingham and said:

- A luxury hotel needs a liquor license in order to survive.
- It would be wise to require a minimum investment amount and not a minimum room number because some locations in Birmingham are so space-limited that 100 rooms may not fit.

Marc Beshany appeared before the Commission as a resident and the Director of the Birmingham Wells Fargo. Mr. Beshany said this ordinance amendment would have a positive impact on the City.

Scott Barry spoke in support of the proposed ordinance amendment.

Andy Petcoff spoke in support of the proposed ordinance amendment.

Paul Choukourian spoke in support of the proposed ordinance amendment.

David Foster spoke against the proposed ordinance amendment, citing lack of benefit to the residents, increased congestion and further parking difficulties. Mr. Foster said residents should be surveyed on their perspective before this moves forward.

Michele Prentiss spoke as the owner of 142 condominiums in Birmingham, and said a survey of her residents demonstrated broad approval for this ordinance amendment.

Justin Barnes, owner of Blue Yoga in Birmingham, spoke in favor of the proposed ordinance amendment.

Linda Taubman spoke against the proposed ordinance amendment, citing similar reasons as Mr. Foster.

Rino Marra, owner of Figo Salon and the building at 265 N. Old Woodward in Birmingham, spoke in favor of the proposed ordinance amendment.

Robert Carson spoke as a representative of several Class C liquor license holders. Mr. Carson stated:

- There are three Class C liquor licenses in escrow in Lansing.
- This sets up a system in which some businesses are more accommodated by the City than others.
- No need for this special treatment has been established, and The Duxton could acquire a Class C liquor license.

Mr. Carson clarified for Commissioner Sherman that he represents Big Rock, The Townsend, and other establishments. Mr. Carson declined to name the other establishments, noting the other clients were not in attendance.

Patrick Hall, representing The Duxton and appearing as liquor counsel for them, stated:

- The three licenses in escrow in Lansing are not available, as they are held by landlords for specific, currently vacant spaces.
- The Duxton sought to acquire a Class C license from holders within Birmingham and holders within Oakland County and was unable to do so.

David Sillman, co-owner of The Townsend Hotel, stated that this proposed ordinance amendment is due to a lack of due diligence on the part of The Duxton's developers. Mr. Sillman continued:

- If The Duxton had sufficiently vetted the property and the entitlements they needed before purchase, they would not be asking for a special allowance now.
- There has not been sufficient study of the implications of the proposed ordinance amendment.

There being no further comment, Mayor Harris closed the public hearing at 10:17 p.m.

Commissioner Boutros emphasized that the question before the Commission is not regarding The Duxton, but how the proposed ordinance amendment will benefit Birmingham.

Commissioner Hoff clarified that The Duxton was already approved, and that the Commission is considering a special allowance, not the existence of The Duxton in general. Commissioner Hoff shared:

- Agreement with Mr. Sillman's concerns.
- That the City should consider expanding the definition of the EDL, rather than making a new ordinance amendment, so as to make sure any business that invests \$10 million in Birmingham can acquire the liquor license needed.

Commissioner DeWeese concurred with Commissioner Hoff.

Commissioner Nickita stated that:

- This proposed ordinance amendment meets a need in Birmingham, just as the process of developing bistro licenses and EDLs met City needs.
- The minimum number of rooms requirement must be studied.
- There should also be a way for the Birmingham Holiday Inn to acquire a liquor license should it see fit, in order to allow the opportunity for its further development.
- Expanding the EDL may be an option, but potentially leads to changing zones to meet the needs of a project, which has not historically been Birmingham's approach to resolving zoning issues. Both this option and the proposed ordinance amendment have benefits and drawbacks.

Mayor Harris:

- Shared much of Commissioner Nickita's perspective.
- Added that much of the opposition voiced this evening regarded the building of The Daxton, which was already approved, and not the particular proposed ordinance amendment. As a result, he was inclined to move forward.

Commissioner Sherman stated that when bistro licenses were developed, the City made it possible for existent establishments meeting the same criteria to apply for said licenses. The same principle should apply here, and the 100-room minimum prevents that.

Commissioner DeWeese said the proposed ordinance amendment should apply to all City hotels, but should also encourage additional investment and development.

Commissioner Sherman agreed, and reviewed the fact that existent restaurants had to meet certain investment requirements in order to obtain a bistro license.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese:
To amend Chapter 10, Alcoholic Liquors, Article II, Division 5, to allow hotels in Downtown Birmingham to qualify to operate with liquor licenses, similar to theaters (*Ordinance appended to these minutes as Attachment C*);

Commissioner Sherman told Mayor Harris that this motion creates a particular class of license, but does not yet specify the permitted geographic application within the City. This functionally prevents the licenses' issuance until the Commission determines the geographic application.

Mayor Pro Tem Bordman said the proposed ordinance amendment should be returned to the Planning Board, given the Commission's concerns.

Commissioner Sherman said opportunities for revision remain even if the amendment passes this evening.

VOTE: Yeas, 5

Nays, 2 (Bordman, Hoff)
Absent, 0

Commissioner Sherman said this part of the discussion determines the geographic application of the licenses. He continued it might be best to have the Planning Board determine where these licenses should be allowed on a city-wide basis.

Mayor Harris said he was persuaded these licenses should be allowed in B-4 zoning, but this does not preclude additional study and additional geographic applications.

City Attorney Currier said a hotel not included in B-4 zoning could come before the Commission to ask that the proposed ordinance amendment be included to their SLUP.

Commissioner DeWeese suggested:

- Restricting this license to B-4 zoning only is too limiting.
- The Planning Board should study the geographic application, the minimum number of rooms required, and the possibility of adding an economic investment requirement.

Commissioner Nickita agreed with Commissioner DeWeese and said he would like a way to allow the Holiday Inn to benefit from these changes in order to encourage investment in the property.

Commissioner Sherman said the process of approving a license type while requesting further study of the geographic application has precedent in the TZ zoning ordinance.

MOTION: Motion by Mayor Pro Tem Bordman, seconded by Mayor Harris:
Resolution amending Chapter 126, Zoning, Article 2, section 2.37, B-4 Business Residential, to allow the sale of liquor in hotels in the B-4 zoning district with a valid Special Land Use Permit.
(Ordinance appended to these minutes as Attachment D)

City Manager Valentine confirmed the Planning Board would prioritize this analysis to speed its return to the Commission, with direction drawn from the Commission's comments this evening.

Commissioner Sherman cautioned that defining the zone here allows an establishment to benefit from this ordinance before all the desired revisions are in place.

Mayor Harris stated that such an application is still subject to SLUP approval and remains up to the Commission's discretion.

VOTE: Yeas, 4
Nays, 3 (DeWeese, Hoff, Sherman)
Absent, 0

Mayor Harris recessed the meeting at 10:55 p.m. and reconvened at 11:00 p.m.

05-139-18

**SPECIAL EVENT REQUEST SUBMITTED BY BIRMINGHAM FIRST
UNITED METHODIST CHURCH – SHINE ON WORSHIP SERVICE**

Kristin Snyder, Worship Coordinator, First United Methodist Church, presented the request for a special event permit.

Ms. Snyder clarified:

- Set-up would be from 7 a.m. to 8 a.m., rehearsal would be from 8 a.m. to 9:30 a.m., and the service would run from 10 a.m. to 11 a.m. Break-down and clean-up should be finished by noon.
- The speakers will not be as loud as the City's concert series, though there will be a full band with a drum kit.
- Every property within 300 feet was notified.
- The amplification and equalization must be calibrated as part of the rehearsal, so it would be difficult to rehearse without amplification.
- The rehearsal can be monitored with a decibel meter and kept under 90 dB.

City Clerk Mynsberge said no responses about the event were received by the City.

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

To approve a request submitted by Birmingham First United Methodist Church requesting permission to hold a contemporary worship service with a live band and message on Sunday, July 15, 2018 in the Shain Park pavilion and lawn area, contingent upon compliance with all permit and insurance requirements and payment of all fees and further pursuant to any minor modifications that may be deemed necessary by administrative staff at the time of the event.

Commissioner Hoff supported the motion in recognition of all First United Methodist Church does for the community.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

05-140-18

**ESTABLISHMENT OF AD HOC MASTER PLAN SELECTION
COMMITTEE**

Senior Planner Baka reviewed his memo dated May 3, 2018 to City Manager Valentine regarding the establishment of an Ad Hoc Master Plan Selection Committee.

Commissioner Sherman said he would like to see the Planning Board members limited to two, and the inclusion of a former Birmingham elected official with experience in planning issues.

Mayor Pro Tem Bordman said:

- One of the resident positions could be specified for a former elected official.
- There should be at least one Commissioner on the committee.
- Reducing the number of Planning Board members on the committee to two would be acceptable.

City Manager Valentine stated residents will apply for the committee in the same manner they apply for any other board or committee. Boards and committees can recommend their own extant members for the committee. The Commission retains final say over the resident appointees, and can retain final say over all appointees, should it see fit.

Commissioner Nickita recommended an appointee from the Architectural Review Committee in lieu of a third Planning Board member.

Commissioner DeWeese recommended the committee retain at least two positions for Planning Board members so they can provide the necessary depth to the considerations, while the other members provide added breadth.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner Boutros: To establish an Ad Hoc Master Plan Selection Committee for the duration of the consultant selection process to review all Master plan RFP submittals and make a recommendation to the City Commission, with the following members:

Two (2) Planning Board members

Two (2) City residents, with a preference that one be a former City Commissioner

One (1) Multi-Modal Transportation Board member

One (1) Advisory Parking Committee member

One (1) Parks and Recreation Board member

One (1) Design Review Board/Historic District Commission member

One (1) Architectural Review Committee member

VOTE: Yeas, 7
Nays, 0
Absent, 0

05-141-18 BICYCLE INFRASTRUCTURE

Assistant City Planner Chapman presented the recommendation of the Multi-Modal Transportation Board.

Mayor Pro Tem Bordman wondered if anyone called Ferndale or Detroit to see what the experience has been with the Fixit system.

Assistant City Planner Chapman stated:

- Visual inspection showed the stations in good condition.
- The signs only come in blue, but the air pump comes in Birmingham green.

Commissioner DeWeese would like Barnum Park considered as a location for the future, and suggested that each location should show other locations so cyclists are aware.

Assistant City Planner Chapman said:

- The QR code directs users to other locations.
- The goal is to make each location an active transportation hub with water fountains, a map with wayfinding, and other amenities.
- The privately funded location at Griffin Claw, which uses the same product, has not experienced any issues.
- The kiosks referenced will not be implemented at this time.
- No count has been undertaken for usage at Griffin Claw.
- Screwdrivers and other tools are affixed to the rack.

MOTION: Motion by Commissioner Boutros, seconded by Mayor Pro Tem Bordman:

To approve the installation of 9 U Rack embedded bike racks and the purchase and installation of 8 Loop embedded bike racks as outlined on the attached chart and map of Phase 4 of the City's Bicycle Parking Plan, for a total cost of \$3240 from account #721.000-825.0000;

AND

To approve the following as the City-wide standard bicycle maintenance station components:

1. Fixit bicycle maintenance station with a Hunter Green powder coat finish;
2. Air Kit 2 public bike pump with a Hunter Green powder coat finish; and
3. Dero Bicycle Repair signs;

AND

To approve the purchase and installation of four bicycle repair stations, including four fixit stations (\$2808), four air pumps (\$1624), and four Dero Bicycle Repair signs (\$128) at the locations noted in Booth Park, Quarton Lake Park, Shain Park, and Kenning Park, for a total expenditure of \$4,819.50 from account #721.000- 825.0000.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

05-142 -18 ALLEY IMPROVEMENT PLAN

Senior Planner Baka presented his May 2, 2018 memo to City Manager Valentine regarding the Alley Improvement Plan. Senior Planner Baka confirmed that the new signs would be the in same style as the already extant signs in the Hamilton alley.

MOTION: Motion by Commissioner Sherman, seconded by Commissioner DeWeese:
To accept the bid from Johnson Sign Co. and to authorize the allocation of \$7,800.00 from account #101-721.000-825.0100 for the purpose of the fabrication and installation of via wayfinding signs.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

05-143-18 PROPOSED SCULPTURE LOAN OF *EASTERN HOPHORNBEAM*

Planning Director Ecker reviewed the memo from Brooks Cowan, City Planner, to City Manager Valentine dated April 23, 2018 regarding *Eastern Hophornbeam*.

Planning Director Ecker said the artist or his representative pays for the cost of installation. All necessary structural requirements will be monitored by the Building and Engineering Departments. The piece will be insured through the Cultural Council.

MOTION: Motion by Commissioner Hoff, seconded by Mayor Pro Tem Bordman:
To approve the recommendations of the Public Arts Board and Parks and Recreation Board to accept a 5-year loan of *Eastern Hophornbeam*, by Robert Lobe, and to approve the proposed located at Booth Park;

AND

To approve the Access and Maintenance Agreement with Robert Lobe and further to direct the Mayor and City Clerk to sign the agreement on behalf of the City;

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

VII. REMOVED FROM THE CONSENT AGENDA

The items removed were discussed earlier in the meeting.

VIII. COMMUNICATIONS

None.

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

None.

X. REPORTS

05-144-18 COMMISSIONER REPORTS

The City Commission will appoint one regular member to the Board of Ethics on June 4, 2018.

The City Commission will appoint three regular members to the Greenwood Cemetery Advisory Board on June 4, 2018.

The City Commission will appoint an alternate Hearing Officer on June 4, 2018.

The City Commission will appoint four regular members to the Historic District Study Committee on June 4, 2018.

The City Commission will appoint two regular members to the Museum Board on June 4, 2018.

The City Commission will appoint one regular member to the Multi-Modal Transportation Board on June 4, 2018.

The City Commission will interview for two positions to be appointed by the City Manager with the concurrence of the City Commission on the Birmingham Shopping District Board on June 4, 2018.

05-145-18 COMMISSIONER COMMENTS

Mayor Pro Tem Bordman reported on the Regional Transit Authority meeting.

Commissioner Hoff reported on the Birmingham Museum's open house and encouraged everyone to see the exhibit.

City Manager Valentine told Commissioner DeWeese that the effort to encourage longer-term parkers to park on higher levels of the parking garages has been successful.

Commissioner DeWeese noted the public does not yet perceive an increase in available parking.

Mayor Harris reported the '88 Seaholm Varsity baseball team will be honored May 12 at Maple Field at Seaholm High School.

05-146-18 CITY STAFF

The Commission received the Parking Utilization report submitted by Assistant City Manager Gunter.

XI. ADJOURN

Mayor Harris adjourned the meeting at 11:43 p.m.

ATTACHMENT A

05-133-18

**CITY OF BIRMINGHAM RESOLUTION AUTHORIZING WEST
NILE VIRUS FUND EXPENSE REIMBURSEMENT REQUEST**

MOTION: Motion by Mayor Pro Tem Bordman, seconded by Commissioner Nickita: To approve the Resolution requesting reimbursement for the maximum allotment of \$2,648.39 for eligible mosquito control activity under the Oakland County's West Nile Virus Fund Program:

WHEREAS, upon recommendation of the Oakland County Executive, the Oakland County Board of Commissioners has established a West Nile Virus Fund Program to assist Oakland County cities, villages and townships in addressing mosquito control activities; and

WHEREAS, Oakland County's West Nile Virus Fund Program authorizes Oakland County cities, villages and townships to apply for reimbursement of eligible expenses incurred in connection with personal mosquito protection measures/activity, mosquito habitat eradication, mosquito larvicide or focused adult mosquito insecticide spraying in designated community green areas; and

WHEREAS, the City of Birmingham, Oakland County, Michigan has incurred expenses in connection with mosquito control activities believed to be eligible for reimbursement under Oakland County's West Nile Virus Fund Program.

NOW THEREFORE BE IT RESOLVED that the Birmingham City Commission authorizes and directs its Director of Public Services, as agent for the City of Birmingham, in the manner and to the extent provided under Oakland County Board of Commissioners, to request reimbursement of eligible mosquito control activity under Oakland County's West Nile Virus Fund Program.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, do hereby certify that the above is a true and correct copy of a resolution adopted by the Birmingham City Commission at their regular meeting of May 14, 2018.

J. Cherilynn Mynsberge
City Clerk

Date: May 14, 2018

ATTACHMENT B

05-136-18

THE MORRIE

**260 N. OLD WOODWARD SPECIAL LAND USE PERMIT AMENDMENT
2018**

WHEREAS, The Morrie filed an application pursuant to Article 7, section 7.34 of Chapter 126, Zoning, of the City Code to operate a food and drink establishment in the B4 zone district in accordance Article 2, Section 2.37 of Chapter 126, Zoning, of the City Code;

WHEREAS, The land for which the Special Land Use Permit is sought is located on the east side of N. Old Woodward, north of Hamilton Row;

WHEREAS, The land is zoned B-4, and is located within the Downtown Birmingham Overlay District, which permits the operation of food and drink establishments serving alcoholic beverages with a Special Land Use Permit;

WHEREAS, Article 7, section 7.34 of Chapter 126, Zoning requires a Special Land Use Permit to be considered and acted upon by the Birmingham City Commission, after receiving recommendations on the site plan and design from the Planning Board for the proposed Special Land Use;

WHEREAS, The applicant submitted an application for a Special Land Use Permit and Final Site Plan to open a new restaurant, The Morrie, with live entertainment in the former Au Cochon and Arthur Avenue spaces;

WHEREAS, The Planning Board on March 28, 2018 reviewed the application for a Special Land Use Permit and Final Site Plan Review and recommended approval of The Morrie with the condition that the applicant revises the proposed signage to comply with the Overlay signage standards.

WHEREAS, The applicant has complied with the condition of approval recommended by the Planning Board and submitted revised plans;

WHEREAS, The Birmingham City Commission has reviewed The Morrie's Special Land Use Permit Amendment application and the standards for such review as set forth in Article 7, section 7.36 of Chapter 126, Zoning, of the City Code;

NOW, THEREFORE, BE IT RESOLVED, The Birmingham City Commission finds the standards imposed under the City Code have been met, subject to the conditions below, and that The Morrie's application for a Special Land Use Permit Amendment and Final Site Plan at

ATTACHMENT B (CONT'D)

260 N. Old Woodward is hereby approved;

BE IT FURTHER RESOLVED, That the City Commission determines that to assure continued compliance with Code standards and to protect public health, safety, and welfare, this Special Land Use Permit is granted subject to the following conditions:

1. The Morrie shall be permitted to provide entertainment in accordance with their entertainment permit issued by the MLCC;
2. The Morrie shall abide by all provisions of the Birmingham City Code; and
3. The Special Land Use Permit may be canceled by the City Commission upon finding that the continued use is not in the public interest including, but not limited to, violations of the state law or Birmingham City Code.

BE IT FURTHER RESOLVED, That failure to comply with any of the above conditions shall result in termination of the Special Land Use Permit.

BE IT FURTHER RESOLVED, Except as herein specifically provided, The Morrie and its heirs, successors, and assigns shall be bound by all ordinances of the City of Birmingham in effect at the time of the issuance of this permit, and as they may be subsequently amended. Failure of The Morrie to comply with all the ordinances of the City may result in the Commission revoking this Special Land Use Permit.

MAY IT BE FURTHER RESOLVED that The Morrie is recommended for the operation of a food and drink establishment serving alcoholic beverages on premises with a Class C Liquor License, at 260 N. Old Woodward, Birmingham, Michigan, 48009, above all others, pursuant to Chapter 10, Alcoholic Liquors, of the Birmingham City Code, subject to final inspection.

VOTE: Yeas, 7
 Nays, 0
 Absent, 0

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, Michigan, do hereby certify that the foregoing is a true and correct copy of the resolution adopted by the Birmingham City Commission at its regular meeting held on May 14, 2018.

J. Cherilynn Mynsberge, City Clerk

ATTACHMENT C

05-138-18

**CITY OF BIRMINGHAM
ORDINANCE NO. 2268**

AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 10 ALCOHOLIC LIQUORS, ARTICLE II. LICENSES, TO AMEND DIVISION 5 TO ADD LICENSES FOR HOTELS.

THE CITY OF BIRMINGHAM ORDAINS:

Part II of the City Code, Chapter 10 Alcoholic Liquors, Article II. Division 5. – Licenses for Theaters shall be amended to add hotels, as follows:

DIVISION 5. - LICENSES FOR THEATERS **AND HOTELS**

Sec. 10-100. - Purpose.

The purpose of this division is to establish a policy and conditions to allow the city commission the ability to approve a request to transfer a liquor license into the city in excess of the city's quota licenses if the request is deemed to constitute a substantial benefit to the city for the continuation and development of theaters **or hotels**, and to establish criteria for selecting applicants, and to provide limitations on the influx of new liquor licenses and to insure controlled growth and development regarding liquor licenses and to evaluate the impact of increased liquor licenses on the city. For purposes of this division, theaters shall be defined as a building, part of a building for housing dramatic presentations, stage entertainments or motion picture shows, **and hotels shall be defined as in Chapter 126, Article 9, Section 9.02 of the Zoning Ordinance.**

Sec. 10-101. - Request for transfer of license into city.

Persons desiring to transfer a liquor license from outside the city limits into the city limits in excess of the city's quota licenses shall make an application to the city commission and pay the applicable theater **or hotel** liquor license transfer review fee as set forth in appendix A of this Code. In addition to those items and conditions set forth in section 10-42, the application shall set forth in detail its proposed project, including, but not limited to:

- (1) Utilization of said liquor licenses and details on the number of quota liquor licenses in escrow at the time of application.
- (2) Proposed and/or existing site plan of the property, building floor plan and an operations floor plan.
- (3) An economic impact analysis.
- (4) A copy of the special land use permit application and supporting documentation

submitted by the applicant.

- (5) All documentation submitted to the LCC requesting the transfer.
- (6) Full identification and history of the license holder(s) as it pertains to the license proposed to be transferred, including all complaints filed with the state liquor control commission (LCC) or actions taken by any municipality or the LCC to suspend, revoke or deny the non-renewal of said license and all other documentation setting forth the detail of the existing theater **or hotel**, or proposed theater **or hotel** by the applicant, including the approximate dollar amount of the investment to be made, number of jobs to be created, minimum of 150 seats **for theaters, a minimum of 100 guest rooms for hotels**, and other benefits to the city.
- (7) Information detailing how the proposed operation will create or sustain the theaters **or hotels** in the city.
- (8) Such other items deemed necessary by city administration.

Sec. 10-102. - Application for transfer of liquor license into the city for theater **or hotel** purposes.

- (a) Selection criteria. In addition to the usual factors and criteria used by the city commission for liquor license requests, including those listed in section 10-42, the commission shall consider the following non-exclusive list of criteria to assist in the determination of which of the existing establishment applicants, if any, should be approved:
 - (1) The applicant's demonstrated ability to finance the proposed project.
 - (2) The applicant's track record with the city including responding to city and/or citizen concerns.
 - (3) Whether the applicant has an adequate site plan to handle the proposed liquor license activities.
 - (4) Whether the applicant has adequate health and sanitary facilities.
 - (5) **For theaters only**, the percentage of proceeds from the sale of tickets and food products as compared to the sale of alcoholic beverages.
 - (6) Whether the applicant has outstanding obligations to the city (i.e. property taxes paid, utilities paid, etc.).
- (b) Maximum number of theater **and hotel** licenses. The city commission may approve a maximum of two theater **or hotel** licenses each calendar year in addition to the existing quota licenses otherwise permitted by state law.
- (c) Annual review of need. Every three calendar years, the city commission shall perform a review of the previously approved theater **and hotel** license(s), if any, and the impact of those decisions on the city's downtown. A time for public comment shall be provided.
- (d) If any new transfers of licenses for theaters **or hotels** are to be considered, the city commission shall set a schedule setting forth when all applicants must submit their

application and supporting documentation, when interviews may be conducted and a timeframe within which a decision will be anticipated.

Sec. 10-103. - Transfer within city.

Should a theater **or hotel** license be issued by the city commission, said license is limited to the property proposed and approved and the applicant receiving the approval, and shall not be transferred to another location or person/entity within the city without prior approval of the city commission. Standards to be considered by the city commission and the procedure to be followed shall include those set forth in section 10-42 and section 10-43. In addition, any expansion of the building located on the property must be approved by the city commission.

Sec. 10-104. - Contract and special land use permit required.

A contract for transfer and a special land use permit are required for all licenses approved under this division. The licensee must comply with all provisions of the contract and special land use permit, and any amendments thereto as a condition of granting of a requested transfer and subsequently maintaining the license under this division.

Sec. 10-105. - Renewals.

Once a license is issued under this division, the license holder must go through the license renewal process set forth in section 10-39 and is subject to the renewal standards set forth in section 10-40. A review of compliance with the contract and special land use permit shall also be included.

Sec. 10-106. - License types, endorsements, additional bar permits.

If a license is issued under this division, the license holder may apply for entertainment, dance and additional bar permits from the state liquor control commission for use only on the premises, but shall not apply for or seek from the state liquor control commission any permit endorsements to its liquor license or seek any change in its license status/class whether available in current state liquor control code or in future state liquor control codes, or amendments thereto, without the prior approval from the city commission.

Sec. 10-107. - Violation of license, contract, special land use permit.

Violations or failures to abide by terms of the liquor license, contract, the special land use permit or this Code shall be grounds for the state liquor control commission to suspend, revoke or not renew the liquor license. Further, should violations occur, or should the applicant fail to complete the project as required by plans and specifications presented to the city commission, or fail to comply with all representations made to the city commission, the city shall be entitled to exercise any or all remedies provided in those documents, in this Code, including but not

limited to seeking the revocation of the special land use permit, pursuing breach of contract claims, and all other legal and equitable rights to enforce the terms thereunder. The licensee shall reimburse the city all of its costs and actual attorney fees incurred by the city in seeking the suspension, revocation or non-renewal of the liquor license, revocation of the special land use permit, or enforcement of such other rights and remedies, including contractual, as may be available at law or in equity.

Secs. 10-108—10-119. - Reserved.

Ordained this 14th day of May, 2018. Effective upon publication.

Andrew M. Harris, Mayor

J. Cherilynn Mynsberge, City Clerk

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held May 14, 2018 and that a summary was published in the Birmingham Observer & Eccentric newspaper on May 20, 2018.

J. Cherilynn Mynsberge, City Clerk

ATTACHMENT D

**05-138-18
CITY OF BIRMINGHAM
ORDINANCE NO. 2269**

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CITY CODE, ARTICLE III, SECTION 2.37 (B4) TO ALLOW THE USE OF LIQUOR LICENSES FOR HOTELS.

THE CITY OF BIRMINGHAM ORDAINS:

Chapter 126 Zoning, Article III, Section 2.37 (B4 Business-Residential) shall be amended as follows:

Permitted Uses

Residential Permitted Uses

- dwelling - multiple-family
- dwelling - one-family*
- dwelling - two-family*
- live/work unit

Institutional Permitted Uses

- church
- community center
- garage - public
- government office
- government use
- loading facility - off-street
- parking facility - off-street
- school - private
- school - public
- social club

Recreational Permitted Uses

- bowling alley
- outdoor amusement*
- recreational club
- swimming pool - public, semiprivate

Commercial Permitted Uses

- auto sales agency
- bakery

- bank
- barber shop/beauty salon
- catering
- child care center
- clothing store
- delicatessen
- department store
- drugstore
- dry cleaning
- flower/gift shop
- food or drink establishment*
- furniture
- greenhouse
- grocery store
- hardware store
- hotel
- jewelry store
- motel
- neighborhood convenience store
- office
- paint
- party store
- retail photocopying
- school-business
- shoe store/shoe repair
- showroom of electricians/plumbers
- tailor
- theater*

Other Permitted Uses

- utility substation

Other Use Regulations

Accessory Permitted Uses

- alcoholic beverage sales*
- laboratory - medical/dental*
- loading facility - off-street
- outdoor cafe*
- outdoor display of goods*
- outdoor sales*
- parking facility - off-street
- retail fur sales cold storage facility

- sign

Uses Requiring a Special Land Use Permit

- alcoholic beverage sales (on-premise consumption)
- assisted living
- continued care retirement community
- establishments operating with a liquor license obtained under Chapter 10, Alcoholic Liquors, Article II, Division 5, Licenses for Theaters **and Hotels**
- independent hospice facility
- independent senior living
- skilled nursing facility

Uses Requiring City Commission Approval

- regulated uses*

*=Use Specific Standards in Section 5.10 Apply

Ordained this 14th day of May, 2018. Effective 7 days after publication.

Andrew M. Harris, Mayor
J. Cherilynn Mynsberge, City Clerk

I, J. Cherilynn Mynsberge, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held May 14, 2018 and that a summary was published in the Birmingham Observer & Eccentric newspaper on May 20, 2018.

J. Cherilynn Mynsberge, City Clerk

Agenda Item 5A

CITY OF BIRMINGHAM
BOARD OF ETHICS
ADVISORY OPINION 2018-02

QUESTIONS PRESENTED

1. Does a conflict of interest exist under the City of Birmingham's Ethics Ordinance if a City Official has any financial or personal interest in the outcome of a matter currently before that City Official or is associated as an employee in any business that would 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 the official's governmental duties?
2. Is it a violation of the Ethics Ordinance for a City Official to participate in a decision that may directly or indirectly affect his or her financial or personal interests provided that they act, in furtherance of the public good, in compliance with the duties of his or her respective board, and in a manner consistent with no use or attempted use of official position to obtain or provide special consideration or advantage?
3. Should a City Official participate, as a representative of the City, in any discussion or vote and/or other action upon any matter in which he or she has directly or indirectly a financial or personal interest?

SUMMARY OF ANSWERS

1. Affirmative.
2. Negative.
3. It depends upon the circumstances.

PROCEDURAL HISTORY

The City of Birmingham (the "City") has declared that public office is a public trust. For a government to operate properly, each City Official must honor and earn the public trust by conduct and integrity. All City Officials must avoid conflicts between private interest and public interest and must not use public office for personal gain. Through the Ethics Ordinance, the City has established minimum rules or standards of ethical conduct for City Officials and has designed a process for determining whether their conduct conforms to or violates the ordinance. That process contemplates the involvement of all citizens in monitoring the integrity of City government. When there is a question or a complaint as to the applicability of any provision of the Ethics Ordinance to a particular situation, the City directs that question or complaint to the Board of Ethics. The Board of Ethics may conduct hearings and issue advisory opinions as applicable under the ordinance.

On May 11, 2018 the City of Birmingham City Clerk's office received an Ethics Incident/Complaint from David Hohendorf, publisher of Downtown Publications, in relation to Steven Kalczynski, a member of the City's Advisory Parking Committee and also an employee of the Townsend Hotel. On May 31, 2018, Mr. Kalczynski filed with the City Clerk's office a response thereto.

On Tuesday, June 19, 2018, the City's Board of Ethics convened to conduct a public hearing in relation to the subject Complaint. During the course of the hearing, Mr. Hohendorf expressed that he was not looking for the imposition of any sanction upon Mr. Kalczynski for a possible past violation of the Code of Ethics (the "Code" or "Ethics Ordinance"). As expressed in his Complaint, Mr. Hohendorf was concerned about Mr. Kalczynski's future participation before the Advisory Parking Committee under certain circumstances. After further discussion, Mr. Hohendorf elected to dismiss his Ethics Complaint, along with the request of Mr. Kalczynski to the Board of Ethics for an "advisory opinion" in association with the incident and situation at hand. See Section 2-325(b)¹ and Chapter 2 of the Board of Ethics Procedural Rules. The Board granted the dismissal of the Complaint, and accepted a modification of the matter to one of a request for an advisory opinion. Pursuant to Section 2-325(a)(3)(c) this Board may establish such procedures it deems necessary or appropriate to perform its functions as set forth in the Code.

STATEMENT OF FACTS

Steven Kalczynski is a resident of the City of Birmingham, and at all times pertinent hereto was employed as the Managing Director of the Townsend Hotel (the "Townsend") in Birmingham, Michigan. Mr. Kalczynski does not have an ownership interest in the Townsend.

Mr. Kalczynski serves on the City's Advisory Parking Committee ("APC"), and his term expires on September 4, 2020. He is the designated representative of large retailers in downtown Birmingham, as each of the members of the APC bear a specific designation.

The subject matter was before the APC in association with the Daxton Hotel's request for a permit to construct a 5-story hotel with two underground levels of private parking. The plans previously received Community Impact Study and Preliminary Site Plan approval from the City's Planning Board. As a condition of such approval, the Planning Board requested the applicant to appear before the APC to receive a recommendation relative to the removal of on-street parking, as proposed in their plan.

On or about August 2, 2017, the APC conducted a meeting to consider whether to recommend for approval the removal of eight on-street parking spaces at 298 S. Old Woodward for operation of a valet service, as requested by the owners of the new proposed Daxton Hotel. During the meeting, an attorney for the Daxton Hotel "wanted to ensure there is no conflict of interest with respect to Mr. Kalczynski being the manager of the Townsend Hotel." Mr. Kalczynski did not believe there was a conflict of interest regarding a vote as to whether changes should be made to the parking space arrangements near the Daxton Hotel. The APC Chairman

¹ All references to "Section" relate to the City's Ethics Ordinance.

responded to counsel indicating the nature of the APC is that it is comprised of stakeholders, and that Mr. Kalczynski provides insight into situations that the committee would not have otherwise. No member of the APC raised the issue of a potential conflict, and no vote was taken as to recusal and/or disqualification.

Mr. Kalczynski responded that “he does not have a conflict of interest, that his role in the APC is only to approve or disapprove recommendations for parking, and that he will not recuse himself from the consideration of this matter.” Mr. Kalczynski maintains he did not have a conflict of interest because he did not have a financial interest or personal interest in removal of parking spaces. He further maintains that he has no conflict because he holds no ownership interest in the Townsend Hotel, but is merely an employee. He also asserts that even if he had a personal or financial interest he did not have a conflict of interest under the Code because he acted within the public interest. He stated that he believed that removing additional street level parking spaces is not in the public’s best interest because street parking in that particular area is extremely limited. He stated that he was acting within the scope of his duties and did not attempt to use his position to secure or grant himself any benefits as a result of his vote.

The applicant was requesting removal of existing parking spaces to create a permanent valet service at the front door of the new building on S. Old Woodward Avenue. It was noted that there is precedent in the city for removing parking spaces for valet. The Townsend itself pays a fee for the former meters and uses 7 parking spaces along Merrill Street. The APC was being asked to similarly remove 8 spaces. Mr. Kalczynski expressed concern relative to delivery trucks seeking to unload on Brown Street and in light of there only being one traffic lane, and considering traffic flow and parking intertwined. Nevertheless, the Traffic Management Plan was reviewed by the City’s Traffic Engineer and he signed off, as did the Planning Board. The Plan provides for valet at the front door. As for the loading situation on Brown Street, trucks will back up into a driveway and be off the road and be able to use that area for loading and unloading.

At the APC meeting, committee member Ms. Champagne moved the recommendation for approval of removal of the eight on-street parking spaces to allow for the operation of a valet service by the property owner, in exchange for an annual payment of \$24,000.00 (@ \$3,000.00 per meter) to be charged annually once the Daxton Hotel is open for business. She noted that one of the things that makes the Townsend special in the city is the valet in front. The motion carried 5 -1, with the only “nay,” being that of Mr. Kalczynski.

Mr. Hohendorf maintained in his Complaint that the City’s approval of the Daxton Hotel had a direct impact on the Townsend, and that Mr. Kalczynski should have recused himself from participation in any deliberations and subsequent voting on issues relating to the Daxton Hotel. Mr. Kalczynski responded that his aforesaid vote was made with the public’s interest at heart, that the limited parking is of grave concern for the citizens, and that there is a substantial waiting list for monthly parking permits in the City’s parking structures and lots. He reported that even after the APC vote to recommend to approve the plan, the City Commissioners agreed with his position and voted to send the issue back to the Planning Board for further study. Mr. Hohendorf is concerned that the issue of parking at the Daxton Hotel could in the future result in further considerations, deliberations and/or voting before the APC, and he maintains that in such an

instance that Mr. Kalczynski must recuse himself as he has a conflict of interest. Both gentlemen cite and rely upon Section 2-324 of the Code. This Board is aware of a perception by some of a hotel battle brewing between the Townsend and the Daxton.

JURISDICTION

In light of the aforesaid procedural history, this Board will consider this matter as a request for an advisory opinion by Mr. Kalczynski pertaining to his conduct or anticipated conduct, and its conformance to the Code.

Unquestionably, Mr. Kalczynski is a “City Official,” pursuant to Section 2-322 of the Code, in that he is a person who has been appointed and serving in a capacity with the City in a position established by City Charter or by City Ordinance which involves the exercise of a public power, trust or duty. He serves on an advisory board, the APC.

Accordingly, pursuant to Section 2-325(b), this Board has the authority to issue the requested advisory opinion.

APPLICATION OF THE CODE OF ETHICS

Both Messrs. Hohendorf and Kalczynski cite and rely upon Section 2-324 of the Code, for their respective positions stated herein. Section 2-323 sets forth the intention of the Code, specifically Section 2-324 which pertains to conflict of interest. Section 2-323 provides in pertinent part that a City Official should avoid any action, whether or not specifically prohibited by Section 2-324, which might result in, or create the appearance of using public office for private gain, giving or accepting preferential treatment, using impartiality of action, or affecting adversely the confidence of the public or the integrity of the city government.

Pursuant to Section 2-324(a)(6), it is noted that an appointed City Official is not prohibited from engaging in private employment or business on his or her own time as a private citizen and/or where city business is not involved, subject to his or her disclosing such private employment or business on the public record before any matter on which he or she may be called upon to act in his or her official capacity. However, it further provides that he or she shall refrain from voting upon or otherwise participating in debate on any such matter in which he or she has directly or indirectly a financial or personal interest. “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. Section 2-322.

Section 2-324(a)(8) applies as it provides in part that no official of the City shall use, or attempt to use, his or her official position to secure, request or grant unreasonably any special consideration or advantage beyond that which is available to every other citizen.

Mr. Kalczynski in his response, cites and principally relies in support of his position on Section 2-324(a)(9), which provides as follows: “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.”

Section 2-324(a)(10) pertains to the determination of conflict of interest, and states in pertinent part in subsection a. thereof that a conflict of interest exists if the City Official has any financial or personal interest in the outcome of a matter currently before that City Official or is associated as employee, etc., 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 governmental duties. “Financial interest” means any interest in money, property or thing of value or benefit. Section 2-322. “Personal interest” means, in part, any interest arising from any business association. Section 2-322.

Both Messrs. Hohendorf and Kalczynski cite and rely upon subsection (b) of Section 2.324, pertaining to full disclosure. Section 2-324(b)(1) pertains to the responsibility to disclose, as follows: “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.”

Section 2-324(b)(2) pertains to the disclosure of conflict of interest and disqualification, as it provides in pertinent part in subsection (a) 2.: “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: 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.”

Subsection b. of Section 2-324(b)(2) is also informative herein, and it provides that: “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 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 should refrain from discussion, deliberation, action or voting thereon.”

Individuals have multiple roles in their daily lives, and because of same they inherently possess many different interests and loyalties. These interests may compete at any given time. Such conflicts are unavoidable as they are a part of life. As stewards of the public trust, City Officials are required to put the public's interest before their own. Impropriety occurs when the City Official who is faced with conflicting interests puts his or her personal or financial interest in priority to the public interest.

As City Officials have lives outside work, and thus conflicts of interest are likely to exist, if they cannot be avoided they must be disclosed and managed in a planned way. It is important to understand that:

- a. The appearance and perception of a conflict of interest is as important to manage as an actual conflict;
- b. Conflicts of interest are usually personal, and therefore must be managed by the individual involved, however the City has the responsibility for implementing policies, processes and/or systems to assist City Officials to recognize conflicts of interest and deal with them.
- c. City Officials should know the City's conflict of interest ordinance and the Ethics Board procedures, and actively facilitate discussion about how to manage conflicts of interest before they happen and assisting others to manage these as they arise; and
- d. City Officials should feel confident that they can discuss issues of conflict with their colleagues, and that the climate of discussion will be one of assistance and support.

One of the aims of the Ethics Ordinance is to regulate conflict of interest in City government. City Officials are expected to put service to the public ahead of personal interests. The ordinance is intended to prevent officials from making decisions in circumstances that could reasonably be perceived as violating this duty of office. Identifying and resolving conflict of interest situations is crucial to good governance and maintaining trust in City government. Citizens have increasing expectations that government should deliver higher standards of integrity. Conflict of interest should become a significant consideration of those who occupy any position of trust. If conflicts of interest are not recognized and controlled appropriately, they can undermine the fundamental integrity of officials, decisions, and government.

Conflicts between private interests and public duties of City Officials must be correctly identified, appropriately managed, and effectively resolved. Left unresolved, conflict of interest can result in corrupt conduct, abuse of public office, misconduct, breach of trust, or unlawful action. Also, public confidence in the integrity of City government can also be seriously damaged. Maintaining trust is a central integrity issue for government and individual officials. Trust can be protected and improved, by making sure that there is no improper connection

between City Officials' functions and their private interests, including the interests of related persons or organizations.

Conflicts of interest interfere with the basic ethical principle of fairness, which is treating everyone the same. A City Official should not take unfair advantage of his or her position by voting on a matter that could benefit him or her at the expense of others. A City Official may honestly believe he or she is not being duly influenced by their personal stake in an issue. To the contrary, he or she may feel that his or her interest in the matter gives him or her a special insight into the subject. He or she may argue that he or she understands the problems of a downtown business because he or she owns or manages one. Nevertheless, it is very difficult for individuals to determine whether they are being fair when their self-interest is involved. Therefore, the Ethics Ordinance prohibits such partiality. The ordinance is aimed at the perception, as well as the reality, that a City Official's personal interests may influence a decision. Even the appearance of impropriety undermines the public's trust that the process is fair. See Sections 2-321 and 2-323.

A City Official is not absolved of his or her responsibility merely by being transparent about his or her stake in the issue. It is insufficient for City Officials to make conflicts public. They must remove themselves from the decision-making process altogether. This includes discussion as well as voting. Abstention is only half of the requirement. For further guidance relative to disclosure and/or recusal, see this Board's Advisory Opinions 2003-03 and 2015-06.

An interest may be personal as well as financial. A personal interest, would especially exist if it improves one's standing in the organization. A personal interest which could constitute a potential conflict of interest situation may include a position held in a business, community or organization. Public office should not be used to punish one's personal and/or political enemies. Rather, City Officials are expected to understand the meaning of the Ethics Ordinance, and comply with same. Every City Official but must be alert to, and responsive to, actual and perceived conflicts of interest. They can avoid or preempt conflicts of interest by understanding and exhibiting the behaviors required of a City Official. City Officials must take personal responsibility for identifying and resolving problem situations. A beneficial discussion and analysis of this topic is set forth in this Board's Advisory Opinion 2012-01.

The presence of a conflict of interest is independent of the occurrence of impropriety. A conflict of interest exists if the circumstances are reasonably believed (on the basis of past experience and objective evidence) to create a risk that a decision may be unduly influenced by a secondary interest, and not on whether a particular individual is actually influenced by a secondary interest. "Secondary interest" includes personal benefit and is not limited to only financial gain but also such motives as the desire for professional advancement, or the wish to do favors for others from "an interest arising from blood or marriage relationships or any business association." Section 2-322.

An apparent conflict of interest situation can be as seriously damaging to the public's confidence in a City Official, or the City, as an actual conflict. An apparent conflict of interest should therefore be treated as though it were an actual conflict, until such time as the doubt is removed and the matter is determined, after investigation of all the relevant facts.

City Officials are expected to maintain and strengthen the public's trust and confidence in the City, by demonstrating the highest standards of professional competence, efficiency and effectiveness, upholding the U.S. and State of Michigan Constitutions and laws, and seeking to advance the public good at all times. City Officials are expected to make decisions and act without consideration of their private interests. Public service being a public trust, the improper use of a public service position for private advantage is regarded as a serious breach of professional integrity.

The proper objective of the effective conflict of interest policy is not the simple prohibition of all private interests on the part of City Officials, even if such an approach were conceivable. The objective should be to maintain the integrity of official policy and administrative decisions and of City management generally, recognizing that an unresolved conflict of interest may result in abuse of public office.

A too-strict approach to controlling the exercise of private interests may conflict with other rights, or be unworkable or counterproductive in practice, or may deter some people from seeking public office altogether. Therefore, the City's Ethics Ordinance seeks to strike a balance, by identifying risks to the integrity of the City Officials, prohibiting unacceptable forms of conflict, managing conflict situations appropriately, making the City and individual officials aware of the incidence of such conflicts, and insuring effective procedures are deployed for the identification, disclosure, management, and promotion of the appropriate resolution of conflict of interest situations.

An "apparent" conflict of interest exists where it "appears" that a City Official's private interests could improperly influence the performance of his or her duties but this is not in fact the case. A "potential" conflict arises where a City Official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future.

A City Official should dispose of, or restrict the operation of, personal interests or private gain that could compromise official decisions in which they participate. Where this is not feasible, a City Official should abstain from involvement in official decisions which could be compromised by their personal interests and affiliations, and private gain.

In summary, City Officials are expected to:

- a. Act in a manner that will bear the closest public scrutiny. This obligation is not fully discharged simply by acting within the letter of the law; it also entails respecting broader public service values such as disinterestedness, impartiality and integrity;
- b. Act at all times so that their integrity serves as an example to other City Officials and the public;

- c. Accept responsibility for identifying and resolving conflicts in favor of the public interest when a conflict does arise; and
- d. Demonstrate their commitment to integrity and professionalism through their application of effective conflict of interest policy and practice.

The hearing in the instant case brought to light that there is a need for City Officials and boards to further acquaint themselves with the City's Ethics Ordinance and this Board's Rules of Procedure. So as to further engender an organizational culture which is intolerant of conflicts of interest:

- a. The City should continue to encourage the effective control and management of conflict of interest situations;
- b. The City should continue to encourage City Officials to disclose and discuss conflict of interest matters;
- c. The City should continue to create and sustain a culture of open communication and dialogue concerning integrity and its promotion; and
- d. The City should continue to provide guidance and training to promote understanding of the Ethics Ordinance.

The City has to date worked to ensure understanding of the Ethics Ordinance, including without limitation:

- a. Publicized the Ethics Ordinance, Rules of Procedure, and Opinions;
- b. Ensured that the rules and procedures are available;
- c. Provided guidance with information, advice, and training seminars;
- d. Provided assistance to City Officials who are in doubt about the application of the Ethics Ordinance, and widely publicize how to obtain such advice; and
- e. Identified preventative measures that deal with conflict situations, including recusal.

CONCLUSION

It does not appear that Mr. Kalczynski had or has an "actual" conflict of interest herein. Yet, as evidenced by the filing of the Complaint herein there may have been an "apparent" conflict. Mr. Kalczynski may continue to participate on the APC in discussions and voting in association with the Daxton Hotel project provided that he act in furtherance of the public good, in compliance with his duties to the APC, and consistent with the requirements of the Ethics

Ordinance. He must be impartial. He must also be cognizant of the appearance of a conflict of interest, as well as the public's perception, whether or not specifically prohibited by Section 2-324. The ordinance "is intended to be preventative."

As the ordinance requires voluntary disclosure to assist in identifying the difference between relationships that require recusal and those which do not, he should going forward (a) review the APC agenda and decide whether there is an Ethics Ordinance issue as to any item, (b) if there is a current relationship that involves a personal or financial interest which would constitute an apparent conflict of interest or more, he must recuse himself from participation, (c) if there is a prior relationship, he must decide if he can be impartial, (d) if he cannot be impartial, he must recuse himself, and (e) if he believes he can be impartial, he must disclose the relationship to the APC at the public meeting before participating and explain why recusal is unnecessary. The APC, as a board, can then determine by vote whether his recusal is required. If the vote is not unanimous, the ordinance issue should first be sent to the Board of Ethics for determination.

Approved:

John J. Schrot, Jr.
Acting Chairperson

James D. Robb
Member

Sophie Fierro-Share
Member



Agenda Item 5B

Case No. _____
(Assigned by clerk)

REQUEST FOR ADVISORY OPINION

The Procedural Rules of the Board of Ethics allow a city official or employee, the City Commission, or another city commission, board or committee, as defined in the Code of Ethics ("the requesting party"), to request an advisory opinion as to whether the requesting party's conduct or anticipated conduct, or that of a city official, employee, commission, board or committee under the requesting party's authority, conforms to the Code of Ethics. The party whose conduct is sought to be reviewed, if it is someone other than the requesting party, is called the "subject party."

All advisory opinions will be communicated to the city commission and will be published on the city's website at www.bhamgov.org.

Written requests are subject to disclosure under the Freedom of Information Act.

Name Leslie Pielack Phone Number (248) 530-1682

Address Birmingham Museum, 556 W. Maple, Birmingham
(Number, Street, City, State, Zip) MI 48009

Position or Board (If Applicable) Museum Director, Birmingham Museum

- A. State each question upon which an opinion is desired. Attach additional sheets of paper if the space provided below is not sufficient.
- B. State all of the facts giving rise to each question presented.
- C. If available, provide all relevant statutory provisions, case law, prior opinions of the Ethics Board, and other authorities.

NOTE: Although the foregoing criteria are subject to exception when the circumstances warrant, a request which does not meet these criteria may be returned and the requestor asked to resubmit the request in an appropriate form.

Please return requests to: City Clerk's Office, City of Birmingham
151 Martin, P.O. Box 3001, Birmingham, MI 48012

Revised 8/16/12

FOR OFFICE USE ONLY

Accepted by _____

Date _____

Facts:

- I, Leslie Pielack, have been employed by the City of Birmingham on a part-time basis as museum director at the Birmingham Museum since 2010
- I also have maintained a part-time consulting business providing historic preservation and research services since 2005, located in Lake Orion and Oxford, Michigan, known as LKPielack Consulting, LLC
- I have authored various print and online articles and booklet publications relating to architectural and local history since 2003, published by various non-profit organizations or self-published
- I have been working on a non-fiction book since 2015 that relates to the history of southeast Michigan from Detroit to Saginaw, called *The Saginaw Trail: From Native American Path to Woodward Avenue*. It covers the general history of the region with selected vignettes of individual people and communities along the Saginaw Trail (Woodward). It will be published by Arcadia Publishing/The History Press the week of July 30, 2018.
- I researched and wrote the book on my personal time and at my personal expense, traveling to historical museums and archives throughout the region and utilizing online historic materials in the public domain. It is 192 pages with approximately 80 illustrations, and has 15 chapters. One of the chapters features some of the historic events and people of Birmingham's settlement period.
- The book will be marketed regionally to bookstores and museum gift shops as well as online. There is a small royalty percentage to which I am entitled on the sale of books through the publisher and bookstores and museums. Entities who wish to sell the book, such as booksellers and museum gift shops, purchase the book directly from the publisher.
- The publisher wishes to schedule book events/author signings at bookstores and museum shops where the book will be sold.
- As author, I am also entitled to purchase books for my own inventory to sell at personal book signings and events that promote the book or the topic. Some book events/author signings and presentations would be arranged by me directly.

Also:

- From time to time, as Birmingham Museum Director I give presentations on topics related to Birmingham's history. These presentations are part of my position and the museum's outreach services. They are not fee-based, but generate donations for the museum that range from \$50-150 per presentation.
- In addition, I participate in professional conferences in which I represent the city as Museum Director and promote the Birmingham Museum's mission.
- I also give presentations to colleagues or historical groups that are not part of my position and not for the benefit of the museum.
- The Friends of the Birmingham Museum is a 501c3 non-profit organization (a.k.a. the Birmingham Historical Society) that conducts fund-raising and educational activities to support the museum and its mission. The Friends, from time to time, have purchased books at their expense for sale in the Birmingham Museum gift shop. When sold, these books generate revenue for the museum.

1. I would like to appear in public in the Birmingham area as museum director of the Birmingham Museum to promote local history and the topic of my book, the Saginaw Trail/Woodward Avenue. I

would like to be able to sell books purchased by the Friends at these events, with all proceeds going to the Birmingham Museum, and I would like to be able to announce and promote that profits will be donated to the museum.

2. I would like to promote these Birmingham Museum-related events to the public through the press and also online media, including the museum's website and Facebook avenues. Non-museum-related events that would not result in sale proceeds going to the museum would not be listed or promoted at the museum or through any communications related to the museum or to the city, or through any activity undertaken by me in my role as museum director.

Would the activities noted above in 1. and 2. be permissible within my obligations and employment with the City of Birmingham without creating a conflict of interest, and, would it be considered ethically appropriate to engage in these activities?

Attached Previous Board of Ethics Advisory Opinion Decisions:

1. July 22, 2010; regarding whether the Birmingham Historical Museum and Park Board (now the Birmingham Museum Board) may engage in fund raising to fund certain Museum operations. Part of analysis and opinion relates to independent fundraising by Museum Board members for the benefit of the Birmingham Historical Society (Friends of the Birmingham Museum) and clarifies ethical practice in that activity. This opinion may bear upon the question in this request.

2. March 8, 2012; regarding conflict of interest standards relating to a question by the Mayor of the City of Birmingham regarding his business firm and a potential contract. In this opinion, the Ethics Board reviewed previous conflict of interest matters relating to positions with the City of Birmingham. The analysis in part reviews whether an official or employee derives monetary gain from his/her position, which would constitute a conflict of interest, and provides examples.

**CITY OF BIRMINGHAM
BOARD OF ETHICS
ADVISORY OPINION 2010-01**

**DECISION
July 22, 2010**

Question Presented

May the Birmingham Historical Museum and Park Board, or its individual members, raise monies to fund certain Museum operations?

Answer

City of Birmingham Ordinance no. 62-31 (e) grants the Birmingham Historical Museum and Park Board the power to raise funds for certain purposes. The ordinance establishing the Birmingham Historical Museum and Park Board divides responsibility for operations between the Board and the City Administration. To avoid creating the appearance of making a decision outside of normal City channels in violation of the Ethics Ordinance Sec. 2-323 (4), the Ethics Board recommends that the Birmingham Historical Museum and Park Board meet with the City Manager to define the extent and methodology of any fund raising activities.

Individual Board members in their capacity as private citizens may participate in fund raising to support the Historical Museum with groups not part of city government, such as the Birmingham Historical Society, as long as they do not create the impression that the individual Board member is representing the City in this effort.

Analysis and Discussion

In its presentation to us, the Birmingham Historical Museum and Park Board was forthright that its purpose was to fully fund the museum director's position, which was reduced to part-time in next year's City budget. The Board understandably believes that a full-time director is critical to the success of its mission of fostering a greater understanding of the City of Birmingham's unique heritage. Sec. 62-31(a). This request for an advisory opinion brings into focus two separate problems: how far may a City board go in carrying out its mission and what must individual board members do if they wish to engage in private activity in support of what they perceive to be in the City's interests.

May the Board Raise Money to Preserve an Employment Position on the Birmingham Historical Museum Staff?

Yes. The ordinance which creates the Birmingham Historical Museum and Park Board contains a system of shared responsibility. The Board has the power to "operate" the museum and serves as "an advisory authority exercising control and management over this cultural resource." Sec. 62-31(d). It is empowered to "raise funds for the exercise of its powers and duties" [Sec. 62-31(e)], which specifically includes the operation of the museum. The Board is authorized to "expend such funds as may from time to time be appropriated to it by the city commission or

otherwise received by it for the purpose of carrying out" its powers and duties. Sec. 62-30.

The shared responsibility is most clear in relation to the museum's executive director. The executive director is a city employee, who is "appointed, removed and supervised by the city manager." Yet the museum director reports to the Board, carries out the duties the Board requires and attends all Board meetings. Sec. 62-32.

The Ethics Board has limited powers. We resolve complaints and issue advisory opinions regarding the Ethics Ordinance. We do not interpret potential conflicts or ambiguities in other ordinances, except as absolutely necessary to giving an opinion under the Ethics Ordinance; nor do we give opinions as to what conduct is permissible under other ordinances. We are not now concerned with the exact division of responsibility between the City Manager and the Birmingham Historical Museum and Park Board in the supervision of the museum's executive director. We are mindful, though, that one of the purposes of the Ethics Ordinance is to "make government decisions and policy in the proper governmental channels." Sec. 2-320. This public policy is reiterated in the Ethics Ordinance's requirement that all "City officials and employees avoid any action....which might result in or create the appearance of....making a City decision outside official channels." Sec. 2-323(IV). Additionally the Ethics Ordinance does not displace rights under the City's collective bargaining agreements. Sec. 2-323.

The fund raising that the Birmingham Historical Museum and Park Board is thinking of might easily come into conflict with the City's budgeting process, or its human relations policies or the City Manager's duties under the ordinance establishing the Board. In order to stay within proper governmental decision-making channels, the Ethics Board recommends that the Birmingham Historical Museum and Park Board meet with the City Manager to assure that any fund raising activities it undertakes comply with City policies and follow the appropriate decisional process. We are deciding only that the Birmingham Historical Museum and Park Board should not start a fund raising campaign to support its operations unless it has met with the City Manager to discuss the issue. Although we doubt it will be necessary, we reserve for a later time and the development of a more complete factual record, the question of whether, under the Ethics Ordinance, the Birmingham Historical Museum and Park Board may raise funds in a manner opposed by other City officials or boards.

2

May Individual Board Members Participate in Independent Fund Raising Such as For the Birmingham Historical Society?

Yes, but with certain conditions. The Birmingham Historical Society is a separate, private organization and is not a body of the City of Birmingham. The Historical Society does, however, provide some funding to the city-owned Birmingham Historical Museum. We have previously issued advisory opinions about whether a City employee or board member may call attention to his or her City affiliation in private fund raising or political activity. Those opinions are instructive.

In Ethics Opinion 2003-04 we said that the Ethics Ordinance allows a City employee to disclose the fact and nature of his employment in campaign literature for a non-partisan political office. We placed importance on the public's rights to know one's qualifications, but we warned that: "caution

must be taken however when one's conduct gives the appearance as a 'City Official' that his or her opinion is that of the City itself or its Board(s)."

In Ethics Opinion 2009-02, we said that under the Ethics Ordinance a member of a City board may not, in private political activity unrelated to the Board's duties, identify himself as a City Board member. We further observed that identification as a Board member may be permissible under the Ethics Ordinance "if it is germane to his role as a City Official and if he states that it is his personal opinion and not that of the.....Board or the City."

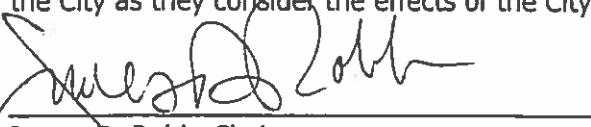
In Ethics Opinion 2004-02, we held that a volunteer member of a City board may solicit funds in his personal capacity, even where the use of those funds is adverse to the City, so long as he does not hold himself out as raising those funds in his official City capacity.

This basically answers the question. Fund raising through the Historical Society to support the museum's operations is germane to the Birmingham Historical Museum and Park Board's business. Raising money for the operation of the museum is therefore germane to the individual Board member's role as a City Official. The Birmingham Historical Society is a private group that supports the museum's work financially. Board members may participate, in their individual capacity, in the Historical Society's fund raising and, in any such fund raising activities, the Board members must take pains to make it clear that their fund raising activities are not approved by the City or the Birmingham Historical Museum and Park Board. Our opinion in this regard assumes that the individual Board members' activities are solely related to private fund raising efforts. The City is not bound to accept any donations which are offered or may attach conditions, in its sole discretion.

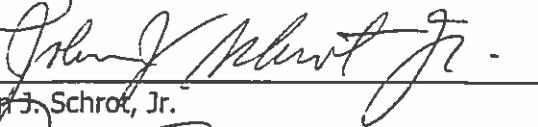
Conclusion

The Birmingham Historical Society may raise money for the Birmingham Historical Museum, but the Birmingham Historical Museum and Park Board cannot, as a board, raise money for the Birmingham Historical Society. The individual members of the Birmingham Historical Museum and Park Board may in their personal capacity raise money for the Birmingham Historical Society, but only if they make it clear that their participation is in their individual not City capacity.

The Ethics Board wishes to thank the members of the Birmingham Historical Museum and Park Board for bringing this matter to us. We hope this Opinion will assist Board members throughout the City as they consider the effects of the City's declining revenues on our community.



James D. Robb, Chairperson



John J. Schrot, Jr.



Sophie Fierro-Share

**CITY OF BIRMINGHAM
BOARD OF ETHICS
ADVISORY OPINION REQUEST 2012-01**

DECISION

March 8, 2012

I. INTRODUCTION

Mark Nickita is a member of the Birmingham City Commission and the current Mayor of the City of Birmingham. Mr. Nickita requested the City of Birmingham Board of Ethics to issue an advisory opinion giving advice about how to conduct himself and the activities of his architectural and urban design firm, Archive Design Studio, with respect to consulting services that Archive Design Studio would like to provide to the South Eastern Michigan Council of Governments in support of the latter's effort to review and recommend plans for a publicly supported bus rapid transit system along the Woodward Avenue corridor from Detroit to Pontiac. This matter boils down to whether the efforts of Archive Design Studio, and Mr. Nickita's role in the company, place him in a conflict of interest with his official city duties and responsibilities such that Archive Design Studio may not participate in the Alternatives Analysis. If, however, no current conflict exists, how must Mr. Nickita conduct his affairs to avoid a conflict in the future?

II. FACTS

In December 2011, the South Eastern Michigan Council of Governments ("SEMCOG") secured grant funding to conduct a study, called an "Alternatives Analysis," intended to support efforts within the Detroit metropolitan area to improve public transportation along Woodward Avenue from Detroit to Pontiac. Various agencies and individuals have conceived of a plan using light rail transportation ("LRT"), bus rapid transit ("BRT"), or some combination of both.

The Alternatives Analysis is an important facet of the planning for the BRT component. It is funded chiefly by a grant from the United States Department of Transportation. It is not funded directly by the City of Birmingham. The Alternatives Analysis will be conducted by SEMCOG itself, not by the City of Birmingham. SEMCOG will select and engage a team of consultants to provide services toward preparation of the Alternatives Analysis. Toward that end, in February 2012 SEMCOG issued a public request for proposals from consultants who seek to participate in the project.

Mark Nickita is a member of the Birmingham City Commission and the current Mayor of the City of Birmingham. He was first appointed to city office in 1997 as a member of the city's planning board. He is co-founder and President of the architectural and urban design firm, Archive Design Studio ("Archive DS"), formed in 1991, whose offices are located in downtown Detroit. Archive DS's relevant expertise is in urban-oriented and walkable-oriented places. Mr. Nickita's professional expertise, and that of one of his partners, will be an important part of the services Archive DS provides toward

the Alternatives Analysis. Archive DS desires to be engaged to provide services toward the Alternatives Analysis. It plans to participate as a member of a team that will submit a proposal in response to SEMCOG's request.

As currently envisioned, Archive DS will not contract directly with SEMCOG. Rather, Archive DS will be a subcontractor under a contract between the prime contractor and SEMCOG.

The identity of the proposed prime contractor with which Archive DS is affiliated is not disclosed to us. But Mr. Nickita stated that that contractor has engaged Archive DS previously, including before the time he became a member of the Birmingham City Commission.

The City of Birmingham is a member of SEMCOG. It paid dues to SEMCOG this year in the amount of \$2,657. The city has appointed Commissioner Scott Moore to be its current liaison with SEMCOG. We are apprised that the SEMCOG contract for the Alternatives Analysis will be approved by SEMCOG's executive committee, of which no one on behalf of the City of Birmingham is a member.

III. STANDARD OF CONDUCT

As Mayor and a member of the Birmingham City Commission, Mr. Nickita is a city official subject to the code of ethics set forth within the city's ethics ordinance. City of Birmingham Code of Ethics § 2-322(2). The code of ethics requires, as a core premiss, that city officials must:

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

Id. § 2-320.

Generally, city officials "are bound to observe in their official acts the highest standards of morality and to discharge the duties of their offices faithfully, regardless of personal consideration, recognizing that their conduct in both their official and private affairs should be above reproach." *Id.* § 2-321. They "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 conduct which may tend to undermine respect for city officials. *Id.*

To set the tone for official conduct, the City of Birmingham intends through its code of ethics "that city officials and employees avoid any action . . . 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.

Id. § 2-323.

We are informed by previous decisions of the Board of Ethics concerning potential or perceived conflicts of interest. We have considered various provisions of section 2-324 of the code of ethics in Advisory Opinions 2003-03 and 2009-01. More specifically, the following conflict of interest provisions are relevant to this matter:

- (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.
-
- (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 He or she shall refrain from voting upon or otherwise participating in debate on any such matter.

- (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 . . . may participate in such decisions provide 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.

Id. § 2-324(a)(1)-(9).

The next provision of the code of ethics defines 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 an 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.

Id. § 2-324(a)(10).

IV. ANSWER AND ANALYSIS

The Board of Ethics finds that the Mr. Nickita is not prohibited by the code of ethics from having his firm, Archive DS, participate as a member and subcontractor of a consulting team that proposes to contract with SEMCOG to provide services toward the Alternatives Analysis project.

As noted previously:

- (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.

Id. § 2-324(a)(5).

We find that City of Birmingham presently has no direct role in the contract. Mr. Nickita's role as a Birmingham public official is relevant to his professional background. Indeed, Mr. Nickita will be disclosing his relationship with the city in Archive DS's portion of the proposal to be submitted by the prime contractor to SEMCOG for its consideration, as he should. But we find that Mr. Nickita's role with the city is not likely to be a material factor in SEMCOG's selection of the ultimate prime contractor.

Similarly, the code of ethics recognizes that city officials may conduct their personal business so long as they do so in a way that is consistent with the requirements of the code.

- (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 He or she shall refrain from voting upon or otherwise participating in debate on any such matter.

Id. § 2-324(a)(6) (emphasis added).

We next find no evidence on this record that Mr. Nickita has used his official position to secure, or attempt to secure, the participation of Archive DS in the project. The relevant provision is:

(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.

Id. § 2-324(a)(8).

The Board of Ethics notes, however, that there remains the potential for a conflict should the City of Birmingham be asked to participate in the Alternatives Analysis, including funding for it. A relevant portion of the code of ethics provides as follows:

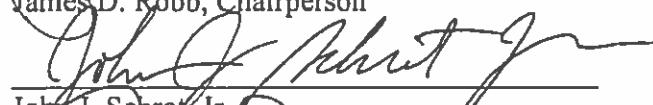
(7) No official or employee of the city shall participate, as an agent or representative of the city, in the negotiation or execution of contracts, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision, relating to any business entity in which he or she has, directly or indirectly, a financial or personal interest.

Id. § 2-324(a)(7). Should the question of the City of Birmingham's participation in the Alternatives Analysis arise, Mr. Nickita will need to consider whether he may properly participate in the city's consideration of that participation in light of the code of ethics. The Board of Ethics invites Mr. Nickita to submit an additional request for advisory opinion if he desires.

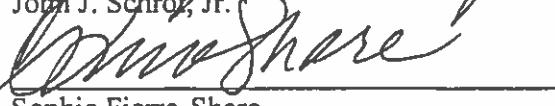
The Board commends Mr. Nickita for submitting his request for this advisory opinion.



James D. Robb, Chairperson



John J. Schrot, Jr.



Sophie Fierro-Share



MEMORANDUM

City Clerk's Office

DATE: **August 22, 2018**

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

FROM: **J. Cherilynn Mynsberge, City Clerk**

SUBJECT: **Ethics Board Meeting Location**

If the members of the Ethics Board are willing, I recommend moving Ethics Board meetings to Room 205, the Commission room. The sound system in the Commission room produces a high quality, clear audio recording. Since the Board's deliberations and decisions are very detailed my office relies on the recording to accurately transcribe the minutes.

Meetings in the conference room must be recorded on a portable audio recorder with one microphone. The distance the meeting participants are sitting from the microphone and the background noise picked up by the microphone make the Board's comments sometimes inaudible.

Because detail is important in creating the permanent record of the Board's decisions, I am recommending meeting and taping in the Commission room.