

**CITY OF BIRMINGHAM
BOARD OF ETHICS AGENDA
SEPTEMBER 1, 2020
2:00pm
VIRTUAL MEETING ON ZOOM
MEETING ID: 996 5685 2194**

I. CALL TO ORDER

Chairperson James Robb

II. ROLL CALL

Alexandria Bingham, City Clerk Designee

III. APPROVAL OF MINUTES

A. Approval of minutes of June 19, 2019

IV. UNFINISHED BUSINESS

VI. NEW BUSINESS

- A. Hearing on Ethics Complaint:
1. 2020-01 Complaint: Clinton Baller, submitted by Donna M. Klein.

VII. PUBLIC COMMENT

VIII. 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 por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).

I, Alexandria Bingham, the duly appointed City Clerk Designee 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 27, 2020.

Alexandria Bingham

**CITY OF BIRMINGHAM
BOARD OF ETHICS MINUTES
JUNE 19, 2019
151 MARTIN, BIRMINGHAM
CONFERENCE ROOMS 202/203**

I. CALL TO ORDER

Chairperson Robb called the meeting to order at 4:04 p.m.

II. ROLL CALL

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

Absent: None

Also Present: City Manager Joseph A. Valentine, Respondent
Mayor Patty Bordman, Respondent

Administration: City Clerk Mynsberge, City Attorney Currier, City Attorney Ballard

III. APPROVAL OF MINUTES

A. Approval of Board of Ethics meeting minutes of June 12, 2019

MOTION: Motion by Mr. Schrot, seconded by Ms. Fierro-Share:
To approve the minutes of June 12, 2019 as submitted.

VOTE: Yeas, 3
Nays, 0

IV. UNFINISHED BUSINESS

None.

V. NEW BUSINESS

A. CONSIDERATION OF DECISION DRAFTS

1. 2019-03 Complaint: City Manager Joe Valentine, submitted by Clinton Baller.
Chairman Robb opened the floor for discussion and comments on the draft of the written opinion. He thanked everyone for convening to complete the matter before the board expediently in the best interest of the public.

Mr. Schrot complemented Chairman Robb for the job he did in capturing the findings of fact and questions presented in the analysis; he added that his thoughts, conclusions, and decisions are reflected in the opinion.

Ms. Fierro-Share pointed out the complexity of the complaint and again, complemented Chairman Robb on the opinion, and recommended changes that were made to the written decision.

MOTION: Motion by Mr. Schrot, seconded by Ms. Fierro-Share:
To approve, adopt, and sign Opinion 2019-03 as written:

VOTE: Yeas, 3
 Nays, 0

2. 2019-04 Complaint: Mayor Patricia Bordman, submitted by Clinton Baller.

Chairman Robb noted that the cases are related, and opened up the floor for discussion by members of the board.

Ms. Fierro-Share noted Page 2 and Page 4, made suggestions, and changes were made to the written opinion.

Mr. Schrot, again, commended Chairman Robb on the outstanding job he did in capturing content and questions posed in the analysis. He further noted variances on Page 1, Paragraph 1 and 2, relative to Mayor Bordman's name corrected by City Clerk Mynsberge.

City Attorney Currier, suggested verbiage to clarify Page 1 last paragraph. The changes were made to the opinion.

Mayor Bordman, in her statement, clarified points in the written opinion for public understanding:

- The ballot proposal read, "Not to exceed \$57.4 M".
- She added that revenues from the Birmingham Parking Systems would have paid for the bond relieving residents of the tax burden.
- Page 5, the complaint is against an individual as opposed to the "City" because the Ethics Ordinance requires that an individual be named.
- Page 3, she offered that the last paragraph does not apply in this case, and undermines the Ethics Ordinance.

Mayor Bordman stated that Chairman Robb is saying, in his written opinion, if you do not like what I did vote me out of office. My position is not at issue in the complaint but you made it an issue by saying go to the ballot box. There is an implication of recall.

Chairman Robb expressed that his opinion was written to the contrary. I am saying you cannot do this. At the end of the hearing, that is how Mr. Baller boiled it down.

Mr. Schrot expressed that what the mayor said resonated with him in hearing how Mr. Baller tried to frame the issue before the board. He went on to say that, Mr. Baller's issue did not need to be addressed in the penultimate paragraph that begins "Finally". Upon reflection, he added that the last paragraph from the opinion should be excluded.

Ms. Fierro-Share commented that she did not read the opinion in the same way as the Mayor and continued that she was only looking on the surface of the complaint and did not see the broader issue that Mayor Bordman pointed out. She agreed to strike the last paragraph of the body of the opinion.

Chairman Robb stated that in a sense, it is a dictum, statements outside the precise decision to give advice, but it is not necessary for the determination of the case.

Mayor Bordman pointed out that Mr. Baller did not include the City or the other Commissioners who voted in favor of the motion in this complaint.

City Attorney Carrier confirmed there is nothing in the Ethics Ordinance that requires the board to suggest a remedy for the complainant when held against.

Mayor Bordman noted in closing, despite the discussion and other small matters, that the opinion was beautifully written.

MOTION: Motion by Mr. Schrot, seconded by Ms. Fierro-Share:
To adopt opinion as amended via the discussion.

VOTE:	Yeas,	3
	Nays,	0

VI. PUBLIC COMMENT

None.

VII. ADJOURN

The meeting was adjourned at 5:10 p.m.

J. Cherilynn Mynsberge, City Clerk
/vc

*930 Larchlea Drive
Birmingham, Michigan 48009*

July 27, 2020

Cheryl Arft, Acting City Clerk
151 Martin Street
Birmingham, MI 48009

Via City Drop-Box

To Whom It May Concern:

Attached is an Ethics Ordinance Complaint form concerning city commissioner Clinton Baller's libel of me, with attachments to support my statements. I am willing to cooperate with the Ethics Board members and city employees, but I do not give permission to Baller or his agents or supporters to contact me.

Sincerely,


Donna M. Klein

CC: Mr Joseph Valentine, City Manager
Via City Drop-Box

City of Birmingham ETHICS INCIDENT/COMPLAINT FORM

1 Name the person alleged to have violated one of more of the provisions of the City of Birmingham's Ethics Ordinance.

Clinton Baller, City Commissioner Phone number unknown 822 Shirley Road

2 Explain why you believe that the individual named above may have violated the City of Birmingham's Ethics Ordinance.

In late June, I was enjoying a social-distanced get-together with friends in a Birmingham backyard. As it wrapped up, a friend privately tipped me off, to his horror, that commissioner Clinton Baller had published outrageous gossip about me in his official newsletter. The friend forwarded it and I rushed home to read it.

I found that Baller had held me up to ridicule to my neighbors, with a completely twisted narrative with no relevance to city business, and signed with his title. Even if the facts had been accurate, a Birmingham City Commissioner has no right to bring his private grievances into an official newsletter to harass a private citizen. Snippet -

"NEXTDOOR SHOWS ME THE DOOR

[Description of his experience on social media]

Surprising to me was to discover that Donna Klein, a Nextdoor neighbor, seems to hold outsize sway over what goes down on Nextdoor. She has two profiles, one in Midvale and one in Torry, and she is a neighborhood "lead" in both. That gives her the right to vote on reported posts. And on Nextdoor, judges are also apparently permitted to be police, so as you can see in the screenshots below, she not only reported my post twice, but also voted to remove it, which helped lead to my banishment."

Clinton Baller
Birmingham City Commissioner
822 Shirley Rd.
Birmingham, MI 48009



I did nothing wrong, nor did not throw Baller off the site, nor could I if I wanted to. That's how how it works. If Baller was thrown off the site, it was for violating site terms of use. To understand this rant, I will provide some context about NextDoor.

City of Birmingham ETHICS INCIDENT/COMPLAINT FORM

About NextDoor ("ND")

- A hyper-local social media site for close neighbors using real identities
- Has defined "neighborhoods" of a few blocks. Birmingham has about 20-40 separate "neighborhoods".
- Users may read and post content to all close "neighborhoods" within a radius, which may include other cities.
- Has defined terms of use, revolving around "Be Helpful Not Hurtful"
- Specifically prohibits divisive content, including political campaigning, neighbor-shaming, misinformation, violations of privacy and more
- Has a 2-layer moderation system:
 - Volunteer local moderators, or "Leads" to monitor comments
 - ND corporation employees who control accounts
- Terms of use include requests of users to report offensive content in order to keep the site friendly and useful and inclusive.

Users enroll with real names. They're asked to read the terms of use and agree. They're told how to report content to Leads and to ND employees so that the site stays helpful. Every user has the same terms of use. Every Lead has additional limited and defined moderation duties. Leads are required to vote on the propriety of reports based on ND terms of use, not friendship, and are bound to keep reports and votes confidential.

About Baller's Comments:

A City Commissioner is bound by the Ethics Ordinance to respect the privacy of all citizens and to use excellent, honest judgment. His public ridicule of me shows complete disregard for accuracy and respect of privacy in his desire to sway public opinion of me. However, I did nothing wrong whatsoever and some of his comments are pure libel.

- In fact, I do have 2 legal ND accounts, as I own 2 homes in Birmingham.
- Only one of my accounts is a "Lead"
- I use ND in accordance with site terms of use and have no special powers.
- I cannot get an account removed.
- The screenshots violate the privacy of 6 other Birmingham residents whose names were used in the confidential screenshots.
- Baller's screenshot indicates that he opted to post it to 59 separate neighborhoods, or about 13,000 people, any of whom could have also reported his comment. Any of those 59+ Leads could have voted for removal. His comment blames just me.
- Anyone whose account is restricted or removed by the ND corporation has violated specific terms of use. Their restriction or removal is their own doing.
- Baller published a confidential screenshot that he was not allowed to see
- Baller used inflammatory commentary about me, "police" and "judge".

City of Birmingham ETHICS INCIDENT/COMPLAINT FORM

Besides the troublesome neighbor-shaming of me (when I did nothing wrong), Baller's actions highlight other concerns. Specifically, Commissioners have access to confidential personal and financial information from citizens and businesses. Baller showed complete disregard for privacy and ND regulations when he chose to use this information for his petty purposes. How can anyone trust what he will do with documents presented to him as a commissioner if he has a secret vendetta or private interest?

As if the newsletter were not bad enough, the libel and public ridicule expanded when Baller published the same account on his political and public Facebook page, Facebook.com/baller4bham. The 4 nasty comments about me from people I have never met show undeserved public sentiment that Baller caused. That Baller would allow these vile to stay on his public polical page page mean that he approves of them.



Lori Lassner

Control freak...I feel sorry for her family.

Like · Reply · 3w



Sydney Reiter

Wow. This is just wrong!! Like so many things going on, just wrong!

Like · Reply · 3w



Suzanne Shields

I do not know Donna either. But I am almost in Clinton's position. I have been booted from ND for silly reasons. I said I yelled at the mailman - did not say he was wearing headphones. I truly believe Donna is behind my removal. Many people know m... See More

Like · Reply · 3w



2

↩ 1 Reply



Kathryn Lampi

Don't know Donna, but she's got way too much time on her hands....

Like · Reply · 3w



1

Another resident posted her shock at a public official calling out a citizen.

City of Birmingham ETHICS INCIDENT/COMPLAINT FORM



Betty Warner

Clinton, I don't know the people listed on your post on Nextdoor, but I'm a little disappointed to see an elected official such as yourself public-shaming, by name, other members of our community.

Like · Reply · 2w

Baller replied with a bizarre allegation and a denial that he wrote bad things about me.



Author

Baller 4 Birmingham

Betty Warner If you consider my expression of facts about Donna Klein to be shaming, then it is because you see something shameful about her behavior. The only opinion I expressed was that she seems to hold outsized power on Nextdoor.

Like · Reply · 2w



Expanding the embarrassment, Baller features a scrolling Facebook feed on Baller4Bham.com. How disgraceful: a gossipy, libelous rant on his page as a city official.

MEET CLINTON BALLER

Dear Neighbors,

I've lived in Birmingham for the better part of 37 years. In 2001, I got involved in local politics, and started a blog called the Birmingham Buzz. It reported and advocated on a variety of issues and engaged residents in a major shift in leadership in the 2005 election. I went on to influence policy on a variety of issues.

In 2004 I recruited and led a volunteer design team to redevelop South Park. It won awards and broad community approval.

A year later, I researched and made a convincing case for the Distro Ordinance, which



My Facebook feed

It scrolls! Or click to visit my page and see all posts



Baller 4 Birmingham
2001 3 weeks ago



NEXTDOOR SHOWS ME THE DOOR
I've been booted again. This time

With this single rant published in at least 3 places, Baller has violated several Ethics Ordinance points and in so doing, destroyed confidence in the integrity of city officials.

Sec. 2-320. - Public policy

- each city official, employee, or advisor must earn and *honor the public trust by integrity and conduct.*
- all city officials and employees *must avoid conflicts* between their private interests

City of Birmingham ETHICS INCIDENT/COMPLAINT FORM

and the public interest.

- Public officials and employees must: Be *independent, impartial and responsible to the people*
- It proscribes *actions incompatible with the public interest*

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

- carry out *impartially and comply with the laws* of the nation, state, and the city.
- City officials and employees *must not exceed their authority*
- observe in their official acts the *highest standards of morality*
- their official and private affairs should be *above reproach*.
- All city officials and employees shall safeguard public confidence by being *honest, fair and respectful of all persons and property with whom they have contact*
- *avoiding conduct which may tend to undermine respect for city officials and employees and for the city as an institution.*

In summary, Baller's reckless disregard for truth and his belief in his own right to violate privacy reflects poorly upon Birmingham. With one story, he managed to:

- Violate the city Ethics Ordinance,
- Violate the ND corporation's privacy requirements,
- Libel a private citizen,
- Violate the privacy of 6 other citizens whose names were in screenshots,
- Generate animosity towards a private citizen,
- Embarrass the city

I have been a Birmingham resident since 1995. I attended all sessions of a Citizen's Academy in order to become a more engaged citizen. I have no criminal record, no traffic violations, nor even an outstanding parking ticket. I am a quiet and responsible taxpayer, with no reason to be on the radar of any city official or employee, other than as a friend.

I am writing in the hopes that the city and officials will take Baller's action seriously. If the Ethics Ordinance is to be observed by all, an official who abuses it so drastically must be held to account. Baller is abusing his trusted role as an elected official.

However, I write this with trepidation. Having witnessed Baller's zeal for blame and revenge, I expect, but dread, an aggressive backlash from, *or on behalf of*, him. That he was willing to go to such great lengths to sway public opinion about me for something as meaningless as social media (and which was factually incorrect) shows such poor judgment that I am worried about the next step he will take to harass me.

City of Birmingham
ETHICS INCIDENT/COMPLAINT FORM

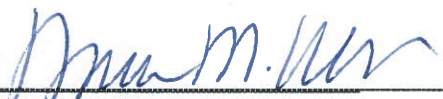
I request the assistance of city officials to ensure that I be safe from physical, verbal, or written harassment by Baller. I seek a correction of the libel, and removal of the comments everywhere he posted them online. I demand no future commentary about me or this incident, either by name or "veiled", by his supporters, agents or family. Baller does not have my permission to contact me in any form, ever.

At this time, my attorney is not going to contact Baller, but he has reviewed this matter carefully. We may opt to pursue the blatant libel in the future if Baller refuses to cooperate or continues to harass me.

3 Attach or make reference to any document or other evidence that may support your allegations. NextDoor documents, Baller's newsletter and screenshots.

4 Are you aware of any civil, criminal or administrative action pending that involves the same parties as alleged in this complaint which involves substantially the same matter? No

5 I declare that the foregoing information is true and accurate to the best of my knowledge.



Donna M Klein

July 26, 2020

Date

930 Larchlea Drive, Birmingham
248-225-5598 sale930@gmail.com

Klein Ethics Complaint: Attachments

Contents

Excerpts from referenced NextDoor corporation policies and their website addresses

- What is Nextdoor?
- Overview: Community Guidelines
- "Do Not Engage In Harmful Activities"
 - Defined
 - Privacy Violations
- About Moderation
- Reporting Posts
 - Encouraged to report
 - How to report
 - What happens after reporting
- About Neighborhood Leads
 - Their role
 - They cannot take action on accounts
- Lead Tools
- Baller Accessed And Published Restricted Content
- Member Agreement

Baller's Newsletter dated June 18, 2020

Screenshot of Baller4Bham Facebook

Screenshot of Baller4Bham.com

Klein Ethics Complaint: Attachments

What Is NextDoor?

https://help.nextdoor.com/s/article/Section-230-of-the-CDA?language=en_US

What is Nextdoor?

Nextdoor is the neighborhood hub for trusted connections and the exchange of helpful information, goods, and services. We believe that by bringing neighbors together, we can cultivate a kinder world where everyone has a neighborhood they can rely on.

Building connections in the real world is a universal human need. That truth, and the reality that neighborhoods are one of the most important and useful communities in our lives, have been a guiding principle for Nextdoor since the beginning.

Nextdoor's purpose is to cultivate a kinder world where everyone has a neighborhood they can rely on, and our mission is to be the neighborhood hub for trusted connections and the exchange of helpful information, goods, and services.

Does Nextdoor have rules regarding appropriate behavior on Nextdoor?

Yes. Nextdoor's Community Guidelines (as well as our Member Agreement and Privacy Policy) set the ground rules for appropriate behavior on Nextdoor.

The Community Guidelines cover a range of issues including our policies regarding disagreements between neighbors, public shaming, political discussion, self-promotion, discrimination, and more. But the crux of the Guidelines can be boiled down to one simple statement:

Everyone here is your neighbor. Please treat each other with respect.

How are the Community Guidelines enforced?

Members have the ability to report members who they believe are abusive or otherwise violating the Guidelines. Nextdoor will follow up if messages that violate our policies are brought to our attention by users reporting abusive members.

In these situations, if we find that the Guidelines were violated, our responses may include:

- Removing the message in question.
- Contacting the member(s) with a warning.
- Placing the member(s) on "read-only" access (meaning that they cannot post messages), temporarily or permanently.
- Disabling the member(s)' account temporarily or permanently. In the case of a permanent ban, we may also block the address in our systems to prevent any further accounts from being created at that address.

Klein Ethics Complaint: Attachments

Community Guidelines

https://help.nextdoor.com/s/article/community-guidelines?language=en_US
Community Guidelines

We're glad you're here.

We want everyone to feel welcome on Nextdoor, and we have created these Guidelines to define the values of the community we want to build. On Nextdoor, you're connected not by a shared preference, but a shared connection to a place – your neighborhood. Let's build a strong one together.



1. Be helpful in conversations

Share this space in a constructive way. Be kind, not judgmental, in your conversations.

2. Be respectful to your neighbors

You're speaking to your real neighbors. Strong communities are built on strong relationships.

3. Do not discriminate

We do not tolerate racism, hateful language, or discrimination of any kind.

4. Do not engage in harmful activity

We prohibit any activity that could hurt someone, from physical harm to scams.

5. Promote local commerce the right way

We have created designated spaces for members and local businesses to sell products and services.

6. Use your true identity

Nextdoor is built on trust – we want everyone to know they're communicating with their real neighbor, and therefore require you to use your true identity.

You, our members who make up Nextdoor, play a key role in neighborhood moderation by reporting content or members that violate these Guidelines. Please remember that disagreeing with a post is not a reason to report it. This slows down our ability to remove content that is truly abusive and to create a platform where everyone feels welcome.

Klein Ethics Complaint: Attachments

"Do Not Engage In Harmful Activities"

https://help.nextdoor.com/s/article/Do-not-engage-in-harmful-activity?language=en_US#privacy

Do not engage in harmful activity

We prohibit any activity that could hurt someone, from physical harm to scams.

1. Appropriately report suspicious activity
2. No threats to the safety of others
3. No fraud or spam
4. No illegal or regulated goods or services
5. No violations of privacy

No violations of privacy

To ensure every member's privacy, do not post or share private information without permission.

	Allowed?
Posting contact information when recommending someone's services. However, if you post someone's personal email addresses, phone number, or physical address and they request that it be removed, we may remove it.	✓
Sharing content outside of Nextdoor by using the built-in share button that appears on some types of posts. You may share public agency posts, business pages, deals, and public events.	✓
→ Reposting information originally posted on Nextdoor without obtaining the author's permission. This includes reposting or sharing screenshots of content with additional neighborhoods on Nextdoor or outside of Nextdoor.	✗

Klein Ethics Complaint: Attachments

About Moderation

https://help.nextdoor.com/s/article/About-moderation?language=en_US

About moderation

To ensure a welcoming and neighborly experience for all members, Nextdoor has developed a set of Community Guidelines detailing the behaviors that are - and are not - allowed on the platform.

Members can report content that they believe violates the Guidelines. Neighborhood Leads can report content, review and vote to remove reported content, or close discussions that were started in their neighborhood.

Neighborhood Leads do not have the power to limit a member's ability to post or to restrict their access to Nextdoor. Only Nextdoor staff can take those actions.

When moderation is insufficient or Leads post inappropriately

Leads can only moderate content. They cannot take action on members' accounts. So in cases where content moderation isn't sufficient, either because a member is repeatedly posting problem content, or you believe they should be removed from Nextdoor entirely, reporting the member to Nextdoor Support is the best course of action.

If a Lead is posting problem messages, and you are unable to resolve the issue privately, report the Lead to Nextdoor Support through the contact form.

Klein Ethics Complaint: Attachments

Reporting Content

https://help.nextdoor.com/s/article/How-to-report-content?language=en_US

How to report a post

We rely on you, Nextdoor members and Leads, to report content that violates Nextdoor's Community Guidelines so that it can be reviewed and, in some cases, removed from Nextdoor. See the reasons you might report content on Nextdoor.

1. Locate the post or reply you want to report in the Newsfeed.
2. Click to the right of the author's name on the post.
3. Select **Report post** or **Report comment**.
4. Fill in the requested information.
5. Click **Submit**.

What happens after you report content

1. Your neighbor will receive an email notification that their content has been reported. We never disclose your name to the author.
2. Nextdoor Lead(s) will be notified and asked to review the content to determine if it violates the Community Guidelines.
 1. Leads will be notified if the reported post was authored in their neighborhood or if the content was reported by a member in their neighborhood.
 2. Leads will NOT be notified if the reported post was authored and reported by neighbors in Nearby Neighborhoods, *even if the content is visible in their own neighborhood*. This change was made at the request of Leads who were overwhelmed with reported content notifications. These Leads can still vote on the content if they choose.
3. If a Lead reports a post, it is removed from the neighborhood's newsfeed. If the post was authored in a Nearby Neighborhood, it will remain in any Nearby Neighborhoods until those Leads take action.

Klein Ethics Complaint: Attachments

About Neighborhood Leads

https://help.nextdoor.com/s/article/About-Nextdoor-Leads?language=en_US

About Nextdoor Leads

Leads are neighbors who are especially dedicated to their neighborhood and are committed to helping to cultivate a strong and healthy community on Nextdoor. They are neighbors like other members, except they have been granted additional capabilities to help their neighborhood run more smoothly.



Note: Neighborhood Leads are volunteers. They are simply great neighbors who take a special interest in cultivating a healthy community in their Nextdoor neighborhood.

Leads help to cultivate a neighborly community on Nextdoor by:

- Welcoming new neighbors
- Growing the neighborhood
- Starting conversations
- Supporting local businesses
- Keeping neighborhood information up to date
- Keeping conversations neighborly

Leads are granted extra capabilities to help them do the things listed above and make their neighborhood run smoother. Those capabilities include:

- Voting to remove messages that they believe violate Nextdoor Guidelines
- Adjusting neighborhood boundaries
- Verifying unverified members
- Editing the About section on the neighborhood feed
- Promoting other members to Lead status



Note: Leads do not have the ability to remove members, place members in read-only mode, or affect a member's account in any way. Only Nextdoor Support can take those actions.

Klein Ethics Complaint: Attachments

Lead Tools

https://help.nextdoor.com/s/article/lead-tools-for-moderating-content?language=en_US

Lead tools for keeping conversations neighborly

One of a Lead's most important responsibilities is facilitating and moderating neighborly conversations in their neighborhood. Leads are given extra tools to help enforce Nextdoor's Community Guidelines. Leads have the ability to:

- [Review reported content](#)
- Report content
- Remove content
- Close a discussion
- Change the category of the post

When moderating content it's important to review and reference Nextdoor's policies and guidelines:

- Community Guidelines
- Reasons you may report content
- Nextdoor Member Agreement

It's important to remember that as a Lead, when you see incivility or other Guidelines violations, your first instinct should be to approach the situation simply as a neighbor who cares. If that's not possible, you can turn to the tools like reporting/removing content. See more best practices for keeping conversations neighborly.

Klein Ethics Complaint: Attachments

Baller Accessed And Published Restricted Content

Source: Lead Tools – after you vote

https://help.nextdoor.com/s/article/How-to-review-reported-content?language=en_US

What to expect after you vote:

After you've voted, the content will be moved to the **History** tab for reference. When you vote on a piece of content that someone else has reported, the member will **not be notified** of your vote.

If your vote triggers the removal of content, the member will be notified that their content has been removed. The author will not be informed about the identity of either the member(s) who made the report or of the Lead(s) who removed their content. Leads should not reveal the identity of a content reporter to the member whose content was reported.

Klein Ethics Complaint: Attachments

Member Agreement

<https://legal.nextdoor.com/us-member-agreement-2020/>

If Baller's was account was removed, it would have been per this term

4. Content and feedback.

You retain all ownership rights to the text, photos, video, responses and other content you submit to Nextdoor (collectively, your "Content"). You give us permission, in the form of a non-exclusive, transferable, sub-licensable, royalty-free, and worldwide license, to use, copy, and publish your Content based on your Nextdoor settings and the selections you make when posting and as otherwise described in our Privacy Policy. This means, for example, if you post a comment on Nextdoor, you give us permission to store, copy, and share it with others (consistent with your settings), such as with service providers that support our Services. Do not provide us with any Content that you don't have the right to publish, or that is defamatory, infringing, illegal or otherwise tortious. We do not proactively moderate Content posted by members; however, we can remove Content posted by you, suspend, delete or deactivate your account or limit privileges, or otherwise refuse service to you, if you violate this Agreement or our other policies, or infringe intellectual property, or otherwise engage in behavior that we think harms a Nextdoor neighborhood.

Klein Ethics Complaint: Attachments

Baller's Newsletter Dated June 18, 2020

Dear Neighbor,

When Birmingham police officers took a knee with protesters at Somerset Mall earlier this month, it was a moving display, not only because it demonstrated solidarity, but because it symbolized a necessary first step in giving millions of Americans what they demand.

Equal justice may be a ways off for many Americans, but getting there, especially in the absence of national leadership, will require decisive local action. Local leaders — from protesters and police officers, to mayors and police chiefs, to teachers and school administrators, media and business leaders — must set an example for, which is to say educate, their constituents. For if there is one word that represents the solution to the problems of race and policing in America, it is "education."

We need to teach and learn that our nation was built on genocide and slavery, which led to Jim Crow, lynchings, segregation, disparities in policing, mass incarceration and extreme income inequality. We need to learn and understand what systemic racism looks like. We need to learn that education, of black and white, is not only a key to addressing our current crises, but a silver bullet that in the long run can cure our social ills.

Current crises afford us an opportunity. In the same way our police officers showed courage and leadership in taking a knee with protesters, community leaders need to take a knee and, with honesty, transparency and humility examine how we can improve. Birmingham is affluent, educated and populated by a broad range of leaders who need to step up and do their part. It is also 91% white, and just 3% black.

Pause and ponder that.

INTRODUCING BIRMINGHAM PARTNERSHIP FOR TRANSPARENT POLICING

A credible group of residents has come together to advocate for a citizen-led effort to police the police. At the City Commission's June 8 meeting, resident attorney Kristen Gross announced the formation of the Birmingham Partnership for Transparent Policing.

"It is our hope to work with the Police Department, the City Manager, and the City Commission to discuss concrete actions the city can take in this area," she said. "While our work is preliminary, let me offer these five concrete suggestions:

1. Mandate that the city begin tracking the racial identity of individuals stopped by police officers.
2. Develop a mentorship program between active Birmingham Police Department

Newsletter p1

Klein Ethics Complaint: Attachments

officers and minority children within the community to allow the minority community and the police department to develop a positive relationship.

3. Create a community advisory committee to provide input on policing issues, review departmental complaints, and hold community forums with a focus on groups that may feel targeted by the police, such as youth of color.

4. Adopt a policy banning the use of chokeholds and strangleholds

5. Adopt a policy requiring officers to intervene and stop excessive force used by other officers and report these incidents immediately to a supervisor.

"As the Report for 21st Century Policing stated, 'Trust between law enforcement agencies and the people they protect and serve is essential in a democracy. It is key to the stability of our communities, the integrity of our criminal justice system, and the safe and effective delivery of policing services.'

"The goal of the Birmingham Partnership for Transparent Policing is to work with the Police Department, the City Commission, and the City Manager to help ensure that this trust exists between the Birmingham Police and all of its citizens, regardless of race. We hope that you will support us in this effort."

Gross can be reached at kristen@krglegal.com.

NEXTDOOR SHOWS ME THE DOOR

I've been booted again, this time permanently, from the social media website Nextdoor. It was for detailing in April a situation in which Nextdoor sent out a daily digest featuring and linking to a post that, by the time many had opened the digest, had been removed by its author. A neighbor had offered face masks obtained in quantity from China at \$4 each, which was, he said, his cost. While several neighbors accepted the offer, one claimed he was profiteering and "supporting China." He provided his receipts as proof of cost, but ultimately decided that rather than respond to such false charges, he would just delete his post.

These are the facts I carefully presented in my separate post later in the day.

Surprising to me was to discover that Donna Klein, a Nextdoor neighbor, seems to hold outsize sway over what goes down on Nextdoor. She has two profiles, one in Midvale and one in Torrey, and she is a neighborhood "lead" in both. That gives her the right to vote on reported posts. And on Nextdoor, judges are also apparently permitted to be police, so as you can see in the screenshots below, she not only reported my post twice, but also voted to remove it, which helped lead to my banishment.

Klein Ethics Complaint: Attachments

10:53 4 Search

← Reported content

Neighbor deletes post after being falsely accused of profiteering



Clinton Baller from Birmingham - 5 days ago
Profile · Activity

By the time many members received the email pictured here, the top post of the day had already been removed by its author. Sarmad Faraj offered face masks at \$4 each, which he said was his cost, and later proved by showing us his receipts. But he was nevertheless accused by one neighbor of profiteering and of "supporting China," where the masks, like the majority of products Americans consume, ... View more

Shared with Birmingham - 58 nearby neighborhoods in Camaraz

Bob, Brad, Nancy, and 23 others thanked Clinton

Status: Removed

Voted on by 6 Leads · Reported by 2 members · Hide



Russell Weiss from Torry Community Assoc Lead · 2 days ago

Voted "Consider Removing"



Donna Klein from Torry Community Assoc · 2 days ago

Reported as Uncivil, unneighborly or offensive and said, "1) The original poster deleted his post. Nobody has the right to repost a screenshot of what the neighbor wasted down, 2) He is neighbor-shaming those who made comments."



John Howard from Colonial Court Lead · 2 days ago

Voted "Do Not Remove"



Elise Wootray from Quenton Lake Estates Lead · 5 days ago

Voted "Remove"



Wendy Fishburn from Barron Park Lead · 5 days ago

Voted "Do Not Remove" and said, "He's defending someone who was unfairly attacked."



Denise DeGraft from Birmingham Farms Lead · 3 days ago

Voted "Do Not Remove"



Post removed · 3 days ago



Donna Klein from Midvale Lead · 3 days ago

Voted "Remove"



Donna Klein from Midvale Lead · 3 days ago

Reported as Uncivil, unneighborly or offensive: Public shaming and said, "The person removed his own post. Clinton reposted it. That's unfair. Plus he's shaming the people who responded. He's inserting himself into an argument that the original poster tried to remove."

Alas, exile has not completely eradicated me from Nextdoor. In a post that was taken down soon after it was added -- and illustrates the depths to which social media pulls people -- a Torry neighbor remarked this week: "I was a bit taken aback by last night's

Newsletter p 3

Klein Ethics Complaint: Attachments

meeting when I noticed Commissioner Clinton Baller sipping wine throughout the telecast. I do not believe alcohol should ever be involved when an official is making decisions regarding the residents and our city!!" It was ice water. In a water glass. Washing down leftover nachos. I would have preferred a proper meal, but such are the sacrifices we make.

INSULT, INJURY AT CITY HALL

In my last message, I gave an example of the frustrations that commissioners Therese Longe, Brad Host and I face as we try to affect the change that many of you wanted when you ousted three incumbent commissioners last November. We three new commissioners campaigned on promises to change the tone, even the "culture," of city government.

In my message, I highlighted our effort to move public comment from the end of meetings to the beginning, our success in achieving a trial run, and our frustration in seeing it continued.

On Facebook, resident David Lurie commented:

Perhaps one possible "solution" is to ask residents who wish to speak at the beginning to email their desire to speak to a representative of the commission by 5 p.m. of the day of the meeting along with their topic. Those who do this could be recognized for 3 minutes or so at the beginning of the meeting. Those who do not email their request have to wait until the end. This may help the commission understand the length of time the public will be speaking at the beginning, at the very least, and organize the comments. Just a thought.

Mr. Lurie was engaging in a process — brainstorming — that is a fading art at City Hall, for it presents the opportunity that an idea to which one has not fully subscribed, and with which one may never agree, may gain a foothold. Before the commission, members of the public who throw things against the wall to see if they stick are invariably disappointed because it is the explicit policy of the commission to allow such comments to fall to the floor with a thud. When the three-month trial of moving public comment began, the city added the following to its printed agenda:

The Commission will not participate in a question and answer session and will take no action on any item not appearing on the posted agenda.

This merely codified long-standing policy, and it is insulting to anyone with a good idea or question.

For the public, it is the insult added to the injury of having to wait sometimes several hours to deliver an idea or ask a question. For commissioners, it is part of a pervasive culture that includes Catch-22s, baseless cautions about violating the Open Meetings Act,

Klein Ethics Complaint: Attachments

moving-target "rules" about "precedent" and "process," and admonitions about when it is appropriate to discuss something or anything, and even what constitutes a "discussion."

Roberts Rules of Order are supposed to govern our meetings, but sometimes don't. At our June 8 meeting, in the midst of a debate over the budget, one commissioner was given the floor. "In an effort to move this along, I call for the question on the amendment and then on the motion." Several commissioners expected the comment to simply end debate. "Any commissioner can call the question and bring the matter up to a vote," asserted one, incorrectly. I'm no expert in Roberts, but I can smell a rat, and the notion that a single board member can unilaterally cut off debate and force a vote defies not only common sense and reason, but basic democracy. Birmingham's resident parliamentarian, Coco Siewert, watched aghast. I insisted the city attorney review Roberts Rules, which he did. The commissioner had the right to make the motion, but upon any objection, it required a second and a vote of two-thirds of the commission to end debate and force a vote.

At the close of the same meeting, four hours in, after several residents had waited three hours and 45 minutes to take 10 minutes of our time, I expressed an apology and a measure of shame, and I do so here again.

HAIL, OAKLAND

The pandemic and my penchant for dirt-road motorcycling has taken me to every corner of Oakland County. From Eight Mile to Baldwin/Davison Lake roads, the county's 907 square miles are amazing. Especially wonderful is the north country, which is to say almost anywhere north of Lone Pine that isn't densely populated, but especially the lakes region and the Huron and Clinton river watersheds. You are missing out if you haven't experienced the county parks, Metroparks and state parks recreation areas within its borders. Nothing is much more than 30 minutes away, and much is as good as anything four or five hours away.

A FIRST FORAY INTO POST-COVID DINING OUT

Last night we decided to dine out, thinking we'd find an outdoor seat at one of the restaurants uptown. Of course, our luck the two open tables outside our chosen place turned out to be reserved. So we took two seats at the bar that were properly socially distanced. The staff all wore masks. Sanitizer was everywhere. The place had even installed these neat foot pedals for opening their doors. But then a couple, unmasked, invaded our space at the bar. They seemed to get it, and after a few minutes backed away. Then we ran into a young man we knew, whose idea of social distancing was to keep at least 18 inches between us. Then we ran into another acquaintance, who gave my wife a hearty hug. Oops. It was all a little -- uneasy. Small, unanticipated but wholly predictable occurrences completely beyond the control of the restaurant.

Klein Ethics Complaint: Attachments

RECOMMENDED READING

There is so much out there, I hesitate to recommend anything in particular. But this morning's edition of the SmartBrief on Leadership contained at least two excellent -- and quick -- reads, Why the Best Leaders Know How to Be Vulnerable, and The Learning Journey We're On. Check 'em out.

Stay healthy, and keep your distance.

Best,

Clinton Baller

Clinton Baller
Birmingham City Commissioner
822 Shirley Rd.
Birmingham, MI 48009



Copyright © 2020 Clinton Baller, All rights reserved.

My mailing address is:
822 Shirley Rd, Birmingham MI 48009

Want to change how you receive these emails?
You can [update your preferences](#) or [unsubscribe from this list](#).

Newsletter #6
Page 16 of 18

Klein Ethics Complaint: Attachments

Baller's Political Facebook Page

<https://www.facebook.com/baller4bham>



Baller 4 Birmingham

Send Email

Like

Message



Donor Reported			
Product	Qty	Price	Total
1	100	25.00	25.00
2	100	25.00	25.00
3	100	25.00	25.00
4	100	25.00	25.00
5	100	25.00	25.00
6	100	25.00	25.00
7	100	25.00	25.00
8	100	25.00	25.00
9	100	25.00	25.00
10	100	25.00	25.00
11	100	25.00	25.00
12	100	25.00	25.00
13	100	25.00	25.00
14	100	25.00	25.00
15	100	25.00	25.00
16	100	25.00	25.00
17	100	25.00	25.00
18	100	25.00	25.00
19	100	25.00	25.00
20	100	25.00	25.00

CLIN
ALLE
BIRMINGHAM
Baller4Bham



Videos

See All



Clinton talks about his work at ...

46

11.1K Views · 42 weeks ago

Page Transparency

See All

Facebook is showing information to help you better understand the purpose of a Page. See actions taken by the people who manage and post content.



Page created - August 11, 2019



Page manager location: United States



Baller 4 Birmingham

June 18 ·

NEXTDOOR SHOWS ME THE DOOR

I've been booted again, this time permanently, from the social media website Nextdoor. It was for detailing in April a situation in which Nextdoor sent out a daily digest featuring and linking to a post that, by the time many had opened the digest, had been removed by its author. A neighbor had offered face masks obtained in quantity from China at \$4 each, which was, he said, his cost. While several neighbors accepted the offer, one claimed he was ... See More

10:53

Search

10:53



Reported content

Neighbor deletes post after being falsely accused of profiteering



Clinton Clinton from Birmingham · 3 days ago
Profile · Activity

By the time many members received the email pictured here, the post had already been removed by its author. Sarned Faraj offered face masks at \$4 each, which he said was his cost, and later proved by showing us his receipts. But he was nevertheless accused by one neighbor of profiteering and of "supporting China," where the masks, like the majority of products Americans consume, ... View more

Shared with Birmingham · 58 not by only 20 hours in General

Yes, Linda, Nancy, and 20 others marked Clinton

Status: Removed

Voted on by 6 Leads · Reported by 2 members · Hide

Reported Clinton from Tony Community Assoc Lead · 3 days ago



Reported: Consider Removing

Reported Clinton from Tony Community Assoc · 3 days ago

Reported as Uncivil, inappropriate or offensive and said, "1) The original poster deleted his post. Nobody has the right to repost a screenshot of what the neighbor wanted down. 2) He is neighbor-shaming those who made comments."



John Rivard from Colonial Court Voted "Do Not Remove"



Eric Voelffray from Quanton Lake Voted "Remove"



Mandy Fishburn from Barnum I Voted "Do Not Remove" and someone who was unfairly



Drika DeGraff from Birmingham Voted "Do Not Remove"



Post removed · 3 days ago



Donna Klein from Midvale Lead Voted "Remove"



Donna Klein from Midvale Lead Reported as Uncivil, inappropriate Public shaming and said, "own post. Clinton reposted he's shaming the people w inserting himself into an art poster tried to remove."

Klein Ethics Complaint: Attachments

Baller's Political Website
www.Baller4Bham.com

MEET CLINTON BALLER

Dear Neighbors,

I've lived in Birmingham for the better part of 39 years. In 2001, I got involved in local politics, and started a blog called the Birmingham Buzz. It reported and advocated on a variety of issues, and engaged residents in a major shift in leadership in the 2003 election. I went on to influence policy on a variety of issues.

In 2004 I recruited, and led a volunteer design team to redevelop Booth Park. It won awards and broad community approval.



A year later, I researched and made a convincing case for the Bistro Ordinance, which resulted in many new, small restaurants in town. I also successfully advocated for looser restrictions on all outdoor dining in town, and numerous other initiatives.

I've been a vocal advocate of redeveloping the N. Bates property for many years, but I disagreed strenuously with the process and direction taken by city officials. I successfully led opposition to the project, winning agreement of 68% of voters in the August election.

Working outside the system has been gratifying. But I see mostly honorable people in City Hall -- both elected and appointed -- who seem to have lost touch with residents. My success over the years has resulted from making strong arguments for good ideas, which naturally engage residents. None of my accomplishments were achieved without broad agreement.

It's time to work from within, solicit more and higher quality resident engagement, tap into the incredible potential of our community, and make what is already a great city even better.

I recently moved with my family -- wife, Judy, and three adult children -- from the Holy Name area to a historic Tudor on Shirley Rd. I enjoy working around the house and riding anything with two wheels. I like to travel, and I am an avid adventure motorcyclist.

I hope you will support my candidacy. Click the Get Involved link above to see some simple ways to help. And keep an eye on my Facebook page at right, or at facebook.com/baller4bham for updates.

Sincerely,
Clinton Baller

My Facebook feed

It scrolls! Or click to visit my page and see all posts



Baller 4 Birmingham
about 3 weeks ago



NEXTDOOR SHOWS ME THE DOOR

I've been booted again, this time permanently, from the social media website Nextdoor. It was for detailing in April a situation in which Nextdoor sent out a daily digest featuring and linking to a post that, by the time many had opened the digest, had been removed by its author. A neighbor had offered face masks obtained in quantity from China at \$4 each, which was, he said, his cost. While several neighbors accepted the offer, one claimed he was p... See More



End of attachments

Ethics Board Complaint Received

5 messages

Alex Bingham <abingham@bhamgov.org>

Tue, Jul 28, 2020 at 4:46 PM

To: Clinton Baller <cballer@bhamgov.org>

Cc: cheryl arft <carft@bhamgov.org>

Commissioner Baller,

The clerk's office received a complaint today. I will give you notice as soon as the board sets a date to meet on this issue. Attached are the following documents:

- Complaint
- The City's Ethics Ordinance
- Board of Ethics Procedural Rules

Wishing you well,

--

Alexandria D. Bingham

City Clerk Designee

City of Birmingham

151 Martin Street

Birmingham, MI 48009

(248) 530-1802 Office Direct

(248) 530-1880 Fax

abingham@bhamgov.org

3 attachments



Board of Ethics Procedural Rules.pdf

621K



ARTICLE_IX.____ETHICS.pdf

104K



07282020 KLEIN COMPLAINT.pdf

2693K

Alex Bingham <abingham@bhamgov.org>

Wed, Jul 29, 2020 at 9:45 AM

To: Clinton Baller <cballer@bhamgov.org>

Cc: cheryl arft <carft@bhamgov.org>

Good Morning Commissioner Baller,

Attached is the notice of virtual meeting for the ethics board hearing on Tuesday, September 1, 2020 at 2:00pm. Please let me know if you have any questions.

Wishing you well,

[Quoted text hidden]



09012020 Ethics Board Notice of Virtual Meeting and Instructions.pdf

1418K

Clinton Baller <clinton@baller4bham.com>

Wed, Jul 29, 2020 at 9:47 AM

To: Alex Bingham <abingham@bhamgov.org>

Thanks, Alex. Got it.

Please don't hesitate to call or write.

Clinton
248-971-0123

[Quoted text hidden]

Clinton Baller <clinton@baller4bham.com> Wed, Jul 29, 2020 at 11:52 AM
To: Alex Bingham <abingham@bhamgov.org>, Joe Valentine <jvalentine@bhamgov.org>, cheryl arft <carft@bhamgov.org>

Joe, Alex...

Given that Ms. Klein submitted her complaint on July 27, and it was promptly forwarded to me (thank you) and a hearing date set, I wonder if the Ethics Board has been given the opportunity to review the complaint and exercise its ability, under Rule 304, to issue a Summary Decision. I would assert that a) the board lacks jurisdiction over the subject matter, and b) the complaint on its face fails to demonstrate any violation of the ethics ordinance. The ordinance does not specify how a Summary Decision can be arrived at, or at least I did not see how that is accomplished outside the context of a board meeting or hearing. Let me know. I will defer drafting any response till I hear.

Please feel free to forward this email to the board for review.

Clinton

On Tue, Jul 28, 2020 at 4:46 PM Alex Bingham <abingham@bhamgov.org> wrote:

[Quoted text hidden]

Joe Valentine <jvalentine@bhamgov.org> Tue, Aug 4, 2020 at 3:52 PM
To: Clinton Baller <clinton@baller4bham.com>
Cc: Alex Bingham <abingham@bhamgov.org>, cheryl arft <carft@bhamgov.org>

Clinton,

Your assessment is correct in that the Ethics Board can not come to any decision without having a meeting to consider the complaint. For this reason, and as a City board subject to the Open Meetings Act, any deliberations they make have to be done at a public meeting. I understand a meeting is set for September 1st and they can collectively review the merits at that time.

Joe

[Quoted text hidden]

--

Joseph A. Valentine
City Manager
City of Birmingham
151 Martin Street
Birmingham, MI 48009
(248) 530-1809 Office Direct
(248) 530-1109 Fax
jvalentine@bhamgov.org
Twitter: @JoeValentine151

To get the latest information regarding the City of Birmingham, please sign up for our communication tools by clicking here www.bit.ly/bhamnews.

**CITY OF BIRMINGHAM
BOARD OF ETHICS
COMPLAINT 2020-01**

In Re Complaint Against Clinton Baller
Submitted by Donna M. Klein.

Matthew S. Erard (P81091)
LAW OFFICE OF
MATTHEW S. ERARD, PLLC
Counsel for Respondent
400 Bagley St. #939
Detroit, MI 48226
(248) 765-1605
mserard@gmail.com

**RESPONDENT CLINTON BALLER'S ANSWER TO THE COMPLAINT
AND MOTION FOR SUMMARY DECISION**

Respondent City Commissioner Clinton Baller, by and through counsel, hereby respectfully submits this answer to the Board of Ethics complaint filed against him by resident Donna M. Klein.

Additionally, for the reasons more fully set forth below, Commissioner Baller respectfully moves the Board to issue a summary decision without the need for a hearing, pursuant to Board of Ethics Procedural Rules 304(b), (e), and 305, on the grounds that (1) the Board lacks subject matter jurisdiction over Respondent's private conduct; (2) the complaint on its face fails to demonstrate any code of ethics violation; and (3) there exists no genuine issue over any material fact.

FACTUAL ALLEGATIONS

The non-conclusory background facts in the complaint are generally undisputed. Respondent Clinton Baller is an elected member of the Birmingham City Commission. Until April, he had also, like thousands of other local residents, been a user of the popular social networking platform NextDoor, geared toward local community discussion.

Complainant Donna M. Klein is a Birmingham resident who maintains two separate NextDoor accounts owing to her ownership of two homes within Birmingham. Through at least one of her two accounts, she also holds the status of a NextDoor ‘neighborhood lead,’ which enables her to vote with leads of other nearby neighborhoods on removing reported posts from the platform.

On April 28, 2020, Ms. Klein acted to report a post by Commissioner Baller from both of her two NextDoor accounts and additionally voted as a lead to remove it. Later that day, Commissioner Baller’s NextDoor account was terminated on the basis that his post, reported twice and only by Ms. Klein, violated the platform’s “community guidelines on disagreements and conflict.” (Exhibit A). Following his account removal, Commissioner Baller wrote a brief narrative describing the occurrence, which he then published in a June 18, 2020 Facebook page post and in his email newsletter of the same date.

In relevant part, the text of that narrative stated the following:

I've been booted again, this time permanently, from the social media website Nextdoor. It was for detailing in April a situation in which Nextdoor sent out a daily digest featuring and linking to a post that, by the time many had opened the digest, had been removed by its author. A neighbor had offered face masks obtained in quantity from China at \$4 each, which was, he said, his cost. While several neighbors accepted the offer, one claimed he was profiteering and "supporting China." He provided his receipts as proof of cost, but ultimately decided that rather than respond to such false charges, he would just delete his post.

These are the facts I carefully presented in my separate post later in the day.

Surprising to me was to discover that Donna Klein, a Nextdoor neighbor, seems to hold outsize sway over what goes down on Nextdoor. She has two profiles, one in Midvale and one in Torrey, and she is a neighborhood "lead" in both. That gives her the right to vote on reported posts. And on Nextdoor, judges are also apparently permitted to be police, so as you can see in the screenshots below, she not only reported my post twice, but also voted to remove it, which helped lead to my banishment. [Exhibit B].

In both the newsletter and Facebook page post, the narrative was accompanied by a screenshot reflecting the status of his removed NextDoor post, which was provided to him by another NextDoor user. The screenshot shows that his post was reported by two accounts, both belonging to Ms. Klein, and that Ms. Klein additionally voted as a lead to remove it. *Id.*

ARGUMENT

I. THE PRIVATE CONDUCT ALLEGED CANNOT GIVE RISE TO A CODE OF ETHICS VIOLATION.

Ms. Klein contends that Commissioner Baller's June 18 published statement remarking on her activities on NextDoor has subjected her to libel. In so allegedly libeling her, she charges that Commissioner Baller has violated sections 2-320 and

321 of the city's code of ethics ordinance. Additionally, she charges that his accompanying publication of the screenshot showing the voting thread on his removed NextDoor post violated the privacy of that thread's participants.

In apparently construing the distinction between private and official action to turn on the use of one's title of office, Ms. Klein ignores the ordinance's provided definition of the latter. For purposes of the code of ethics' provisions, official action is limited solely to "a decision, recommendation, approval, disapproval or other action or failure to act, which involves the use of discretionary authority."

Id. § 2-322. Because Commissioner Baller's self-published commentary involved only the exercise of his First Amendment rights as a citizen,¹ rather than any power of office, his conduct cannot come under the ordinance's scope of regulation.

A. No Violation of Section 2-320.

Section 2-320 of the code of ethics ordinance declares that public offices and employment positions are public trusts and directs city officials and employees to avoid conflicts between their private interests and the public interest. *Id.*

Specifically, it requires city officials and employees to be independent, impartial, and responsible to the people; to make governmental decisions and policy in proper governmental channels; and not to use public office for personal gain. *Id.*

¹ Commissioner Baller's history of local political commentary spans over two decades.

Although involving different facts than those presented here, this Board's prior decision on Complaint 2007-05 is fully dispositive of the alleged 2-320 violation. There, in rejecting a charge that a city official had violated that section by privately contributing to the production of postcards critical of two City Commission candidates, this Board determined that the "ambit of section 2-320" is limited to the context of official acts.² Absent any cognizable application of official conduct, the charge against Commissioner Baller fails the same threshold.

Further, as with the charge asserted in Complaint 2007-05, Ms. Klein's complaint fails to articulate any private interest implicated by Commissioner Baller's statements, much less any basis for conflict with the interest of the public. See Birmingham Ordinances § 2-322 (defining 'personal interest' as "an interest arising from blood or marriage relationships or any business association.")). Though Ms. Klein may not share Commissioner Baller's views of how the public interest is best served, the code of ethics is not aimed at enforcing political consensus.

B. No Violation of Section 2-321.

Section 2-321 of the code of ethics requires city officials and employees to

² 2007-05 Decision on Complaint: Christopher Longe, submitted by Dorothy Conrad, issued January 31, 2008, p 6, available at <https://bhamgov.org/document_center/Clerks_Office/Board_of_Ethics/Decisions/2007_05___opinion.pdf>.

observe the highest ethical standards of conduct in their official acts and to avoid official conduct that may tend to undermine respect for city officials and employees and for the city as an institution. *Id.*

In charging Commissioner Baller with violating this section, Ms. Klein erroneously relies on its former language which had asserted reach to the conduct of city officials and employees “in both their official and private affairs.”

Birmingham Ordinances § 2-321, as amended by Ordinance 1819 (January 12, 2004); see Majority Opinion on Complaint 2004-02 at 10³ (finding that section 2-321, as then worded, explicitly addressed private activity).

On March 28, 2016, the Birmingham City Commission unanimously adopted Ordinance 2177, which amended section 2-321 to strike that section’s former language regarding private affairs and to further specify that its directive to avoid conduct tending to undermine respect for the city and its officials and employees applies only to official conduct. Birmingham Ordinances § 2-321, as amended by Ordinance 2177 (present version); see Exhibit C: City of Birmingham, *Birmingham City Commission Meeting Minutes* (March 28, 2016) at 3-4.⁴ That

³ 2004-02 Majority Opinion on Complaint: Ralph Seger, Jr., submitted by Dorothy Conrad, issued June 8, 2004, p 10, available at <https://bhamgov.org/document_center/Clerks_Office/Board_of_Ethics/Decisions/2004_02___majority_opinion.pdf>.

⁴ The amendment also replaced the former use of the term “morality” with “ethical conduct.”

adopted amendment arose from the proposal of members of this Board based on the conclusion that judging non-official conduct exceeds the ethics ordinance's proper purview. *Id.*

With the city's legislative body having expressly acted to confine the scope of section 2-321 to official action, the charge asserted under that section must be rejected as a matter of law. As with the threshold-level failure of the accompanying charge under 2-320, the purely private conduct alleged could not run afoul of section 2-321 even if the complainant's libel claim were meritorious.

II. THE ALLEGATIONS DO NOT SUPPORT A CLAIM OF LIBEL.

Because Commissioner Baller's statement implicated no official action, there is no need for this Board to assess the merits of Ms. Klein's libel claim. However, even if this claim were within the ordinance's proper scope, the allegations fail to provide it a plausible basis.

In order to establish a claim of libel under Michigan law, the subject of the alleged libel must show (1) a false and defamatory statement concerning that person; (2) an unprivileged communication to a third party; (3) fault amounting to at least negligence on the part of the publisher;⁵ and (4) either actionability of the

⁵ As an active lead on the most widely used platform for discussion of local public controversies, Ms. Klein quite arguably qualifies as a limited-purpose public figure with respect to statements concerning her actions in that role. Upon that basis, a claim for libel would further necessitate clear and convincing evidence of

statement irrespective of special harm (defamation per se⁶) or the existence of special harm caused by publication. *Mitan v Campbell*, 474 Mich 21, 24 (2005).

The present claim fails facially with respect to at least three of the four elements. It fails to establish that Commissioner Baller's statement was defamatory or materially false, it does not support a finding of negligence, and it asserts no special harm resulting from the publication.

Even assuming that Commissioner Baller's non-opprobrious statement could be considered defamatory, the banishment of a local public official from a leading community forum and its relation to other public controversies are clearly matters of public concern. Consequently, Ms. Klein bears the burden of proving the published statement's falsity. *Rouch v Enquirer & News of Battle Creek*, 427 Mich 157, 200 (1986).

Although Ms. Klein declares that she lacks the individual power to remove a NextDoor user's account, Commissioner Baller's statement made no assertion to the contrary. Rather, he stated only that her acts of reporting his post from two separate accounts and voting to remove it had "*helped lead to* [his] banishment."

actual malice in order to comport with First Amendment limitations. *Ireland v Edwards*, 230 Mich App 607, 614 (1998).

⁶ Defamation per se is limited to words imputing lack of chastity or commission of a criminal offense. MCL 600.2911(1).

Exhibit B (emphasis added). None of the facts alleged in Ms. Klein’s complaint would contradict the accuracy of this assertion.

Ms. Klein also predicates her claim of libel on the alleged inaccuracy of Commissioner Baller’s assumption that her status as a neighborhood lead extended to both of her two NextDoor accounts. Though Commissioner Baller’s statement may have been mistaken as to that particular detail,⁷ it does not render his statement materially false. Under Michigan’s long-established substantial truth doctrine, “[a]s long as ‘the substance, the gist, the sting’ of the communication is true, minor inaccuracies do not amount to falsity.” *In re Chmura*, 464 Mich 58, 74 (2001) (quoting *Masson v New Yorker Magazine, Inc*, 501 US 496, 517 (1991)). Thus, “substantial truth is an absolute defense to a defamation claim.” *Collins v Detroit Free Press, Inc*, 245 Mich App 27, 33 (2001).

Here, it is undisputed that Ms. Klein reported Commissioner Baller’s post from both of her two accounts and then voted as a lead to remove it. Having effectively conceded the full extent of Commissioner Baller’s assertion concerning her actions, the alleged inaccuracy of her lead status extending to both accounts is

⁷ That assumption was consistent with the most logical reading of the post status information generated by the NextDoor platform — stating that his post was “Voted on by 6 Leads – Reported by 2.” (Exhibit B). If, for example, it were reported that a bill was “sponsored by 6 senators and opposed by 2,” one could hardly be faulted for assuming that senators are the intended referents of both numbers.

neither defamatory nor material to the substantial truthfulness of the statement at issue.

Accordingly, even as assessed from only a private figure standard, the allegations cannot satisfy the requisite elements for a libel claim. And neither can they satisfy the element of official action needed to invoke the code of ethics' application.

III. THE ALLEGATIONS DO NOT SUPPORT A CLAIM OF INVASION OF PRIVACY.

Ms. Klein further asserts that Commissioner Baller violated her privacy and that of other local leads by publishing a screenshot of their voting thread regarding his NextDoor post. She does not, however, specify any provision of the code of ethics that she believes this action contravened. And no other leads reflected in the screenshot have expressed such an objection.

In order to establish a claim of invasion of privacy by means of publication, “the disclosed information [must] be highly offensive to a reasonable person and of no legitimate concern to the public.” *Fry v Ionia Sentinel-Standard*, 101 Mich App 725, 728 (1980). And such information must concern an individual’s private, as opposed to public, life. *Id.* at 729. Plainly, the information depicted in the screenshot was in no way offensive or related to personal matters, but rather did bear on a matter of public concern.

Ms. Klein appears to base her claim on the contention that the publication violated NextDoor Inc.'s terms of service. As a private company lacking constitutional reach or even elected governance, NextDoor's internal policies have no bearing on the city's code of ethics or any other law. Moreover, Commissioner Baller neither posted that screenshot on the NextDoor platform nor posted it during the time that he held a NextDoor account.

Finally, as with her corresponding libel accusation, Ms. Klein grounds her claim entirely on private conduct and grossly maligning speculation about Commissioner's Baller's character. Absent any implication of official action or even a specific ethics code provision, such a claim can only be regarded as frivolous.

CONCLUSION AND REQUEST FOR RELIEF

Having asserted no facts that could give rise to a code of ethics violation, the present complaint is a misuse of the ethics ordinance to expand the same capricious censorship practiced on NextDoor to broader realms of private expression.

Allowing an evidentiary hearing to proceed on such a basis would only run up defense costs⁸ and likely chill protected speech for fear of instigating vexatious charges.

⁸ Commissioner Baller has chosen hire counsel at his own expense for this matter in lieu of accepting the offer to have the public pay for his defense.

Wherefore, Commissioner Baller respectfully requests that the Board enter a summary decision dismissing or rejecting the charges asserted by the Complaint pursuant to Board of Ethics Procedural Rules 304(b), (e), and 305.

Respectfully submitted,

/s/ Matthew S. Erard
Matthew S. Erard (P81091)
LAW OFFICE OF
MATTHEW S. ERARD, PLLC
Counsel for Respondent
400 Bagley St. #939
Detroit, MI 48226
(248) 765-1605
mserard@gmail.com

Dated August 23, 2020

TABLE OF EXHIBITS

Account Termination Notice from NextDoor (April 28, 2020).....	Exhibit A
Clinton Baller Email Newsletter (June 18, 2020).....	Exhibit B
Birmingham City Commission Minutes (March 28, 2016).....	Exhibit C

----- Forwarded message -----

From: support@nextdoor.com <support@nextdoor.com>
Date: Tue, Apr 28, 2020, 4:52 PM
Subject: Case # 03878887: My account
To: cmballer@visa-master.com <cmballer@visa-master.com>

EXHIBIT A

Hi Clinton,

Thanks for contacting us about this issue.

We permanently disabled your Nextdoor account after we received a complaint regarding your recent content and found that you had violated our [Community Guidelines](#) on disagreements and conflict.

Here is an example of the content that was brought to our attention:

Neighbor deletes post after being falsely accused of profiteering

Clinton Baller Apr 26, 2020 1:21 PM

By the time many members received the email pictured here, the top post of the day had already been removed by its author. Sarmed Faraj offered face masks at \$4 each, which he said was his cost, and later proved by showing us his receipts. But he was nevertheless accused by one neighbor of profiteering and of "supporting China," where the masks, like the majority of products Americans consume, were made. Most commenters supported his post, and many took him up on his offer, as well as his offer to share his source, through private messages.

Top post: I ordered large supply of NK95 M3 masks and willing to share at... 



Nextdoor Digest <no-reply@rs.email.nextdoor.com> [Unsubscribe](#)
to cmballer ▾

Nextdoor Birmingham 

FROM THE NEXTDOOR TEAM

Have you witnessed a moment of kindness in your neighborhood recently? Share your story using [#StrengthInNeighbors](#).



[Post on Nextdoor](#)

Today's top posts

I ordered large supply of NK95 M3 masks and willing to share at cost

Sarmed Faraj, Pierce-St. James | To all my neighbors, I ordered M3 N95 masks directly from china and they arrived, if anyone need a... [See more](#)

 1  5 Last reply 1 min ago

We thank you for having been a part of Nextdoor, but as of this time, we will not be able to reinstate your account to you.

Please let me know if you have any questions.

Best,
Sylvia
Nextdoor

How did I do?



Want to rate the product? You can do this once you have rated the agent.

ref:_00D361GqdD._5001RxFdsC:ref

[View this email in your browser](#)

Dear Neighbor,

When Birmingham police officers [took a knee](#) with protesters at Somerset Mall earlier this month, it was a moving display, not only because it demonstrated solidarity, but because it symbolized a necessary first step in giving millions of Americans what they demand.

Equal justice may be a ways off for many Americans, but getting there, especially in the absence of national leadership, will require decisive local action. Local leaders — from protesters and police officers, to mayors and police chiefs, to teachers and school administrators, media and business leaders — must set an example for, which is to say *educate*, their constituents. For if there is one word that represents the solution to the problems of race and policing in America, it is “education.”

We need to teach and learn that our nation was built on genocide and slavery, which led to Jim Crow, lynchings, segregation, disparities in policing, mass incarceration and extreme income inequality. We need to learn and understand what systemic racism looks like. We need to learn that education, of black and white, is not only a key to addressing our current crises, but a silver bullet that in the long run can cure our social ills.

Current crises afford us an opportunity. In the same way our police officers showed courage and leadership in taking a knee with protesters, community leaders need to take a knee and, with honesty, transparency and humility examine how we can improve. Birmingham is affluent, educated and populated by a broad range of leaders who need to step up and do their part. It is also 91% white, and just 3% black.

Pause and ponder *that*.

INTRODUCING BIRMINGHAM PARTNERSHIP FOR TRANSPARENT POLICING

A credible group of residents has come together to advocate for a citizen-led effort to police the police. At the City Commission's June 8 meeting, resident attorney Kristen Gross announced the formation of the Birmingham Partnership for Transparent Policing.

"It is our hope to work with the Police Department, the City Manager, and the City Commission to discuss concrete actions the city can take in this area," she said. "While our work is preliminary, let me offer these five concrete suggestions:

1. Mandate that the city begin tracking the racial identity of individuals stopped by police officers.

Subscribe

Past Issues

Translate ▼

police department to develop a positive relationship.

3. Create a community advisory committee to provide input on policing issues, review departmental complaints, and hold community forums with a focus on groups that may feel targeted by the police, such as youth of color.

4. Adopt a policy banning the use of chokeholds and strangleholds

5. Adopt a policy requiring officers to intervene and stop excessive force used by other officers and report these incidents immediately to a supervisor.

"As the Report for 21st Century Policing stated, 'Trust between law enforcement agencies and the people they protect and serve is essential in a democracy. It is key to the stability of our communities, the integrity of our criminal justice system, and the safe and effective delivery of policing services.'

"The goal of the Birmingham Partnership for Transparent Policing is to work with the Police Department, the City Commission, and the City Manager to help ensure that this trust exists between the Birmingham Police and all of its citizens, regardless of race. We hope that you will support us in this effort."

Gross can be reached at kristen@krglegal.com.

NEXTDOOR SHOWS ME THE DOOR

I've been booted again, this time permanently, from the social media website Nextdoor. It was for detailing in April a situation in which Nextdoor sent out a daily digest featuring and linking to a post that, by the time many had opened the digest, had been removed by its author. A neighbor had offered face masks obtained in quantity from China at \$4 each, which was, he said, his cost. While several neighbors accepted the offer, one claimed he was profiteering and "supporting China." He provided his receipts as proof of cost, but ultimately decided that rather than respond to such false charges, he would just delete his post.

These are the facts I carefully presented in my separate post later in the day.

Surprising to me was to discover that Donna Klein, a Nextdoor neighbor, seems to hold outsize sway over what goes down on Nextdoor. She has two profiles, one in Midvale and one in Torry, and she is a neighborhood "lead" in both. That gives her the right to vote on reported posts. And on Nextdoor, judges are also apparently permitted to be police, so as you can see in the screenshots below, she not only reported my post twice, but also voted to remove it, which helped lead to my banishment.

Subscribe

Past Issues

Translate ▼

Neighbor deletes post after being falsely accused of profiteering



Clinton Baller from Birmingham · 3 days ago
[Profile](#) · [Activity](#)

By the time many members received the email pictured here, the top post of the day had already been removed by its author. Sarmed Faraj offered face masks at \$4 each, which he said was his cost, and later proved by showing us his receipts. But he was nevertheless accused by one neighbor of profiteering and of "supporting China," where the masks, like the majority of products Americans consume, ... [View more](#)



Shared with Birmingham + 58 nearby neighborhoods in General

You, Brad, Nancy, and 23 others thanked Clinton

Status: **Removed**

Voted on by 6 Leads · Reported by 2 members · [Hide](#)



Romel Liarena from Torry Community Assoc Lead · 2 days ago

Voted "Consider Removing"



Donna Klein from Torry Community Assoc · 2 days ago
 Reported as **Uncivil, unneighborly or offensive** and said, "1) The original poster deleted his post. Nobody has the right to repost a screenshot of what the neighbor wanted down. 2) He is neighbor-shaming those who made comments."



John Rivard from Colonial Court Lead · 2 days ago

Voted "Do Not Remove"



Eric Voeffray from Quarton Lake Estates Lead · 3 days ago

Voted "Remove"



Mandy Fishburn from Barnum Park Lead · 3 days ago
 Voted "Do Not Remove" and said, "He's defending someone who was unfairly attacked."



Drieke DeGraff from Birmingham Farms Lead · 3 days ago

Voted "Do Not Remove"



Post removed · 3 days ago



Donna Klein from Midvale Lead · 3 days ago

Voted "Remove"



Donna Klein from Midvale Lead · 3 days ago
 Reported as **Uncivil, unneighborly or offensive: Public shaming** and said, "The person removed his own post. Clinton reposted it. That's unfair. Plus he's shaming the people who responded. He's inserting himself into an argument that the original poster tried to remove."

Alas, exile has not completely eradicated me from Nextdoor. In a post that was taken down soon after it was added -- and illustrates the depths to which social media pulls people -- a Torry neighbor remarked this week: "I was a bit taken aback by last night's meeting when I noticed Commissioner Clinton Baller sipping wine throughout the telecast. I do not believe alcohol should ever be involved when an official is making decisions regarding the residents and our city!!" It was ice water. In a water glass. Washing down leftover nachos. I would have preferred a proper meal, but such are the sacrifices we make.

In my last message, I gave an example of the frustrations that commissioners Therese Longe, Brad Host and I face as we try to affect the change that many of you wanted when you ousted three incumbent commissioners last November. We three new commissioners campaigned on promises to change the tone, even the "culture," of city government.

In my message, I highlighted our effort to move public comment from the end of meetings to the beginning, our success in achieving a trial run, and our frustration in seeing it continued.

On Facebook, resident David Lurie commented:

Perhaps one possible "solution" is to ask residents who wish to speak at the beginning to email their desire to speak to a representative of the commission by 5 p.m. of the day of the meeting along with their topic. Those who do this could be recognized for 3 minutes or so at the beginning of the meeting. Those who do not email their request have to wait until the end. This may help the commission understand the length of time the public will be speaking at the beginning, at the very least, and organize the comments. Just a thought.

Mr. Lurie was engaging in a process — brainstorming — that is a fading art at City Hall, for it presents the opportunity that an idea to which one has not fully subscribed, and with which one may never agree, may gain a foothold. Before the commission, members of the public who throw things against the wall to see if they stick are invariably disappointed because it is the explicit policy of the commission to allow such comments to fall to the floor with a thud. When the three-month trial of moving public comment began, the city added the following to its printed agenda:

The Commission will not participate in a question and answer session and will take no action on any item not appearing on the posted agenda.

This merely codified long-standing policy, and it is insulting to anyone with a good idea or question.

For the public, it is the insult added to the injury of having to wait sometimes several hours to deliver an idea or ask a question. For commissioners, it is part of a pervasive culture that includes Catch-22s, baseless cautions about violating the Open Meetings Act, moving-target "rules" about "precedent" and "process," and admonitions about when it is appropriate to discuss something or anything, and even what constitutes a "discussion."

Roberts Rules of Order are supposed to govern our meetings, but sometimes don't. At our June 8 meeting, in the midst of a debate over the budget, one commissioner was given the floor. "In an effort to move this along, I call for the question on the

up to a vote," asserted one, incorrectly. I'm no expert in Roberts, but I can smell a rat, and the notion that a single board member can unilaterally cut off debate and force a vote defies not only common sense and reason, but basic democracy. Birmingham's resident parliamentarian, Coco Siewert, watched aghast. I insisted the city attorney review [Roberts Rules](#), which he did. The commissioner had the right to make the motion, but upon any objection, it required a second and a vote of two-thirds of the commission to end debate and force a vote.

At the close of the same meeting, four hours in, after several residents had waited three hours and 45 minutes to take 10 minutes of our time, I expressed an apology and a measure of shame, and I do so here again.

HAIL, OAKLAND

The pandemic and my penchant for dirt-road motorcycling has taken me to every corner of Oakland County. From Eight Mile to Baldwin/Davison Lake roads, the county's 907 square miles are amazing. Especially wonderful is the north country, which is to say almost anywhere north of Lone Pine that isn't densely populated, but especially the lakes region and the Huron and Clinton river watersheds. You are missing out if you haven't experienced the [county parks](#), [Metroparks](#) and [state parks recreation areas](#) within its borders. Nothing is much more than 30 minutes away, and much is as good as anything four or five hours away.

A FIRST FORAY INTO POST-COVID DINING OUT

Last night we decided to dine out, thinking we'd find an outdoor seat at one of the restaurants uptown. Of course, our luck the two open tables outside our chosen place turned out to be reserved. So we took two seats at the bar that were properly socially distanced. The staff all wore masks. Sanitizer was everywhere. The place had even installed these neat foot pedals for opening their doors. But then a couple, unmasked, invaded our space at the bar. They seemed to get it, and after a few minutes backed away. Then we ran into a young man we knew, whose idea of social distancing was to keep at least 18 inches between us. Then we ran into another acquaintance, who gave my wife a hearty hug. Oops. It was all a little -- uneasy. Small, unanticipated but wholly predictable occurrences completely beyond the control of the restaurant.

RECOMMENDED READING

There is so much out there, I hesitate to recommend anything in particular. But this morning's edition of the [SmartBrief on Leadership](#) contained at least two excellent -- and quick -- reads, [Why the Best Leaders Know How to Be Vulnerable](#), and [The Learning Journey We're On](#). Check 'em out.

[Subscribe](#)[Past Issues](#)[Translate ▼](#)

Best,

Clinton Baller

Clinton Baller
Birmingham City Commissioner
822 Shirley Rd.
Birmingham, MI 48009



Copyright © 2020 Clinton Baller, All rights reserved.

My mailing address is:
822 Shirley Rd, Birmingham MI 48009

Want to change how you receive these emails?
You can [update your preferences](#) or [unsubscribe from this list](#).

EXHIBIT C

BIRMINGHAM CITY COMMISSION MINUTES MARCH 28, 2016 MUNICIPAL BUILDING, 151 MARTIN 7:30 P.M.

I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Rackeline J. Hoff, Mayor, called the meeting to order at 7:34 PM.

II. ROLL CALL

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

Administration: City Manager Valentine, City Attorney Currier, Clerk Pierce, DPS Director Wood, Planning Director Ecker, Building Official Johnson, Police Chief Studt, City Engineer O'Meara

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

03-91-16 APPOINTMENT TO THE PUBLIC ARTS BOARD

Applicant Kaitlyn Tuson was not in attendance to be interviewed. The City Commission postponed this item until the applicant is able to be in attendance.

03-92-16 APPOINTMENT TO THE AD HOC RAIL DISTRICT REVIEW COMMITTEE

MOTION: Motion by DeWeese, seconded by Bordman:

To appoint Lisa Krueger, as the Advisory Parking Committee member, to the Ad Hoc Rail District Review Committee.

VOTE: Yeas, 7
Nays, None
Absent, None

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.

03-93-16 APPROVAL OF CONSENT AGENDA

The following item was removed from the consent agenda:

- Item B (Minutes of March 14, 2016) by Mayor Hoff

MOTION: Motion by Sherman, seconded by Nickita:

To approve the consent agenda as follows:

- A. Approval of City Commission minutes of February 22, 2016.
- C. Approval of warrant list, including Automated Clearing House payments, of March 16, 2016 in the amount of \$920,274.69.
- D. Approval of warrant list, including Automated Clearing House payments, of March 23, 2016 in the amount of \$198,205.23.
- E. Resolution approving the purchase and planting of 22 native trees and 83 native shrubs and container plants from KLM Landscape for the 2016 Barnum Park and Quarton Lake Park planting project for a total project cost not to exceed \$9,530.00. Funds are available from the Parks – Other Contractual Services account #101-751.000-811.0000. In addition, donation dollars and grant funds will be applied to this account when appropriate. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.
- F. Resolution waiving the formal bidding requirements and approving the purchase and installation of the DeZurik PTW plug valve in the total amount not to exceed \$17,899.00; from Kennedy Industries in the amount of \$5,779.00 for the plug valve and for replacement services from Midwest Power Systems in the amount of \$12,120.00 for the Quarton Road Pump Station to be paid from the Sewer Fund – Operating Supplies account #590-536.002-729.0000.
- G. Resolution approving the purchase and planting of 100 trees from KLM Landscape for the 2016 spring tree purchase and planting project for a total project cost not to exceed \$30,325.00. Funds are available from the Local Streets Fund-Forestry Service Contract account #203-449.005-819.0000, the Major Streets Fund-Forestry Service Contract account #202-449.005-819.0000, the Local Streets Fund-Operating Supplies account #203-449.005-729.0000 and the Major Streets Fund-Operating Supplies account #202-449.005-729.0000 for these services. Further, authorizing the Mayor and City Clerk to sign the agreement on behalf of the City upon receipt of required insurances.
- H. Resolution awarding the Birmingham Train Station Demolition, Contract #7-16(M), to ILE Excavating Co. of Canton, MI, in the amount of \$71,856, charged to account number 401-901.014-981.0100 and further, approving the appropriations and budget amendments for a total amount not to exceed \$90,000 for related engineering costs, as follows:
Capital Projects Fund
Revenues:

MDOT Grant	#401-901.014-540.0002	\$ 90,000
------------	-----------------------	-----------

Total Revenue Adjustments \$ 90,000
Expenditures:

Public Improvements	#401-901.014-981.0100	\$ 90,000
---------------------	-----------------------	-----------

Total Expenditure Adjustments \$ 90,000
- I. Resolution approving the purchase of four (4) new 2016 GMC Sierra Pickup trucks from Todd Wenzel GMC through the Oakland County Purchasing Contract #4096 in the amount of \$112,874.00. Funds for this purchase are available in the Auto Equipment Fund, account #641.441.006-971.0100.
- J. Resolution setting a public hearing on April 25, 2016 to consider the approval of the Brownfield Plan and Reimbursement Agreement for 34965 Woodward.
- K. Resolution setting a public hearing on April 25, 2016 to consider the proposed Lot Split of 221 Baldwin, Parcel #1925352017.

- L. Resolution setting a public hearing of necessity on April 25, 2016 to consider the installation of lateral sewers within the Webster Ave. Paving project area. If necessity is declared, setting a public hearing to confirm the roll on May 9, 2016.
- M. Resolution awarding the Webster Ave. Paving Project, Contract #4-16(P) to DiPonio Contracting, Inc., of Shelby Twp., MI, in the amount of \$1,780,615.00, to be charged to the various accounts as detailed in the report; and further approving the appropriations and budget amendments as follows:

Sewer Fund

Revenues:

Draw from Fund Balance	#590-000.000-400.0000	\$ 85,520
Total Revenue Adjustments		\$ 85,520

Expenditures:

Public Improvements	#590-536.001-981.0100	\$ 85,520
Total Expenditure Adjustments		\$ 85,520

Water Fund

Revenues:

Draw from net position	#591-000.000-400.0000	\$ 76,475
Total Revenue Adjustments		\$ 76,475

Expenditures:

Public Improvements	#591-537.004-981.0100	\$ 76,475
Total Expenditure Adjustments		\$ 76,475

Local Street Fund

Revenues:

Draw from Fund Balance	#203-000.000-400.0000	\$128,620
Total Revenue Adjustments		\$128,620

Expenditures:

Public Improvements	#203-449.001-981.0100	\$128,620
Total Expenditure Adjustments		\$128,620

ROLL CALL VOTE: Yeas, Commissioner Bordman
 Commissioner Boutros
 Commissioner DeWeese
 Commissioner Harris
 Mayor Pro Tem Nickita
 Commissioner Sherman
 Mayor Hoff

Nays, None

Absent, None

Abstention, 1, Hoff (from warrant #241062 – reimbursement)

V. UNFINISHED BUSINESS

VI. NEW BUSINESS

03-94-16 ORDINANCE AMENDMENT ETHICS ORDINANCE

Ms. Fierro-Share, chairperson of the Ethics Board, explained that the proposed amendment would clarify that the ordinance only governs ethical behavior not private morality.

Commissioner DeWeese noted that one's private affairs may have an impact on public office. Ms. Fierro-Share explained that the Ethics Board does not judge private affairs. Judging non-official behavior exceeds the purview of the ethics ordinance.

Jim Robb, member of the Ethics Board, explained that the part of the ordinance about morality is essentially unworkable. When discussing ethics and measuring the conduct of city officials against the requirements of the ordinance in terms of their acts rather than their morality, it is much easier to handle.

Commissioner Bordman suggested a revision to the second paragraph of Section 2-231 to clarify that it refers to official conduct.

Commissioner Harris commented that he sees no harm in clarifying the second paragraph. He questioned whether the Commission has the authority to accept, reject, or modify the Ethics Board opinions. Mr. Robb explained that the determination of whether the conduct or prospective conduct meets the requirements of the ordinance is committed to the Ethics Board. It is up to the City Commission to determine what to do about it. He noted that the only time it is binding is if it is a question from the Commission as to whether one of its members has a conflict and must recuse him or herself.

Commissioner Sherman explained that when this ordinance was originally brought forward, the original intention was to govern everything about anyone's conduct, including official and private conduct. There were disclosure provisions and a requirement for volunteers to disclose their assets and their parents, siblings, and grandparents assets. It was extremely overreaching. What eventually came out is what is currently in place and is really directed toward the official capacity. This language may have been a remnant from the original and this is a great change.

MOTION: Motion by Sherman, seconded by Bordman:

To adopt an ordinance amending Part II of the City Code, Chapter 2 Administration, Article IX Ethics, Section 2-321 Responsibilities of Public Office as amended.

VOTE: Yeas, 7
 Nays, None
 Absent, None

03-95-16 SPECIAL EVENT REQUEST FEED 5K & FUN RUN

Megan Coppen, student, explained the purpose of the run is to raise money to feed the hungry at an orphanage in Zimbabwe.

In response to a question from Mayor Hoff, Kelly Willian, youth director at the First United Methodist Church, confirmed that volunteers will be at every intersection to let cars through during the event.

MOTION: Motion by Bordman, seconded by DeWeese:

To approve a request submitted by the First United Methodist Church to hold the Feed 5K and Fun Run in Birmingham May 21, 2016, 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.

VOTE: Yeas, 7
Nays, None
Absent, None

**03-96-16 SPECIAL EVENT REQUEST
CRUSING WITH THE CHILDREN'S CHARITY COALITION**

Andrea Coronado, Director of Special Events at the Community House, explained the event will benefit the Children's Charity Coalition. She explained that temporary fencing will be used to completely enclose the space including the bandshell and grassy area of the park up to the Community House. She explained there will be a tent, entertainment in the bandshell, and a classic car display on Bates Street. She noted that the sidewalks near the library will be open for public access.

Commissioner Sherman expressed concern with blocking off the park. He questioned whether the event could be done without the fence around the entire area. Commissioner Bordman agreed.

Ms. Coronado and Ms. Ninneman agreed to review the plans and return to the Commission with an alternate layout.

Mayor Pro Tem Nickita stated that this poses a policy question as to when and how the parks are used. He suggested that this is something that the City may want to explore with the Parks Board and have a recommendation as to how Shain Park should be used going forward. He commented that it would be better to have a clear understanding of what the City is allowing or not allowing and set the precedent that way as opposed to at the Commission meeting. Mayor Hoff agreed.

The Commission agreed to postpone this item.

**03-97-16 DISABLED PARKING POLICY
FOR THE CENTRAL BUSINESS DISTRICT**

City Engineer O'Meara explained that the Americans with Disabilities Act will have revisions in the near future asking all cities to have marked reserved on-street parking spaces for the disabled. This would be required whenever resurfacing and reconstructing a street. He noted that this would be a city-wide change throughout the downtown area. He stated that there would be one handicap space for up to every 25 spaces on a block in accordance with the future ADA rules. The spaces would be located near an existing handicap ramp. The time limits would be the same as the other meters on the street. Those utilizing the spaces would have to pay and abide by the time limits. Those using the ParkMobile system would be able to double their time by utilizing the remote payment option. He explained that meter posts and meter heads would be painted, some of the meters would have to be separated, sign posts would be installed and pavement markings painted. He noted that the meters would be lower as any operable part has to be 42" or lower.

The Commission discussed the location of the meters and the enforcement of the new policy. City Manager Valentine confirmed that there will be a warning period once the meters are initially installed.

Mayor Hoff suggested the City provide information to the Senior Men's Club and Senior Women's Club at the Community House. Commissioner Bordman suggested Next be included as well.

Commissioner DeWeese noted that this does not prevent individuals from parking at any space.

MOTION: Motion by Bordman, seconded by Nickita:

To direct staff to proceed with implementation of the new disabled parking policy for the Central Business District, as follows:

1. Reserved, designated spaces shall be provided at the rate of at least one per 25 existing parking metered spaces on each block, located near adjacent ramps, as well as near pedestrian traffic generators.
2. Each reserved space shall have a blue marked parking meter and post, reserved parking sign using the standard accessible parking symbol, and blue pavement markings. The meter shall charge for parking at the same rate and time limit as the other meters on the block, except that no meter shall have a time limit of less than two hours.
3. Parkmobile customers parked at disabled parking spaces shall have the ability to renew their parking fee remotely one time over and above the posted time limit.
4. Staff shall implement the policy throughout the Central Business District during calendar year 2016, at which time the current policy of parking for free or at yellow curbed zones shall no longer be allowed. Disabled parkers with a yellow free parking tag affixed to their permit shall continue to be exempt.
5. All new street projects within the Central Business District shall be designed with fully compliant reserved disabled spaces in accordance with the new ADA law.
6. All costs relative to this project shall be charged to the Auto Parking System Fund.

VOTE: Yeas, 7
Nays, None
Absent, None

03-98-16 ORDINANCE AMENDMENT HEARING OFFICER

City Manager Valentine explained that the law has changed and the City is looking to re-establish the Hearing Officer position to allow for an appeal process for any violations that occur under the ordinance for snow removal and grass trimming. City Attorney Currier explained that the purpose is to recover the cost that the City incurs.

MOTION: Motion by DeWeese, seconded by Bordman:

To adopt an ordinance amending Part II of the City Code, Chapter 1, to add General Provisions, Section 1-17, Hearing Officer for Disputed Fees.

VOTE: Yeas, 7
Nays, None
Absent, None

MOTION: Motion by Sherman, seconded by Nickita:

To adopt an ordinance amending Part II of the City Code, Chapter 118, Article IX, Section 118-68(c) Work Done At Owner's Expense.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**03-99-16 AMENDMENT TO THE
FEE SCHEDULE**

City Clerk Pierce explained that the fees charged for permits and services are set by the Fee Schedule. She explained the proposed revisions include increasing the BLS Emergency Transport fee and Load Mile fee in the Fire Department section to cover the current cost for those services, to move the Hydrant Use fee from the Fire Department section to the DPS section as the permits are issued through DPS, and to remove the fee for a copy of the Zoning Ordinance on CD from the Public Records Policy as it is available free on the City website.

Building Official Johnson explained the revisions to the Community Development section include increasing the bond amount for Swimming Pools and Replacement Windows to encourage contractors to schedule final inspections and to amend the text to further clarify Lawn Sprinklers and Water Heaters.

MOTION: Motion by Sherman, seconded by DeWeese:
To amend the Schedule of Fees, Charges, Bonds and Insurance, Building Department section, Department of Public Services section, and Fire Department section as stated in the report and to adopt the revised Public Records Policy.

VOTE: Yeas, 7
 Nays, None
 Absent, None

**03-100-16 CLOSED SESSION REQUEST
PERSONNEL MATTER**

The Commission agreed to meet in closed session to discuss a personnel matter in accordance with Section 8(a) of the Open Meetings Act at the request of Police Chief Studt.

**03-101-16 CLOSED SESSION REQUEST
LABOR RELATIONS**

MOTION: Motion by Nickita, seconded by Sherman:
To meet in closed session to discuss labor relations in accordance with Section 8(c) of the Open Meetings Act.

ROLL CALL VOTE:	Yeas,	Commissioner Boutros Commissioner DeWeese Commissioner Harris Mayor Pro Tem Nickita Commissioner Sherman Commissioner Bordman Mayor Hoff
	Nays,	None
	Absent,	None
	Abstention,	None

VII. REMOVED FROM CONSENT AGENDA

03-102-16 CITY COMMISSION MEETING MINUTES OF MARCH 14, 2016

Mayor Hoff suggested the following revisions:

- Resolution 03-75-16: "He noted a concrete path will be added and striped to be used for bikes only on the south side of Maple between Larchlea and Chesterfield."
- Resolution 03-84-16: "Ms. Pielack explained that many attempts were made to solicit input. In addition, this was discussed by the Friends of the Birmingham Historical Museum ~~Historical Society Board.~~"

Commissioner Harris corrected a spelling error on page 11.

MOTION: Motion by DeWeese, seconded by Bordman:
To approve the City Commission minutes of March 14, 2016 as amended.

VOTE: Yeas, 7
Nays, None
Absent, None

VIII. COMMUNICATIONS

03-103-16 COMMUNICATIONS

The Commission received the following communications:

- Robert F. Riley regarding West Maple
- Richard C. Rollins regarding West Maple

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

X. REPORTS

03-104-16 COMMISSIONER COMMENTS

Commissioner Bordman announced the Boomer Summit, sponsored by Next, which will be held on April 30th at Groves High School.

The Commission recessed to closed session at 8:55 PM.
The Commission reconvened in open session at 9:32 PM.

XI. ADJOURN

The meeting adjourned at 9:32 PM.

Laura M. Pierce
City Clerk