

**CITY OF BIRMINGHAM  
BOARD OF ETHICS AGENDA  
February 15, 2021  
1:30 PM  
VIRTUAL MEETING ON ZOOM  
MEETING ID: 996 5685 2194**

**I. CALL TO ORDER**

Chairperson Sophie Fierro-Share

**II. ROLL CALL**

Alexandria Bingham, City Clerk

**III. APPROVAL OF MINUTES**

A. Approval of minutes of November 20, 2020

**IV. UNFINISHED BUSINESS**

None

**VI. NEW BUSINESS**

A. Consideration of Matter 2021-01: Request for Advisory Opinion (Kucharek)

**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 for the City of Birmingham, certify this meeting notice was posted at all four entrances into the Municipal Building, and to [www.bhamgov.org](http://www.bhamgov.org) on February 8, 2021.

*Alexandria Bingham*

**CITY OF BIRMINGHAM  
BOARD OF ETHICS MINUTES  
NOVEMBER 20, 2020  
151 MARTIN, BIRMINGHAM  
MEETING ID: 996 5685 2194**

**I. CALL TO ORDER**

Chairperson Robb called the meeting to order at 1:02 p.m.

**II. ROLL CALL**

Present: James Robb, Chairperson (located in Birmingham, MI)  
John Schrot, Board Member (located in Birmingham, MI)  
Sophie Fierro-Share, Board Member (located in Birmingham, MI)

Absent: None

Also Present: Donna M. Klein, Complainant  
City Commissioner Clinton Baller, Respondent  
Attorney Matt Erard, Counsel for the Respondent

Administration: City Manager Valentine, City Clerk Designee Bingham, City Attorney Kucharek

**III. APPROVAL OF MINUTES**

Member Schrot thanked the Clerks Office staff for their work on the minutes. He said that on page three, in the last paragraph, second line 'confidents' should be 'confidence'. Page five, last paragraph, third line from the bottom, he asked that a comma be added after the word 'secure', a comma be added after the word 'request', and that 'provide' be added after the word 'or'. On page six, fourth full paragraph, 'by the majority' should be inserted after 'It was determined'.

Chairperson Robb said that page six, second paragraph, 'again agreed' should be changed to 'stated'.

On page six, Member Schrot and Chairperson Robb agreed that 'It was determined that there was no violation of Ethics Ordinance, Section 2-320' should be written in regular type instead of bolded type.

On page six, sixth full paragraph up from the bottom, Member Schrot suggested 'effected the confidence of the City and other individuals but does not believe it has' should be removed and 'not' should be added in place of that segment. In the same paragraph, third line from the end, 'is' should be changed to 'was'.

The Board also made corrections to how the sections of the Ethics ordinance were cited in the minutes. The updated minutes reflect those corrections.

Member Schrot said that on page seven, fifth full paragraph from the bottom, 'him' should be changed to Commissioner Baller. In the same paragraph, last line, 'was not' should be changed to 'did not appear'.

**MOTION:** Motion by Member Schrot, seconded by Member Fierro-Share:  
To approve the minutes of September 11, 2020 as corrected.

ROLL CALL VOTE:	Ayes,	Member Schrot Member Fierro-Share Chairperson Robb
	Nays,	None

#### **IV. UNFINISHED BUSINESS**

##### **A. Consideration of the draft opinions for ethics complaint #2020-01**

1. 2020-01 Complaint: City Commissioner Clinton Baller, submitted by Donna M. Klein

The Board reviewed Member Schrot's proposed revisions to Member Fierro-Share's opinion.

Member Fierro-Share accepted most of Member Schrot's proposed revisions. She said she wanted to leave 'even if it does' in the discussion of Section 2.320, which Member Schrot assented to.

In the discussion of Section 2.320, Member Schrot and Member Fierro-Share agreed to strike 'I believe that'. They agreed to change 'I' to 'we'. On page seven they agreed not to include Member Schrot's recommended 'there at'. On the same page they agreed to add the word 'personal' before 'Facebook page' for the sake of consistency.

At the bottom of page eight, where it reads 'This is a technical violation', Member Fierro-Share and Member Schrot agreed to add 'In Member Fierro-Share's view' to the beginning of that sentence.

Member Schrot and Chairperson Robb thanked Member Fierro-Share for her work.

City Attorney Kucharek said it would be best for there to be a motion to adopt the majority opinion, and for Member Schrot and Member Fierro-Share to both sign the same hardcopy document which will then be kept as a record by the City.

**MOTION:** Motion by Member Schrot, seconded by Member Fierro-Share:  
To adopt and approve the majority opinion as amended during this meeting.

ROLL CALL VOTE:	Ayes,	Member Schrot Member Fierro-Share
	Nays,	Chairperson Robb

Chairperson Robb said he would submit his signed dissenting opinion to City Clerk Designee Bingham.

Members Schrot and Fierro-Share both complimented Chairperson Robb on the quality of his dissenting opinion despite their disagreement with some of its findings.

**V. NEW BUSINESS**

A. Selection of new chair

**MOTION:** Motion by Member Schrot, seconded by Chairperson Robb:  
To select Sophie Fierro-Share as the Chair of the Board of Ethics, with her holding of the position to commence at the beginning of the next Board of Ethics meeting.

Member Fierro-Share thanked her colleagues for their kind words regarding her nomination.

ROLL CALL VOTE:	Ayes,	Member Schrot Chairperson Robb Member Fierro-Share
	Nays,	None

B. Report on consultation with other cities concerning ethics ordinances

Chairman Robb reported on his meeting with the newly formed Grosse Pointe Park Ethics Board, stating that they largely based their ethics ordinance off of Birmingham's. He credited Beier Howlett for their good work on Birmingham's Ethics Ordinance, noting it has served as a model for other communities.

**VI. PUBLIC COMMENT**

Commissioner Baller said he noted three or four inaccuracies in the written opinions.

Ms. Klein disputed some of the statements made by the Ethics Board Members in their discussion of the case and in their written opinions.

**VII. ADJOURN**

**MOTION:** Motion by Member Schrot, seconded by Member Fierro-Share:  
To adjourn the meeting.

ROLL CALL VOTE:	Ayes,	Member Schrot Member Fierro-Share Chairperson Robb
	Nays,	None

The meeting was adjourned at 3:37 p.m.

DRAFT



Case No. \_\_\_\_\_  
(Assigned by clerk)

**REQUEST FOR ADVISORY OPINION**

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

All advisory opinions will be communicated to the city commission and will be published on the city's website at [www.bhamgov.org](http://www.bhamgov.org).

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

Name Mary Kucharek Phone Number ( 248 ) 645-9400

Address 3001 W. Big Beaver Road, Suite 200, Troy, MI 48084  
(Number, Street, City, State, Zip)

Position or Board (If Applicable) Equity Partner

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

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

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

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Revised 8/16/12

**FOR OFFICE USE ONLY**

Accepted by \_\_\_\_\_ Date \_\_\_\_\_

## REQUEST FOR AN ADVISORY OPINION

After open and transparent discussions with City Manager Markus, we agree the correct approach and practice is to come to the Ethics Board of the City of Birmingham and request an advisory opinion for Assistant City Attorney, Mary M. Kucharek, to exercise her responsibilities and duties as an official of the City of Birmingham. The requesting party of this advisory opinion is myself and City Manager Markus. Recognizing Sec. 2-321 – Responsibilities of Public Office in our Code of Ethics Ordinance states:

“City officials and employees are bound to observe in their official acts, the highest standards of ethical conduct, and to discharge the duties of their offices faithfully, regardless of personal consideration, recognizing that their official conduct should be above reproach.”

Sec. 2-322 defines a City official or employee as “a person elected, appointed, or otherwise serving in any capacity within the City in any position established by the City charter or by City ordinance which involves the exercise of a public power trust or duty.” Personal interest means an interest arising from blood or marriage relationships or any business association.

The Code of Ethics has been written so as to ensure that every person acting on behalf of the City always and constantly puts the City first. If there is a conflict of interest, the conflict of interest must be recognized, articulated and the officer or employee, i.e. myself, needs to take necessary steps in order to recognize the conflict of interest and act in a way that assures that all decisions and behaviors on my part are done without reproach. Therefore, in accordance with Sec. 2-324 of the Code of Ethics, subsection (b) Full Disclosure, I fully understand my responsibility to disclose the full nature and extent of any financial or personal interest in a matter that may become before me, and realize that I will have to take steps in order to avoid a conflict of interest.

The important facts necessary for this Ethics Board to give an Advisory Opinion is as follows:

I am here to fully disclose a personal relationship that I have come to enjoy with one of the City’s consulting engineers. The City of Birmingham has been legally represented by the law offices of Beier Howlett for approximately 60 years. Likewise, the engineering company of Hubbell Roth Clark (hereinafter “HRC”) has consulted for engineering services with the City for at least, if not more than, 60 years. The primary person responsible to oversee the City of Birmingham with its engineering needs is Mr. Jim Surhigh. HRC is managed by its Board of Directors. One member of the Board of Directors oversees each City that HRC serves. In this particular case, the managing partner, Michael MacDonald, oversees the work of Mr. Jim Surhigh. HRC is under a consulting contract with the City of Birmingham, and from time-to-time bids on particular jobs. Their contract is reviewed after many years, and no contract is entered into without the approval and the review of the City Commission.

Mr. MacDonald and I began a dating relationship, and now luckily and joyfully our relationship has developed, and we were recently engaged. The engagement proposal occurred on January 15, 2021. We intend to marry sometime this year.

The engineering consultants of HRC and the law offices of Beier Howlett, P.C. have worked side-by-side in order to best advise the City on its engineering needs and legal needs. The services of HRC and Beier Howlett have been one of a parallel professional relationship. Beier Howlett is not responsible to hire or fire HRC. Beier Howlett is not responsible for engaging in a contract with HRC. Beier Howlett is not responsible for developing any RFP for projects or awarding those to HRC. Instead, it is the purview of the City Manager and final approval of the City Commission to engage HRC services through awarding of contracts or of projects for professional engineering consultation.

If at any time HRC's contracts need to be looked at by legal, I am happy to have another legal member of Beier Howlett review the contracts so that I am always separated from the contract services of HRC. Again, it is important to note that the law offices of Beier Howlett does nothing more than review the contract for form and do not negotiate with HRC. Again, if anything like that ever became necessary, I would always step out of the way and allow another law office member to be involved so there would never even appear to be an impropriety.

In summation, I come before this Board to request an advisory opinion to acknowledge this potential conflict of interest. I come before this Board to give full disclosure of my personal relationship with a consulting firm member that also serves the City of Birmingham. I also respectfully request a written advisory opinion that concurs with my intent of how to always keep any contract review, etc. of HRC away from me and with other members of my firm, and welcome any other advice or recommendation this learned Board has so that my conduct, working on behalf of the City of Birmingham, is always ethical and beyond reproach.

I look forward to any questions you may have, and look forward to meeting with you at any time.