

**CITY OF BIRMINGHAM  
BOARD OF ETHICS AGENDA  
July 12, 2022  
MUNICIPAL BUILDING, 151 MARTIN  
2:00 PM**

**I. CALL TO ORDER**

Chairperson John Schrot

**II. ROLL CALL**

Alexandria Bingham, City Clerk

**III. APPROVAL OF MINUTES**

A. Approval of minutes of June 15, 2022

**IV. UNFINISHED BUSINESS**

**VI. NEW BUSINESS**

- A. Selection of chairperson for the Ethics Board
- B. Review and approval of the draft Advisory Opinion for case 2022-02 - Requested by City Manager Thomas M. Markus Re. Bert Koseck on the Planning Board
- C. Consideration of Advisory Opinion Request 2022-01 – Requested by City Manager Thomas M. Markus Re. Samuel Oh on the Triangle District Corridor Improvement Authority

**VII. PUBLIC COMMENT**

**VIII. ADJOURN**

Should you wish to participate, you are invited to attend the meeting in person or virtually through ZOOM: <https://us06web.zoom.us/j/99656852194> Meeting ID: 996 5685 2194  
You may also present your written statement to the Board of Ethics, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the meeting.

*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 June 10, 2022.

Alexandria Bingham

**City of Birmingham  
Board of Ethics Minutes  
June 15, 2022  
151 Martin, Birmingham**

**I. CALL TO ORDER**

Chair Schrot called the meeting to order at 2:00 p.m.

**II. ROLL CALL**

Present: John Schrot, Chair  
Sophie Fierro-Share, Board Member  
James Robb, Board Member

Absent: None

Administration: City Clerk Bingham, Assistant City Manager Ecker, City Manager Markus, City Attorney Kucharek

**III. APPROVAL OF MINUTES**

Ms. Fierro-Share recommended that a superfluous 'that' be removed from page two.

On the same page, the Chair recommended that 'complaint' be changed to 'request'.

**MOTION:** Motion by Mr. Robb, seconded by Ms. Fierro-Share:  
To approve the minutes of November 16, 2021 as amended.

VOICE VOTE: Ayes, Mr. Robb  
Chair Schrot  
Ms. Fierro-Share

Nays, None

**IV. UNFINISHED BUSINESS**

None.

**V. NEW BUSINESS**

- A. Consideration of Advisory Opinion Request 2022-02 (Request 2022-02) - Requested by City Manager Thomas M. Markus Re. Bert Koseck on the Planning Board

Chair Schrot noted that the Board was in receipt of letters from Planning Board members Scott Klein, dated June 8, 2022, and Jason Emerine, dated June 9, 2022. The Chair then explained from where the Board derives the authority to offer advisory opinions, and noted that the Board's page on the City's website outlines the Board's rules of procedure, mission statement, training sessions, and previous advisory opinions. He then summarized the process that would be followed for reviewing the request.

Ms. Fierro-Share informed the Board that her husband, Dan Share, currently serves on the Planning Board with Bert Koseck. She stated that she had never met Mr. Koseck, saw no issue with her participating in the proceedings, and asked that she be permitted to participate unless there were concerns.

No concerns were stated by anyone present.

In reply to Mr. Robb, Mr. Koseck stated there had been no discussions between himself and Mr. Share regarding Request 2022-02.

CA Kucharek clarified that Mr. Koseck had reached out to Mr. Share, but that Mr. Share had said he could not discuss the matter with Mr. Koseck. Ms. Fierro-Share was not part of that exchange and had no contact with Mr. Koseck.

The Chair then swore in CM Markus and asked him to review his request.

The City Manager prefaced his request by stating that he respects Mr. Koseck and regards him as a valued member of the Planning Board. He noted that he had the option to file a complaint or a request for an advisory opinion and chose the latter. He explained that requesting an advisory opinion regarding this matter was part of his professional obligation.

The City Manager then provided an overview of Request 2022-02, which can also be found described in the meeting's agenda packet.

In reply to Board inquiry, CM Markus explained:

- The determination regarding whether an item should be reviewed administratively or should be brought before the Planning Board is done by Staff;
- He did not believe that Messrs. Clein or Emerine discussed their conversations with Mr. Koseck with other Planning Board members or with Staff;
- There are seven regular Planning Board members plus two alternate members;
- The conversations between Mr. Koseck and Messrs. Clein and Emerine would have occurred prior to January 20, 2022;
- On page two of his request he should have referred to a public meeting instead of a public hearing;
- As a City Manager he was obligated to protect subordinate Staff if and when certain levels of issues arise from Board members. He said he would expect future City Managers to do the same. He said he was also obligated to ensure that the record is clear and that the City is following the procedures of the Ethics Code;
- There was a consensus decision by the Planning Board at its February 9, 2022 meeting that the Cannelle Patisserie (Cannelle) plans could be administratively reviewed and approved; and,
- He suspected that the Planning Board was asked to give direction regarding whether the Cannelle plans should be administratively reviewed or reviewed by the Planning Board in part because of Mr. Koseck's involvement and Mr. Koseck's reference to two other Planning Board members.

CC Bingham noted that Mr. Koseck was absent from the February 9, 2022 meeting and that both Messrs. Clein and Emerine were present and serving at that meeting. She then read the section of those minutes under Pre-Application Discussions.

The Chair then swore in Mr. Koseck.

Mr. Koseck introduced himself to the Board. He then stated:

- He volunteers on the Planning Board because he loves Birmingham and believes his professional background helps him contribute to the City in a positive way;
- He has never volunteered for personal or professional gain, or behaved unethically in any way. His personal and professional contacts would corroborate those statements;
- In his volunteer service with other organizations and his professional work his ethics have never been called into question;
- His work with Cannelle began as helping a neighbor without compensation and transitioned to a paid, professional architect-client relationship likely in mid-August 2021 as the project evolved into redesigning a previously approved outdoor dining facility. His work was to redesign and to assist in getting approvals from the City;
- Working with City Staff during that process was at times confusing, aspects of their demands did not make sense, there were communication gaps, missed information, and slow responses;
- After many months he became frustrated, saw no end to the entitlement process, and went above those particular Staff members' heads to the Assistant City Manager and the City Manager, both of whom he asked for help;
- He suspects that Staff then raised the present Ethics issues as a defense since Mr. Koseck had gone over their heads;
- He did not know whether the project is fully approved or whether a building permit was yet issued but he believed it was close, despite these issues. He was happy for that and for his client;
- In a passing conversation with the City Manager in early April 2022, the City Manager expressed a desire to meet with Mr. Koseck regarding Cannelle. That meeting was held on April 28, 2022 and included ACM Ecker and CA Kucharek;
- During the meeting, CM Markus read the request for an advisory opinion to Mr. Koseck and said he would be submitting it; and,
- He wished that they had more time to discuss the issues during that meeting. He said he was deeply saddened by CM Markus' decision to submit the request to the Ethics Board.

Mr. Koseck then passed out copies of, and reviewed, a presentation explaining the Cannelle process. He asked that his presentation not be taken as an indictment of the Community Development Department in general, and said his interactions with Staff in that department in general have been wonderful. He said he was only speaking regarding this experience as an architect representing a client.

In reply to Board inquiry, Mr. Koseck explained:

- He became frustrated as the entitlement process went on;
- At some point, he asked Staff for the requirements in writing because he felt he was not getting clear information, and when Staff subsequently made two requests for additional information he became unhappy;
- He likely spoke to Mr. Emerine twice about the project, once in July 2021 and once in March 2022;
- The Planning Board said the project could be administratively reviewed and approved on February 9, 2022, which meant that neither Messrs. Clein or Emerine would have a need to comment on the project in their capacities as Planning Board members again;
- When the site of Cannelle in general was before the Planning Board on March 9, 2022, it was in regards to a sitewide project and not Mr. Koseck's project;

- He neither showed the Cannelle plans to Messrs. Clein and Emerine nor represented that he did to Staff;
- He did mention his discussion of the Cannelle plans with Messrs. Clein and Emerine to Staff once, which he believes occurred after March 9, 2022;
- In mentioning the opinions of Messrs. Clein and Emerine to Staff, he was aware that Staff was aware that Messrs. Clein and Emerine are Planning Board members;
- He did not mention their names, however, in an attempt to influence Staff, nor did he represent that Messrs. Clein and Emerine said the project should be permitted above the easement. Mr. Koseck said they actually both said that the Engineering Department had discretion in the matter;
- He never referenced his position as a Planning Board member to Staff, nor asked for any favoritism;
- He referenced Messrs. Clein and Emerine regarding the technical, engineering-related items of the soil boring request and the easement, saying they did not have concerns about those aspects of Mr. Koseck's plans. The 'bullshit' was quoting a civil engineer and surveyor who told Mr. Koseck that he would no longer work in Birmingham; and,
- In his frustration, he used a blanket statement.

Ms. Fierro-Share noted that CM Markus indicated that there were Staff members who were hurt, insulted, frustrated, and angered by the way Mr. Koseck behaved in his frustration.

Mr. Koseck said he was disturbed by the content of the request for the advisory opinion, indicating that he did not recognize himself in the description. He conceded that he was angry by late Winter-early Spring 2022, when he said he had not received answers for months.

Ms. Fierro-Share asked Mr. Koseck if he accepted responsibility for how Staff may have been injured as a result of his anger. She described him as having lost his temper.

Mr. Koseck said the conversation with SP Cowan that was quoted in Request 2022-02 was likely no more than two minutes, and that he would have expressed himself the same way to another jurisdiction. He said he also apologized about two weeks later and instructed SP Cowan not to take it personally. He said he sees himself as a mentor. He said he would not describe himself as having 'lost his temper', but said he was short, frustrated, and went above SP Cowan's head. He said going above SP Cowan's head 'was probably when he had to defend himself'.

The Board invited closing statements.

CM Markus noted:

- That 'easements, sewers, and soils' as referenced on page ten of Mr. Koseck's presentation were described as being excluded from Planning Board review, when in fact they are tangentially related to items the Planning Board reviews, such as parking, which were part of the Cannelle plans; and,
- While Mr. Koseck said that the plans for the whole site and the plans for Cannelle were separate, the two items were related because items that come up for one set of plans affect the other set and some of them could result in a full site plan review which is the purview of the Planning Board.

Mr. Koseck stated:

- Based on the scale and specific items to be addressed, he never thought the Cannelle plans would become an item on the Planning Board agenda. He spoke to Messrs. Clein and Emerine believing the matter would not go before the Planning Board;
- Cannelle is a good operator and has had a positive impact on the surrounding neighborhood. While many development plans can be contentious, no one except for a couple Staff members would have had an issue with the plans for Cannelle;
- He encountered roadblocks, confusion, complexity in working with certain Staff members;
- The final requests from Staff cost Cannelle thousands of additional dollars and the reason for those final requests was not conveyed;
- He is generally appreciative of, and impressed by, Staff;
- He would have reacted the same way if this had occurred in a different municipality;
- He would not characterize follow-up emails and phone calls when no response had occurred after a number of days as 'excessive'; and,
- During this entire process, he was an architect representing a client and not acting as a Planning Board member.

CM Markus stated:

- The six projects Mr. Koseck compared to Cannelle were too dissimilar to be analogous;
- The final requests that Staff issued to Mr. Koseck occurred because the City Attorney was in the process of drafting a hold harmless agreement for the Cannelle project and because the potential piers and poles could have had an impact on the surface of the easement. Each change in the variables of the project prompted the need for other information; and,
- It is appropriate for development to undergo a thorough review process and Birmingham residents would be dissatisfied if that did not occur.

The Chair offered Mr. Koseck a final remark. Mr. Koseck declined. The Chair then invited Board deliberations.

Ms. Fierro-Share said Mr. Koseck seemed to have escalated the situation and to have taken his frustrations out on Staff in this case, despite not identifying as someone who would do so. She said his behavior moved into bullying, and that there was no excuse for it. She said Mr. Koseck wanted the process to go according to his schedule, and that was not how it works. She said the situation was regrettable. She continued that she had three questions:

1. Can a Board member represent a private client before the City in a matter not requiring Board action?
2. Can a Board member represent a private client before a Board he or she does not serve on?
3. Can a Board member represent a private client before a Board he or she does serve on?

She answered yes to question one, yes to question two, and no to question three. The issue that unites the questions is what the Ethics ordinance expects of Board members who interact with Staff or their fellow Board members on behalf of clients and neighbors. The ordinance does not provide clear guidance on all issues that may arise, and so Board members need to continually evaluate their ethical obligations.

Ms. Fierro-Share continued that:

- Section 2-324(a)(5) requires that Board members hired to represent a client before the City ensure that they are hired for the right reasons;
- Section 2-324(a)(6) requires that Board members not accept employment inconsistent with their duties or that would impair their independence;

- It is permitted to take private employment that would not do those things as long as a disclosure statement is made on the public record per Section 2-324(b)(5);
- Mr. Koseck's employment by Cannelle was not before the Planning Board while he was present at a Planning Board meeting;
- Section 2-321 requires City officials to be respectful of the conduct of City business. If the average Staff member felt intimidated or coerced by an official's behavior, that violates the ordinance;
- The bullying that occurred in this case could also raise issues with Section 2-324(a)(8). Disagreement with Staff alone does not violate this section, but crosses the line when it moves from vigorous advocacy to bullying, as it did in this case;
- The bullying, however, occurred in Mr. Koseck's private capacity, and not as a public official;
- While she did not condone these aspects of Mr. Koseck's behavior, she did not believe it was covered by the Ethics ordinance;
- There was nothing improper about Mr. Koseck asking Messrs. Clein and Emerine for information based on their specific fields since there was no indication that the matter would appear before the Planning Board, and there was also no indication that Mr. Koseck would not have disclosed the conversation and potentially recused himself if it had gone before the Planning Board;
- The letters from Messrs. Clein and Emerine indicated that Mr. Koseck undertook no lobbying for a specific outcome if the matter had gone before the Planning Board;
- There was no indication that Mr. Koseck intended to make a behind the scenes case for his client. His behavior in this regard did not violate Section 2-323(1), Section 2-323(2), or Section 2-323(3) or Section 2-324(a)(5); and,
- Section 2-324(b)(2) does not apply to this request because the conversations with Messrs. Clein and Emerine occurred well before Mr. Koseck knew it might come before the Planning Board.

She concluded that Board members who take on private work that involves the City must be constantly ethically vigilant in every way.

Mr. Robb said:

- He was concerned about a Planning Board member consulting with fellow Planning Board members about a matter that could come before the Planning Board;
- Even though Mr. Koseck reported not thinking that the Cannelle plans would come before the Planning Board, he was not only required to avoid true conflicts of interest, but to also avoid creating the appearance of a conflict of interest;
- Mr. Koseck's behavior in this case could have given the appearance of a conflict of interest since it could have seemed like he was seeking special consideration for his client;
- While Mr. Koseck contends he would have reacted the same way in another municipality, he is not a public official in those municipalities;
- As public officials in Birmingham, when interacting in Birmingham there is an 'overlay' of conduct above and beyond one's normal business and personal conduct due to one's status as a public official;
- While Messrs. Clein and Emerine might provide good engineering insight, it might be appropriate for Mr. Koseck to consult other engineers he knows and respects on a project that might end up before the Planning Board;
- While he trusts that Mr. Koseck would have recused himself had it come before the Planning Board, Messrs. Clein and Emerine did not recuse themselves from the

conversation regarding whether the Cannelle plans should be administratively approved or brought before the Planning Board;

- He conceded that the conversations between Mr. Koseck and Messrs. Clein and Emerine may have been technical and non-Planning Board related, but he cannot know for sure how the conversations with Mr. Koseck impacted Messrs. Clein's and Emerine's opinion on how the project should be reviewed, thus giving rise to the possibility of an perceived of a conflict of interest; and,
- He agreed with Ms. Fierro-Share's comments.

Mr. Robb concluded that this advisory opinion would benefit the community, reiterated that it was not a complaint, and thanked both CM Markus and Mr. Koseck for discussing the issue so forthrightly.

Chair Schrot echoed that this was an advisory opinion and not a complaint. He said he also concurred with Ms. Fierro-Share and asked if she would write the advisory opinion. The Chair continued that:

- While Mr. Koseck contended that he did not expect this matter to come before the Planning Board, there remained that possibility;
- This fact was his main concern;
- Public officials have two sets of fiduciary responsibilities - to individual clients, and to the City;
- Public officials maintain their fiduciary responsibility to the City for as long as they serve, and so if they voluntarily take on an additional set of fiduciary responsibilities to a client they have to be mindful of the implications;
- Doing so does restrict on occasion what a public official may do for, and on behalf of, a private client;
- It also impacts how a public official should conduct themselves in dealing with the City;
- He agreed with Mr. Robb that there is a heightened standard as a Birmingham public official conducting business in Birmingham;
- He does believe that the request for an advisory opinion from CM Markus does have application in this matter, but he has some concerns about some of the factual accuracy of some of the allegations because there is some dispute about certain statements;
- Overall, he was persuaded that there was sufficient evidence to generally regard CM Markus' request as accurate;
- There was no indication that Mr. Koseck was acting 'behind the scenes' in an attempt to secure favorable consideration; and,
- These kinds of issues have arisen before, noting that advisory opinions 2003-01, 2003-02, 2003-03, 2009-02, 2012-01, 2015-05, 2015-07, and 2018-02 all had some relevance to the present request.

The Chair asked Ms. Fierro-Share to bring aspects of those opinions to bear on the writing of this advisory opinion as she saw fit.

Mr. Robb explained that Ms. Fierro-Share would then author the advisory opinion and the Board would review it at the next meeting.

The Board concurred that the advisory opinion would be reviewed subsequent to any new business occurring at the next meeting.

## **VI. PUBLIC COMMENT**



## VII. ADJOURN

**MOTION:** Motion by Mr. Robb, seconded by Ms. Fierro-Share:  
To adjourn the meeting at 4:53 p.m.

VOICE VOTE:	Ayes,	Mr. Robb Ms. Fierro-Share Chair Schrot
	Nays,	None

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Alexandria Bingham, City Clerk



Laura Eichenhorn  
City Transcriptionist

CITY OF BIRMINGHAM

BOARD OF ETHICS

ADVISORY OPINION 2022-02

QUESTIONS PRESENTED<sup>1</sup>

Do the actions of an architect, who is also a member of the Birmingham Planning Board, in promoting his client's building project to the City's Planning Department violate the Birmingham Ethics Ordinance, because of either:

- a) The nature and tone of the verbal statements to Planning Department staff made in support of that project; or
- b) The mention—and quoting—to Planning Department staff the opinions of two other Planning Board members who are civil engineers on an engineering matter pertaining to the project?

STATEMENT OF FACTS

Bert Koseck is an architect and a member of the Planning Board. He was hired by a Birmingham business to provide architectural services in connection with modifications that business hoped to make to its building. The modifications required one or more City approvals. It is unclear if the modifications required Planning Board approval. Mr. Koseck did not think so.

There were several discussions between Mr. Koseck and City staff about what, if anything, could be built over an easement on the site and what kind of site plan review is required. The issues were not resolved in a time frame satisfactory to Mr. Koseck. He became frustrated by the length of time it was taking to resolve the matters and with the substance of the responses he was getting from the Engineering Department and from the Planning Department. According to the Request, which Mr. Koseck did not dispute, he made "continued efforts.....to push the staff, with almost daily or every other day emails.....attempting to bypass the need for Planning Board review." He was angry, raised his voice, used profanity and named—and quoted—two Planning Board members who are civil engineers in support of his position. In none of these interactions did Mr. Koseck identify himself or the two engineers as Planning Board members, though the City staff was well aware of each of their affiliation with the Planning Board.

Mr. Koseck told the Ethics Board that he did not intend to use his Planning Board membership to get special treatment. The Request states that "Many of the staff members felt as though they were

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<sup>1</sup> The Ethics Board is acting in Response to a Request for Advisory Opinion. Advisory Opinions often deal with questions about how City Officials should act in the future based on an assumed statement of facts. Advisory Opinions differ from Complaints, where we are asked to judge whether past conduct violates the Ethics Ordinance. Compare Chapters 2 and 3 of the Board of Ethics Procedural Rules. We have also issued Advisory Opinions concerning past conduct where it is useful to provide City Officials with guidance in situations which might occur in the future. Advisory Opinion 2004-01. This Advisory Opinion serves that purpose.

being pressured to change their opinions for Mr. Koseck because he is on the Planning Board.” The two engineers, Scott Clein and Jason Emerine each wrote letters to the Ethics Board in which they described their conversations with Mr. Koseck. Both stated that Mr. Koseck asked them technical, engineering questions and they did not feel pressured by Mr. Koseck. Mr. Clein stated that Mr. Koseck “did not ask for nor imply in any way that he wanted my assistance with any approval.” Mr. Emerine wrote that it did not appear to him that Mr. Koseck “was asking for my support of the project, attempting to influence my decision-making process or gain a ‘favorable decision’.”

The Request for Advisory Opinion asks for guidance on whether the facts submitted to the Board show the use of a public position for private gain, either in the way in which Mr. Koseck behaved to the City staff or by his consulting two Planning Board members before a public hearing. These are important questions. The Ethics Board believes this Advisory Opinion can help clarify the rights and duties of appointed board members when they seek something from the City in their private capacity.<sup>2</sup>

#### ANALYSIS

The Ethics Ordinance recognizes that volunteer board members are different from full or part time paid employees. Section 2-324(a)(6) has a general prohibition applicable to all city officials and city employees against the acceptance of employment where it is “incompatible or in conflict with the discharge of his or her official duties”, but goes on to say that Commissioners or board members may engage in private employment on their own time “where city business is not involved, subject to” disclosure and refraining from participating in that matter.

Section 2-324(a)(9) recognizes that Board members may participate in decisions even though their financial or personal interests may be directly or indirectly affected if it is in furtherance of the public good, in compliance with the duties on their board and is not an effort to gain some benefit not available to the general public.

Section 2-324(b) sets out the process for disclosure of conflicts of interest and requires a board member to refrain from voting or discussing a matter in which they have a direct or indirect financial or personal interest.

Putting all these provisions together and applying them to the facts presented to us, we conclude that a board member may accept private employment on behalf of someone with business before the City except in three cases: where board member or the board member’s client is selling goods or services to the City (the “city business” referred to in the exception of Section 2-324(a)(6)) or where the board member has a fiduciary duty to both the client and the City (Advisory Opinion 2015-05) or where the employment would “tend to impair his or her independence of judgment or action in the performance of his or her official duties” Section 2-324(a)(6). If the employment is permitted, the

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<sup>2</sup> We have not been asked to and do not directly address any issue relating to conflicts of interest. Our Advisory Opinion 2018-02 contains a thorough analysis of apparent, potential and actual conflicts of interest. That Advisory Opinion is especially relevant to appointed board members. We recommend that all board members contemplating doing any business with the City review Advisory Opinion 2018-02 and, for those contemplating doing business with the city on behalf of someone with whom they have a fiduciary relationship, that they read Advisory Opinions 2003-03 and 2015-05 .

conduct of the board member is private conduct, not official conduct. Where the employment is permitted and a board on which the member sits has to consider it, the board member must disclose the employment on the public record and may participate as a board member if the standards of 2-324(a)(9) are satisfied and there is no conflict of interest as defined in the Ethics Ordinance.<sup>3</sup>

There is another aspect to the question of whether private employment is prohibited by the Ethics Ordinance. Section 2-324(a)(5) states that no City Official may engage in a business transaction that he may profit from due to his official position. This Section echoes the general prohibition against using public office for private gain in Section 2-320(3). There is no indication why Mr. Koseck was hired. He may have been hired because his client thought his status as a Planning Board member will help get things done quicker or more satisfactorily. Or he may have been hired for his skill, experience, cost or some other reason unrelated to his membership on the Planning Board. It is important for a Board member who is hired to represent a client before the City to be sure he or she is being hired for the right reasons. Promises of success because of one's status as a board member are inconsistent with the Ethics Ordinance.

The Ethics Ordinance seeks to give guidance to public officials for separating their public and private roles. Section 2-320. The Ethics Ordinance seeks to assure public trust in government by fostering independence, impartiality, proper procedures and the use of public resources solely for public purposes. In Section 2-321 it requires city officials and employees to "observe in their official acts the highest standards of ethical conduct".

We are called upon to consider two aspects of Mr. Koseck's conduct: (1) the manner in which he interacted with the City staff, specifically the intensity with which he spoke to city staff in tone and frequency and (2) whether contact with other board members pertaining to his private employment is permitted. Because this is an Advisory Opinion we focus on providing guidance as to what the Ethics Ordinance requires rather than adjudicating whether all or any part of Mr. Koseck's conduct violates the Ethics Ordinance.

1. We turn first to the question of whether the Ethics Ordinance limits what a city official can say or how they say it. As noted, Section 2-321 requires city officials to be respectful, honest and fair and to avoid conduct which "may tend to undermine respect" for the official or the city. These are imprecise standards. There is no simple test dividing respectful from disrespectful conduct. We can all agree that there are characteristics of communication that are not acceptable. "Bullying" is defined by the Oxford Languages English Dictionary as: "to seek to harm, intimidate or coerce someone (someone who is perceived to be vulnerable)." If the average person in the position of the staff would have felt intimidated or coerced by the style or substance of Mr. Koseck's speech, that would violate the Ethics Ordinance if it was done in the course of conducting official business on behalf of the City. Simply disagreeing with City Staff is not a violation of the Ethics Ordinance. We have previously concluded that city officials have the right to express disagreement with decisions of the City, Advisory Opinion 2004-02 and the City Commission, Advisory Opinion 2007-02. Advocacy, even vigorous advocacy, is permitted.

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<sup>3</sup> The facts of this Advisory Opinion do not involve a board member attempting to vote on the matter for which he was employed. For a situation where a board member had a direct or indirect personal or financial interest which may not have been a conflict of interest see Advisory Opinion 2009-02, where an employee of one hotel who was a member of the Parking Advisory Committee wanted to participate in a matter before that board that affected a competitor hotel.

Advocacy becomes an ethics violation when the manner of disagreement crosses the line between vigorous advocacy and bullying<sup>4</sup>. In this case Mr. Koseck was acting in his private capacity. He was not acting on behalf of the City. That does not mean that we condone his behavior. We just conclude, similarly to the conclusion we reached in Advisory Opinion 2007-05 that Section 2-321 does not regulate private conduct. it isn't covered by the Ethics Ordinance.

2. Did Mr. Koseck speaking to Mr. Clein and Mr. Emerine violate the Ethics Ordinance? Mr. Koseck spoke to Mr. Clein and Mr. Emerine, both of whom are professional engineers, about an engineering question. By design, boards have diverse membership. Different boards require different skills. We do not think there is anything improper about one board member asking another about a question within their specialized knowledge. There is no indication that this matter was going to come before the planning board or that Mr. Koseck (or Mr. Clein and Mr. Emerine) would not have disclosed the discussion and possibly recused themselves if it did come before the Planning Board. Based on the letters of Mr. Clein and Mr. Emerine, there is no indication that Mr. Koseck lobbied Mr. Clein or Mr. Emerine to take or not take any action should the matter come before the Planning Board. The Request for Advisory Opinion characterizes the conversation as a behind-the-scenes effort to support Mr. Koseck's case, but there is no indication that Mr. Koseck intended to make a behind the scenes deal to get more favorable treatment than would be available to a member of the public, which would have violated Section 2-324(a)(8). Mr. Clein and Mr. Emerine have told us that the conversations were not improper in any way. Just asking a fellow board member for their opinion on a question that is involved in a matter before a City department does not amount to using public employment for private gain, giving or accepting preferential treatment or giving up independence. Sections 2-323(1) and (3). Nor does it violate 2-324(a) (5) unless confidential information is sought or given—not the case here since Mr. Koseck asked for an opinion about engineering matters generally. Mr. Emerine and Mr. Clein weren't asked to give special treatment to Mr. Koseck or his client and they certainly didn't agree to give special consideration to him or his client. Nor does 2-324(b)(2) prohibit any discussion with fellow board members. That section requires disclosure of conflicts of interest "on the appropriate record of the city prior to any discussion, voting, or action thereon....."

Board members should be careful not to make commitments to other board members about matters before a city department that might come before their board. Such commitments might compromise a board member's independence or impartiality or constitute partiality, all in violation of Section 2-323.

## CONCLUSION

There are obvious and not-so-obvious ethical risks in a Board member representing somebody in seeking an approval from the City. The possibility exists that it could involve using the Board member's status for private gain in violation of 2-323(1) or giving or accepting preferential treatment in violation of 2-323(3) and 2-324(a)(8). The possibility exists that there could be issues with confidential information or with a Board member representing his opinion to be that of the Board's, in violation of the Section 3-324(a)(2). There are disclosure issues that can arise. Equally important, Board

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<sup>4</sup> We have not considered whether forms of speech or behavior could violate the Ethics Ordinance. This Advisory Opinion should be not be understood to say that bullying is the only form of speech or behavior that violates the Ethics Ordinance.

members should be aware that the appearance of an ethical violation can harm the public's confidence in government even if there is no ethics violation in fact.

Board members who choose to take on private work that involves the City must be constantly vigilant to conduct themselves ethically every step of the way. The Board of Ethics appreciates the opportunity to consider these important issues.

Approved by the Ethics Board this \_\_\_\_ day of July, 2022.

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Sophie Fierro-Share

---

James Robb

---

John J. Schrot, Jr.



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 Samuel Oh Phone Number ( 313 ) 339-8308

Address 820 Hazel St., Birmingham, MI 48009  
(Number, Street, City, State, Zip)

Position or Board (If Applicable) Triangle District Corridor Improvement Authority

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

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

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

Revised 8/16/12

### FOR OFFICE USE ONLY

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



April 25, 2022

City of Birmingham Ethics Board  
**City of Birmingham**  
151 Martin Street  
Birmingham, MI 48009

***Re: Advisory Opinion***

Dear Members of the Board:

On Friday, March 25, 2022 it came to my attention that Mr. Oh, who is a member of the Corridor Improvement Authority Triangle District Development Board, hosted on the social media site change.org, a request for a petition to be signed by 100 persons for revision of the Triangle District Master Plan, which can be found in Attachment 1. Mr. Oh begins his petition request with the statement, "My name is Samuel Oh, and I am a member of the Corridor Improvement Authority (Triangle District Development) Board." Mr. Oh is indeed a member of this Board as demonstrated in Attachments 2, 3, 4 and 5.

In reviewing the Code of Ethics, I am contacting the Ethics Board of the City of Birmingham to request an Advisory Opinion regarding the conduct of Mr. Oh. Sec. 2-320(3), makes it clear that one is not to use a public office for personal gain. Further, recognizing Sec. 2-321 which 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."

Mr. Oh is a City official pursuant to Section 2-322, which states:

"*City official or employee* means a person elected, appointed or otherwise serving in any capacity with the city in any position established by the City Charter or by city ordinance which involves the exercise of a public power, trust or duty."

I believe the Code of Ethics has been written to ensure that every person acting on behalf of the City always does so with the utmost integrity and not have even the appearance of impropriety. I am concerned that Mr. Oh is using his title as a Triangle District Development Board





member to pass around a petition for revision of the Birmingham Triangle Development Master Plan, thereby using his position as a member of the Board, duly appointed by the Commission, and as such may be in violation of Sec. 2-321, Sec. 2-323(1), (3), (4) and (5). His statements at change.org are fraught with inaccuracies and, therefore, a concern to the City, and thereby in potential violation of Sec. 2-323(5) of the Birmingham Code of Ethics. Furthermore, Sec. 2-324(a)(2) states:

"(2) No official or employee of the city shall represent his or her personal opinion as that of the city."

By proclamation of this social media site and the circulating of the petition he could be using his Board membership to sound as though he is acting in an official position and performing an official action of the Board. Likewise, in violation of Sec. 2-324(a)(8), by using his official position, as he stated at the beginning of the paragraph, in order to secure and request signatures on his petition, he is using his official capacity to advance his personal position. It could be argued that he may also be in violation of Sec. 2-324(a)(9)b. in that he is acting in a way that is not in compliance with the duty of his Board, but instead is utilizing his position in order to act against the Triangle District Board's plan, for which he has been sworn to represent and make decisions on behalf of the Board.

Also, I have concerns regarding Mr. Oh's actions at a recent meeting. At the Planning Board meeting, which was held on March 9, 2022, Mr. Oh made comments regarding the process and makeup of the Birmingham Triangle District Corridor Improvement Authority Board (of which he is a member) along with potential impacts of rezoning on the neighborhood. Please find the Planning Board Minutes of March 9, 2022 as Attachment 6. In this statement, Mr. Oh made multiple erroneous statements of the Board's makeup which brings about more issues also causing potential ethic violations. Please review attachment 7, which is the City Clerk's memo to me on March 15, 2022 detailing the correct information regarding the Board and a transcript of Mr. Oh's full statement. You will also find Attachment 8, which is the City Manager's report offered to the City Commission on March 28, 2022, wherein I had to "set the record straight" for the City Commission for Mr. Oh's misstatements.

By having this misinformation stated to the world, Mr. Oh is potentially in violation of Sec. 2-323(5), which states:

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

(5) Affecting adversely the confidence of the public or the integrity of the city government."



In conclusion, I bring the aforementioned facts to the Ethics Board requesting an Advisory Opinion as to whether or not sections of the Birmingham City Code of Ethics have been potentially violated by Mr. Oh's actions.

I look forward to any questions you may have, and I will make myself available for a meeting as requested.

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

A handwritten signature in black ink, which appears to read "Thomas M. Markus", is written over a horizontal line.

Thomas M. Markus, Birmingham  
City Manager  
[tmarkus@bhamgov.org](mailto:tmarkus@bhamgov.org)  
(248) 530-1809

Date: 2-27-22

Attachments:

1. Social Media Post and Petition Circulated by Mr. Oh
2. Application by Mr. Oh for City Board or Committee
3. Affidavit and Disclosure Statement by Mr. Oh
4. Affirmation of Support by Mr. Oh
5. Sworn Oath of Office by Mr. Oh
6. Planning Board Minutes of March 9, 2022
7. Clerks Memo to City Manager of March 15, 2022
8. City Manager's Report with Clarifications Pertaining to The Triangle District

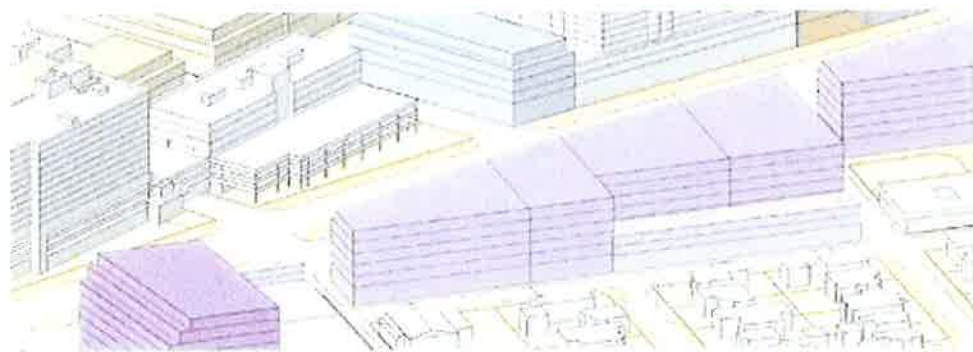


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## Revision of Triangle District Master Plan



heights:

development 56'  
development 68'  
development 80'

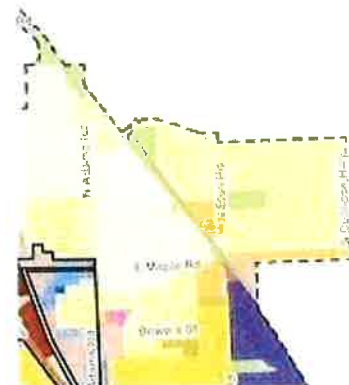
Max allowable heights:

MU-3 MFR 5-story development - 60'  
MU-5 SF 6-story development - 82'  
MU-7 9-story development - 115'

iting Development Potential in Neighboring Overlays.



ASF-3 SF 2-story development  
R2 MFR 2-story development  
MU-3 MFR 5-story development  
MU-5 SF 6-story development  
MU-7 9-story development



## Revision of Triangle District Master Plan

47 have signed. Let's get to 100!



At 100 signatures, this petition is more likely to be featured in recommendations!



**At 100 signatures, this petition is more likely to be featured in recommendations!**

---



[Samuel Oh](#) started this petition

Fellow Triangle District neighbors,

My name is Samuel Oh and I am a member of the Corridor Improvement Authority (Triangle District Development) board.

You may be aware that a Triangle District Redevelopment Plan has been created and approved on a provisional basis and will be going through final approval soon. See attached photos for diagram and mass render of the proposed plan.

As a fellow resident, I believe that there are many aspects of this plan that would be detrimental to our neighborhood community. The plan calls for significant commercial development which includes multi story parking structures and buildings as tall as 7-9 stories (including some 4 story structure that would bump up right against our homes).

I have created a petition asking for the Redevelopment Master Plan to be revised (requested modifications are detailed in the petition). Please consider signing the petition and encouraging your neighbors and family members to sign as well. I believe by partnering together we can impact and shape the future of our community.

If you have any questions or need additional information, I can be reached at [Samuel.e.oh@gmail.com](mailto:Samuel.e.oh@gmail.com).

— PETITION BEGINS HERE —

### MARCH 2022 PETITION FOR REVISION OF THE BIRMINGHAM TRIANGLE DISTRICT DEVELOPMENT MASTER PLAN

We, the undersigned residents of the City of Birmingham, petition the Birmingham City Council and Planning Board to make modifications to the current Triangle District Development Master Plan as outlined below:

- 1) Create step back provisions on all commercial buildings and structures that would be adjacent to or facing residential areas.
- 2) Modify the planned commercial / residential transition zones to include more open space.
- 3) Include creation of a neighborhood playground / dog park within a transition zone.
- 4) Include traffic mitigation as part of the master plan for safety and walkability of the many school aged children who live in the community.

Sign this petition

47 have signed. Let's get to 100!



**At 100 signatures, this petition is more likely to be featured in recommendations!**



At 100 signatures, this petition is more likely to be **featured in recommendations!**

## Sign this petition


First name

Last name

Email

Hazel Park, 48030  
United States

☒ Display my name and comment on this petition

 Sign this petition

By signing, you accept Change.org's [Terms of Service](#) and [Privacy Policy](#), and agree to receive occasional emails about campaigns on Change.org. You can unsubscribe at any time.



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[Start a petition](#)

Report a policy violation

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- [Careers](#)
- [Team](#)

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- [Guides](#)
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- [Policies](#)
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English (United States) ▼

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English (United States) ▼







OFFICE USE ONLY  
Meets Requirements? Yes No  
Will Attend / Unable to Attend

## APPLICATION FOR CITY BOARD OR COMMITTEE

Thank you for your interest in serving on a Board or Committee. The purpose of this form is to provide the City Commission with basic information about applicants considered for appointment. **NOTE:** Completed applications are included in the City Commission agenda packets. The information included on this form is open to the public. All Board and Committee members are subject to the provisions of the Ethics Ordinance (Chapter 2, Article IX of the City Code).

Information on various Boards and Committees and a list of current openings can be found on the City website at [www.bhamgov.org/boardopportunities](http://www.bhamgov.org/boardopportunities).

(Please print clearly)

Board/Committee of Interest TRIANGLE DISTRICT CORRIDOR IMPROVEMENT AUTHORITY

Specific Category/Vacancy on Board PRESIDENT OWNER (see back of this form for information)  
RECONSTRUCTION

Name SAMUEL OH

Phone 202-339-8308

Residential Address 220 HAZEL ST.

Email SAMUEL.OH@F.MAIL.UWM

Residential City, Zip BIRMINGHAM, MI, 48009

Length of Residence 2 YES

Business Address \_\_\_\_\_

Occupation FAMILY OFFICE MANAGER

Business City, Zip \_\_\_\_\_

Reason for Interest: Explain how your background and skills will enhance the board to which you have applied \_\_\_\_\_

TRIANGLE DISTRICT PRESIDENT. I WANT TO END LAND BANKING IN THE DISTRICT. WE NEED TO BUILD OUT THREE SPACES FOR USE AND PURPOSE. USE YOUR RELATED EMPLOYMENT EXPERIENCE 24 BILLION \$/YR RE RECURRENT AND INVESTMENT FOR FORTUNE 100 COMPANY.

List your related community activities RECENTLY FWD FOR BOE IN BIRMINGHAM

List your related educational experience MASTERS ARCH/RE DEVELOPMENT (U.P.M)

To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit? If yes, please explain: NO

Do you currently have a relative serving on the board/committee to which you have applied? NO

Are you an elector (registered voter) in the City of Birmingham? YES

Signature of Applicant \_\_\_\_\_

Date 11/10/20

Return the completed and signed application form to: City of Birmingham, City Clerk's Office, 151 Martin, Birmingham, MI 48009 or by email to [carol@bhamgov.org](mailto:carol@bhamgov.org) or by fax to 248-330.1260. Updated 12/02/18







## AFFIDAVIT AND DISCLOSURE STATEMENT

According to section 2-326 of the Birmingham City Code, "Immediately following an election, employment or appointment of a City official or employee, the City Clerk shall provide the individual with an Affidavit and Disclosure Statement form. Within twenty days after election, appointment, employment or any change in the facts set forth in the City official's or employee's previously filed Affidavit and Disclosure Statement, all City officials and employees shall file with the City clerk an Affidavit and Disclosure Statement." Chapter 2 – Effective April 28, 2003

**Date** 12/19/2020

**Name** Samuel Oh

**Position/Board** Triangle District Corridor Improvement Authority

1. To the best of your knowledge do you or any members of your immediate family own any interest in real property located within the City of Birmingham, in land contiguous to the City of Birmingham, or in any area to which the City of Birmingham is party?  
Yes
2. If your answer to question 1 is affirmative, to the best of your knowledge state the following information for each such interest owned:
  - a. The nature of your interest in the real property Primary Residence / Homeowner
  - b. The location of the real property (for improved property, provide the street address; for unimproved property state its location in relation to existing streets)  
820 Hazel St, Birmingham MI 48009
  - c. The property's permanent real estate tax identification number Parcel Number 08-19-36-233-001
3. To the best of your knowledge, do you or a member of your immediate family own five percent (5%) or more of any business entity located in the City of Birmingham? No
4. If your answer to question 3 is in the affirmative, state the following, to the best of your knowledge:
  - a. The name of the entity \_\_\_\_\_
  - b. The address of the entity \_\_\_\_\_
  - c. The nature of your relationship to the entity \_\_\_\_\_
  - d. The date relationship commenced \_\_\_\_\_

5. To the best of your knowledge, do you or a member of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit that is not reported in the prior answers? No
6. To the best of your knowledge, have you or a member of your immediate family given or received any gifts, other than from immediate family members, the value of which exceeds \$50.00, within the last year, or since the effective date of this code, whichever time period is shorter, to or from any person or business or other legal entity doing business with the City, other than legal campaign contributions?  
No

If so, supply the following information for each donee or donor:

NAMES OF DONOR/DONEE	ADDRESS	DATE GIFT RCVD/DONATED	NATURE OF GIFT


"I have read and I understand the Code of Ethics of the City of Birmingham and, to the best of my knowledge, I am not in conflict with its provisions."



Signature of city official or employee

Date

Subscribed and sworn to before me this 21 day of December, 2020  
Notary Public  
Acting in the County of Macomb, Michigan

  
Signature of Notary  
My commission expires Sep. 4 2026

ABRIAL HAUFF  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF MACOMB  
MY COMMISSION EXPIRES Sep 4, 2026  
ACTING IN COUNTY OF

<b>FOR OFFICE USE ONLY</b>	
Accepted by <u>Abrial Hauff</u>	Date <u>12/21/2020</u>





**AFFIRMATION OF SUPPORT  
OF THE CITY CHARTER AND CODE OF ORDINANCES**


Resolution 09-261-17, adopted by the Birmingham City Commission on September 25, 2017 requires an affirmation of support of the City of Birmingham Charter and Code of Ordinances as a supplemental document to be signed by appointed and elected officials along with the Ethics Affidavit and Disclosure statement.

**Date** 12/19/2020

**Name** Samuel Oh

**Position/Board** Triangle District Corridor Improvement Authority

I do solemnly swear (or affirm) that I will support the City of Birmingham Charter and Code of Ordinances in the performance of the duties of my office.

  
Signature

Date

**FOR OFFICE USE ONLY**  
Accepted by Heidi Hauff Date 12/21/2020



STATE OF MICHIGAN  
COUNTY OF OAKLAND

I do solemnly swear (or affirm) that I will support the Constitution of the United States of America and the constitution of this state and endeavor to secure and maintain an honest and efficient administration of the affairs of Birmingham, free from partisan distinction or control, and to perform the duties of the office of

The planning Board  
according to the best of my ability.

Signed [Signature]

Subscribed and sworn to before me this 17 day of Dec 2020

[Signature]  
City Clerk

STATE OF MICHIGAN  
COUNTY OF OAKLAND

I do solemnly swear (or affirm) that I will support the Constitution of the United States of America and the constitution of this state and endeavor to secure and maintain an honest and efficient administration of the affairs of Birmingham, free from partisan distinction or control, and to perform the duties of the office of

Birmingham Triangle District Corridor  
Improvement Authority  
according to the best of my ability.

Signed [Signature]

Subscribed and sworn to before me this 21 day of December 2020

[Signature]  
City Clerk

STATE OF MICHIGAN  
COUNTY OF OAKLAND

I do solemnly swear (or affirm) that I will support the Constitution of the United States of America and the constitution of this state and endeavor to secure and maintain an honest and efficient administration of the affairs of Birmingham, free from partisan distinction or control, and to perform the duties of the office of

The Board of Review  
according to the best of my ability.

Signed [Signature]

Subscribed and sworn to before me this 21 day of December 2020

[Signature]  
City Clerk





- Number Two merits inclusion in terms of its effects neighborhood cohesion.

#### Public Comment

Samuel Oh, resident and member of the Corridor Improvement Authority, spoke on behalf of his neighborhood group in the Triangle. He expressed concerns about the speed and density of traffic, about the process of appointments for the Corridor Improvement Authority, and about potentially increasing density in the Triangle. He requested that a park or open space be considered for the Triangle.

Chair Clein clarified that:

- The Plan itself makes recommendations but does not rezone properties; and,
- The recommendations made for the Triangle in the Plan align with the Triangle Plan which was adopted by the City in 2007.

Mr. Oh reiterated his belief that the Plan rezoned properties in the Triangle to a higher density.

David Bloom said the Plan should provide more clarity on how a Master Plan influences zoning, noting that the process may confuse some residents. He advocated for clarity in the Plan as to whether there is insufficient parking in the City, recommended public engagement on the Plan's recommendations, raised concerns about having cafes in the parks, and said there should be clarity regarding whether a mezzanine is considered a 'floor' in describing building heights.

Jack Reinhardt, Managing Partner of the 555 Building, expressed concern about the S. Old Woodward project. He said he had not received notice of discussions of the S. Old Woodward project.

Chair Clein clarified that the present topic before the Board was the Master Plan.

Mr. Williams said Mr. Reinhardt's comments regarding the S. Old Woodward project would be more appropriately directed to the Commission.

Mr. Reinhardt then expressed concern about the loss of parking in the S. Old Woodward area.

## **2. Outdoor Dining Standards (previously Item J1)**

PD Dupuis introduced the item.

Mr. Share recommended in Article 4, Section 4.44(B), "or by the Planning Division at the discretion of the Planning Director" would be changed to "or by the Planning Division at the discretion of the Planning Board", and that "throughout the year with a valid Outdoor Dining License" be removed from Article 4, Section 4.44(B)(5).

Mr. Jeffares and Chair Clein said the 'written permission' referenced in Article 4, Section 4.44(B)(4) should require renewal yearly and should be submitted to the City as part of the Outdoor dining patio renewal process. Chair Clein recommended Staff determine where best to include that as part of the policy.





## MEMORANDUM

City Clerk's Office

**DATE:** March 15, 2022

**TO:** Thomas M. Markus, City Manager

**FROM:** Alexandria Bingham, City Clerk

**SUBJECT:** Triangle District – Corridor Improvement Authority

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The Birmingham Triangle District Corridor Improvement Authority (BTDCIA) was created by resolution that was adopted by the City Commission on November 10, 2008.

In the resolution section six clearly outlines the makeup of the board.

6. Board of Directors. The Authority shall be under the supervision and control of the Board. The Board shall consist of the Chief Executive Officer, or his or her assignee, and six additional members. Members shall be appointed by the Chief Executive Officer, subject to approval by the City Commission. Not less than a majority of the members shall be persons having an ownership or business interest in property located in the Development Area. Not less than 1 of the members shall be a resident of the Development Area, or of an area within 1/2 mile of any part of the Development Area. Members shall be appointed to serve for a term of four years, except that of the members first appointed, an equal number, as near as is practicable, shall be appointed for terms of 1 year, 2 years, 3 years, and 4 years. A member shall hold office until the member's successor is appointed and qualified. Before assuming the duties of office, a member shall qualify by taking and subscribing to the constitutional oath of office. An appointment to fill a vacancy shall be made by the Chief Executive Officer for the unexpired term only. Members of the Board shall serve without compensation, but shall be reimbursed for actual and necessary expenses. The Chairperson of the Board shall be elected by the Board. The Board shall adopt Bylaws governing its procedures subject to the approval of the City Commission.

In summary, the board makeup includes:

- Members appointed by the Mayor subject to approval by the City Commission
- Not less than a majority of the members shall be persons having an ownership or business interest in property located in the Development Area
  - The majority of 7 is 4
- Not less than 1 of the members shall be a resident of the Development Area, or of an area within 1/2 mile of any part of the Development Area
  - May have up to 2 residents
- The makeup of the board could be
  - 4 members with a business interest or ownership in property and 2 residents
  - or
  - 5 members with a business interest or ownership and 1 resident

Historically this board has suffered from vacancies and has not had a full roster, meaning 6 members plus a commissioner, 7 total, since December 13, 2016. Many applicants for this board are ineligible because they do not have a business interest or ownership within the Development Area or qualify as a resident of the Development Area.

The current makeup of the board includes:

- Commissioner Baller
- 2 Residents
- 2 Persons with Business Ownership/Interest

Before the scheduled board appointment interviews on January 24, 2022 City Staff had only confirmed that the applicants were residents or property owners in the Development Area with respect to the map provided of the Triangle District. Both applicants were residents. Staff missed the critical point in the 2008 resolution that states:

**Not less than a majority of the members shall be persons having an ownership or business interest in property located in the Development Area.**

When staff reviewed the item, staff determined that both applicants were residents and that there were already 2 resident members on the board. The agenda packet was amended with a memo to explain why the applications must be held and considered at a later time in order to comply with the member requirements of the resolution. The two vacancies on the board at this point must be filled by applicants with a business interest or ownership in the Development Area. Clerk's office staff informed the applicants of the situation and the amended agenda packet was released.

The Clerk's office is currently holding the resident applications until qualified applicants with business ownership/interest are submitted in order fulfill the requirements as prescribed by the November 10, 2008 resolution.

At the March 9, 2022 Planning Board meeting where public comment was taken on the 2040 Master Plan study session item. Samuel Oh stated, "We are very concerned that um when Dr. Falucca applied to the CIA board, and it was goi-, and I know you guys don't have oversight of this, but I think its very important for you to know, he is a resident of the triangle district and he was going to get voted in, and it was parcipituously cancelled, and we were told as residents, and Dr. Falucca was told that uh a a change in the by-laws was instigated in which previously there were 7 board members to be allowed, and if Dr. Falucca got voted in that would have made 3 residents and 3 commercial representation, and that doesn't build um transparency or confidence with with the with the neighborhood. Dr. Falucca asked that his uh application would be not be declined but held until another position was open, and his position, his application was not even considered for an alternate, um that really upsets the residents because that doesn't show transparency or or even like um cooperations amongst the resident voters of the area and that really builds a lot of distrust. I would like you to take that into consideration because the communication in which um the urban planning of the master planning of the triangle district seems to be just like a bulldozing over of the residential areas in order to increase taxable income for the city by increasing the commercial er maximizing the commercial values around and um we don't appreciate that in fact we have a petition already being signed right now a round and we would like to know where we could uh submit that petition to the urban planning committee and also to the City Commissioners."

Key facts to point out regarding the statement by Mr. Oh:

- There was no guarantee that Mr. Falucca was going to be appointed until the Commission conducted interviews and made nominations.
- There has not been any new resolution which would change the makeup of the board.
- Both residential applications from the January 24, 2022 appointments are being held until there is a vacancy of a resident position available on the board.
- The applications were not declined.
- Currently there are no alternate positions for the BTDCIA.

ATTACHMENTS:

- Agenda Packet Information for the Board Appointments on January 24, 2022
- March 9, 2022 Planning Board Meeting Comments From Samuel Oh start at **1:29.01**  
<https://vimeo.com/event/3472/videos/681164702/>





## CITY MANAGER'S REPORT

March 2022

### City Manager's Office

### Setting the Record Straight

#### **Birmingham Triangle District Corridor Improvement Authority (BTDCIA)**

At the Planning Board meeting held on March 9, 2022 a resident made comments regarding the process and makeup of the BTDCIA board along with the potential impact of rezoning on the neighborhood surrounded by the Triangle District as outlined in the draft of the 2040 plan. Linked below is a detailed memo and supporting documents that further explain the resident's concerns, specifically in regards to the makeup of the board and the parameters that were passed by resolution # 11-363-08 of the City Commission on November 10, 2008. There have not been any changes to the makeup of this board since it was established in 2008. No alternate positions for the BTDCIA have been created to date by resolution of the City Commission. Most importantly, the board must have a majority of its members identified as persons having an ownership or business interest in property located in the Development Area. Download the [memo regarding this here](#).

Currently the board is comprised of the following members:

- Commissioner Baller
- Two persons having an ownership or business interest in property located in the Development Area
- Two residents of the Development Area as defined in the 2008 resolution

To maintain the requirements of the resolution passed, the board must have:

**Not less than a majority of the members shall be persons having an ownership or business interest in property located in the Development Area**

The City Commission will be seeking applicants who are persons having an ownership or business interest in property located in the Development Area.



2040

## Clarifications Pertaining to the Triangle District

### **Are there any current proposals to increase density in the Triangle District?**

No. The most recent plan associated with the area is the Triangle District Urban Design Plan, which was adopted in 2007. No changes are proposed to the Triangle District Urban Design Plan at this time.

### **Has a Triangle District Redevelopment Plan been created and approved on a provisional basis, with final approval soon?**

There is no "Triangle District Redevelopment Plan" being considered or approved by the City at this time.

The City has recently amended its Tax Increment Financing ("TIF") Plan through the Corridor Improvement Authority, the purpose of which is to help leverage funding for the construction of a parking structure in the Triangle District. The TIF Plan does not impact the height, massing or permitted uses currently in place within the Triangle District.

The City is currently working on an updated citywide comprehensive plan, known as the Birmingham 2040 Plan. A comprehensive plan is a document designed to guide the future actions of the entire community. It presents a citywide vision for the future, with long-range goals and objectives for all activities that affect the local government. After three years of public engagement and review, the Draft 2040 Plan is expected to be sent to the consultant team shortly for revisions toward a third and final draft.

### **Does the Draft 2040 Master Plan call for any increases in building height or massing in the Triangle District?**

No. The Draft 2040 Plan does not recommend any additional building height or massing in the Triangle District. At present, the Triangle Overlay District zoning consists of three mixed-use overlay districts (MU3, MU5, MU7), and one attached single family zoning district (ASF3). These zoning districts have been in place since 2007. The parking related recommendations contained within the Draft 2040 Plan are taken directly from the Triangle District Urban Design Plan from 2007.

### **Do existing or proposed zoning regulations allow 4-story structures to "bump up" immediately against single family homes within the Triangle District?**

No. The existing zoning regulations do not allow 4-story structures to "bump up" immediately against single-family homes within the Triangle District. The current permissible height of buildings in the mixed-use zones vary from 2- and 3-story minimums to 9 stories maximum in the MU7 zone at the tallest. The R2 single-family zone located in the center of the Triangle District is adjacent to only MU3 zoned properties, which have a 3-story maximum building height within 100 feet of the residential boundary. There are no changes proposed to the existing height regulations in the Triangle District.

### **Are there step back provisions on all commercial buildings and structures that would be adjacent to or facing residential areas?**

Yes. There are currently step back provisions within the Zoning Ordinance that require additional bonus stories to be stepped back at a 45-degree angle from the top story allowed by right without the height bonus. In addition, bonus stories are not permitted in the Triangle District within 100 feet from a single-family residential zoning district, which offers an additional step back.

### **Are there plans to include more open space (such as a neighborhood playground, dog park, etc.) in the Triangle District?**

Yes. The Triangle District Urban Design Plan recognized a need for a park and recommended that the City pursue the Worth Street extension, which included the creation of Worth Park as an open space feature for the area. The Draft 2040 Plan explores many strategies for open space in the Triangle District. One such recommendation is the pursuance of Worth Park in the center of the Triangle District. Another recommendation in the Draft 2040 Plan is to "create subdivision and zoning standards to encourage redevelopment of the Adam's Square shopping center, offering significant development capacity in exchange for a public open space and public parking."





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**Are there plans to enhance the safety and walkability for school-aged children in the Triangle District?**

Yes. The Triangle District Urban Design Plan contains many specific recommendations to help reduce speeds on local streets, improve safety for vehicles and pedestrians, widen sidewalks and ensure proper access to residences and businesses.

In addition, safety and walkability are hallmarks of the Draft 2040 Plan. Throughout the Draft 2040 Plan, there are recommendations and emphasis placed throughout with tactics including, but not limited to, creating safer crosswalks at key locations, adding multimodal enhancements in seam areas to help safely connect neighborhoods across larger roads, and even lane reduction recommendations for Woodward Avenue, which the City is currently pursuing.

**What is the status of the Citywide Master Plan?**

The Planning Board completed its thorough review of the second draft on March 9, 2022. A summary of the review and a prioritization will be brought to the City Commission at a joint meeting on April 18, 2022. Following this meeting, requested changes to the second draft will be incorporated into a final draft of the 2040 Plan to be considered later this year.

**How can I learn more about the Citywide Master Plan and participate in future meetings?**

Visit [www.thebirminghamplan.com](http://www.thebirminghamplan.com) for all documents relating to the Citywide Master Plan, including the consultant's presentation slides, relevant data, surveys, documents and an email communication option to send comments directly to the planning team. Recordings of Planning Board meetings are available at [www.bhamgov.org/planningboard](http://www.bhamgov.org/planningboard).

**Residents are encouraged to follow the city on social media and sign up for the Citywide Master Plan Constant Contact group at [www.bhamgov.org/enews](http://www.bhamgov.org/enews)**