

**CITY OF BIRMINGHAM
BOARD OF ETHICS AGENDA
JANUARY 30, 2023
MUNICIPAL BUILDING, 151 MARTIN
11:00 AM**

I. CALL TO ORDER

James Robb, Chairperson

II. ROLL CALL

Alexandria Bingham, City Clerk

III. APPROVAL OF MINUTES

A. Approval of minutes of November 21, 2022

IV. UNFINISHED BUSINESS

A. Continue the review of the Ethics Ordinance and Board Rules of Procedure

V. NEW BUSINESS

A. To acknowledge the receipt of the request for an advisory opinion for City Commissioner Brad Host, submitted by City Manager Thomas M. Markus on January 27, 2023. In accordance with the ordinance, the ethics board shall set the date for the hearing to render an advisory opinion within 7 days of receipt of the advisory opinion request. The notice for the hearing must be given at least 28 days in advance of the hearing.

Motion to set a hearing date of _____.

INFORMATION ONLY

- A. Update on the City of Detroit Ethics Conference – Spring 2023
- B. Gunsberg – Notice of Administrative Dismissal of Ethics Complaint

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 on January 4, 2023.

Alexandria Bingham

**City of Birmingham
Board of Ethics Minutes
November 21, 2022
151 Martin, Birmingham**

I. CALL TO ORDER

Chair Robb called the meeting to order at 10:00 a.m.

II. ROLL CALL

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

Absent: None

Staff: City Clerk Bingham, City Attorney Kucharek

III. APPROVAL OF MINUTES

MOTION: Motion by Chair Robb, seconded by Ms. Fierro-Share:
To approve the minutes of September 22, 2022 as submitted.

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

IV. UNFINISHED BUSINESS

None.

V. NEW BUSINESS

A. Christal Phillips, Executive Director of the Board of Ethics for the City of Detroit – Discussion regarding suggested topics and activities for an Ethics Conference in Downtown Detroit

The Board and Ms. Phillips discussed their respective Boards' work and policies.

The following were listed as potential topics for an Ethics Conference in Detroit:

- How to create an Ethics ordinance;
- Changing community culture to be in alignment with an Ethics ordinance;
- What is the mission of an Ethics Board - proactive or reactive;
- Having a roundtable discussion of what different Ethics Boards finds works or does not work; and,
- When and whether confidentiality and closed sessions are appropriate, especially given FOIA and Open Meetings Act requirements.

The Michigan League of Municipal Clerks, the Birmingham Board of Ethics' training video, and SEMCOG were recommended as potential resources for the Conference.

B. Review of the Ethics Ordinance and Board Rules of Procedure

The Board, Staff, and Ms. Phillips discussed the item.

Thematic discussion points were:

- Each section of the ordinance stands on its own, as well as being part of the overall ordinance;
- The point of the ordinance is to make officials aware of the potential for conflict between one's personal interests and the public interests, and how those interests can sometimes conflict or be entwined;
- References in the ordinance to 'highest standards' or 'above reproach' should be seen as setting aspirations for public officials. Those particular phrases, however, are not the parts of the ordinance that public officials might be found in violation of;
- Some concerns were raised about the subjective judgements required for phrases like 'highest standards' or 'above reproach';
- Whether the ordinance should be treated as a document to be interpreted by the Board rather than changed;
- Section 2-324(a)(6) and Section 2-324(a)(9) may be in conflict;
- Section 2-324(a)(9) could be clarified to indicate that a public official would be expected to recuse from a vote if their interests would be directly affected by a vote, and would be expected to vote if their interests would be indirectly affected by a vote, with the emphasis that they still must act in accordance with 2-324(a)(9)(a-c) and with the rest of the ordinance if they are required to vote due to an indirect interest;
- Section 2-324(a)(9) could also be left as-is because it allows for a public official to vote even if their interests would be directly affected as long as they comply with 2-324(a)(9)(a-c);
- 2-324(a)(9) could also be modified to specify that a vote does not represent a conflict when the decision would impact the public official no differently than it would affect every other citizen;
- It was noted that 2-324(a)(6) references a 'Section 5 B' that no longer exists and should be changed to 'Section 2-326';
- Rewording 2-324(a)(4) should also be considered, since the ordinance in general aims to prevent the appearance of a conflict of interest; and,
- The definition of 'personal interest' in Sec 2-322 could benefit from re-evaluation.

The Board decided that further review would occur at a later date.

VI. PUBLIC COMMENT

VII. ADJOURN

No further business being evident, the Board motioned to adjourn at 12:05 p.m.

Alexandria Bingham, City Clerk

A handwritten signature in black ink, appearing to read 'Laura Eichenhorn', with a stylized, flowing script.

Laura Eichenhorn, City Transcriptionist



MEMORANDUM

City Clerk's Office

DATE: January 20, 2023
TO: Board of Ethics
FROM: Alexandria Bingham, City Clerk
SUBJECT: Review of the Ethics Code and Procedural Rules

INTRODUCTION:

Near the conclusion of the Board of Ethics meeting held on September 22, 2022 the board came to a consensus regarding setting some time aside to review the current city code pertaining to ethics and the procedural rules in place for the Board of Ethics.

The board met on November 21, 2022 to begin discussions on potential revisions to the Ethics Ordinance, at that meeting the board decided that additional time to discuss revisions would be necessary.

ATTACHMENTS:

1. Birmingham City Code – Article IX. – Ethics
2. Board of Ethics Procedural Rules
3. Affidavit and Disclosure Statement
4. Advisory Opinion Request Form
5. Ethics Complaint Form

ARTICLE IX. - ETHICS

Footnotes:

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Editor's note— Ord. No. 1810, adopted May 19, 2003, states that the provisions of this article shall become effective July 21, 2003.

Sec. 2-320. - Public policy.

Public office and employment are public trusts. For government to operate properly, each city official, employee, or advisor must earn and honor the public trust by integrity and conduct.

The city hereby declares that all city officials and employees must avoid conflicts between their private interests and the public interest. Public officials and employees must:

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

To enhance public trust, the city must provide its officials and employees with adequate guidelines for separating their roles as private citizens from their roles as public servants.

This Code sets minimum standards of ethical conduct for all city officials and employees, elected or appointed, paid or unpaid. It proscribes actions incompatible with the public interest and directs disclosure of private financial or other interests in matters affecting the city.

(Ord. No. 1805, 4-28-03; Ord. No. 1810, 5-19-03; Ord. No. 1819, 1-12-04)

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

City officials and employees are bound to uphold the Constitution of the United States and the Constitution of the State and to carry out impartially and comply with the laws of the nation, state, and the city. City officials and employees must not exceed their authority or breach the law or ask others to do so. City officials and employees are bound to observe in their official acts the highest standards of ethical conduct and to discharge the duties of their offices faithfully, regardless of personal consideration, recognizing that their official conduct should be above reproach.

All city officials and employees shall safeguard public confidence by being honest, fair and respectful of all persons and property with whom they have contact, by maintaining non-partisanship in all official acts, and by avoiding official conduct which may tend to undermine respect for city officials and employees and for the city as an institution.

(Ord. No. 1805, 4-28-03; Ord. No. 1810, 5-19-03; Ord. No. 1819, 1-12-04; Ord. No. 2177, 3-28-16)

Sec. 2-322. - Definitions.

City official or employee means a person elected, appointed or otherwise serving in any capacity with the city in any position established by the City Charter or by city ordinance which involves the exercise of a public power, trust or duty. The term includes all officials and employees of the city, whether or not they receive compensation, including consultants and persons who serve on advisory boards and commissions. The term does not include election inspectors and student representatives appointed to city boards or commissions.

Consultant means a person who gives professional advice or services regarding matters in the field of his or her special knowledge or training.

Compensation means any money, property, thing of value or benefit conferred upon or received by any person in return for services rendered or to be rendered to himself or herself or any other party.

Financial interest means any interest in money, property or thing of value or benefit.

Immediate family means a city official or employee, his or her spouse, parents or children.

Official duties or *official action* means a decision, recommendation, approval, disapproval or other action or failure to act, which involves the use of discretionary authority.

Personal interest means an interest arising from blood or marriage relationships or any business association.

Private gain means any interest or benefit, in any form, received by a city employee or official.

Substantial shall mean considerable in quantity or significantly great.

(Ord. No. 1805, 4-28-03; Ord. No. 1810, 5-19-03; Ord. No. 1819, 1-12-04)

Sec. 2-323. - Intention of code.

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

- (1) Using public employment or office for private gain;
- (2) Giving or accepting preferential treatment, including the use of city property or information, to or from any organization or person;
- (3) Losing complete independence or impartiality of action;
- (4) Making a city decision outside official channels; or
- (5) Affecting adversely the confidence of the public or the integrity of the city government.

The code of ethics is intended to be preventative and not punitive. It should not be construed to interfere with or abrogate in any way the provisions of any federal or state statutes, the City Charter, the city ordinances, or any rights and/or remedies guaranteed under a collective bargaining agreement.

This declaration of policy is not intended to apply to contributions to political campaigns, which are governed by state law.

(Ord. No. 1805, 4-28-03; Ord. No. 1810, 5-19-03; Ord. No. 1819, 1-12-04)

Sec. 2-324. - Promulgation.

(a) *Conflict of interest—General.*

- (1) No official or employee of the city shall divulge to any unauthorized person, confidential information acquired in the course of employment in advance of the time prescribed for its authorized release to the public.
- (2) No official or employee of the city shall represent his or her personal opinion as that of the city.
- (3) Every official or employee of the city shall use personnel resources, property and funds under his or her

official care and control solely in accordance with prescribed constitutional, statutory and regulatory procedures and not for personal gain or benefit.

- (4) No official or employee of the city shall directly or indirectly, solicit or accept any gift or loan of money, goods, services or other thing of value for the benefit of any person or organization, other than the city, which tends to influence the manner in which the official or employee or any other official or employee performs his or her official duties.

Gratuities do not include fees for speeches or published works on legislative subjects and, except in connection therewith reimbursement for expenses for actual expenditures for travel, and reasonable subsistence, for which no payment or reimbursement is made by the city, invitations to such events as ground breakings, grand openings, charitable or civic events, or inconsequential gifts from established friends.

- (5) No official or employee of the city shall engage in a business transaction in which he or she may profit because of his or her official position or authority or benefit financially from confidential information which he or she has obtained or may obtain by reason of such position or authority.
- (6) No official or employee of the city shall engage in or accept employment or render services for any private or public interest when that employment or service is incompatible or in conflict with the discharge of his or her official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of his or her official duties.

This section shall not prohibit a part-time elected or appointed city official from engaging in private employment or business on his or her own time as a private citizen and where city business is not involved, subject to his or her disclosing such private employment or business on the public record for any matter on which he or she may be called upon to act in his or her official capacity, in accordance with Section 5 B below. He or she shall refrain from voting upon or otherwise participating in debate on any such matter.

- (7) No official or employee of the city shall participate, as an agent or representative of the city, in the negotiation or execution of contracts, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision, relating to any business entity in which he or she has, directly or indirectly, a financial or personal interest.
- (8) No official or employee of the city shall use, or attempt to use, his or her official position to secure, request or grant unreasonably any special consideration, privilege, exemption, advantage, contract or preferential treatment for himself, herself, or others, beyond that which is available to every other citizen.
- (9) It is recognized that various boards and committees are part of the plan of government for the city. As such, it is further recognized that by virtue of the various requirements for membership of the board, a member may be placed in the position of participating in a decision that may directly or indirectly affect his or her financial or personal interests. Therefore, those members of the various boards and committees in the city, as they may be established from time to time, may participate in such decisions provided that they act:
- a. In furtherance of the public good;
 - b. In compliance with the duties of their respective boards; and,
 - c. In a manner consistent with subsection (8) of this section.
- (10) Determination of conflict of interest. A conflict of interest exists if:
- a. The city official or employee has any financial or personal interest, beyond ownership of his or her place

of residence, in the outcome of a matter currently before that city official or employee, or is associated as owner, member, partner, officer, employee, broker or stockholder in an enterprise that will be affected by the outcome of such matter, and such interest is or may be adverse to the public interest in the proper performance of said official's or employee's governmental duties, or;

- b. The city official or employee has reason to believe or expect that he or she will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his or her official activity, or;
- c. The public official has any other prohibited interest as defined by state statutes relating to conflicts of interest.

(11) Subsequent conflict of interest. No official or employee of the city shall acquire any financial interest in or accept any employment concerning any project which has been granted approval by the city or any commission, board, department or employee thereof within one year of the official's or employee's participation in any manner in considering or recommending the approval or disapproval of said project.

(b) *Full disclosure.*

- (1) Responsibility to disclose. It shall be the responsibility of the official or employee to disclose the full nature and extent of his or her direct or indirect financial or personal interest in a matter before him or her.

No official or employee of the city shall participate, as an agent or representative of the city, in approving, disapproving, voting, abstaining from voting, recommending or otherwise acting upon any matter in which he or she has directly or indirectly a financial or personal interest. The official or employee shall, in such circumstances, recuse himself or herself from the matter before him or her.

- (2) Disclosure of conflict of interest and disqualification.

- a. Any city official or employee who has a conflict of interest, as defined herein, in any matter before the city shall disclose such fact on the appropriate record of the city prior to discussion or action thereon and shall refrain from participating in any discussion, voting or action thereon, as follows, provided that such exceptions shall be observed as are permitted by law:

- 1. A city commissioner shall disclose any conflict of interest and the nature and extent of such interest on the record of the city commission;
- 2. A member of any city board, commission or committee shall disclose any conflict of interest and the nature and extent of such interest on the records of said board, commission or committee;
- 3. A city employee who has a financial or other interest in a matter before the city commission or any city board, commission or committee and who participates in discussion with, or gives an official opinion to the city commission, or to such other city board, commission or committee relating to such matter, shall disclose on the records of the city commission or such other city board, commission or committee, as the case may be, any conflict of interest and the nature and extent of such interest.
- 4. Otherwise, any appointed city official or employee shall address such a disclosure to the supervisory head of his or her department, and any elected city official shall address such a disclosure to the general public.

- b. If a city official, commissioner or employee who has a conflict of interest, as defined herein, in any matter before the city, and who discloses that conflict on the appropriate records but who refuses to refrain from discussion, deliberation or voting thereon, the matter under consideration shall be immediately

referred to the board of ethics for a final determination as to the conflict in question and whether the official, commissioner or employee must refrain from discussion, deliberation, action or voting thereon.

- c. Within 20 days after election, employment, appointment, or the effective date of this ordinance, or any change in the facts set forth in the city official's or employee's previously filed disclosure statement, each city official and employee shall file with the city clerk an affidavit and disclosure statement. The city clerk shall provide each city official or employee with the required affidavit and disclosure statement form immediately upon his or her election, employment or appointment. The affidavit and disclosure statement does not apply to part-time and temporary employees of the city. Additionally, the disclosure requirements on this section do not apply to regular full-time employees below the level of assistant department head, except at the discretion of the city manager.

- d. The effective date for this ordinance shall be July 21, 2003.

(Ord. No. 1805, 4-28-03; Ord. No. 1810, 5-19-03; Ord. No. 1819, 1-12-04)

Sec. 2-325. - Violation, enforcement and advisory opinions.

(a) *Board of ethics.*

- (1) The city commission shall appoint a board of ethics, consisting of three members, as an advisory body for the purpose of interpreting this code of ethics.
- (2) The initial three members of the board of ethics shall be appointed for one-, two-, and three-year terms of office respectively, which shall begin on July 1, 2003. If appointed prior to July 1st, they shall begin their terms of office immediately and their terms shall include the additional time prior to July 1st. Terms of office shall expire on June 30th of the respective years.

Thereafter, all members shall be appointed to three-year terms, beginning July 1, so that only one member's term expires each year. A member shall hold office until his or her successor is appointed. The city commission shall fill a vacancy by an appointment for the unexpired term only.

- (3) The board of ethics shall be made up of residents of the city who have legal, administrative or other desirable qualifications.
 - a. The members of the board of ethics shall serve without compensation, and shall not be elected officials, persons appointed to elective office, full-time appointed officials or city employees, nor shall they be currently serving on any other city board or commission.
 - b. The board shall select its own presiding officer from among its members.
 - c. The board shall establish such procedures it deems necessary or appropriate to perform its functions as set forth in this article.

(b) *Functions of the board of ethics.* When there is a question or a complaint as to the applicability of any provision of this code to a particular situation, that question or complaint shall be directed to the board of ethics. It shall then be the function of the board of ethics to conduct hearings and/or issue an advisory opinion, as applicable.

- (1) Hearings. The board of ethics shall follow the following hearing procedure:
 - a. The board shall, within seven days after any matter is brought to its attention, set a date certain for hearing said matter.
 - b. The board shall, at least 28 days before the hearing date, send notice of such hearing, accompanied by a concise statement of the alleged breach of this code of ethics, to any person requested to appear before

them, by certified mail, return receipt requested, to addressee only.

- c. Any person requested to appear before a board of ethics hearing may request one extension for a period not to exceed 28 days. Extensions thereafter will be granted only under extreme circumstances.
 - d. Any person requested to appear before a board of ethics hearing may be accompanied by his or her attorney.
 - e. All hearings at which any person shall be requested to appear shall be subject to the Open Meetings Act.
 - f. All findings of board hearings shall be published in permanent form and communicated to the city commission and the public, subject to the requirements of the Open Meetings Act.
- (2) Advisory opinions. All advisory opinions so issued shall also be published in permanent form and communicated to the city commission and the public, subject to the requirements of the Open Meetings Act.
- (3) After the board of ethics' advisory opinions and/or hearing findings have been published:
- a. The city commission shall be responsible for imposing any sanction for a violation of this Code on one of its members or any person appointed by the commission to any city board.
 - b. If it becomes necessary to seek the removal of a city official after the board of ethics' advisory opinion and/or hearing findings, the city shall follow the requirements for removal of a public official in accordance with the laws of the state.
 - c. The city manager shall be responsible for imposing any discipline for a violation of this Code on any employee of the city.

(Ord. No. 1805, 4-28-03; Ord. No. 1810, 5-19-03; Ord. No. 1819, 1-12-04)

Sec. 2-326. - Affidavit and disclosure statement.

Immediately following an election, employment or appointment of a city official or employee, the city clerk shall provide the individual with an affidavit and disclosure statement form. Within 20 days after election, appointment, employment or any change in the facts set forth in the city official's or employee's previously filed affidavit and disclosure statement, all city officials or employees shall file with the city clerk an affidavit and disclosure statement including the following:

- A. A disclosure statement responding in detail to the following questions:
 - 1. To the best of your knowledge, do you or any members of your immediate family own any interest in real property located within the City of Birmingham, in land contiguous to the City of Birmingham, or in any area covered by a 425 Agreement to which the City of Birmingham is party?
 - 2. If your answer to question 1. is affirmative, to the best of your knowledge state the following information for each such interest owned:
 - (a) The nature of your interest in the real property;
 - (b) The location of the real property (for improved property, provide the street address; for unimproved property state its location in relation to existing streets), and;
 - (c) The property's permanent real estate tax identification number.
 - 3. To the best of your knowledge, do you or members of your immediate family own five percent (5%) or more of any business entity located in the City of Birmingham?
 - 4. If your answer to question 3. is in the affirmative, state the following, to the best of your knowledge:
 - (a) The name of the entity;

- (b) The address of the entity;
 - (c) The nature of your relationship to the entity, and;
 - (d) The date relationship commenced.
5. To the best of your knowledge, do you or any members of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit that is not reported in the prior answers.
6. To the best of your knowledge, have you or any members of your immediate family given or received any gifts, other than from immediate family members, the value of which exceeds \$50.00, within the last year, or since the effective date of this code, whichever time period is shorter, to or from any person or business or other legal entity doing business with the City, other than legal campaign contributions? If so, list the names and addresses of each donor or donee of each such gift and the date upon which it was made and the nature of the gift.
- B. An affidavit in which the City official or employee states: "I have read and I understand the Code of Ethics of the City of Birmingham and, to the best of my knowledge, I am not in conflict with its provisions."

Dated:

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public

_____ County, Michigan

My Commission Expires:_____

(Ord. No. 1805, 4-28-03; Ord. No. 1810, 5-19-03; Ord. No. 1819, 1-12-04)



BOARD OF ETHICS PROCEDURAL RULES

Chapter 1. Policy and Construction.

Rule 101. Intent.

The City of Birmingham Board of Ethics (the board) promulgates these rules pursuant to the City of Birmingham's Code of Ethics with the intent of realizing the policies and goals set forth in that code and in the board's own mission statement. The board intends to conduct its business consistent with all applicable federal, state and local laws.

Rule 102. Construction.

These rules are to be construed to achieve the timely, efficient and cost-effective determination of matters brought before the board.

Rule 103. The board may modify these rules on a case-by-case basis to further this policy.

Chapter 2. Procedure for Obtaining Advisory Opinions.

The rules of this chapter apply to the situation where 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"), requests 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."

Rule 201. Request for Advisory Opinion.

The request for advisory opinion must be in writing and filed with the city clerk on a form prescribed by the clerk who will present it to the board for consideration. The requesting party may include with the request any documents that may assist the board in responding to the request.

Rule 202. Dismissal.

- a. The city clerk may administratively dismiss a request for an advisory opinion if the request fails to comply with Rule 201 of this Chapter.
- b. The board may administratively dismiss a request for an advisory opinion for either of the following reasons:
 - (i) One or more requests or complaints regarding the same matter are pending.
 - (ii) The board previously addressed the subject matter.

Rule 203. Additional Information.

Upon presentation of a request for an advisory opinion, the board may direct the city clerk to obtain additional information regarding the request.

Rule 204. Summary Decision.

At any time, the board may issue an advisory opinion decision on the request based on any of the following reasons:

- a. The board lacks jurisdiction over the requesting or subject party.
- b. The board lacks jurisdiction over the subject matter.
- c. The requesting party lacks the legal capacity to request an advisory opinion.
- d. The request for an advisory opinion is barred because of release, prior judgment, or other disposition of the matter before the request for an advisory opinion was filed.
- e. The request for advisory opinion on its face fails to demonstrate any violation of the code of ethics.

Rule 205. Summary Opinion.

If no genuine issue as to any material fact exists, the board may issue an advisory opinion without a hearing.

Rule 206. Scheduling.

If the request for an advisory opinion is not resolved under Rule 204 or 205, the board may schedule a meeting or hearing in accordance with the Rules of this Chapter.

Rule 207. Meeting Date.

The clerk will set the matter for meeting on a date certain and place the matter on the board's calendar. The board may hold a hearing to review, or further review, the merits of a request for an advisory opinion.

Rule 208. Notice of Meeting and Requests to Others to Appear.

The clerk will send notice of the meeting to the requesting party and, where applicable, to the subject party in the manner prescribed by the Code of Ethics. The board may request other persons to appear at the meeting by directing the clerk to send notice of the meeting and a request to appear, accompanied by a copy of the request for advisory opinion.

Rule 209. Appearance of Requesting Party, Subject Party, or Representative.

The requesting party and, where applicable, the subject party, or a representative of either, may appear at the meeting, present information to support or oppose the request, and respond orally to questions presented by the board.

Rule 210. Meetings, Generally.

The board will conduct a meeting on the matter set forth in the request for advisory opinion at the scheduled time. Any person requested to appear at the meeting may be accompanied by an attorney.

Rule 211. Presiding Officer.

The Chairperson of the board will act as the presiding officer for the meeting or may assign another member of the board to be the presiding officer. The presiding officer

will officiate over the meeting; moderate the questions and answers between members of the board, the requesting party, the subject party, and any other witness; and rule on questions of procedure and the admissibility of evidence. The presiding officer will consult with other members of the board before making any decision.

Rule 212. Presentation of the Request and the Evidence.

The requesting party will present the request by stating the issue to be resolved and giving any evidence that bears on the matter. The subject party, where applicable, may likewise present any evidence that bears on the matter. The board may request the testimony of other witnesses and the introduction of exhibits or other evidence relevant to the matter. The requesting party, the subject party, and any member of the board may question any witness in the manner directed by the presiding officer. All witnesses will give testimony on sworn oath or affirmation.

Rule 213. Post-Meeting Evidence.

The board may request the requesting party, the subject party where applicable, or any other person to submit post-meeting evidence if warranted.

Rule 214. Closure of the Record.

The record is closed at the conclusion of the meeting or, if the board requests any person to submit post-meeting evidence, at the earlier of the submission of the evidence or the deadline for submitting it. The board may re-open the record and take additional evidence before rendering its decision.

Rule 215. Advisory Opinion.

The board will determine whether the conduct or anticipated conduct of the requesting party or the subject party, as the case may be, conforms to the Code of Ethics. The board will make its decision upon a vote of a majority of the board based upon the evidence in the record and controlling law. The board will issue its decision in the form of a written advisory opinion. The advisory opinion, and any dissenting or concurring opinion, will be stated in writing. Once they are issued, the opinions are final.

Rule 216. Transmittal of the Advisory Opinion or Order.

The board will send its advisory opinion or order to the city clerk, who will publish, distribute and keep it in the manner prescribed in the ordinance and in conformity with applicable law. The clerk will mail the requesting party, the subject party, the affected department, and other persons as the board directs, a copy of the opinion or order.

Chapter 3. Procedure for Resolving Complaints.

The rules in this chapter apply to the situation where any person has a complaint against a city official or employee, as defined in the Code of Ethics, alleging that the conduct of that official or employee is in breach of the code.

Rule 301. Filing of Complaint.

A person with a complaint involving the applicability of any provision of the Code of Ethics with respect to the conduct of a city official or employee may bring the matter before the board by filing with the city clerk a complaint on a form prescribed by the

clerk. The person who files the complaint is called the “complainant.” The person who is alleged to have breached the code is called the “respondent.”

Rule 302. Dismissal.

- a. The city clerk may administratively dismiss a complaint if it fails to comply with Rule 301 of this Chapter.
- b. The board may administratively dismiss a complaint for either of the following reasons:
 - (i) One or more complaints or requests for advisory opinions regarding the same matter are pending.
 - (ii) The board previously addressed the subject matter.

Rule 303. Additional Information.

Upon the filing of a complaint, the board may direct the city clerk to obtain additional information regarding the request.

Rule 304. Summary Decision.

At any time, the board may issue a decision on the complaint based on any of the following reasons:

- a. The board lacks jurisdiction over the respondent.
- b. The board lacks jurisdiction over the subject matter.
- c. The complainant lacks the legal capacity to assert the complaint.
- d. The complaint is barred because of release, prior judgment, or other disposition of the complaint before the complaint was filed.
- e. The complaint on its face fails to demonstrate any violation of the code of ethics.

Rule 305. Summary Opinion.

If no genuine issue as to any material fact exists, the board may issue a decision on the complaint without a hearing.

Rule 306. Scheduling.

If the complaint is not resolved under Rule 205 and 206, the board may schedule a meeting or hearing in accordance with the Rules of this Chapter.

Rule 307. Hearing Date.

Within seven (7) days of the filing of the complaint, the clerk will set the matter for hearing on a date certain and place the matter on the board’s calendar in accordance with the ethics ordinance and these procedural rules.

Rule 308. Service of Complaint on, and Notice to, Respondent.

At least twenty-eight (28) days before the hearing date, the clerk will send notice of the hearing, accompanied by a copy of the complaint to the respondent in the manner prescribed by the code.

Rule 309. Notice of Hearing to Complainant and Requests to Others to Appear.

After setting the matter for hearing, the clerk will notify the complainant of the hearing date in the manner prescribed by the Code of Ethics. The board may request other persons to appear at the hearing by directing the clerk to send notice of the hearing and

a request to appear, accompanied by a copy of the complaint in the manner prescribed by the code.

Rule 310. Answer of Respondent.

Ahead of the hearing date, the respondent may submit a written answer to the complaint by filing that answer with the city clerk. In the answer, the respondent may respond to the allegations set forth in the complaint and may further provide information, including documents, relevant to the matter. In lieu of a written answer, the respondent may appear at the hearing and respond orally to the allegations in the complaint.

Rule 311. Hearings, Generally.

The board will conduct a hearing on the matter alleged in the complaint at the scheduled time. Any person requested to appear at the hearing may be represented by an attorney.

Rule 312. Presiding Officer.

The Chairperson of the board will act as the presiding officer for the hearing or may assign another member of the board to be the presiding officer. The presiding officer will officiate over the hearing and rule on questions of procedure and the admissibility of evidence. The presiding officer will consult with other members of the board before making any decision.

Rule 313. Opening Statements.

The opening statement is the parties' way to introduce the matter to the board, summarize the evidence that will be presented during the hearing, and state the relief requested. The complainant and the respondent may each give an opening statement. Usually, the complainant will give the first opening statement, but the board may vary this procedure.

Rule 314. Conduct of Proceedings

- a. The complainant will present evidence to support the complaint. The respondent may then present evidence to support any defense. Witnesses for each party will also submit to questions from the complainant, the respondent, and the board. The board has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.
- b. The board, exercising its discretion, will conduct the proceedings with a view to expediting the resolution of the matter and may direct the order of proof, bifurcate proceedings and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the matter.
- c. The parties may agree to waive oral hearings in any case.

Rule 315. Evidence

- a. The parties may offer such evidence as is relevant and material to the matter and will produce such evidence as the board may deem necessary to an understanding and determination of the matter. Conformity to legal rules of evidence will not be necessary. All evidence will be taken in the presence of the

- board and all of the parties, except where any of the parties is absent, in default or has waived the right to be present.
- b. The board will determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the board to be cumulative or irrelevant.
 - c. The board will take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

Rule 316. Closing Statements.

When the parties have finished presenting their evidence, each may make a closing statement summarizing the evidence, stating the relief requested, and arguing in favor of that relief. Usually, the respondent will give the first closing statement, to be followed by the complainant, but the board may vary this procedure.

Rule 317. Post-Hearing Briefs.

The board may request the parties to submit post-hearing briefs if warranted.

Rule 318. Closure of the Record.

The record is closed at the conclusion of the hearing or, if the board requests the parties to submit post-hearing briefs, at the earlier of the submission of the briefs or the deadline for submitting them. The board may re-open the record and take additional evidence before rendering its decision.

Rule 319. Decision.

The board will determine whether the respondent's conduct as alleged in the complaint or demonstrated at the hearing is in breach of the Code of Ethics. The board will make its decision upon a vote of a majority of the board based upon the evidence in the record and controlling law. The board will issue its decision in the form of a written opinion. The opinion, and any dissenting or concurring opinion, will be stated in writing. Once they are issued, the decision and opinions are final.

Rule 320. Transmittal of the Decision.

The board will send its decision to the city clerk, who will publish, distribute and keep it in the manner prescribed by the ordinance and in conformity with applicable law. The clerk will mail each party, the affected department, and other persons as the board directs, a copy of the decision.

Chapter 4. Procedure for Deciding Referred Questions of Disqualification Due to Conflict of Interest.

The rules in this chapter apply to the situation where, under Section 2-324 of the Code of Ethics, a city official or employee has a conflict of interest in any matter before the city, as defined in the code, has disclosed that conflict on the appropriate records of the city, but refuses to refrain from discussion, deliberation or voting on that matter. In that instance, the affected city body may request the board to decide the question of whether the official or employee must refrain from discussion, deliberation, action or voting on the matter because of disqualification due to a conflict of interest. The rules in this chapter contemplate that the referred question be decided on an expedited basis.

Rule 401. Referral of Question of Disqualification.

The city, its commission, or any city board or committee, which is called the "referring body," may refer to the board the question of whether an official or employee is disqualified from discussion, deliberation, action or voting on any pending matter due to a conflict of interest. The referring body will refer the question of disqualification to the board by filing the question with the city clerk on a form prescribed by the clerk. The referring body may include with the referred question any information and documents that may assist the board in answering the referred question. The person who is alleged to be disqualified due to conflict of interest is called the "respondent."

Rule 402. Dismissal.

- a. The city clerk may administratively dismiss a referred question of disqualification if the referral fails to comply with Rule 401 of this Chapter.
- b. The board may administratively dismiss a referred question of disqualification for either of the following reasons:
 - (i) One or more questions regarding the same matter are pending.
 - (ii) The board previously addressed the subject matter.

Rule 403. Additional Information.

Upon referral of a question of disqualification, the board may direct the city clerk to obtain additional information regarding the request.

Rule 404. Summary Decision.

At any time, the board may issue a decision on the referred question of disqualification based on any of the following reasons:

- a. The board lacks jurisdiction over the respondent.
- b. The board lacks jurisdiction over the subject matter.
- c. The referring body lacks the legal capacity to refer the question to the board.
- d. Decision on the question is barred because of release, prior judgment, or other disposition of the question before the question was referred.
- e. The question on its face fails to demonstrate any conflict of interest or reason for disqualification.

Rule 405. Summary Opinion.

If no genuine issue as to any material fact exists, the board may issue a decision without a hearing.

Rule 406. Scheduling.

If the referred question of disqualification is not decided under Rule 404 and 405, the board may schedule a meeting or hearing in accordance with the Rules of this Chapter.

Rule 407. Hearing Date.

As soon as practicable after the referred question of disqualification is filed, the clerk will set the matter for hearing on a date certain, which may be that very day, and place the matter on the board's calendar. The board may convene and conduct the hearing immediately upon the clerk's receipt of the referred question, or may set another time for the hearing.

Rule 408 Notice of Hearing and Requests to Others to Appear.

The clerk will notify the referring body and the respondent of the hearing. Notice may be given orally or in any other form reasonably calculated to give the date, time, location and subject matter of the hearing. The board may request other persons to appear at the hearing by directing the clerk to notify those persons of the request and transmitting a copy of the referred question to them.

Rule 409 Hearings, Generally.

The board will conduct a hearing on the referred question at the scheduled time.

Rule 410. Presiding Officer.

The Chairperson of the board will act as the presiding officer for the hearing or may assign another member of the board to be the presiding officer. The presiding officer will officiate over the hearing, and rule on questions of procedure and the admissibility of evidence. The presiding officer will consult with other members of the board before making any decision.

Rule 411. Appearance of Referring Body and Respondent.

The referring body and the respondent may appear at the hearing, present information on the referred question of disqualification and respond orally to questions presented by the board. The referring body will designate one of its members or another person to act as its representative for the hearing.

Rule 412. Opening Statements.

The opening statement is the parties' way to introduce the question to the board, summarize the evidence that will be presented during the hearing, and state the party's position on the question. The referring body and the respondent may each give an opening statement. Usually, the referring body will give the first opening statement, but the board may vary this procedure.

Rule 413. Conduct of Proceedings

- a. The referring body will present evidence on the question of disqualification. The respondent may then present evidence to support his or her position on the question. Witnesses for each party will also submit to questions from the referring body and the respondent. The board has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.
- b. The board, exercising its discretion, will conduct the proceedings with a view to expediting the resolution of the matter and may direct the order of proof, bifurcate proceedings and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the matter.
- c. The parties may agree to waive oral hearings in any matter.

Rule 414. Evidence

- a. The parties may offer such evidence as is relevant and material to the question and will produce such evidence as the board may deem necessary to an understanding and determination of the question. Conformity to legal rules of evidence will not be necessary. All evidence will be taken in the presence of the board and all of the parties, except where any of the parties is absent, in default or has waived the right to be present.

- b. The board will determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the board to be cumulative or irrelevant.
- c. The board will take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

Rule 415. Closing Statements.

When the parties have finished presenting their evidence, each may make a closing statement, summarizing the evidence, stating the position it takes on the question, and arguing in favor of that position. Usually, the respondent will give the first closing statement, to be followed by the referring body, but the board may vary this procedure.

Rule 416. Post-Hearing Briefs.

The board may request the parties to submit post-hearing briefs if warranted.

Rule 417. Closure of the Record.

The record is closed at the conclusion of the hearing or, if the board requests the parties to submit post-hearing briefs, at the earlier of the submission of the briefs or the deadline for submitting them. The board may re-open the record and take additional evidence before rendering its decision.

Rule 418. Decision.

The board will decide whether the respondent is disqualified from discussion, deliberation, action or voting on the matter pending before the referring body due to a conflict of interest. The board will make its decision upon a vote of a majority of the board based upon the evidence in the record and controlling law. The board will issue its decision in the form of a written opinion. The opinion, and any dissenting or concurring opinion, will be stated in writing. Once they are issued, the decision and opinions are final.

Rule 419. Transmittal of the Decision.

The board will send its decision to the city clerk, who will publish, distribute and keep it in the manner prescribed in the ordinance and in conformity with applicable law. The clerk will provide the referring body, the affected department, and the respondent with a copy of the decision.

Revised 10/03
Revised 05/04
Revised 10/06
Revised 12/06
Revised 1/08
Revised 9/11



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." Ordinance 1810 – Effective July 21, 2003

Date _____

Name _____

Position/Board _____

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?

2. If your answer to question 1 is affirmative, to the best of your knowledge state the following information for each such interest owned:
 - a. The nature of your interest in the real property _____

 - b. The location of the real property (for improved property, provide the street address; for unimproved property state its location in relation to existing streets)

 - c. The property's permanent real estate tax identification number _____

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 _____?
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? _____
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?

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 _____ day of _____, ____.

Notary Public

Acting in the County of _____, Michigan

Signature of Notary

My commission expires _____.

FOR OFFICE USE ONLY

Accepted by _____ Date _____



Case No. _____
(Assigned by clerk)

REQUEST FOR ADVISORY OPINION

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

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

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

Name _____ Phone Number (____) _____

Address _____
(Number, Street, City, State, Zip)

Position or Board (If Applicable) _____

- 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 _____



Case No. _____
(Assigned by clerk)

ETHICS INCIDENT/COMPLAINT FORM

Any person who has a complaint against a city official or employee, as defined in the Code of Ethics, alleging that conduct of that official or employee is in breach of the code, may bring the matter before the Birmingham Board of Ethics by filing this form with the city clerk. Within seven days upon receipt of this filing, the clerk will set a hearing for this matter and notify the parties involved according to the ordinance.

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

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

1. Name the person alleged to have violated one or more provisions of the City of Birmingham's Ethics Ordinance (Chapter 2, Article IX), and provide the following information, if known. If you are alleging that more than one person may have violated the City of Birmingham's Ethics Ordinance, file a separate complaint form for each individual. The information on this form may be subject to disclosure under the Freedom of Information Act.

Name _____ Phone Number (____) _____

Address _____
(Number, Street, City, State, Zip)

Position or Board _____

2. Explain why you believe that the individual named above may have violated the City of Birmingham's Ethics Ordinance. Be as specific as possible as to dates, times, places, and actions. Attach additional sheets of paper if the space provided below is not sufficient. Also note which specific section in the ordinance was violated.

3. Attach or make reference to any document or other evidence that may support your allegations. Also provide the names and addresses (if known) of any witnesses or persons who may have knowledge of facts that support your allegations.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

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 subject matter? If so identify in detail.

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

Your signature

Date

Your printed name

Address _____
(Number, Street, City, State, Zip)

Daytime Phone (____) _____ Evening Phone (____) _____

Email _____

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

If you have questions about this form, or would like to request the form in an alternate format for the visually impaired, contact the Clerk's Office at 248.530-1880 or write us at the above address. We will take reasonable steps to accommodate your needs.

NOTE: Within seven days of receipt of this form, the Birmingham Ethics Board will set a date for hearing this matter. Any parties involved will be given 28 days notice to appear at the hearing.

Revised 8/16/12

FOR OFFICE USE ONLY

Accepted by _____ Date _____



Case No. _____
(Assigned by clerk)

REQUEST FOR ADVISORY OPINION

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

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

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

Name Brad Host Phone Number (248) 219-2249

Address 416 Park, Birmingham, MI 48009
(Number, Street, City, State, Zip)

Position or Board (If Applicable) City Commissioner

- 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 _____



January 27, 2023

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

Re: Advisory Opinion

Dear Members of the Board:

"Accordingly, this Opinion celebrates the rights of free speech, but also addresses the self-imposed limitations thereof when one voluntarily elects to become a City Official. When one serves in the public sector, one becomes less and less 'a public citizen' and more and more a 'public servant.' This is part of the responsibilities and burdens one accepts as a public official. Being a public servant may constrain one's activities in many ways, including the open expression of personal views. Having the right to engage in an activity doesn't mean exercising that right is necessarily the best course of action." (Advisory Opinion 2009-02 Pertaining to Mr. Wisz and is Quoted in Advisory Opinion 2022-01 in regarding to Mr. Samuel Oh.)

As the above quote demonstrates, this Board has previously offered Advisory Opinions in regards to educating public servants as to how they should conduct themselves in order to be compliant with the Birmingham Code of Ethics in Article IX of the Birmingham City Code. I am requesting an Advisory Opinion as it relates to Commissioner Brad Host for his activities since at least September of 2022 through the present time in his public statements, mail activities and social media posts as it relates to the Birmingham 2040 comprehensive master plan ("2040 Plan").

As this Board is aware, the City of Birmingham, by state statute, is required to engage in planning for the City and its future. The 2040 Plan is in its near final form after a very long process of multiple drafts and reviews by the Planning Board and ultimately the City Commission in early 2023. Please find as Attachment 1 a memo that was published to the City Commission on September 14, 2022 outlining the anticipated Schedule of Review for the 2040 Plan and notice to the Commission that sometime in February of 2023 the City Commission will be reviewing and deliberating the adoption of the 2040 Plan. Part of the 2040 Plan discusses many ideas and concepts, one of which is called *seams*. *Seams* are concepts in which neighborhood planning is achieved, and the 2040 Plan discusses access, activity and buffer seams at the edges of planning districts to better connect neighborhoods and the community at large. *Access seam concepts* involve looking at ways to improve multi-modal access to the community and neighborhoods. *Activity and Buffer seam concepts* would be those, for example, located near 14 Mile Road which contemplate a future where multi-family dwellings of an appropriate scale and character are permitted near larger and active roadways.

Important to all of these concepts in the 2040 Plan is broad interpretation and ways to achieve planning for the future of Birmingham. I offer this by way of background as Commissioner Host has



been very active in private mailings to homes and social media posts, most predominately on his Facebook page, with the obvious intent to agitate the issues and encourage loud voices to the Planning Board.

In reviewing the Code of Ethics, it is clear the Code applies to Mr. Host as a Commissioner. Section 2-322 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."

The Board should know, there were at least five original videos posted on Commissioner Host's Facebook page that demonstrate Commissioner Host was misinforming and misstating the 2040 Plan. Please utilize these hyperlinks in order to view these original videos posted last fall by Commissioner Host:

[Video 1¹](#), [Video 2²](#), [Video 3³](#), [Video 4⁴](#), [Video 5⁵](#)

He is advocating that the 2040 Plan calls for rezoning which is inaccurate and untrue. This [video](#), taken at Grant and Lincoln, demonstrates Commissioner Host stating "that according to the 2040 Plan the area will be rezoned to multi-family units." This is blatantly untrue. As stated by the Board of Ethics in the Advisory Opinion 2022-01 from September 22, 2022:

"Board of Ethics member, James Robb, pointed out... Words matter. **'As a public official, you have an obligation to make sure that statements of fact are in fact, facts. People see you as an official and maybe you are mistaken on some things you put in your petition, but that can cause mistrust of city officials by the public.'**"
(Emphasis Added)

Commissioner Host is engaging in advocacy for a position and an opinion before the 2040 Plan even arrives at the Commission table. He directly tells the public that they only have until early January in order to speak their opinions which is untrue. As seen in this [video](#), Commissioner Host states "you have 45 days to get your opinion in and then it is going to be history after that." This is completely untrue as the adoption of the 2040 Plan has many upcoming hearings ultimately leading to a Commission meeting wherein the public is always heard.

¹ Date: Uncertain. At Grant & Lincoln and speaking to St. James and Pierce neighborhoods.

² Date: October 31, 2022. On Oakland Street between the Woodwards looking at San Francisco area – gorgeous homes to be rezoned as multiples.

³ Date: October 29, 2022. Quarton Lake waterfall area. The 2040 Plan calls for cafes, kiosks, food trucks, commercial endeavors here. Why?

⁴ Date: September 27, 2022. Abbey and Wimbleton – showing what construction is doing to the ambience of the neighborhood.

⁵ Date: Uncertain. Poppleton Park area. 2040 Plan is going to rezone into multiples.



At the Birmingham City Commission meeting on October 3, 2022, Planning Director Nicholas Dupuis discussed the background of the 2040 Plan and what the 2040 Plan can provide for the community and what it says, thereby educating the Commission, including Mr. Host. Yet, these videos are posted subsequent to Mr. Host being informed of the facts. Additionally, the City Manager's Report, which can be found in Attachment 2, has three pages of "setting the record straight" to clarify the misinformation by Commissioner Host. It was again explained that the 2040 Plan does not rezone property. The information presented to Commissioner Host at the [November 28, 2022 Commission meeting](#) (beginning at 1:03.25) reiterated published facts in 2021 explaining that the 2040 Plan recommends priorities but does not rezone property.

Yet, despite educating Commissioner Host to the facts, Commissioner Host reposts similar videos on Facebook, once again suggesting homes in particular areas could be in jeopardy. [Video 6](#)⁶, [Video 7](#)⁷, [Video 8](#)⁸ While he attempted to correct the errors in his videos based upon my communications with him at the November Commission meeting, the new videos continue to be misleading and he continues to advocate outside the proper channels of a Commissioner. For example, as you can see from the currently posted [video](#), he states, "How long do you think these gorgeous homes are gonna last after rezoning." He posted a video regarding Booth Park stating that the 2040 Plan called for a café in the park. He suggests there may be the inclusion of corporate enterprises which is not included in the 2040 Plan. [Video 9](#)⁹ After the new posts were discovered, at the December 19, 2022 City Commission meeting (Attachment 3), the City Manager's Report, once again, contained six pages of material setting the record straight. Once again publicizing that "the City repeatedly corrected the inaccuracies put forth by Commissioner Host and prior written documents as well." Please see the detailed explanation and education provided to Commissioner Host at that [meeting](#) (at 2:28.50). Despite continued education in December to Commissioner Host, Commissioner Host's current videos, even at this date, continue to contain fear-mongering and continue to advocate for specific positions on topics which will eventually be presented to the full City Commission for consideration and adoption of the 2040 Plan. Commissioner Host is in fact one of the final arbiters of this Plan. He violates the normal process of the City Commission when he, as a sitting Commissioner, publicly voices his concerns, opinions and discussions in personal forums. This is not the proper governmental channel. The proper governmental channel is at the public Commission meetings with the entire City Commission present. Commissioner Host has removed the original posts, but to this day continues to have videos on his Facebook page that could be in violation of the Ethics Ordinance.

⁶ Date: [December 8, 2022](#) – Grant & Lincoln from here to Woodward 2040 encourages single family homes to be zoned multiples.

⁷ Date: [December 11, 2022](#) – Grant & 14 Mile Rd, page 46 of the Master Plan proposes to take over 45 single family houses and have them zoned to encourage infill.

⁸ Date: [December 12, 2022](#) -Two gorgeous homes 100 years old south end of Poppleton in Poppleton Park – 2040 Plan, Chapter 2, encourages these two lots to be townhouses, duplexes, or multi-family buildings. You have until January 11th to speak your opinion.

⁹ Date: [December 16, 2022](#) - Booth Park - Page 35 of the Master Plan permits a café – could this be a Starbucks or building – there is broad interpretation get your opinion in by January 11th.



It has further come to my attention that letters are being sent to persons' homes and emails, which you will find in Attachment 4, wherein Commissioner Host is once again advocating for the community's agitation. He violates the normal process of the City Commission when he, as a sitting Commissioner, publicly voices his concerns, opinions and discussions in personal forums. Once again, it is of note, Commissioner Host also does not ever state these are his personal opinions and not opinions of the Commission or the City. Also, these mailings are not proper governmental channels. Once again, the proper channel is at the public Commission meetings with the entire City Commission.

It is believed that as a result of Commissioner Host's public agitation, that when the Planning Board was planning its agenda for its January meeting, members of the Planning Board were so concerned about people's reactions that members requested police presence at their meeting. Also, Commissioner Host appears to be influencing and attempting to craft a product i.e. the 2040 Plan, which will ultimately be delivered to him and his colleagues on the City Commission. Again, he is one of the final arbiters of the 2040 Plan, yet he is attempting to influence the Plan itself before it even reaches the Commission table. Can his vote now be unbiased, independent and impartial?

You will also find in Attachment 5 an email to Commissioner Host from me dated Tuesday, December 20, 2022 regarding a conversation wherein Commissioner Host agreed with a citizen that the Planning Board has gone "rogue." Commissioner Host stated that was not his intent. I suggested he should publicly acknowledge that he did not intend to disparage the Planning Board, and yet that statement of correcting the record or apology has never occurred.

You will also find Attachment 6 which is a demonstration of the effect of Commissioner Host's misinformation and public advocacy. It is, in fact, causing citizens to react to this misinformation as demonstrated by an email exchange wherein I had to correct the misinformation of Commissioner Host in order to relieve the anxiety of a citizen.

Please also find Attachment 7. This demonstrates again the actual effect of Commissioner Host's mailings upon citizens. Clearly, people are becoming afraid that "something terrible" is going to happen to their neighborhoods because of the 2040 Plan. This clearly demonstrates that fear-mongering is having a negative effect upon Birmingham citizens.

The Birmingham City Code Section 2-320. – Public Policy states that:

"Public officials and employees must:

- (1) Be independent, impartial and responsible to the people;
- (2) Make governmental decisions and policy in the proper governmental channels;
- (3) Not use public office for personal gain."



Will Commissioner Host be independent, impartial and responsible to the people when he receives the 2040 Plan sometime in early 2023, wherein he will be deliberating with his colleagues at an open public meeting, and will he remain impartial until he hears all the information at that meeting? How can he, based upon the videos he published. The Code also says that decisions and policy must be in proper governmental channels. While Commissioner Host is sending out letters and posting Facebook posts, is he making decisions and policy in a proper governmental channel, which in his case would be a public City Commission meeting? Further, at no time does Commissioner Host state that these are his personal views, and not that of the Commission. Therefore, he seems to be using his public office as a Commissioner in order to get persons to agree with his personal views and have the 2040 Plan struck down because he personally disagrees with some of the concepts.

Sec 2-323. – Intention of the code.

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

- (1) Using public employment or office for private gain;
- (2) Giving or accepting preferential treatment, including the use of city property or information, to or from any organization or person;
- (3) Losing complete independence or impartiality of action;
- (4) Making a city decision outside official channels; or
- (5) Affecting adversely the confidence of the public or the integrity of the city government.

The Code of Ethics is intended to be preventative and not punitive. It should not be construed to interfere with or abrogate in any way the provisions of any federal or state statutes, the City Charter, the city ordinances, or any rights and/or remedies guaranteed under a collective bargaining agreement.

This declaration of policy is not intended to apply to contributions to political campaigns, which are governed by state law."

The foregoing facts, videos and letters could be in violation of Sec. 323 because they have resulted in, and created the appearance of, Commissioner Host using his office for personal gain, for losing complete independence and impartiality of action, making City decisions outside of the Commission meeting and affecting adversely the confidence of the public and the integrity of City government. This is evidenced by the communications of a citizen whereby they are reacting to misinformation. Also, the appearance of negativity in Commissioner Host's affect, comments, and accusatory tone, particularly with



misinformation, has agitated these issues and has violated and tainted the process of government such that the Planning Board members felt they needed police presence at their meeting.

Another potential violation at Sec. 2-323(1)(2)(3) of the Code of Ethics is that Commissioner Host is known publicly as a current sitting City Commissioner. Not once in any of the nine presented videos does Commissioner Host caution the viewer that the opinions, thoughts, or questions presented are being done so by Commissioner Host as an independent private citizen. While the Commissioner is careful not to say here is what I think, or here is what I believe, his demeanor, accusatory tone, and cues clearly lead the viewer and listener to an understanding of what Commissioner Host believes. While Commissioner Host has First Amendment rights, Commissioner Host should be making it clear that he is not speaking on behalf of the City, any of its boards, or the Commission. The Ethics Board has visited this exact topic in prior ethics opinions including 2009-02 and quoted in Advisory Opinion 2022-01:

"The Wisz Ethics Opinion determined that the use of his official position in that case was not germane to the matter being pursued by the City Official. This Board has found the same in the instant case involving Mr. Oh. As stated in the Wisz Opinion, **'(t)he ethical difficulty and concern relates to a situation where a private citizen opts to also become a 'City Official' and therefore 'wears two hats.' Someone in such position has to be careful about creating a false impression, such as that one is speaking on behalf of the City itself.'** The Ethics complaint opinion relative to Mr. Ralph L. Seger, Jr., being number 2004-02 also has some relevance herein. This Board therein made it clear that it is mandated to recognizing and adhering to the principles of the First Amendment. However, the First Amendment principles do not permit a member of a City Board to assume a role, and act as a competing fiduciary, directly against the interests of the City. As stated in Wisz, **'(s)uch conduct presents an irreconcilable conflict of interest, may tend to undermine respect for City Officials and employees and for the City as an institution, might result and/or create an appearance of adversely affecting the confidence of the public or the integrity of the City government, and is incompatible and in conflict with the discharge of the volunteer's official duties.'** Herein, Mr. Oh's identification of himself as a TDCIA member at the beginning of the petition appears to create confusion for the recipient's thereof. His representation that the use of his official title was intended to assist the public is illogical. Public officials are obligated to be aware that their words could be misinterpreted or misread. **Therefore, when making a personal statement that identifies the speaker as a city official that official must include a conspicuous disclaimer that the opinions expressed are his or her personal opinions, and not the opinion(s) of the City or any other City Official."** (Emphasis Added)

I also question whether Commissioner Host has created a conflict of interest as described in Sec. 2-324(10) in that Commissioner Host's behavior demonstrates that as a City Official, his personal interest may have now interfered with the outcome of a matter currently before him, and his personal interest may be adverse to the public interest in the performance of his duty. Now, does he have a responsibility to disclose his interest and recuse himself from participating in the deliberation of the adoption of the 2040 Plan when it does, in fact, make it to the City Commission as a whole?



In reviewing the analysis of the discussion of Advisory Opinion 2022-01, the Board opined that others who used their position as a City Official to advance their advocacies results in personal gain. While this Board has said that the Ethics Ordinance was never intended to preclude City Officials from expressing his or her opinions, this Board has found in the past that when City Officials conduct themselves in such a way as to fail to separate their roles as private citizens from their roles as public servants that they are not acting in conformity to the Code of Ethics.

I would like to also advise the Ethics Board that Mr. Host is likely not acting in conformity with Sec. 2-323(5) as he is adversely affecting the integrity of the City government when he appears to be finding a way to circumvent legal opinion and direction. Attachment 8 is a memo from legal counsel to the City Commission dated December 6, 2021. Legal counsel explained to the City Commission, including Commissioner Host, that case law and the Attorney General have deemed it improper for Commissioners that possess appointment powers over members of boards and committees to appear at the meetings of said boards and committees. The rationale is that an appointer's mere presence can cause duress on members of boards and committees. The City Commission appoints members to the Planning Board. Despite this education, counseling, and information, Commissioner Host continuously finds a way to ignore these directives. It is my belief that he is using public forums, including email and mail systems, to pursue avenues to influence the Planning Board without having to attend the meetings personally. He is instead agitating members of the public to appear at the Planning Board to carry out his disgruntled message. To be clear, I believe his end around of these clear directives by the Attorney General and higher courts adversely affects the integrity of the Birmingham City government.

In conclusion, despite multiple attempts to demonstrate to Commissioner Host that he is disseminating untrue information and thereby misinforming the public, and by engaging in advocacy for an item wherein he will be one of the final arbiters, he violates the public process, thereby disrupting the integrity of the process of an item coming before the City Commission. The manner in which Commissioner Host has agitated the public with misinformation may be using his public office for personal gain in order to get people to align with his personal opinion and thoughts. I believe that he has lost complete independence or impartiality of action thereby causing a conflict of interest, one of which needs to be disclosed to his fellow Commissioners and perhaps result in him not participating in discussions regarding the 2040 Plan and whether or not it should be adopted by the City Commission. All of these actions by Commissioner Host, his continuing to allow this misinformation and false information to be a part of his Facebook page, adversely affects the confidence of the public and the integrity of the City government.

I bring the aforementioned facts and thoughts to the Ethics Board requesting an Advisory Opinion as to whether or not actions of Commissioner Host are in conflict with conformity to the Ethics Code and whether he has created a conflict of interest.

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.

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

Date: 1-27-23

Attachments:

1. Memo from Planning Director, Nicholas Dupuis dated September 14, 2022.
2. City Manager's Report with "Setting the Record Straight", November 28, 2022.
3. City Manager's Report at December 19, 2022 Commission with "Setting the Record Straight."
4. Content of letters being sent to persons' homes and emails.
5. Emails Dated December 20, 2022 from City Manager to Commissioner Host wherein Commissioner Host agreed with a citizen that the Planning Board has gone "rogue."
6. Email exchange with citizen demonstrating the effect of Commissioner Host's misinformation and public advocacy.
7. Text exchange with citizen demonstrating the effect of Commissioner Host's misinformation and public advocacy.
8. Memo from legal counsel to the City Commission dated December 6, 2021

ATTACHMENT 1



MEMORANDUM

Planning Division

DATE: September 14, 2022

TO: Planning Board Members

FROM: Nicholas Dupuis, Planning Director

SUBJECT: The Birmingham Plan 2040 – Final Draft Presentation & Process Update

The City of Birmingham has received the third and final draft of the Birmingham Plan 2040 (the "2040 Plan"), which is available at www.thebirminghamplan.com. The schedule of review below outlines the presentation of the plan, the required 63-day public noticing period, and the reviews planned for the Planning Board and the City Commission. The planned schedule of review is as follows:

Date	Meeting Type	Action Needed
September 14, 2022	Planning Board	<ul style="list-style-type: none">• Present final draft.• Board recommends to the City Commission that the Plan be distributed for public comment (minimum of a 63-day period).
October 3, 2022	City Commission	<ul style="list-style-type: none">• Vote to authorize the 63-day distribution period for the final, draft Master Plan.
<i>Required 63-Day Public Notice Period</i>		
December 14, 2022	Planning Board	<ul style="list-style-type: none">• Review final draft and present / discuss comments received during the distribution period.• Set public hearing date.
January 11, 2023	Planning Board	<ul style="list-style-type: none">• Present the final Plan and hold a public hearing. Further discuss comments received during the distribution period as needed.• Adopt plan; recommend to the City Commission for adoption.

February 2023 (Exact Date TBD)	City Commission	<ul style="list-style-type: none"> • Present the final Plan and hold a public hearing. • If prepared to do so, the City Commission may adopt the Plan by resolution.
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At this time, the Planning Board should acknowledge the receipt of the final draft of the 2040 Plan and present it to the public, provide any high level observations, and recommend that the City Commission distribute the final draft as required by the Michigan Planning Enabling Act. Those entities in which the City is required to provide a copy of the final draft of the 2040 Plan may be summarized as follows:

- Surrounding Municipalities
- Oakland County
- SEMCOG
- Public Utilities
- CN North America (Railroad)
- SMART

Sample Motion Language

Motion to recommend that the City Commission authorize the 63-day distribution period for the final draft of the 2040 Plan pursuant to the requirements of Article III, Section 125.3841 of the Michigan Planning Enabling Act.

ATTACHMENT 2

5/9/22	Pickleball	Baller, no vote	Lauren Wood	Agenda item 5/23/22	Installed on 6-3-22
1/24/22	Social Districts	M: Schafer S: Boutros	Nick Dupuis/Jana Ecker	2/14/22 - make formal item 3/9/22 - Workshop 3/14/22 - Informally brought up by Host 6/20/22 Commission and Planning Board Discussed	No formal action taken by the Commission
5/23/22	Commission Meeting Start Time	Baller	Mary Kucharek	On agenda for 6/27/22 - Mary to draft generic ordinance language and discuss in July On agenda for 7/11/22 - Commission decided not to proceed	No changes for now

Topics Failed

4/25/22	On Street Parking Study	M:Haig S: Host
4/11/22	Downtown Parking	M: Host S: Haig
3/28/22	Parking Matters	M: Host S: Haig
6/13/22	479 SOW (Doraid) PAD	M: Boutros

Topics With No Vote - Resolved

1/10/22	Unimproved Streets	Discussed during the Long Range Planning meeting.
2/28/22	Solidarity with Ukraine	City Manager arranged for exterior lighting at City Hall.

Topics With No Vote - Unresolved

5/9/22	-PAD ordinance/cleanup	Baller, no vote	No vote
5/9/22	-Policy for granting public space ODD/Valet	Baller, no vote	No vote

Setting the Record Straight

2040 Master Plan does not Rezone Property

The City has observed a renewed vigor regarding the [Birmingham Plan 2040](#) ("2040 Plan") and its Neighborhood Seams concept across social media that has involved residents and a current City Commissioner. Within the posts and ensuing conversations, there has been a continued assertion or idea that the 2040 Plan will be rezoning single-family homes to build multifamily, and that somehow the City of Birmingham is ignoring its residents in favor of developers and profit.

This was the subject of two recent videos that Commissioner Host posted on social media, [one on Oakland Ave.](#) in which he stated "these five homes as well as the two lots over near Woodward are going to be *rezoned* to multiple", and the other in the [Poppleton Neighborhood](#) in which he states "in the proposed 2040 Plan they are going to *rezone* these two houses on Poppleton and turn them into

multiples” and that “you have time to tell the master planners and Planning Board what you think about this *rezoning* proposal.” It is important that we as City staff, Boards and Commissioners are factually accurate when discussing the Master Plan and how it applies to land use.

The City has reiterated that comprehensive master plans do **not** rezone property once adopted.

Excerpt from press release distributed [February 11, 2021](#):

“It is important to clarify that a master plan does not rezone property. It is a framework setting the course for what the City may or may not do in the future,” said Birmingham Planning Director Jana Ecker. “The community is encouraged to review the Frequently Asked Questions document and continue to share their thoughts and ideas on the project website.”

Excerpt from FAQ distributed [February 10, 2021](#) and [October 13, 2021](#):

Is the Master Plan rezoning the City?

No. The Master Plan will include a Future Land Use map, but not a new zoning map. The Master Plan recommends that the City study and revise its current zoning code, but does not establish any updated zoning. The Master Plan recommends that zoning be updated for two primary purposes: 1) to simplify but not substantively change zoning in the Downtown and Triangle District, and 2) to better align neighborhood zoning with existing character to avoid new houses that are out of character. Other zoning changes are recommended for further study by the City.

The words “rezone” or “rezoning” do not exist within the 2040 Plan document, nor the [Michigan Planning Enabling Act](#) that regulates comprehensive master planning in Michigan. A comprehensive master plan is a document designed to guide the future actions of a community. It presents a vision for the future, with long-range goals and objectives for all activities that affect the local government. One might say however, and correctly so, that a comprehensive master plan *informs* future zoning. In the spirit of guiding future actions and informing zoning, a Future Land Use Map is created, which is contained across pages 8 and 9 of the [current draft of the 2040 Plan](#). A Future Land Use Plan is legally required to be included in the 2040 Plan by the Michigan Planning Enabling Act.

In the 2040 Plan’s Future Land Use Map, several areas are identified as “district seams.” Seams are placed in areas where districts abut each other or natural or man-made barriers, and roadways that are more significant than a neighborhood street. These seams are broken down into three categories (download the [city’s zoning map](#) for reference):

- [Access Seams](#) – Focus is connectivity and multimodal improvements, located in R1A, R1, R2, and R3, and R4 zoning districts where abutted by R3 or more intense properties on all boundaries.
- [Activity Seams](#) – Found along regionally significant streets and places where multi-family housing, attached single-family housing, and commercial uses have previously been built, located in TZ-1, R3, R4, R5, R6, and R8 zoning districts
- [Buffer Seams](#) – Found along regionally significant streets and places where multi-family housing, attached single-family housing, and commercial uses have previously been built, located in TZ-1, TZ-3, R3, R4, R5, R6, R7, R8, and MX zoning districts.

The current composition of seams and the number of areas proposed for seams has changed dramatically since their inception in the first draft of the 2040 Plan. These changes are *directly and unequivocally* due

to the feedback that Birmingham residents provided to the City. The Planning Board, City Commission, consultant team, and City Staff have worked tirelessly over 4+ years to work the input of residents into the 2040 Plan, and to state otherwise would be inappropriate and unfair to those who have spent so much time working on the Master Plan, especially our Planning Board and City Staff.

As demonstrated [in the attached map](#), the seam concept in the Future Land Use Map affects a roughly 106 residentially zoned parcels in the City, 28 of which are already developed as multi-family or commercial (26%). Overall, roughly 78 single-family properties are being considered for exploration in locating multi-family units such as townhomes, cottage courts, and small multi-family buildings.

Finally, it is immensely important not to lose sight of why the seams concept and the accompanying hyper-specific multi-family housing types were planned in the first place. Again, we turn to the Michigan Planning Enabling Act for an initial simple justification:

125.3807 Master plan; adoption, amendment, and implementation by local government; purpose.

- 1) A local unit of government may adopt, amend, and implement a master plan as provided in this act.
- 2) The general purpose of a master plan is to guide and accomplish, in the planning jurisdiction and its environs, development that satisfies all of the following criteria:
 - a) Is coordinated, adjusted, harmonious, efficient, and economical.
 - b) *Considers the character of the planning jurisdiction and its suitability for particular uses, judged in terms of such factors as trends in land and population development.*
 - c) Will, in accordance with present and future needs, best promote public health, safety, morals, order, convenience, prosperity, and general welfare.
 - d)

As evident in subsection “c” of the above, trends in population development are a required criteria. Population trends are more than just a grand total. Population trends include:

- What kind of people live in the area;
- What types of lives they lead, and would like to lead;
- How long they will live;
- How long they will reside in the particular area;
- Who will replace them when they move out or die;
- How many children they will have (and would like to have under different conditions);
- Whether these children will live in the area; and
- Many other factors.

The 2040 Plan was developed based on a [background analysis](#) of data on population trends and forecasts from the U.S. Census Bureau and SEMCOG. The data informed the consultant team that Birmingham can expect a population increase, and that both new residents and existing residents alike will continue to require diverse housing types based on factors such as family size, health, age, and income. This has major implications for equity, aging in place, and sustainability, all of which are major pillars of planning in general, but also the City’s recently adopted Strategic Goals. As the 2040 Plan states, accommodating some of these different housing types must happen in areas other than the mixed use Downtown, Triangle District (or Haynes Square), or the Rail District. In stating such, the 2040 Plan also makes sure to emphasize that multi-family development in seam areas, should it ever be permitted, must complement the character, scale and massing of the surrounding neighborhood. The suggested action in the 2040 Plan is to “encourage infill development of small homes, townhomes, duplexes, and small multi-family buildings.”

ATTACHMENT 3

George W. Kuhn Retention Treatment Basin

The city received an email from Water Resources Commissioner, Jim Nash, regarding accusations made against the George W. Kuhn (GWK) Retention Treatment Basin. Mr. Nash's email ([available at this link](#)) provides information regarding the accusations, which pertain to pollution in Lake St. Clair and the Clinton River. Correspondence between Mr. Nash and Macomb County Public Works Commissioner, Candice Miller, and documentation countering the accusations are [available at this link](#).

Setting the Record Straight

2040 Master Plan does not Rezone Property

The previous City Manager's Report dated November 28, 2022 addressed inaccurate information being presented on social media to Birmingham's residents by a sitting City Commissioner. Specifically, two videos posted by Commissioner Host were discussed, [one on Oakland Ave.](#) in which he stated "these five homes as well as the two lots over near Woodward are going to be *rezoned* to multiple", and the other in the [Poppleton Neighborhood](#) in which he stated "in the proposed 2040 Plan they are going to *rezone* these two houses on Poppleton and turn them into multiples" and that "you have time to tell the master planners and Planning Board what you think about this *rezoning* proposal." These inaccuracies were raised and discussed at the City Commission meeting on November 28, 2022.

The City has repeatedly corrected the inaccuracies put forth by Commissioner Host in prior written documents as well. Specifically, the City has reiterated, in writing, the fact that comprehensive master plans do **not** rezone property once adopted in the following documents:

- In a press release distributed [February 11, 2021](#), which stated "it is important to clarify that a master plan does not rezone property. It is a framework setting the course for what the City may or may not do in the future."
- In a Frequently Asked Questions publication distributed on both [February 10, 2021](#) and [October 13, 2021](#), which included the following commentary:

Is the Master Plan rezoning the City?

No. The Master Plan will include a Future Land Use map, but not a new zoning map. The Master Plan recommends that the City study and revise its current zoning code, but does not establish any updated zoning. The Master Plan recommends that zoning be updated for two primary purposes: 1) to simplify but not substantively change zoning in the Downtown and Triangle District, and 2) to better align neighborhood zoning with existing character to avoid new houses that are out of character. Other zoning changes are recommended for further study by the City.

- In the November 28, 2022 edition of the City Manager's Report which stated:

The words "rezone" or "rezoning" do not exist within the 2040 Plan document, nor the [Michigan Planning Enabling Act](#) that regulates comprehensive master planning in Michigan. A comprehensive master plan is a document designed to guide the future actions of a community. It presents a vision for the future, with long-range goals and objectives for all activities that affect the local government. One might say however, and correctly so, that a comprehensive master plan *informs* future zoning. In the spirit of guiding future actions and informing zoning, a Future Land Use Map is created, which is contained across

pages 8 and 9 of the [current draft of the 2040 Plan](#). A Future Land Use Plan is legally required to be included in the 2040 Plan by the Michigan Planning Enabling Act.

Despite the continued corrections issued on the matter, yet another video has been circulating on social media in which Commissioner Host stands near the corner of Lincoln and Grant, and states that “The 2040 Plan as proposed is going to *rezone* to *multiples (sic)* all of the south side of Lincoln between here (*Grant Street*) and Woodward”. Once again, there is a need to reiterate that comprehensive master plans do **not** rezone property once adopted.

As discussed last month in both the City Manager’s Report and at the City Commission meeting on November 28, 2022, it is very important that City staff, board members and City Commissioners are factually accurate when discussing important issues with the public. The continued assertion by Commissioner Host that the Draft 2040 Plan will rezone single-family properties to multi-family zoning, despite repeated attempts by City staff to set the record straight as to the fact that master plans **do not** in fact rezone properties once adopted disregards the facts and staff’s attempts to advise him of his inaccuracies. Such communication undermines the confidence of the public in city government, and adversely affects the integrity of city government. Public office is a public trust. For government to operate properly, each city official, employee, or advisor must earn and honor the public trust through integrity and conduct.

2040 Master Plan does not Propose Food and Beverage Services at Quarton Lake Park or the W. Lincoln Well Site

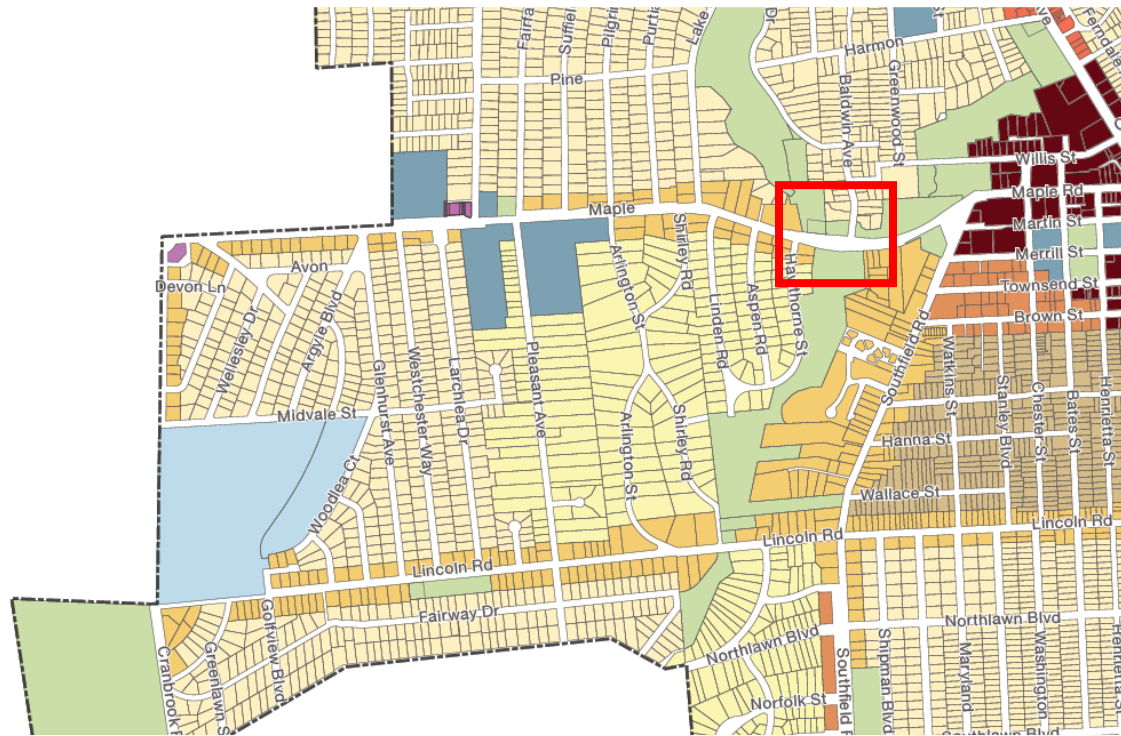
It is also important to set the record straight due to another video that has been circulating on social media in which Commissioner Host states that the 2040 Plan “proposes kiosks, cafes, food trucks, commercial endeavors here”, referencing the waterfall at the south end of Quarton Lake at the dam.

This area is part of Quarton Lake Park, and the draft 2040 Plan clearly refutes Commissioner Host’s inaccurate statement. Chapter 3, Retain Neighborhood Quality, of the draft 2040 Plan clearly contains a chart on page 53 (Figure 34) with all parks listed, and specifically excludes the provision of food and beverage services at Quarton Lake Park (see highlighted chart below).

	Athletics	Food & Bev.	Garden	Dogs	Exercise	Play	Splash	Seating	Walkways
Specialty Parks									
18. Booth		X		X	X	X	X	X	X
19. Rouge River								X	X
20. Shain		X				X	X	X	X
21. Quarton Lake			X	X	X	X	X	X	X
22. Museum								X	X
23. Manor					X	X		X	X
24. Springdale	X			X	X	X		X	X
25. Lincoln Hills	X			X	X			X	X
26. Worth Park		X						X	
26. Haynes Sq.		X			X	X	X	X	X

Figure 34. Recommended Park Amenities for Consideration in a Parks and Recreation Plan Update.

In addition, the Future Land Use Map contained in the draft 2040 Plan also clearly refutes Commissioner Host's statement. Section B, Future Land Use, of the draft 2040 Plan clearly contains the Future Land Use Map on page 8 (Figure 5), which does NOT recommend a commercial destination at the south end of Quarton Lake Park (location highlighted in red).



District Destinations

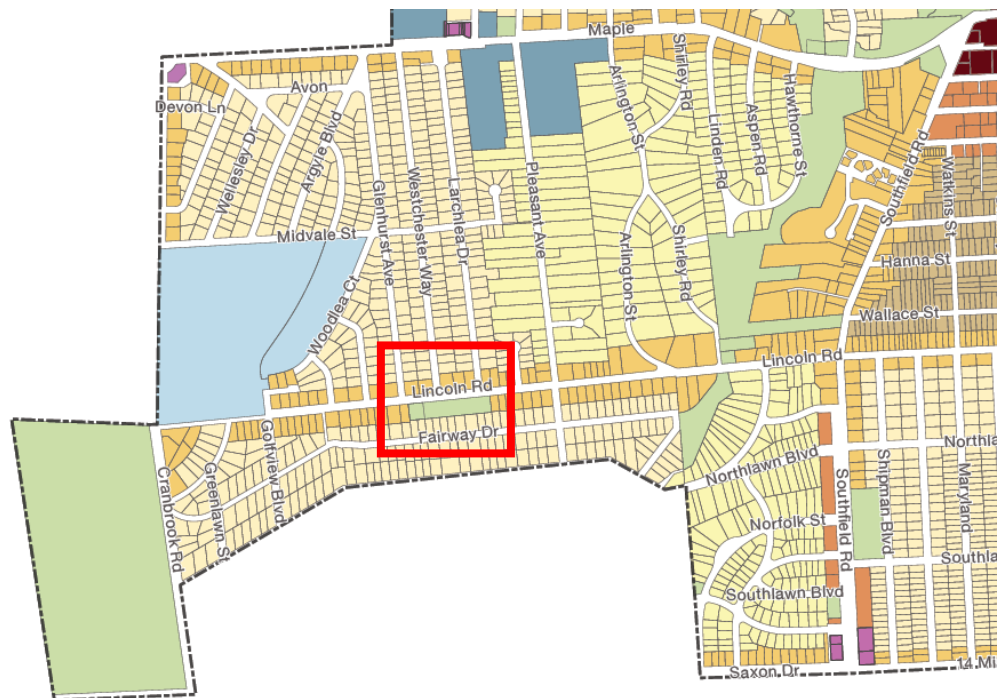
- Civic Destination: General
- Civic Destination: School
- Civic Destination: Cemetery
- Recreational Destination
- Commercial Destination

Yet another video was circulated on social media on December 14, 2022 in which Commissioner Host appears at the W. Lincoln Well Site on Lincoln between Larchlea and S. Glenhurst, and states that the 2040 master plan shows that "they want to put in kiosks, cafes, food trucks or carts...this is subject to interpretation. Does that mean a Starbucks?" at the W. Lincoln Well Site.

Once again, it is important to set the record straight. The area referenced by Commissioner Host is formally named W. Lincoln Well Site, and is also known as Lincoln Park. The draft 2040 Plan clearly refutes Commissioner Host's inaccurate statement. Chapter 3, Retain Neighborhood Quality, of the draft 2040 Plan clearly contains a chart on page 53 (Figure 34) with all parks listed, and specifically excludes the provision of food and beverage services at W. Lincoln Well Site (see highlighted chart below).

	Athletics	Food & Bev.	Garden	Dogs	Exercise	Play	Splash	Seating	Walkways
Mini Parks									
1. Baldwin Well								X	
2. Derby Well			X	X	X	X		X	X
3. Pump House					X			X	X
4. Redding Well			X		X			X	X
5. Lynn Smith			X		X			X	X
6. Martha Baldwin					X			X	X
7. South Well			X					X	X
Neighborhood Parks									
8. Crestview	X	X	X	X	X	X		X	X
9. Howarth	X		X	X	X	X		X	X
10. Linden	X		X	X	X	X		X	X
11. Pembroke	X		X	X	X	X		X	X
12. St. James	X		X	X	X	X		X	X
13. W. Lincoln Well Site	X		X	X	X	X		X	X
14. Adams Park	X				X	X		X	X
A. Adams Square	X			X	X	X		X	X
B. Quarton School	X			X	X	X		X	X

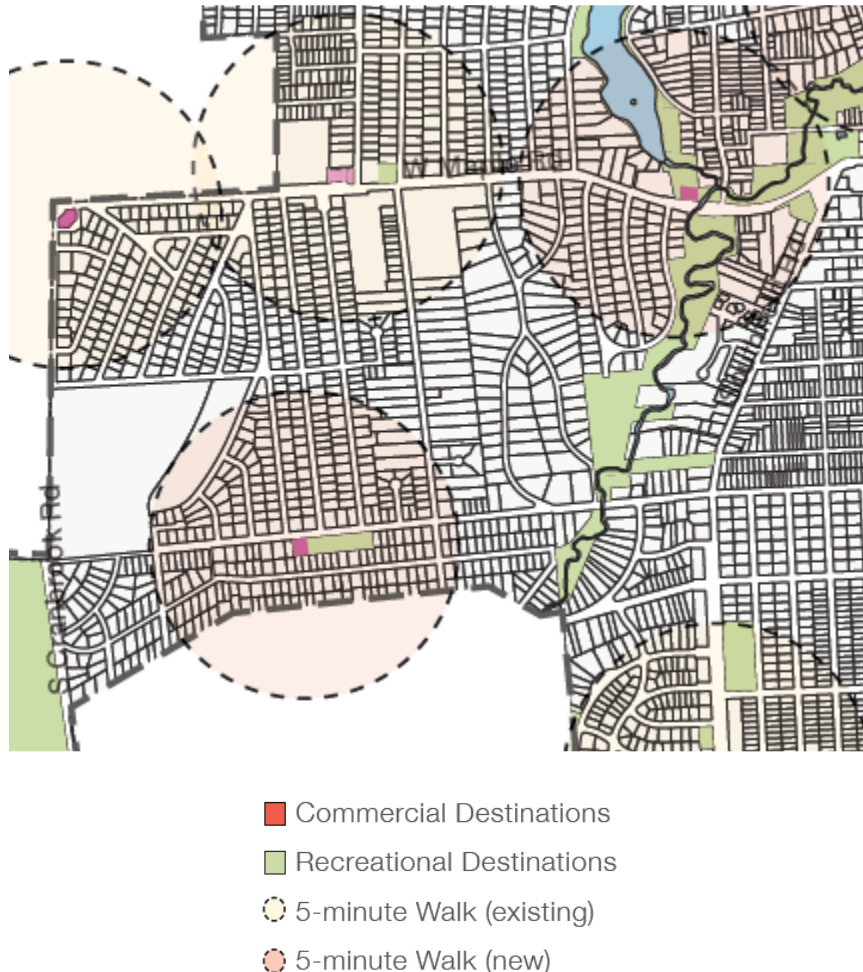
In addition, the Future Land Use Map contained in the draft 2040 Plan also clearly refutes Commissioner Host's statement. Section B, Future Land Use, of the draft 2040 Plan clearly contains the Future Land Use Map on page 8 (Figure 5), which does NOT recommend a commercial destination at the W. Lincoln Well Site (location highlighted in red).



District Destinations

- Civic Destination: General
- Civic Destination: School
- Civic Destination: Cemetery
- Recreational Destination
- Commercial Destination

The confusion about “commercial endeavors” being proposed in Quarton Lake Park, or a coffee shop at the W. Lincoln Well Site may have arisen as a result of Figure 22 in Chapter 1, Connecting the City, on page 36 of the draft 2040 Plan. Figure 22 shows recommended neighborhood commercial destinations at the south end of Quarton Lake Park, and at the west end of the W. Lincoln Well Site.



However, during Planning Board review of the draft plan, direction was provided to the consultant at a public meeting to remove the Quarton Lake Park and the W. Lincoln Well Site neighborhood commercial destinations based on public input. These updates were made to Figure 34 (Parks Chart) and to Figure 5 (Future Land Use Map) but updates were not made, and should have been, to Figure 22 (Neighborhood Destinations). However, Planning Director Dupuis clearly stated at the November 28, 2022 City Commission meeting that the consultant will ensure these corrections would be made in the final draft of the 2040 Plan.

During the past week, yet another video was posted on social media by Commissioner Host regarding the Poppleton neighborhood, wherein Commissioner Host states that “the 2040 master plan asks us to embrace managed growth and encourages these 2 lots to be townhouses, duplexes or multi-family buildings”. The change in terminology utilized in this video seems to demonstrate that perhaps

Commissioner Host may be attempting to self-correct his previous misstatements as to rezoning in earlier videos.

As noted above, it is very important that City staff, board members and City Commissioners are factually accurate when discussing important issues with the public, and thus City Commissioners and board members should contact City staff to verify the accuracy of all public communications.

The City goes to great lengths to accurately describe the purpose of our public meetings. Having elected officials encouraging public attendance is fine. Misrepresenting what the purpose of a hearing is or the topics that are to be discussed is inappropriate and only causes conflict and needless emotional distress. As I have stated before, "Let the process work". The City Commission has appointed citizens to the Planning Board to review the master plan drafts and the board members have shown their willingness to be completely transparent and open to considering public comments which may differ from what the draft master plan calls for. The professional staff and consultants are paid to provide their professional advice, however, they recognize that their recommendations must stand the test of the public process, and are likely to be questioned, challenged and altered through the very public and transparent review process. What the public does not need is a public official misstating the proposals contained within the draft 2040 Plan or encouraging a public position for or against the various recommendations contained in the evolving drafts of the proposed master plan.

I would also say that prematurely taking positions or advocating positions on the various aspects of the draft 2040 Plan is contrary to following an open public process, especially when it comes to a City Commissioner who ultimately is one of seven persons who are held responsible for the final decision on the plan. As those of you who have gone through the new City Commissioner orientation process know, I encourage our elected officials to keep an open mind about the decisions they make right up to the time they are called upon to vote.

Finally, I repeat, "Let the process work". Our community is filled with intelligent, thoughtful and well-informed people who are not likely to sit in a pot of boiling water without making their discomfort and views known. Our process works quite well and in my opinion, does not benefit from misinformation or fear mongering.

Boiling Frog Metaphor

At the November 28, 2022 City Commission meeting, a Commissioner asserted that frogs will remain in a pot of water that is slowly brought to a boil. Although the boiling frog metaphor is commonly used in political discourse, herpetologists have found that frogs will, in fact, attempt to escape a pot as its water temperature is raised. For more information, read this brief [article](#) by [Dr. Whit Gibbons](#), Professor Emeritus of Ecology at the University of Georgia.

Department of Public Services

Pat Andrews Tribute

The table below describes the donations received to date in honor of Pat Andrews.

Pat Andrews Tribute	Amount Received	Date Received
Name of Donor		
Debicki, Sandra	\$225.00	12/16/2021
Host, Bradley	\$500.00	11/17/2021
Karhohs, Jo	\$100.00	11/17/2021

ATTACHMENT 4

A wish for you and yours to have a Happy New Year! We can all hope for a better 2023!

You should be interested to know The Birmingham Planning Board is in the final stages of reviewing the 2040 Master Plan for the City. Chapter 2, *Embrace Managed Growth*, identifies the properties that are single-family today along the Southside of Lincoln between Grant and Woodward and states:

"...While there are not many properties available for infill.... those areas able to accommodate infill should be zoned to encourage it... Create a new zoning district or modify the transition zone districts to enable infill development of small homes, townhouses, duplexes, and small multi-family buildings..."

The Planning Board will hear your comments in person 7:30PM Wednesday, January 11, 2023. Or you can **go online to send your comments** at <https://thebirminghamplan.com/comment>

Again, best wishes for 2023.



Always welcoming your emails and calls.

Brad Host

248.219.2249

BraddHost@gmail.com



Josh Greenwald

Torry Community Assoc · 9m ·



Apparently a new development (likely townhouses) is being planned for t

January 2, 2023

Dear Birmingham Neighbors,

A wish for you and yours to have a Happy New Year! We
for a better 2023!

You should be interested to know The Birmingham Planning E
final stages of reviewing the 2040 Master Plan for the City. C
Embrace Managed Growth, identifies the three single-family h
Southeast corner of Eton and Lincoln and states:

*"...While there are not many properties available for infill.... th
able to accommodate infill should be zoned to encourage it...C
zoning district or modify the transition zone districts to enable
development of small homes, townhouses, duplexes, and sma
buildings..."*

The Planning Board will hear your comments in person 7:30P
Wednesday, January 11, 2023. Or you can **go online to send**
comments at <https://thebirminghamplan.com/comment>

ATTACHMENT 5

Mary Kucharek

From: Tom Markus <tmarkus@bhamgov.org>
Sent: Tuesday, December 20, 2022 6:43 PM
To: Brad Host
Cc: City Commission; Department Heads
Subject: Re:

As I previously stated: "If that was not your intent, I would suggest that you publicly acknowledge that you did not intend to disparage the Plan Board.

On Tue, Dec 20, 2022 at 1:41 PM Brad Host <bhost@bhamgov.org> wrote:

Thanks Tom.

Couldn't conceive agreeing with a "rogue" comment. My intention was agreeing with a less friendly local environment ONLY. Have stated same to Linda. Would you want me to address this retraction with the Planning Board?

Best safe wishes,

Brad

Sent from my iPhone

On Dec 20, 2022, at 11:06 AM, Tom Markus <tmarkus@bhamgov.org> wrote:

As I observed your reaction to my comment about you agreeing with a citizen that our Plan Board has gone rogue, you seemed to not know what I was referring to and or you acted as if it did not happen. Please see the attached commentary that I am referring to. It is pretty clear that you agreed with the "rogue comment". Is it possible that someone else has access to your facebook page and is communicating in your place? Obviously, your comment creates the view that you think our Plan Board is operating improperly. If that was not your intent, I would suggest that you publicly acknowledge that you did not intend to disparage the Plan Board. Remember that our Plan Board members are citizens who volunteer their time (a lot of time) to help the City Commission plan for the future of our community. As I noted at Monday's meeting our Plan Board is one of the most competent Planning Boards I have had the privilege to work with.

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

From: **thomas markus** <tmsquared20@gmail.com>

Date: Tue, Dec 20, 2022 at 9:14 AM

Subject:

To: <tmarkus@bhamgov.org>

<Resized-image-110218743756182.jpeg>

--

You received this message because you are subscribed to the Google Groups "DepartmentHeads" group. To unsubscribe from this group and stop receiving emails from it, send an email to departmentheads+unsubscribe@bhamgov.org.

To view this discussion on the web visit

https://groups.google.com/a/bhamgov.org/d/msgid/departmentheads/CALPLqCh0Xye3ZFVNPJ-dMe4Rc%3D%3DSb4cOM_RnG_YjVdsRGzZqfQ%40mail.gmail.com.

Mary Kucharek

From: Tom Markus <tmarkus@bhamgov.org>
Sent: Tuesday, December 20, 2022 11:06 AM
To: Brad Host
Cc: City Commission; DepartmentHeads
Subject: Fwd:

As I observed your reaction to my comment about you agreeing with a citizen that our Plan Board has gone rogue, you seemed to not know what I was referring to and or you acted as if it did not happen. Please see the attached commentary that I am referring to. It is pretty clear that you agreed with the "rogue comment". Is it possible that someone else has access to your facebook page and is communicating in your place? Obviously, your comment creates the view that you think our Plan Board is operating improperly. If that was not your intent, I would suggest that you publicly acknowledge that you did not intend to disparage the Plan Board. Remember that our Plan Board members are citizens who volunteer their time (a lot of time) to help the City Commission plan for the future of our community. As I noted at Monday's meeting our Plan Board is one of the most competent Planning Boards I have had the privilege to work with.

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

From: **thomas markus** <tmsquared20@gmail.com>
Date: Tue, Dec 20, 2022 at 9:14 AM
Subject:
To: <tmarkus@bhamgov.org>



Brad Host

22h ·

The city needs your voice:

<https://www.thebirminghamplan.com/comment>



7

2 comments 70 views

Like

Comment

Send



Linda Orlans

Thanks [Brad Host](#). Looks like the Planning group has gone Rogue again. What is happening to our family friendly Birmingham! So disappointing.

Like Reply



Brad Host

[Linda Orlans](#) agree!

Like Reply

--

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To view this discussion on the web visit <https://groups.google.com/a/bhamgov.org/d/msgid/city-commission/CALPLqCgx%3DHqHdX%3D%2BEQjpqguODGLLG7cRuS7R28ejfw%2BXUN%3Du2A%40mail.gmail.com>.

ATTACHMENT 6

Mary Kucharek

From: Tom Markus <tmarkus@bhamgov.org>
Sent: Thursday, December 22, 2022 2:15 PM
To: nord718@aol.com
Cc: City Commission; DepartmentHeads
Subject: Draft 2040 Plan Comments

Dear Ms. Nordlie,

Thank you for your comments on the Draft 2040 Plan that you provided via email to Commissioner Host (attached below).

Commissioner Host has asked that we forward your comments to the Planning Board for consideration during the public review process. We are happy to share your email comments with the Planning Board.

Did you know that the café discussed in the Draft 2040 Plan for Booth Park is not a new idea, but has been included in the recommendations contained in the Downtown Birmingham 2016 Plan since 1996? The 2016 Plan had specific recommendations for improvements in Booth Park, including the provision of a café or kiosk located near the corner of N. Old Woodward and Harmon, to anchor the corner and activate the area by providing food and drink to park visitors. In addition, the most recent Parks and Recreation Plan (2018) also shows a concept plan for Booth Park that includes an urban plaza entry feature at the corner of Harmon and N. Old Woodward with umbrella covered tables with seating for visitors to enjoy. The Draft 2040 Plan continues to recommend the addition of a café or kiosk in Booth Park, as recommended since at least 1996.

As the Downtown Birmingham 2016 Plan, the Parks and Recreation Plan and the Draft 2040 Plan are master plans, they provide recommendations, but do not mandate the implementation of each element. Rather, the plans recommend concepts for further study and exploration in the future, given the right opportunity and the availability of funding for study and potential implementation. However, incorporation in a master plan does not guarantee implementation, as the City would need to fund and conduct further study and planning in the future, and this would require formal approval of the City Commission before any further steps are taken.

In light of this information, please verify that you wish to send your comments as presented to the Planning Board. If that is your desire, please let us know and we will be happy to pass your email along to the Planning Board for consideration during the public review process.

Tom Markus

Forwarded

From: nord718@aol.com
Date: December 20, 2022 at 2:00:18 PM EST

To: bhost@bhamgov.org
Subject: Booth Park cafe?

Hi Brad...

I think you may have asked for some feedback on this issue, so I would like to respond.

I think it is a bad idea for at least two reasons:

1) the potential for an increase in vehicle traffic. There are already numerous times when that part of the street is blocked off by people who park illegally to go to the park or pick up to-go orders from the nearby restaurants, etc. Also, many times there are already times when traffic on that street is problematic even without any increase due to the cafe.

2) the increase in trash and littering. There is already too much trash on the park property, on Harmida Street, and many more napkins, to-go cups, etc. blowing around that area. Also, there is no need for a high concentration of restaurants in that area.

Just a thought... if you want to test out the idea before investing in the infrastructure, why not find a way to see what the response is and if traffic and litter do become bigger problems.

I hope this feedback is helpful. Thanks for your service as a commissioner.

Sincerely,
Nancy Nordlie
450 Tooting Lane
Birmingham, MI 48009

--

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To unsubscribe from this group and stop receiving emails from it, send an email to city-commission+unsubscribe@bhamgov.org.

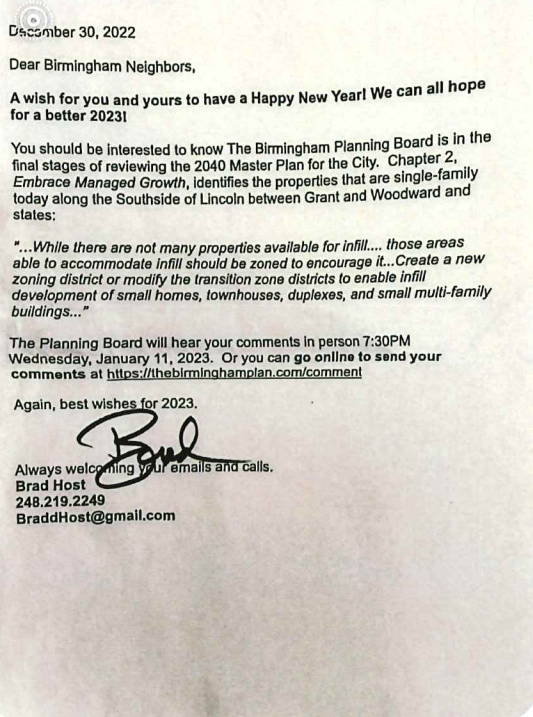
To view this discussion on the web visit <https://groups.google.com/a/bhamgov.org/d/msgid/city-commission/CALPLqCJoJeD5kxFnuPAFFDQKmuGcAUtOi9aJWMYS80mcpE%3DqEQ%40mail.gmail.com>.

ATTACHMENT 7

11:32



Mark >



Good afternoon Tom

Just thought you would find
interest in this

My neighbor just pulled me aside
this mor
Ing, in total fear that something
terrible was going to happen to
our neighborhood.

She got this in her mailbox
dropped off by hand. Funny
thing, I didn't get one. I wonder
why?



iMessage





Mark >



This is a handout designed to scare, but not explain. It's interesting how it says very little, but implies a lot.

And it absolutely does not clarify the facts about what is going on.

Intentionally designed as a fear, mongering piece, in my opinion.

More of the same inappropriate behavior by commissioner.

I definitely believe this is not the way the commissioner should handle this issue. Not impressed to say the least.

FYI

Have a great day
Mark

May I share this with the commission?

Yes, for sure

But
I assume , Not my text message.



iMessage





Mark >



Yes, for sure

But

I assume , Not my text message.
Just the letter, right?

Is that what you mean?

You can surely say that it came
from one of my neighbors. If
you'd like. It's up to you,

I think your text message would
add context. I ccd a similar Brad
letter at the last meeting and
made comments

Delivered

And I thought you'd want to
share it with Mary as well. I think
it's worthwhile to consider an
ethics review regarding his
actions.

On a sidenote, dropping a letter
in people's mailboxes is also bar
questionable and I don't think it's
legal either. But that's just
another side point



iMessage



Ethics Conference

Christal Phillips <christal.phillips@detroitethics.org>
To: Alex Bingham <abingham@bhamgov.org>

Wed, Dec 21, 2022 at 3:54 PM

Hi Alex,

Thanks for reaching out. The ethics conference will likely be held in April 2023. I am only in talks with various boards and professors who want to participate, but I have not gotten to confirm the session topics or panels. Some common themes from boards that want to participate are conflict of interest issues (obtaining independent counsel vs. city attorney), funding, revising the ordinance and charter, and creating a more effective and enforceable board.

Any public servant with Birmingham is welcome to attend. If some of your ethics board members would like to participate in a panel, that would be great too. We can discuss the topic of the panel session in the new year.

Please reach out to me at any time to discuss the conference or anything else.

Happy Holidays!

Christal Phillips

[Quoted text hidden]

--

Christal Phillips

Executive Director

(she/her/hers)

Board of Ethics for the City of Detroit

[7737 Kercheval, Suite #213](#)

[Detroit, MI 48214](#)

O. 313-224-3768

C. 313-269-3651

christal.phillips@detroitethics.org

www.detroitethics.org

Ethics Complaint - Notice of Administrative Dismissal

Alex Bingham <abingham@bhamgov.org>
To: davidgunsberg@hotmail.com
Bcc: Mary Kucharek <mkucharek@bhlaw.us.com>

Tue, Jan 3, 2023 at 2:54 PM

Mr. David Gunsberg,

Attached is the email submitted by Liz Slanec on December 13, 2022 which includes the ethics incident/complaint form that you filled out. The second attachment in this correspondence is a letter giving notice and informing you that I have administratively dismissed the complaint.

For any other inquiries regarding this matter, kindly contact me through this email.

--

Alexandria D. Bingham

City Clerk

City of Birmingham

151 Martin Street

Birmingham, MI 48009

(248) 530-1802 Office Direct

(248) 530-1080 Fax

abingham@bhamgov.org

Important Note to Residents

Let's connect! Join the Citywide Email System to receive important City updates and critical information specific to your neighborhood at www.bhamgov.org/citywideemail.

2 attachments



Eithics Incident Complaint.pdf

1078K



Gunsberg - Notice of Administrative Dismissal of Ethics Complaint.pdf

123K



January 3, 2023

****Via Email: davidgunsberg@hotmail.com & First Class Mail****

Mr. David Gunsberg
10221 Capitol St.
Oak Park, MI 48237

Re: Notice of Administrative Dismissal of Ethics Complaint

Dear Mr. Gunsberg:

Pursuant to the City of Birmingham Board of Ethics Procedurals Rules found at Chapter 3, Procedure for Resolving Complaints Rule 301 states that

"Filing of Complaint A person with a complaint involving the applicability of any provision of the Code of Ethics with respect to the conduct of a city official or employee may bring the matter before the board by filing with the city clerk a complaint on a form prescribed by the clerk. The person who files the complaint is called the "complainant." The person who is alleged to have breached the code is called the "respondent."

Rule 302. Dismissal. (a) the city clerk may administratively dismiss a complaint if it fails to comply with Rule 301 of this Chapter. The Birmingham City Clerk's office has received a form prescribed by the Clerk's office, from your office that does not comply with Rule 301. The form that has been returned to the City Clerk's office does not contain the specificity needed to satisfy paragraph 1 of the form. As to paragraph 2 of the form, the statement explains how the "above named" person violated the Ethic's Ordinance, which it does not. The attached letter to the form that has been returned, provides allegations that do not contain complaints of the Ethic's Ordinance, rather it complains and states that some police officers' actions were "unauthorized police activity outside their legal capacity and requires resolution." The activities complained about involves potential complaints of unauthorized police activity, which would be outside of the scope of the Ethics Board's determination. The complaint as stated indicates that the Ethics Board would have to determine civil, criminal, or administrative resolution or an examination of police conduct in the criminal process and procedure, and constitutionality. These determinations are outside the scope of the Ethics Board authority.

Therefore, the Birmingham City Clerk is administratively dismissing this complaint because it fails to comply with Rule 301 of the Birmingham Board of Ethics procedural rules.

Very truly yours,


Alexandria Bingham, City Clerk
abingham@bhamgov.org

Fwd: Complaint Form and Document

1 message

Scott Grewe <Sgrewe@bhamgov.org>

Wed, Dec 14, 2022 at 8:29 AM

To: Tom Markus <tmarkus@bhamgov.org>, "Kucharek, Mary" <Mkucharek@bhlaw.us.com>, Mark Clemence <Mclemence@bhamgov.org>, Alex Bingham <abingham@bhamgov.org>

Please see attached complaint form.

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

From: **Liz Slanec** <lslanec@eatonsteel.com>

Date: Tue, Dec 13, 2022 at 4:49 PM

Subject: Complaint Form and Document

To: sgrewe@bhamgov.org <sgrewe@bhamgov.org>

Cc: David Gunsberg - Hotmail <davidgunsberg@hotmail.com>

Captain S. Grewe ~ you name and email was given to me by Lieutenant Ray Faes.

I'm sending on behalf of David B Gunsberg. His contact information is below.
Please reach out to Mr Gunsberg should you have any questions.

David B Gunsberg

248-231-9090

davidgunsberg@hotmail.com

Liz Slanec

--

Scott Grewe
Operations Captain
Birmingham Police Department
[151 Martin St.](#)
[Birmingham, MI. 48009](#)
(248)530-1867



Important Note to Residents

Let's connect! Join the Citywide Email System to receive important City updates and critical information specific to your neighborhood at www.bhamgov.org/citywideemail.



Eithics Incident Complaint.pdf

922K



Case No. _____
(Assigned by clerk)

ETHICS INCIDENT/COMPLAINT FORM

Any person who has a complaint against a city official or employee, as defined in the Code of Ethics, alleging that conduct of that official or employee is in breach of the code, may bring the matter before the Birmingham Board of Ethics by filing this form with the city clerk. Within seven days upon receipt of this filing, the clerk will set a hearing for this matter and notify the parties involved according to the ordinance.

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

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

1. Name the person alleged to have violated one or more provisions of the City of Birmingham's Ethics Ordinance (Chapter 2, Article IX), and provide the following information, if known. If you are alleging that more than one person may have violated the City of Birmingham's Ethics Ordinance, file a separate complaint form for each individual. The information on this form may be subject to disclosure under the Freedom of Information Act.

Name _____ Phone Number (____) _____

Address _____
(Number, Street, City, State, Zip)

Position or Board Police officer (Birmingham Police Dept)

2. Explain why you believe that the individual named above may have violated the City of Birmingham's Ethics Ordinance. Be as specific as possible as to dates, times, places, and actions. Attach additional sheets of paper if the space provided below is not sufficient. Also note which specific section in the ordinance was violated.

See Attached

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 subject matter? If so identify in detail.

See Attached

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

[Signature]

Your signature

12/13/2022

Date

David B. Gunsberg

Your printed name

Address 10221 Capital St Oak Park MI 48257
(Number, Street, City, State, Zip)

Daytime Phone (248) 231-9090 Evening Phone (248) 231-9090

Email davidgunsberg@hotmail.com

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

If you have questions about this form, or would like to request the form in an alternate format for the visually impaired, contact the Clerk's Office at 248.530-1880 or write us at the above address. We will take reasonable steps to accommodate your needs.

NOTE: Within seven days of receipt of this form, the Birmingham Ethics Board will set a date for hearing this matter. Any parties involved will be given 28 days notice to appear at the hearing.

Revised 8/16/12

FOR OFFICE USE ONLY

Accepted by _____

Date _____

3. Attach or make reference to any document or other evidence that may support your allegations. Also provide the names and addresses (if known) of any witnesses or persons who may have knowledge of facts that support your allegations.

See attached document

DAVID B. GUNSBERG, ESQ.
10221 CAPITAL ST. OAK PARK, MI 48237 248.231.9090
davidgunsberg@hotmail.com

December 7, 2022

To the Birmingham Police Department

I am filing this complaint on behalf of my client, Darlene Fowlkes of Pontiac Michigan.

On Tuesday November 29, 2022, two Birmingham Police Officers, not in uniform and in an unmarked vehicle, came to Ms Fowlkes home in Pontiac unannounced, at 8:13am violently banged on the door and demanded entry to search for "air pods" they claimed were 'stolen" and had 'pinged' in the area. When Ms Fowlkes asked why they were acting in Pontiac, clearly outside their jurisdiction and authority, one officer said they "could do what they wanted". They did not identify themselves or show police identification; even when requested only one person "flashed" what appeared to be a badge.

The officers repeatedly accused Ms Fowlkes(or someone in her family) falsely, of stealing 'air pods", which she repeatedly denied. The did not identify the owner of the air pods or alleged circumstances of theft. They claimed they were stolen in Birmingham the night before although Ms Fowlkes repeatedly denied she (or her grown children) had been in Birmingham the day before. This police behavior was witnessed by Ms Fowlkes 2 grown children.

When Mrs Fowlkes' daughter showed the officers her own air pod case, one of the officers (Cook sp?) made a motion toward his waist as if he had a weapon.

Ms Fowlkes called the Birmingham Police Department to file a complaint and was directed to a Captain Cook (sp?). It turns out he was the officer banging on Ms Fowlkes house and behaving in a threatening and intimidating manner. Captain Cook repeatedly tried to talk Ms Fowlkes out of making a complaint.

Ms Fowlkes is a widowed Oakland County employee with no criminal record of any kind and (was a US Marine who was honorably discharged). Her deceased husband was a retired fireman after 35 years of service. Her grown children are college graduates (Princeton and Oakland University). They are not engaged with law enforcement. They are EXEMPLARY CITIZENS !!!

All of this bizarre intimidating/threatening behavior (a Captain going out of his authorized jurisdiction to track down "air pods" ?) has caused Ms Fowlkes and her family extreme emotional distress, fear, and disturbance.

Obviously, these officers' actions were unauthorized police activity, outside their legal capacity and require resolution. Unauthorized police activity which is threatening and harassing is completely unacceptable.

Please contact me to explore a fitting resolution to this outrageous incident.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'D. Gunsberg', with a stylized flourish extending from the end.

David B. Gunsberg

cc: Darlene Fowlkes – client