

ATTACHMENT 8

MEMORANDUM

DATE: December 13, 2021
TO: Thomas M. Markus, City Manager and City Commission
FROM: Mary M. Kucharek
SUBJECT: Commissioners Attendance at Various Advisory Boards and Committees

INTRODUCTION:

At the December 6, 2021 regular Commission meeting, the City Commission discussed the best practice regarding Commissioners' attendance at various boards and committees.

BACKGROUND:

As the Commission recalls at the December 6, 2021 meeting, a legal opinion and the City Manager's opinion was provided discouraging commissioners from attending various boards and committees either in person or with their names advertised remotely. A legal opinion was discussed at the meeting of December 6, 2021, and it was determined that a policy would be adopted by the City Commission stating commissioners should refrain from appearing at the various boards and committee meetings in person or with their names advertised remotely.

LEGAL REVIEW:

The Attorney General of Michigan and Michigan Courts have examined these issues in the past. In 1981 the Attorney General made the determination that it would be improper for commissioners that possess appointment powers over members of boards and committees to appear before boards of committees regarding the business of that board, particularly if they have a personal interest. Also, courts have determined that when the appointees of those serving on committees and boards are conducting their business, the presence of those who appointed them causes an imposition of duress not as a matter of law, but in matters of potential consequence. The courts have stated that "the presence of a city commissioner before boards bring with it the presence and powers of his office."

FISCAL IMPACT:

None.

PUBLIC COMMUNICATIONS:

None.

SUMMARY:

The City Commission would desire to adopt a Policy of Procedure which prohibits commissioners from appearing at various boards and committee meetings.

ATTACHMENTS:

- Report of December 6, 2021
- Resolution
- Amendment to Rules of Procedure
- List of Meetings, taping or access for meetings remotely and after, and ability to review meetings online.
- Instructions to change your name on Zoom.

SUGGESTED COMMISSION ACTION:

Make a motion adopting a Resolution to adopt a policy stating that commissioners will not attend various advisory board and committee meetings.

REPORT

DATE: December 6, 2021
TO: Thomas M. Markus, City Manager and City Commission
FROM: Mary M. Kucharek
SUBJECT: Commissioners Attendance at Various Advisory Boards and Committees

The question has been posed, whether it is advisable for City commissioners to personally attend various advisory boards and committees of the City.

In order to analyze this issue, we must be cognizant of not only impressions and unattended consequences of the presence of commissioners, but the Open Meetings Act as well. Keeping in mind that the basic intent of the Open Meetings Act is to require commissioners to be transparent while conducting business at open meetings of the City Commission. A meeting means the convening of the Commission when there is a quorum present for the purpose of deliberating or rendering a decision on public policy, and all meetings must be considered open to the public with proper notice given to the public stating the date, time and place of all commission meetings. If a commissioner were to address one of the boards or committees while a quorum of the Commission was present, it could be argued that a meeting occurred if the commissioners had an exchange between two (2) members. An exchange between commissioners could be deemed to be deliberation towards a decision, even if that decision was not being made at the committee level but at a future Commission meeting.

Courts have examined these issues in the past and, likewise, the Office of the Michigan Attorney General. In 1981 the Attorney General made the determination that it would be improper for commissioners that possess appointment powers over members of boards and committees to appear before boards of committees regarding the business of that board, particularly if they have a personal interest. Also, courts have determined that when the appointers of those serving on committees and boards are conducting their business, the presence of those appointers causes an imposition of duress on the members of the board not as a matter of law, but in matters of potential consequence. The courts have stated that "the presence of a city commissioner before boards bring with it the presence and powers of his office."

While the intended purpose of commissioners to attend the various boards and committees of the City is to observe, to be aware of, as well as to learn what is happening in the community, those purposes and intents can easily be achieved by either watching the proceedings anonymously on zoom or watching at a later date as all open meetings are recorded. Therefore, to avoid even the appearance of an opportunity of potential influence or duress upon appointees, and to avoid the remote opportunity to violate the OMA, it is my recommendation that commissioners refrain from appearing at the various boards and committee meetings in person or if on zoom with their names.

CITY OF BIRMINGHAM
A RESOLUTION CONCERNING A POLICY REGARDING
COMMISSIONERS' ATTENDANCE AT ADVISORY BOARDS AND COMMITTEES

At a meeting of the City Commission of the City of Birmingham, Oakland County, Michigan, held on the 13th day of December, 2021, at City Hall, 151 Martin Street, Birmingham, MI, 48009.

Moved by: _____ Seconded by: _____

WHEREAS, at the December 6, 2021 regular Commission meeting, discussions were had regarding the best practice for commissioners to not attend various advisory boards and committees; and,

WHEREAS, legal counsel submitted a legal opinion to the City Commission at the December 6, 2021 Commission meeting advising commissioners to refrain from appearing at the various boards and meetings in person, or if on zoom with their names, which is attached to this Resolution; and,

WHEREAS, the State of Michigan, through its Attorney General and courts have determined that there is an opportunity to violate the Open Meetings Act when a quorum of Commissioners attend various advisory boards and committees; and,

WHEREAS, the opportunity for deliberation outside of a formal Commission meeting could occur at one of these advisory boards and committees; and,

WHEREAS, the mere presence of those with the power to appoint causes an imposition of duress on members of boards, and as a consequence, their mere presence and powers of their office is detrimental to advisory boards and committees; and,

WHEREAS, the City Commission has agreed to create a policy against commissioners' attendance at various advisory boards and committees; and,

WHEREAS, the City Commission on October 13, 2021 has reviewed the best practices and has determined that the commissioners will not attend advisory boards and committees.

THEREFORE, BE IT RESOLVED, that the Birmingham City Commission adopt the following amendment to add to the Rules of Procedure:

Commissioners' Attendance at Boards and Committees

It is the decision of the Commission that to avoid the appearance or a possibility of potential influence or duress upon appointees, or to avoid the possibility of violating the OMA, commissioners shall refrain from appearing at various boards

and committees in person or with their names addressed upon remote attendance.
Exceptions may occur upon presentation and vote of the entire Commission.

Passed, adopted and approved this _____ day of _____, 2021.

AYES:

NAYS:

PRESENT:

ABSENT:

CERTIFICATION

I, Alexandria D. Bingham, being the duly appointed and qualified Clerk of the City of Birmingham, Oakland County, Michigan, do hereby certify and declare that the foregoing is a true and correct copy of Resolution, the original of which is on file in my office, adopted by the City of Birmingham Commission at a regular meeting held on December 13, 2021.

Alexandria D. Bingham, City Clerk

CITY OF BIRMINGHAM COMMISSION

AN AMENDMENT TO THE CITY COMMISSION RULES OF PROCEDURE TO ADD A POLICY CHANGE REGARDING COMMISSIONERS' ATTENDANCE AT BOARDS AND COMMITTEES

The City of Birmingham Commission Rules of Procedure shall be amended to add a new section entitled Commissioners' Attendance at Boards and Meetings, and shall read as follows:

Open Meetings

Regular meetings and special meetings of the Birmingham City Commission, which are normally held in the Commission Room of the Municipal Building, 151 Martin Street, shall be open to the public, in compliance with the Michigan Open Meetings Act.

It is the desire of the city commission to conclude all business not later than 11:00 PM. The commission will consider this goal during their deliberations.

Closed Sessions

All meetings of the Commission shall be open to the public and shall be held in a place available to the general public. A closed session, a meeting or part of a meeting that is closed to the public, may be called for the permissible purposes included in the Open Meetings Act (Act 267 of 1976 as amended). Examples of such purposes include personnel evaluation, collective bargaining, purchase or lease of real property, and pending litigation.

Agenda

The Commission Meeting Agenda, including minutes, warrants, correspondence and reports shall be distributed to the City Commission on or before the Friday prior to the meeting date. Agendas shall also be made available for public review in the City Clerk's Office and on the City website. Minutes shall not normally be read as part of the meeting.

Minutes

The minutes shall include the mandatory information as required by the Open Meetings Act 267 of 1976; Section 15.269. The minutes shall reflect an overview or brief summary of the subject matter and any Commission comments that may have had an effect on the outcome. Commission

comments may include a summary in support or opposed and discussion which may be relevant for future reference.

The minutes shall include a participating citizen's name and position on an issue when there is public comment during the commission meeting in all of the following instances: (1) a public hearing, (2) an agenda item or (3) recognition of citizens in the audience.

Presiding Officer

The Mayor shall preside at all meetings of the City Commission. In the absence or disability of the Mayor, the Mayor Pro-Tem shall preside. In the absence or disability of both the Mayor and the Mayor Pro-Tem, the Commission shall elect one of its members to act as presiding officer.

The Mayor shall possess all the rights and powers of any other Commissioners; he or she shall not have the right of veto.

Conduct of Business

Commission Meetings shall be governed by the rules contained in the most recent edition of Robert's Rules of Order, Newly Revised in all instances in which they are applicable and not inconsistent with the statutes of the United States or the State of Michigan, or with the Charter or adopted of the City of Birmingham or these Rules of Procedure.

Commissioners should be recognized by the presiding officer before speaking.

Commissioners' Attendance at Boards and Committees

It is the decision of the Commission that to avoid the appearance of or a possibility of potential influence or duress upon appointees, or to avoid the possibility of violating the OMA, commissioners shall refrain from appearing at various boards and committees in person or with their names addressed upon remote attendance. Exceptions may occur upon presentation and vote of the entire Commission.

Voting

Birmingham's City Charter states that four members of the City Commission shall constitute a quorum; that the Commission shall act only by ordinance or resolution, that is, an official action in the form of a motion; and that a minimum of four votes shall be required to adopt any such motion.

For all Boards, Commissions or Committees appointed by the City Commission the minimum number of votes shall be the same as the quorum number for that body. State statute, City of

Birmingham Charter or ordinance may require a larger number of affirmative votes to approve certain actions for either the City Commission or appointed Boards.

The City Commission may take action on any motion either by voice or by roll-call vote. A roll-call vote shall be taken if requested by any Commissioner, the City Clerk, or any member of the public in attendance.

A motion may be amended or modified by combining the original motion and the modifications in one motion, provided all City Commission Members agree to include the "friendly amendment" in the original motion.

A Commission member may abstain from voting on a motion if he or she: 1) has a conflict of interest; or 2) lacks sufficient information about the issue to be decided. Any Commissioner who abstains from voting on a motion shall state, for the record, at the outset of the discussion both his or her intention to abstain and reason for doing so. Should the need to abstain become clear during discussion, the member shall state his or her intention at that time. The Commissioner shall then be prohibited from participating in any further discussion or debate on the issue.

After a motion has been voted upon, any Commissioner who voted on the prevailing side may move to "reconsider" said motion at the same meeting, or at the next regularly scheduled meeting, provided no action has been taken as a result of the previous vote.

General consent or consensus (in lieu of a motion) may be used to give direction. In this case, the minutes shall indicate that a majority consented.

Citizen Participation

During any City Commission meeting, any person may question or comment upon any specific agenda item at the time the City Commission considers that item.

The public shall also be invited to make comments on any item not on the meeting agenda under the agenda item, "Meeting Open To The Public For Items Not On The Printed Agenda."

No person shall address the City Commission without first having been recognized by the presiding officer. Once recognized, the member of the public shall go to one of the available microphones, and state his or her name and community of residence before speaking.

Speakers may be requested to limit their comments so as to provide opportunities for comments from all interested persons. In particular, no member of the public shall normally be permitted to speak a second time on the same issue until all others wishing to make a presentation on the subject have had an opportunity to do so.

If any person becomes loud or unruly, the presiding officer may rule that person out of order and may forfeit that person's opportunity to speak further. A person may also be expelled from the meeting for breach of the peace.

Commission Vacancies

If a vacancy occurs on the City Commission, it shall be filled by a vote of the remaining Commissioners (not including the member who is vacating his or her seat). The vote to fill a vacancy shall be taken during a public meeting held within the time prescribed by State Law. Candidates for a vacant seat need not have previously served on, nor sought election to, the Commission.

The person selected to fill a vacancy shall serve only until the next following general election, at which time any remaining unexpired term shall be filled by the voters.

Appointment Procedures

No member of the City Commission shall serve on any Board of the City of Birmingham, except the Retirement System, unless membership is required by Michigan Statute or the Birmingham City Charter.

When the City Commission desires to fill a vacancy on an appointed City of Birmingham Board, Commission or Committee, the City Clerk shall give notice to the public by publishing the intent to fill the vacancy on the City website.

If the number of persons nominated for appointment to a City Board, Commission or Committee does not exceed the number of positions to be filled, the City Commission may use a voice vote. If the number of nominations exceeds the number of positions to be filled, nominees shall be voted upon in the order in which they were nominated, either by voice or by roll-call vote.

If no nominee receives the required four votes for appointment, the process of nomination and voting may be repeated either at the same meeting or at a subsequent meeting. If the Commission desires, the position may be re-noticed.

Requests for members of the City Commission to serve on non-city bodies shall be given to the Mayor, who shall make such information available to all Commissioners. Members shall indicate their interest in such positions to the Mayor and the appointment shall officially be made at a public meeting.

Amendment or Suspension of the Rules of Procedure

These rules may be changed at any meeting of the City Commission by a majority vote with notice at the previous meeting or by a 2/3 vote (5) without notice.

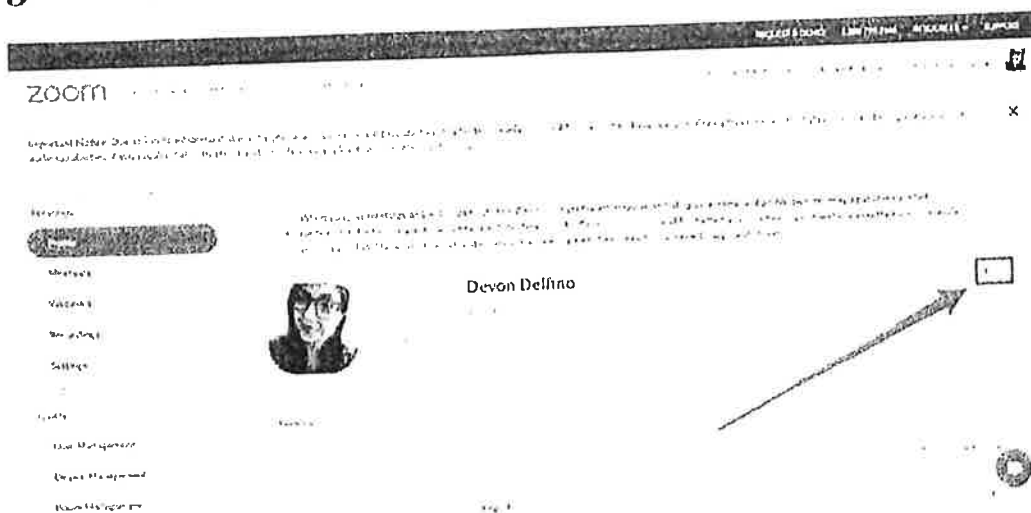
Board Name	Staff Person	How to Meet	When
Ad Hoc Joint Senior Services Committee	City Manager	inactive	
Ad Hoc Unimproved Street Study Committee	City Manager	inactive	Typically the first Wednesday of the month at 7:30am
Advisory Parking Committee	Scott Grewe & Ryan Weingartz	Zoom: https://zoom.us/j/98209276859#success	As needed for special project review when other boards not reviewing
Architectural Review Committee	Engineering	This board seldom meets. Past meetings were not recorded.	3rd Wednesday of the month 7:45am
Birmingham Area Cable Board	Cathy White	https://www.birminghamareacableboard.org/Cable-Board/Meeting-Schedule.aspx	For dates, visit https://www.bhamgov.org/about_birmingham/city_government/boards_commissions/board_of_review.php
Board of Review	Jack Todd	https://us06web.zoom.us/j/92603155672	Meeting schedule is irregular https://bhamgov.org/about_birmingham/city_government/boards_commissions/brownfield_red_development_authority.php
Brownfield Redevelopment Authority	Brooks Cowan	Zoom https://us06web.zoom.us/j/81705527424	first Thursday of every month at 8:30 a.m.
Birmingham Shopping District AKA: Principal Shopping District Board	Sean Kammer	https://us06web.zoom.us/j/83915400165	As needed
Board of Building Trades Appeals	Bruce Johnson	This board seldom meets. Past meetings were not recorded.	
Board of Zoning Appeals	Bruce Johnson	Zoom: https://us06web.zoom.us/j/96343198370 BACB Vimeo: https://vimeo.com/event/3474	Second Tuesday of the month
City Commission	Alexandria Bingham	Zoom: https://zoom.us/j/655079760 BACB Vimeo: https://vimeo.com/showcase/6708293	typically the 2nd and 4th Monday at 7:30pm
Greenwood Cemetery Advisory Board	Alexandria Bingham	Zoom: https://zoom.us/j/98983856041 *Ask staff liason for recording	typically the first Friday of the month at 8:30am
Design Review Board	Nick Dupuis	Zoom: https://zoom.us/j/91282479817 Vimeo: https://vimeo.com/event/419991	1st and 3rd Wednesday, 7:15 PM
Ethics Board	Alexandria Bingham	Zoom: https://us06web.zoom.us/j/99656852194 *Ask staff liason for recording	As requested
Housing Board of Appeals	Bruce Johnson	This board seldom meets. Past meetings were not recorded.	As needed
Historic District Commission	Nick Dupuis	Zoom: https://zoom.us/j/91282479817 Vimeo: https://vimeo.com/event/419991	1st and 3rd Wednesday, 7:00 PM
Historic District Study Committee	Nick Dupuis	Zoom: https://zoom.us/j/92668352238	As Needed- 1-2 hearings per year
Hearing Officer	Jack Todd	https://us06web.zoom.us/j/85413772027	As Needed
Library Board	Rebekah Craft	Zoom Meeting: https://us02web.zoom.us/j/88033156263 , www.baldwinlib.org/staff-board for recordings	3rd Monday at 7:30 p.m., except in January
Museum Board	Leslie Plelack	Zoom: https://us06web.zoom.us/j/99524301376 ; please make advance arrangements for recordings	First Thurs of the month, 5 PM
Martha Baldwin Park Board	Lauren Wood		As Needed - Once Per Year Minimum
Multi-Modal Transportation Board	Scott Grewe & Brooks Cowan & Scott Zielinski	Zoom: https://us06web.zoom.us/j/82477954435	First Thurs of the month, 6 PM
Public Arts Board	Brooks Cowan	Zoom: https://zoom.us/j/88378200269	
Planning Board	Nick Dupuis	Zoom: https://zoom.us/j/111656987 Vimeo: https://vimeo.com/event/3472	2nd and 4th Wednesday, 7:30 PM
Parks and Recreation Board	Lauren Wood	https://us06web.zoom.us/j/98191466679	First Tuesday of the month at 6:30 PM, unless on a holiday goes to following Tuesday
Retiree Health Care Fund Investment Committee	Mark Gerber	Live meetings via zoom	Quarterly immediately after the Retirement Board meeting
Retirement Board	Mark Gerber	Live meetings via zoom	Typically, the 2nd Friday in March, June, September, and December at 8:15 am
Retirement Investment Committee	Mark Gerber	Live meetings via zoom	Typically, the Wednesday a week before the Retirement Board meeting at 7:30 am
Storm Water Utility Appeals Board	Engineering	This board seldom meets. Past meetings were not recorded.	as-needed when a property owner appeals a decision by Engineering
Triangle District Corridor Improvement Authority	Brooks Cowan	Zoom https://us06web.zoom.us/j/84780743574	Meeting schedule has been irregular https://bhamgov.org/about_birmingham/city_government/boards_commissions/birmingham_triangle_district_corridor_improvement_authority.php

How to change your name on Zoom before a meeting

There are a few places you can change your name on Zoom: the website, the desktop app, or the mobile app.

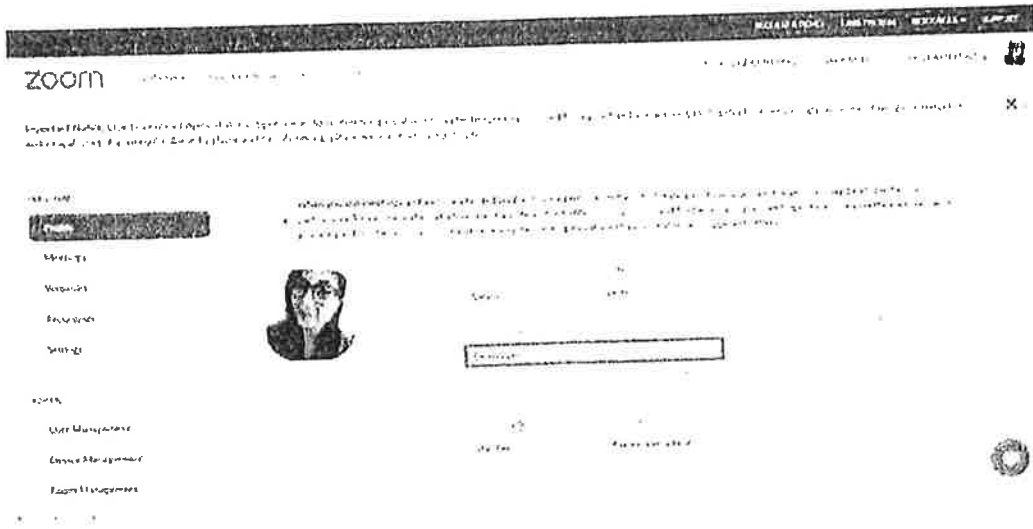
On the Zoom website

1. Sign in to the [Zoom web portal](#).
2. Click **Profile** in the left sidebar.
3. Click **Edit**, located to the right of your name.



"Edit" option to the right of your name on the Profile page. Devon Delfino/Insider

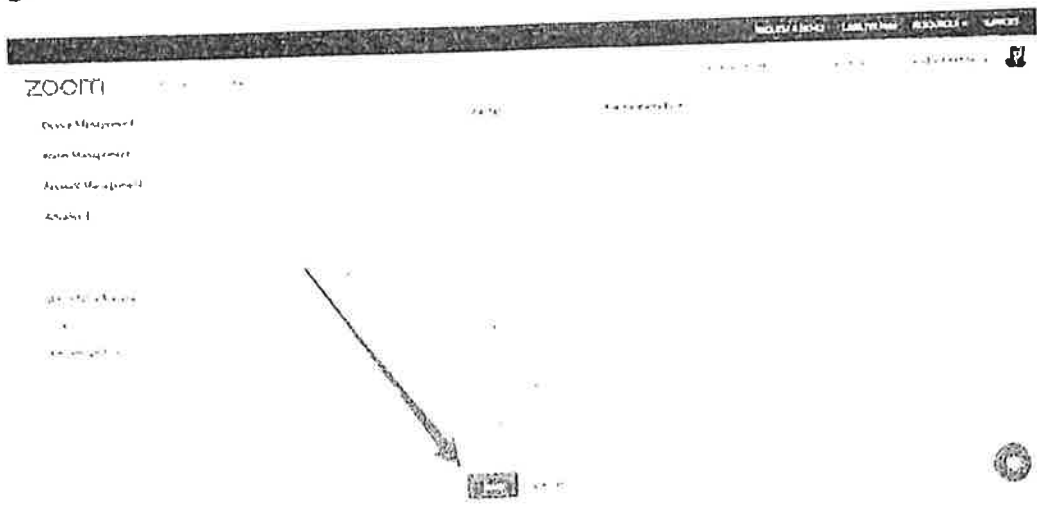
4. Enter your full name and **Display Name**. The latter is what you'll display for other users in a meeting.



Your Display Name is what will show up beside you on a call.

Devon Delfino/Insider

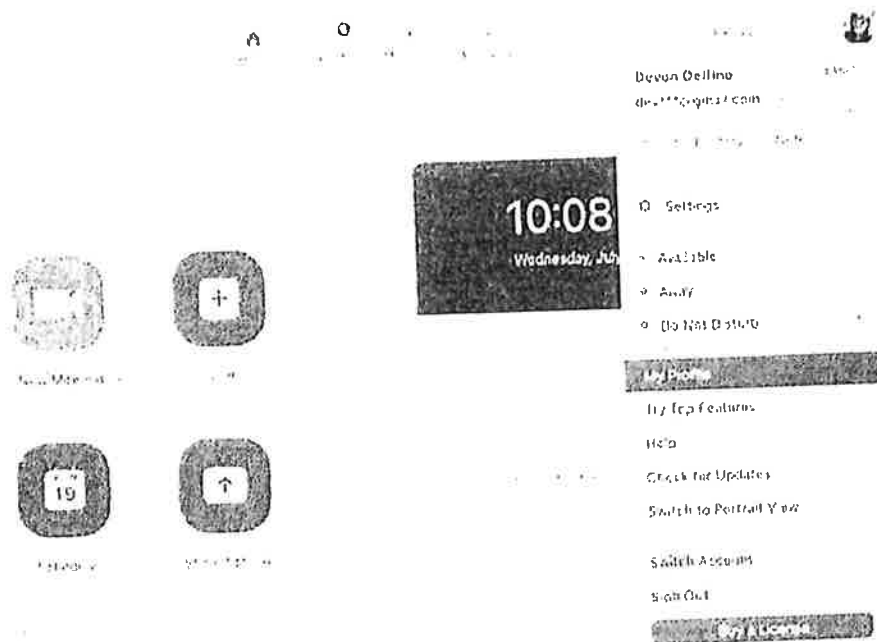
5. Scroll down and click **Save**.



From the same page, you can also update things like your pronouns, job title, location, and company.

On the desktop app

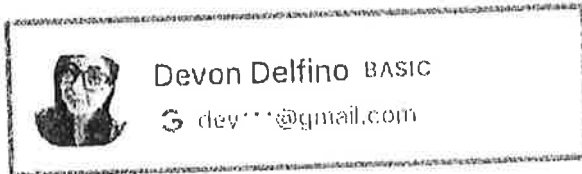
1. Open the app and log into your account, if needed.
2. Click your **profile icon**, located in the top-right corner of the window.
3. Select **My Profile** from the dropdown menu — this will prompt a pop-up window to open.



4. Click **Edit**, located to the right of your name.
5. Enter your desired name.
6. Click **Save**.

On the mobile app

1. Open the app (iOS, Android) and log into your account, if needed.
2. Select **Settings**, located on the bottom-right corner of the screen.
3. Select the banner with your name and email address at the top of the screen.



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Settings

Tap the banner at the top of the page. Devon Delfino/Insider

4. Tap **Display Name**.



Profile Photo



Account

Display Name	Devon Delfino
--------------	---------------

Pronoun she/her

Personal Note Not Set

Department Not Set

Job Title Not Set

Location Not Set

Personal Meeting ID

Tap "Display Name." Devon Delfino/Insider

5. Enter your desired name and/or display name and tap **Save**.



FIRST NAME

Devon

LAST NAME

Delfino

DISPLAY NAME

Devon Delfino

Enter a name (e.g. your first name, full name, or nickname) that you would like your Zoom contacts to see

Change your name or display name and tap "Save."