

**CITY OF BIRMINGHAM  
BOARD OF ETHICS AGENDA  
APRIL 18, 2023  
MUNICIPAL BUILDING, 151 MARTIN  
1:00 PM**

**I. CALL TO ORDER**

James Robb, Chairperson

**II. ROLL CALL**

Alexandria Bingham, City Clerk

**III. APPROVAL OF MINUTES**

A. Approval of minutes of March 7, 2023

**IV. UNFINISHED BUSINESS**

A. Motion to recommend proposed Ethics Ordinance amendments for consideration by the City Commission.

**V. NEW BUSINESS**

A. Review and approval of the draft Advisory Opinion 2023-01 – Requested by City Manager Thomas M. Markus Re. City Commissioner Brad Host  
1. Letter from Commissioner Brad Host dated April 12, 2023 regarding the draft opinion

**VI. PUBLIC COMMENT**

**VII. ADJOURN**

Should you wish to participate, you are invited to attend the meeting in person or virtually through ZOOM:

<https://us06web.zoom.us/j/99656852194> Meeting ID: 996 5685 2194

You may also present your written statement to the Board of Ethics, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the meeting.

*NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.*

*Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al (248) 530-1880 por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).*

I, Alexandria Bingham, the duly appointed City Clerk for the City of Birmingham, certify this meeting notice was posted at all four entrances into the Municipal Building, and to [www.bhamgov.org](http://www.bhamgov.org) on March 27, 2023.

**City of Birmingham  
Board of Ethics Minutes  
March 7, 2023  
151 Martin, Birmingham**

**I. CALL TO ORDER**

Chair Robb called the meeting to order at 1:00 p.m.

**II. ROLL CALL**

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

Absent: None

Staff: City Manager Markus; City Clerk Bingham, Assistant City Manager Ecker, City Attorney Kucharek, Deputy City Clerk Woods

**III. APPROVAL OF MINUTES**

**MOTION:** Motion by Mr. Schrot, seconded by Chair Robb:  
To approve the minutes of January 30, 2023 as submitted.

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

The Chair thanked the City Clerk and City Transcriptionist for the minutes.

**IV. UNFINISHED BUSINESS**

- A. To acknowledge the receipt of the proposed Ethics Ordinance amendments from City Attorney Mary Kucharek. Further discussion and consideration of recommending the proposed ordinance amendments will take place at a future Ethics Board meeting.

The Board agreed to discuss the item at a future meeting.

**V. NEW BUSINESS**

- A. Hearing and Consideration of Advisory Opinion Request 2023-01 – Requested by City Manager Thomas M. Markus Re. City Commissioner Brad Host.

The Chair outlined how the hearing would proceed, explained the purpose of an advisory opinion, and explained the difference between an advisory opinion and a complaint.

At 1:12 p.m., the Chair opened the hearing. He noted there were eight attachments, with the eighth having been distributed to the Board, Commissioner Host, and Commissioner Host's attorney - Jordan Bolton - earlier on March 7, 2023.

Mr. Bolton then briefly reviewed his request, submitted as part of Attachment Eight, that the Board reject the request for advisory opinion 2023-01 (Request 2023-01).

Mr. Schrot said that while there was a prior Ethics advisory opinion regarding Commissioner Baller, he did not believe the subject matter was sufficiently similar to use Procedural Rule 2-202(b)(ii) to dismiss Request 2023-01. He added that the reasons contained in Attachment Eight were insufficient to result in a dismissal or a summary opinion as there appeared to be genuine issues of material fact.

Ms. Fierro-Share noted that Commissioner Host was obligated to state that his personal views were his alone and not representative of the Commission.

Chair Robb stated his concurrence with Mr. Schrot. He added that he was satisfied that Request 2023-01 provided the relevant facts and met the legal standards, which would enable the Board to render advice to Commissioner Host.

The Chair stated that Mr. Bolton's request to reject Request 2023-01 was denied.

At the Chair's invitation, CM Markus swore or affirmed that his testimony would be true to the best of his information or belief.

CM Markus presented Request 2023-01.

In reply to Mr. Bolton, CM Markus explained that Commissioner Host discusses the draft 2040 Plan's proposals for the area of Oakland and Park, which is in the vicinity of one of the Commissioner's properties.

In reply to Mr. Bolton, the Chair said that one of the concerns being raised by the City Manager was the Commissioner's possible pecuniary interest in the 2040 Plan's proposal for the Oakland and Park area.

Mr. Bolton stated he found it difficult to surmise CM Markus' concern from the text of Request 2023-01 and said the Board might be able to provide guidance on what should be included in future requests for advisory opinion.

Mr. Bolton then presented the remainder of Attachment Eight, which included a response to the concerns outlined in Request 2023-01.

The Chair invited Commissioner Host to answer Board questions.

Commissioner Host stated that the last time he was 'here' was July 8, 2019, when the Mayor at the time ended a Commission meeting early.

In reply to Board inquiry, the Commissioner stated:

- Yes, his understanding was that the draft 2040 Plan would necessitate rezoning of the specific areas he discussed;
- The initial draft of the 2040 Plan proposed many more 'seam' areas, and many members of the public spoke against those proposals;

- When he was informed that his videos offered incorrect information, he pulled four of the five videos and only left the fifth video up inadvertently. When he became aware that the fifth video remained live, he removed that video as well, a little more than two weeks later;
- He then uploaded three more videos which, to his understanding, avoided the previous incorrect information. Those three videos were still described as misleading by the City Administration;
- He was unsure what more he could have done beyond removing the first five videos;
- The mistake in the first five videos was his stating that the 2040 Plan would rezone the areas in question;
- A Birmingham resident who shared the Commissioner's concerns filmed the videos;
- He chose to appear in the videos because he was elected to report to Birmingham residents;
- He wanted to continue doing the videos to demonstrate his awareness of residents' discussions;
- He did not believe his fellow Commissioners were aware of the content of residents' discussions;
- When he said 'lot line to lot line', despite its not being factually true, he was aware of zoning setbacks but was trying to illustrate his concerns;
- He did not identify himself as a member of the City Commission because he does not think about it;
- Regarding Attachment Five, his intent was to agree that the City was becoming less 'family friendly', and not that the 'Planning group has gone Rogue again' [sic];
- He did not believe that the Planning Board had gone rogue, and he called Ms. Orlans to inform her of that;
- It was possible that someone could have seen his 'Agree' in response to Ms. Orlans' statement as saying that he agreed that the Planning Board had gone rogue, though only the City Manager had describing perceiving it that way;
- He would not have spoken ill of the Planning Board because they are volunteers;
- He was only made aware of the request for a Police presence at the Planning Board by the City Manager, City Attorney, and newspapers. He did not hear about it from other people;
- He 'happen[s] to know everybody', and he assumes someone would have said something to him if they had a concern about his actions;
- The joint Commission-Planning Board review the second draft of the 2040 Plan was a 'sham' meeting where there was a 'magic wand on the second draft' because he felt there was limited discussion by either the Planning Board or the Commission on the draft;
- He thinks he has an open mind, and is someone who can change his mind, because the only other place he has lived is Ann Arbor, Michigan;
- He is cognizant of his appearance to the public, the integrity of City government, and the public trust;
- His intent was to generate more public comment regarding the draft 2040 Plan;
- He is more comfortable with the draft 2040 Plan as it stands now than he was with its first iteration;
- The other Commissioners, as a generalization, are not open-minded people because they represent the downtown and he represents the neighborhoods;
- It is possible that both he and his fellow Commissioners could change their minds about some aspects of the draft 2040 Plan;

- It is possible that some people would see him as being petulant or disrespectful to the City. He does not see himself as being disrespectful because the homeowners deserve someone who represents their point of view, which he sees as his function;
- He could state that his perspectives are his own moving forward, and would do so if asked to by the Board; and,
- Page 36 in the draft 2040 Plan contained an incorrect map showing commercial destinations up until December 23, 2022, and the inaccuracy of the map was raised as an issue because of Commissioner Host's commentary.

Mr. Bolton said:

- The Board should distinguish between previous Ethics Board matters where there was a refusal to correct the record and this case, where Commissioner Host removed the incorrect videos;
- The Commissioner's use of the word 'gonna' was likely accurate given the 2040 Plan's strategic intent to encourage rezoning in the areas in question; and,
- Requiring the Commissioner to state that his opinion is his own could conflict with the Board's advice in Request 2020-01. That advisory opinion recommended the City develop a social media policy and said that only when someone is identified as a public official are they required to qualify their statements as being their own opinions;

During the hearing, Board members' comments were:

- There was less concern about whether there was a conflict-of-interest in terms of pecuniary interest, personal interest, or personal gain, since this was not an Ethics complaint;
- There was also less concern about the Commissioner's motivation or intent for the same reasons;
- A larger concern would be the appearance of a conflict-of-interest;
- The potential spread of misinformation was also a concern;
- The Commissioner only identified himself in one of the videos, and did not identify himself as a member of the City Commission;
- There were statements in the first five videos that were hyperbolic and untrue;
- The lack of disclosure was a concern;
- The Commissioner has a fiduciary duty to all of Birmingham's citizens, to come to a meeting with an open mind, and to come to a Commission meeting and to debate at that time the issue at hand, which is why the appearance of impartiality on the part of the Commissioner is important;
- Public officials are an integral part of City government, and it is very important that public officials foster the public trust;
- Commissioner Host must be cognizant of his appearance to the public, the integrity of City government, and the public trust;
- Commissioner Host's statements seemed more targeted than just a general solicitation of commentary on the draft 2040 Plan. His choice to do so may be acceptable because he is a politician, in addition to being a civilian and a public official, but political speech is also limited by certain exceptions;
- One of those exceptions is when the speech in question [risks] undermining the public's confidence in the City's government or the public trust;
- Proliferating misinformation to the public knowingly would serve to undermine the public trust;
- The Commissioner will hopefully understand that he cannot state that properties will be rezoned by the 2040 Plan;

- The Commissioner has shown some recognition and appreciation of that fact during today's proceedings;
- CM Markus seeking an advisory opinion benefits the aims of good governance;
- It is careless on Commissioner Host's part that he 'does not think of himself as a Commissioner', because he is. When he does not keep in mind his position and its obligations, it causes problems for his constituents and in general;
- It would be incumbent upon Commissioner Host to qualify his opinions as being his own in certain circumstances;
- The Commissioner could participate in developing a social media policy as a Commissioner if he feels it would be beneficial; and,
- The City may also want to consider a policy regarding when a Commissioner is representing personal, City, or other organizational interests.

In reply to Mr. Bolton, Commissioner Host said all the facts contained in Mr. Bolton's review of Attachment Eight were correct.

CM Markus noted:

- The draft 2040 Plan is a constantly changing document, and mistakes get made as part of that process. The Planning Board, Staff, and consultants were aware of aspects of the document needed to be updated;
- The Commissioner's engagement without an understanding that the document is a work in progress is why the Commissioner may have a different interpretation of the document;
- The draft 2040 Plan remains a work in progress until it is recommended to the City Commission;
- Commissioners are elected to represent everyone in the community. Even within the Commissioner's goal of representing just the residents, there is a diversity of opinions among the residents regarding all aspects of development; and,
- Residents also do not only occupy single-family homes in the City, and so residents of the more commercial areas, multi-family homes, and seams should also be a part of those the Commissioner feels he represents.

Mr. Bolton replied that CM Markus' closing comments were pertinent to political conversations but not to the present Ethics consideration.

Seeing no further comment, the Board motioned to close the record at 4:01 p.m. and to briefly recess.

When the Board returned from recess, the Chair described how the Board's discussion would proceed and stated that it was his turn to write the advisory opinion. He noted that the Ethics Ordinance certainly applied to the Commissioner as a public official.

The Chair recommended that discussion focus on four topics: the issue of misinformation, the issue of advocacy, the affirmation of the 'Rogue' comment on social media, and the Commissioner's attendance at volunteer board meetings. The Chair noted that the latter two topics were less pressing issues, but noted that since this was an advisory opinion the Board could provide guidance on those matters as well.

During discussion, Board members' comments were:

- Sections 2-320, 2-321, the definition of 'Official duties or official action' in 2-322, 2-323(1), 2-323(3), 2-323(4), 2-323(5), 2-324(a)(2), 2-324(a)(8), and 2-324(a)(10) would be relevant to the advisory opinion;
- The Commissioner owns properties in an area that could be impacted by the 2040 Plan. The Board may want to address in its advisory opinion that the Commissioner may have to address or disclose his ownership at some point in the future;
- Section 2-323(5) contains no exception for political speech;
- The advisory opinion should include some consideration of when recusal is appropriate and when it might be inappropriate. On occasion, a recusal might deprive the City of the benefit of the board member's or Commissioner's needed expertise. This might be relevant in this situation since the draft 2040 Plan is not yet before the Commission;
- If this were an Ethics complaint, it would have been relevant to see Commissioner Host's disclosure as required by Sec. 2-324(b). It would be relevant to discuss that section in the advisory opinion to advise Commissioner Host and other public officials that should their situation change, their disclosure should be revised as well;
- Disclosure does not necessarily mean there is a disqualifying conflict;
- The guidance provided in an advisory opinion is for future conduct and other public officials as well;
- Other Commissioners in the past have also attended advisory board meetings and questions have been raised about their attendance, so this advisory opinion can opine on that question;
- In order to provide advice, the Board should discuss the communications and their appropriateness in terms of: truthfulness, being outside of official channels, possibly having adversely affected or undermined public confidence in the City government, possibly having jeopardized impartiality in terms of future deliberation by an arbiter, and possibly spreading misinformation to the public;
- While political speech is permitted a politician, misrepresentations of the facts or truth are not protected as part of political speech, nor is undermining public confidence;
- Ethics enforcement may not be better done at the polls because citizens cannot act on what they do not know, they may be unlikely to remember, and ethical misconduct may not be a determining factor in a voting decision, and voting someone out of office is a harsh remedy for someone who has integrity but lacks good judgment or access to ethics advice;
- Commissioner Host should be especially sensitive to the requirements of Section 2-324(5), irrespective of the fact that he is an elected official;
- Commissioner Host should be commended for his commitment to adhering to the Ethics ordinance and for his welcoming of professional advice;
- Appearance matters most in this situation, as opposed to character, feelings, or motivation. Any city official will only be judged or held accountable for their actions and relationships based on how they appear on their face;
- City officials see their decision making from an internal perspective, while the public experiences city officials' decisions from an external perspective. Being a city official creates obligations towards the community, and requires that a city official look at facts, life, and reality from the perspective of the public;
- The public elects a Commissioner, and expects a Commissioner to not misuse their office for their own benefit or in ways that conflict with their obligations to the community;
- Residents receive benefit from the existence of Birmingham's commercial community, and it is not inherently an adversarial relationship;
- Being respectful and civil in discourse is important at the Commission level, even and especially when there are disagreements;

- This matter raises the issue of questionable means, including the videos and letters, being used to justify certain ends. It would be best to eliminate the use of questionable means;
- Fairness and impartiality are essential to government ethics, and Commissioner Host should recognize their importance when he debates these issues with his fellow Commissioners;
- Being able to talk to constituents is important for elected officials and an important part of the democratic process;
- Commissioner Host seems not to have sought to use his office for private gain. He seemed to genuinely be concerned about the issues he raised, and when he was informed he was incorrect about some of his concerns he changed his behavior;
- Commissioner Host's behavior may have been somewhat careless, but not malicious;
- All the City's public officials should be willing to change their minds as necessary;
- The City is resilient enough to withstand public debate and disagreement, and being comfortable with it benefits the City. The process can promote more consideration of the issues among residents;
- The Board can advise that public officials should update their perspectives based on new information provided by City Administration or Staff;
- Commissioner Host's report from an prior Michigan Municipal League meeting noted that politicians' lies or misrepresentations can erode the public trust, and this information could be included in the advisory opinion to remind all the Commissioners of that;
- Politicians should be encouraged to be truthful, and the ordinance requires it;
- Misinformation from Commissioner Host could undermine the public's confidence in him, which could in turn undermine public confidence in City government;
- While the 2040 Plan would not directly rezone properties, the intent to rezone is implicit in the Plan and that should be noted in the advisory opinion; and,
- The Board should provide some guidance both to CM Markus and to Commissioner Host regarding their relationships to this issue moving forward, should note there is merit on both sides, and should note that this was an example of good government.

In reply to Mr. Schrot, CA Kucharek stated the Commission was considering adopting the December 13, 2021 policy recommendation that Commissioners not attend advisory boards either in person or remotely as part of broader Commission Code of Conduct discussions.

The Chair said the Board would take administrative notice of that.

Mr. Schrot provided quotes from Martin Luther King, Jr., Jesse Jackson, and Mark Twain that he thought may be relevant to the consideration.

In reply to Mr. Schrot, the Chair said he was prepared to find on the record that some of the content of the Commissioner's nine videos was not true. He said that fact could have the potential to undermine public confidence in City government. He noted the same was true for the 'Rogue' comment on social media.

In reply to Ms. Fierro-Share, Mr. Schrot emphasized that the Board was not finding that the Commissioner's statements did undermine the public confidence - only that the statements had the potential to do so.

Ms. Fierro-Share asked how the Board could determine, in general, when something rises to the level of undermining the public confidence. After brief discussion with the Board, Ms. Fierro-Share said seeing the draft opinion would likely help her further deliberate on the question.

**MOTION:** Motion by Mr. Schrot, seconded by Ms. Fierro-Share:  
To assign the Chair to draft the advisory opinion in conformity with the discussion, and to bring the advisory opinion to the Board for consideration.

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

Nays, None

The Chair thanked all those present for their time.

## **VI. INFORMATION ONLY**

### A. Update on the City of Detroit Ethics Conference – Spring 2023

The Chair said he would attend.

CC Bingham said the hours would be 9 a.m. to 4 p.m. or 5 p.m.

CA Kucharek said Board members could all attend as long as they do not discuss Board business while in attendance.

The Chair provided a brief overview of the Conference for the public.

## **VII. PUBLIC COMMENT**

## **VIII. ADJOURN**

No further business being evident, the Chair adjourned the meeting at 5:45 p.m.

Alexandria Bingham, City Clerk



Laura Eichenhorn, City Transcriptionist

CITY OF BIRMINGHAM

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 2. – ADMINISTRATION, ARTICLE IX. - ETHICS**

THE CITY OF BIRMINGHAM ORDAINS:

The City Code, Part II, Chapter 2.- Administration, Article IX. – Ethics, shall be amended to read as follows:

***ARTICLE IX. ETHICS***

**Sec. 2-320. Public policy.**

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

The cityCity hereby declares that all cityCity 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 cityCity 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 cityCity 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 cityCity.

**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 cityCity. 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 cityCity 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 cityCity officials and employees and for the cityCity as an institution.

## **Sec. 2-322. Definitions.**

*City official* or *employee* means a person elected, appointed or otherwise serving in any capacity with the cityCity in any position established by the City Charter or by cityCity ordinance which involves the exercise of a public power, trust or duty. The term includes all officials and employees of the cityCity, 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 cityCity 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 cityCity 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 cityCity employee or official.

*Substantial* shall mean considerable in quantity or significantly great.

## **Sec. 2-323. Intention of code.**

It is the intention of section 2-324 below that cityCity 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 cityCity property or information, to or from any organization or person;
- (3) Losing complete independence or impartiality of action;
- (4) Making a cityCity decision outside official channels; or
- (5) Affecting adversely the confidence of the public or the integrity of the cityCity government.

The eCode of eEthics 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 cityCity 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.

## **Sec. 2-324. Promulgation.**

### **(a) *Conflict of interest—General.***

- (1) No official or employee of the cityCity shall divulge to any unauthorized person, confidential information acquired in the course of employment or service as a City official in advance of the time prescribed for its authorized release to the public.
- (2) No official or employee of the cityCity shall represent his or her personal opinion as that of the cityCity.
- (3) Every official or employee of the cityCity 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 cityCity 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 cityCity, 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 cityCity, 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 cityCity 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 cityCity 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 cityCity official from engaging in private employment or business on his or her own time as a private citizen and where cityCity 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-B2-326

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 cityCity shall participate, as an agent or representative of the cityCity, 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 cityCity 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 cityCity. 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 cityCity, 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 cityCity 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 cityCity 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 cityCity 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 cityCity shall acquire any financial interest in or accept any employment concerning any project which has been granted approval by the cityCity 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 cityCity shall participate, as an agent or representative of the cityCity, 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 cityCity official or employee who has a conflict of interest, as defined herein, in any matter before the cityCity shall disclose such fact on the appropriate record of the cityCity 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 cityCity Commissioner shall disclose any conflict of interest and the nature and extent of such interest on the record of the cityCity eCommission;
2. A member of any cityCity 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 cityCity employee who has a financial or other interest in a matter before the cityCity eCommission or any cityCity board, commission or committee and who participates in discussion with, or gives an official opinion to the cityCity eCommission, or to such other cityCity board, commission or committee relating to such matter, shall disclose on the records of the cityCity eCommission or such other cityCity 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 cityCity official or employee shall address such a disclosure to the supervisory head of his or her department, and any elected cityCity official shall address such a disclosure to the general public.

- b. If a cityCity official, commissioner or employee who has a conflict of interest, as defined herein, in any matter before the cityCity, 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 bBoard of eEthics 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 cityCity official's or employee's previously filed disclosure statement, each cityCity official and employee shall file with the cityCity eClerk an affidavit and disclosure statement. The cityCity eClerk shall provide each cityCity 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 cityCity. 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 cityCity mManager.

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

**Sec. 2-325. Violation, enforcement and Aadvisory eOpinions.**

(a) *Board of eEthics.*

- (1) The cityCity eCommission shall appoint a bBoard of eEthics, consisting of three members, as an advisory body for the purpose of interpreting this eCode of eEthics.
- (2) The initial three members of the bBoard of eEthics 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 cityCity eCommission shall fill a vacancy by an appointment for the unexpired term only.

(3) The City Commission may also appoint not more than two alternate members for the same term as regular members of the Board of Ethics. An alternate member may be called on a rotating basis to sit as a regular member of the Board of Ethics in the absence of a regular member, and shall have the same voting rights as a regular member of the Board of Ethics. An alternate member may also be called to service in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained or recused for reasons of conflict of interest. An alternate member having been appointed shall serve in the case until a final decision has been made.

- (34) The bBoard of eEthics shall be made up of residents of the cityCity who have legal, administrative or other desirable qualifications.

- a. The members of the bBoard of eEthics shall serve without compensation, and shall not be elected officials, persons appointed to elective office, full-time appointed officials or cityCity employees, nor shall they be currently serving on any other cityCity 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 bBoard of eEthics.* 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 bBoard of eEthics. It shall then be the function of the bBoard of eEthics to conduct hearings and/or issue an aAdvisory eOpinion, as applicable.

- (1) Hearings. The **b**Board of **e**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 **e**Code of **e**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 **b**Board of **e**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 **b**Board of **e**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**City **e**Commission and the public, subject to the requirements of the Open Meetings Act.
- (2) Advisory **e**Opinions. All **a**Advisory **e**Opinions so issued shall also be published in permanent form and communicated to the **city**City **e**Commission and the public, subject to the requirements of the Open Meetings Act.
- (3) After the **b**Board of **e**Ethics' **a**Advisory **e**Opinions and/or hearing findings have been published:
  - a. The **city**City **e**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**City board.
  - b. If it becomes necessary to seek the removal of a **city**City official after the **board** Board of **e**Ethics' **a**Advisory **e**Opinion and/or hearing findings, the **city**City shall follow the requirements for removal of a public official in accordance with the laws of the state.
  - c. The **city**City **m**Manager shall be responsible for imposing any discipline for a violation of this Code on any employee of the **city**City.

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

Immediately following an election, employment or appointment of a **city**City official or employee, the **city**City **e**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**City official's or employee's previously filed affidavit and disclosure statement, all **city**City officials or employees shall file with the **city**City **e**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:\_\_\_\_\_

All other Articles of Chapter 2. – Administration, shall remain unaffected.

Ordained this \_\_\_\_\_ day of \_\_\_\_\_, 2023. Effective upon publication.

\_\_\_\_\_  
Therese Longe, Mayor

\_\_\_\_\_  
Alexandria D. Bingham, City Clerk

I, Alexandria D. Bingham, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held \_\_\_\_\_ and that a summary was published \_\_\_\_\_, 2023.

\_\_\_\_\_  
Alexandria D. Bingham, City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO AMEND PART II OF THE CITY CODE, CHAPTER 2. –  
ADMINISTRATION, ARTICLE IX. - ETHICS**

THE CITY OF BIRMINGHAM ORDAINS:

The City Code, Part II, Chapter 2.- Administration, Article IX. – Ethics, shall be amended to read as follows:

***ARTICLE IX. ETHICS***

**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.

**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.

## **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.

## **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.

## **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 or service as a City official 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 2-326 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.

## **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 City Commission may also appoint not more than two alternate members for the same term as regular members of the Board of Ethics. An alternate member may be called on a rotating basis to sit as a regular member of the Board of Ethics in the absence of a regular member, and shall have the same voting rights as a regular member of the Board of Ethics. An alternate member may also be called to service in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained or recused for reasons of conflict of interest. An alternate member having been appointed shall serve in the case until a final decision has been made.
- (4) 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.

## **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:\_\_\_\_\_

All other Articles of Chapter 2. – Administration, shall remain unaffected.

Ordained this \_\_\_\_ day of \_\_\_\_\_, 2023. Effective upon publication.

\_\_\_\_\_  
Therese Longe, Mayor

\_\_\_\_\_  
Alexandria D. Bingham, City Clerk

I, Alexandria D. Bingham, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held \_\_\_\_\_ and that a summary was published \_\_\_\_\_, 2023.

\_\_\_\_\_  
Alexandria D. Bingham, City Clerk

# **BIRMINGHAM BOARD OF ETHICS**

## **ADVISORY OPINION**

**2023-01**

### **INTRODUCTION**

Birmingham City Manager Thomas Markus asked the Birmingham Board of Ethics for an advisory opinion as to whether certain conduct or anticipated conduct of Birmingham City Commissioner Brad Host conforms to the Birmingham Code of Ethics. Commissioner Host, through counsel, responded in writing. The parties then appeared in person and presented their positions at a Board hearing on March 7, 2023. This advisory opinion presents the Board's decision.

### **SUMMARY OF DECISION**

The Request focuses on Commissioner Host's actions concerning *Birmingham Plan 2040*, a proposed master plan for the physical development of the community. His actions were taken particularly through written and video social media posts and in correspondence to constituents. As one of seven elected members of the Birmingham City Commission, Commissioner Host will vote for or against the plan. Core to the city manager's Request is the concern that Commissioner Host's comments ahead of that vote reflect bias, interfere with the proper function of government, and could result in a conflict of interest.

The Board finds that some of Commissioner's Host's conduct fell short of what the Code of Ethics requires. Some of his communications about the 2040 Plan contained misstatements of fact, failed to identify whether he was speaking in his official or private capacity, and tended to affect governmental action outside of proper channels. The Board also finds, however, that Commissioner Host later corrected most of those non-conformities. Through this opinion, the Board offers advice to Commissioner Host and other city commissioners on more closely conforming to the Code of Ethics.

### **MOTION TO DISMISS: DENIED**

By written response and oral argument of his counsel at the hearing, Commissioner Host moved to dismiss the matter, contending that the Request failed to present each question upon which an opinion is desired, did not include all facts giving rise to each question presented, and did not include all relevant authorities, as required on the city's advisory opinion request form.<sup>1</sup> Commissioner Host also

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<sup>1</sup> Birmingham Board of Ethics Rule 201 requires an advisory opinion to be in writing and filed with the Birmingham City Clerk on a form prescribed by the clerk, who will present it to the Board for consideration. Rule 202(a) allows the clerk to administratively dismiss a request for advisory opinion that fails to comply with Rule 201.

moved for a summary decision on the basis that the Request is barred by other disposition of the matter or for a summary opinion on the basis that there is no genuine issue of any material fact.<sup>2</sup>

The Board denied the motions, ruling that the Request provides sufficient basis for it to proceed with the matter. The Board found that the issues, facts, and legal standards were stated sufficiently for it to render advice to Mr. Host and the city. Indeed, the Request presented those matters with particularity. The Board further ruled that there has been no prior disposition of the matter, and there exists a genuine issue of material fact.

## **DECISION**

### **FINDINGS OF FACT**

#### **Birmingham Plan 2040**

The Michigan Planning Enabling Act provides for the City of Birmingham to adopt a master plan for its future. The statute says that the general purpose of a master plan is to “guide and accomplish” local development that satisfies specified criteria. The plan needs to be “coordinated, adjusted, harmonious, efficient, and economical.” It must consider “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.” And it must be designed in accordance with present and future needs to “best promote public health, safety, morals, order, convenience, prosperity, and general welfare.” (MCL § 125.3807 (2) (a)-(c)).

A key element of Birmingham’s current planning is its proposed *Birmingham Plan 2040*, a comprehensive master plan that is nearing completion after a four-year process. That process has involved countless hours of citizen input, drafting and review by city staff and consultants, and consideration by the Birmingham Planning Board and the Birmingham City Commission. To support that effort, the city provided a social media platform to post drafts and reviews of the plan and to solicit and receive comments from citizens. (See <https://www.thebirminghamplan.com>).

As contemplated by the statute, the 2040 Plan, as it has become known, is intended to guide the city’s land-use decisions for years to come. It does not set specific requirements for that use; those requirements must by law be established through the city’s zoning activities that involve several city boards or commissions and, ultimately, the city commission. Rather, it presents a vision for the future by expressing long-range goals and objectives to inform the city’s future planning and zoning decisions. The plan does not direct those decisions.

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<sup>2</sup> Rule 204 allows the Board to issue a summary decision without hearing if the request is barred by other disposition of the matter. Rule 205 allows for a summary opinion if there is no genuine issue of material fact.

Among other techniques, the 2040 Plan employs a land-use planning concept called “seams.” Seams are areas of land that serve as connectors across planning districts and as buffers between districts and other types of neighborhoods. For example, sometimes multi-family dwellings are permitted in a seam as a buffer between single-family dwellings and larger, active roadways.

### Commissioner Host’s Stated Opposition to the 2040 Plan

Over the years, Commissioner Host has established a reputation of favoring single-family homes over large-scale and multi-family development within Birmingham. As work on the 2040 Plan nears completion, Commissioner Host has acted against it. Across the fall of 2022, he published on social media a series of video clips containing the following statements (the Board has highlighted particular factual assertions):

Video 1 (date uncertain): “Hey, here we are at Grant and Lincoln. And **in the 2040 Plan as proposed, they’re going to rezone to multiples all of the south side of Lincoln** between here and Woodward. If you are in the St. James or Pierce neighborhood, what do you think about that? **Do you want this rezoning?** We have attached a link so you can tell the Planning Board and the master planners what you think.”

Video 2 (October 31, 2022): “Here I am on Oakland Street between the Woodwards, looking at the Little San Francisco area. And this is full of gorgeous homes and they’re right here. **And these five homes as well as the two lots over near Woodward are going to be rezoned to multiple. How long do you think these gorgeous homes are going to last after they’re rezoned.** What do you think? There’s a link attached. Write the master planners as well as the Planning Board. **You’ve got 45 days to get your opinion in because then it’s going to be history after that.**”

Video 3 (October 29, 2022): “Quarton Lake Waterfall area. And you know, I just was reading the **2040 Plan and it calls for kiosks, cafes, food trucks, commercial endeavors here.** Why? I attached the link. Let the city planners and the Planning Board know what you think.”

Video 4 (September 27, 2022): “Hi. I’m here at Abbey and Wimbleton in the fabulous Poppleton Park neighborhood. And I just want to show you what some of the construction is doing to the ambience of this neighborhood. We have four houses in a row being built that all comply with our zoning ordinances. But I think the ordinances are more friendly to the developers because they’re **building lot line to lot line.** And what we need are building ordinances which are more friendly to the neighbors and the neighborhood. What do you think?”

Video 5 (date uncertain): “Hi. I’m in the beautiful Poppleton Park neighborhood. And **in the proposed 2024 Plan, they’re going to rezone these two houses on Poppleton and turn them into multiples.** What do you think?”

There's a link attached. Give us your opinion. You have time to tell the master planners and the Planning Board **what you think about this rezoning proposal**. Please do."

(Request for Advisory Opinion (hereafter, "Request"), at 2 (emphasis supplied)).<sup>3</sup> In none of these videos did Commissioner Host identify himself by name. Nor did he indicate whether he was acting in his official or personal capacity.

At the Board's hearing on this case, Commissioner Host refused to identify who video-recorded the statements, instead calling that person "a friend." He said his friend shared his opinion about the 2040 Plan. When asked how it came to be that he, rather than his friend, would appear on camera, Commissioner Host conceded that his role as a city commissioner was determinative. He wanted to show his constituents that he was standing up for them. As Commissioner Host said, "I happen to know everybody." According to testimony, Commissioner Host received the largest number of votes amongst multiple candidates when he was elected to the city commission.

#### Commissioner Host's Knowledge That the Plan Does Not Rezone Property

Commissioner Host has known since early 2021 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." (See the city's press release of February 11, 2021, Request, Attachment 2, at 2). A city FAQ published on February 10, 2021, and again on October 13, 2021, elaborated the point that the 2040 Plan does not rezone properties:

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.

(*Id.*).

Commissioner Host was reminded of these elements of the plan during Birmingham City Commission meetings on October 3, 2022, and November 28, 2022. During the latter meeting, the city manager's report called out some of Commissioner Host's videos and ensuing conversation surrounding it. The city manager noted the "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." (*Id.* at 1). The city manager's report, in a

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<sup>3</sup> These statements are found in links provided in the Request.

section titled “Setting the Record Straight,” reiterated to Commissioner Host that “comprehensive master plans do **not** rezone property once adopted.” (*Id.* at 2 (emphasis in original)).

Shortly after the November 28, 2022, city commission meeting, Commissioner Host deleted four of the five videos but mistakenly left another one up. He testified that, after he was alerted to the mistake, he removed the remaining video on December 19, 2022. (Request, at 3 (link to city commission meeting, beginning at 2:28.50).

Following those city commission meetings, Commissioner Host published more video statements critical of the 2024 Plan.

Video 6: (December 8, 2022): “Hi, I’m Brad Host and I’m here at Grant and Lincoln. And the 2040 Plan **proposes to take all the single family houses between here and Woodward and encourages them to be zoned multiples.** I wonder what the St. James and the Pierce neighborhoods think about that. **You got until January 11<sup>th</sup> to let the planners and the Planning Board know what you think.** I’ve attached a link below and I hope you use it.”

Video 7 (December 11, 2022): “I’m Brad Host. I’m at Grant and 14 Mile. And on page 46 of the Master Plan it **proposes to take these over 45 single family houses between Grant and Woodward and wants to have them zoned to encourage endfill. Well, endfill is townhouses, duplexes, multi-family buildings.** What do the Pierce and the St. James neighborhood think about having this happen? **You have until January 11<sup>th</sup> to let the planner as well as the Planning Board know what you think.** See the link below.”

Video 8 (December 12, 2022): “Here’s two gorgeous houses a hundred years old, at the south end of Poppleton in the fabulous Poppleton Park neighborhood. **The 2040 Master Plan, Chpt 2, asks us to embrace managed growth and encourages these two lots to be townhouses, duplexes, or multi-family buildings.** I wonder if the neighborhood and the neighbors of Poppleton Park truly can embrace this type of managed growth. **You have until January 11<sup>th</sup> to get your opinion in to the city planner and the Planning Board.** I’ve attached a link below. Let ‘em know what you think.”

Video 9 (December 16, 2022): “Learning from the Master Plan, page 35 says **it calls for updating the zoning code to permit a café in Booth Park. Café, a term subject to broad interpretation. Does it mean that this could be a Starbucks or a small building in Booth Park? This plan enables broad interpretation. What the neighbors think matters. Get your opinion in by January 11<sup>th</sup> to the city planner and the Planning Board.** Use the link below.”

(Request, at 3 (emphasis supplied)). In none of these videos except No. 6 did Commissioner Host identify himself by name. Nor did he indicate in any of them whether he was acting in his official or personal capacity.

Leading up to the city commission’s December 19, 2022, meeting, Commissioner Host made a social media post about the 2040 Plan, saying, “The city

needs your voice” and referred readers to the city’s comment channel at <https://www.thebirminghamplan.com/comment>. (Request, Attachment 5). A reader, Linda Orlans, posted:

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

Commissioner Host replied:

**Linda Orlans** agree!

#### The City Manager’s Renewed Attempts to Correct the Record

At the next city commission meeting on December 19, City Manager Markus took issue with Commissioner Host’s response to Ms. Orlans’ “gone rogue” comment. Both then and in an e-mail the next day, he pointed out that the comment creates the view that Commissioner Host thinks the planning 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.” (*Id.*).

Commissioner Host replied:

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?”

(*Id.*).

At the Board hearing, Commissioner Host testified that he clarified his statement with Ms. Orlans, calling her to say that he did not believe the planning board had gone rogue. He did not however, make a public retraction or apologize to the planning board.

Shortly after the last four video posts were published, the city manager again reiterated to Commissioner Host that the “2040 Master Plan Does Not Rezone Property.” (Report to the city commission on December 19, 2022, Attachment 3 to the Request, at 1). The city manager recounted inaccuracies in Commissioner Host’s communications and pointed out that the city has repeatedly corrected those inaccuracies. (*Id.*). The city manager wrote:

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.

(*Id.* at 2.) The city manager's report went on to detail his concerns:

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.

(*Id.* (emphasis in original)). The city manager again pointed out the inaccuracies in Commissioner Host's post (Video 3) about how the 2040 Plan "proposes kiosks, cafes, food trucks, commercial endeavors here," referencing the waterfall at the south end of Quarton Lake at the dam." (*Id.*). Specifically, the city manager pointed out that the Plan expressly does not contemplate food or beverage services in that area.

The city manager then commented on Commissioner Host's December 12, 2022, post (Video 8):

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.

(*Id.* at 5-6).

In addition, to his written report during the December 19, 2022 city commission meeting, the city manager orally informed the commissioners that “I’m getting plan board members who are really concerned about how this is agitating the public and how that is going to play out at their public hearings, to the point where they’re asking for law enforcement to be there.” (Request, at 3 (link to city commission meeting, beginning at 2:33.00)).

Following that city commission meeting, Commissioner Host placed into neighbors’ mailboxes a letter dated December 31, 2022. (Request, Attachment 7). In that letter, he recited that the Birmingham Planning Board will be meeting on January 11, 2023, to hear public comments in person about the 2040 Plan. He wrote that the plan says that certain properties available for infill should be rezoned to encourage development of small homes, townhouses, duplexes, and small multi-family buildings. The letter identifies him by name but does not give his title as a city commissioner. It does not say whether he is acting in his personal or official capacity.

### **CONCLUSIONS OF LAW: THE BIRMINGHAM CODE OF ETHICS**

As a foundational matter, there is no question that the Code of Ethics, which is a City of Birmingham ordinance, applies to a city commissioner such as Commissioner Host. (Birmingham Code of Ethics, § 2-322).<sup>4</sup>

To enhance public trust, the city must provide its officials with adequate guidelines for separating their roles as private citizens from their roles as public servants. (*Id.*, § 2-320). The city does that in several ways, among them educational

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<sup>4</sup> *City official or employee* means a person elected, appointed or otherwise serving in any capacity with the city in any position established by the Birmingham City Charter or by city ordinance which involves the exercise of a public power, trust or duty. (Birmingham Code of Ethics, § 2-322).

programs for city officials, communications from the Birmingham City Manager, and Birmingham Board of Ethics advisory opinion process. The Code is intended to be preventative and not punitive. (*Id.*, § 2-323).

The Code sets minimum standards of ethical conduct for all city officials and employees, whether 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. (*Id.*, § 2-320). The Code promotes the city commission's declaration that "[p]ublic 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." (*Id.*).

The Code centers around three key aspects of governmental conduct, as declared by the city commission when it adopted the ordinance:

[A]ll 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.

(*Id.*, § 2-320 (1)-(3)).

The Code sets forth a high standard of conduct by requiring that city officials:

- uphold the Constitution of the United States and the Constitution of the State and carry out impartially and comply with the laws of the nation, state, and the city.
- not exceed their authority or breach the law or ask others to do so.
- 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.
- 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.

(*Id.*, § 2-321).

Through the Code, the city specifically intends that its officials *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.

(*Id.* § 2-323 (1)-(5)).

Furthermore, the Code's conflict of interest section prohibits certain specific conduct:

- (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.
- ....
- (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.
- ....
- (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.

(*Id.* § 2-324 (a) (2)-3), (5), (8).

### **DISCUSSION AND ADVICE REGARDING CONDUCT OF COMMISSIONER HOST'S CONDUCT**

It is important to note both what this matter is and what it is not. The Board of Ethics is responding to a request for an advisory opinion and is offering an opinion on whether Commissioner Host's conduct or anticipated conduct conforms to the Code of Ethics. (Birmingham Board of Ethics Rules Chapter 2 and Rule 215). The Code is

intended to be preventative and not punitive. (Birmingham Code of Ethics, § 2-323). The Board thus issues this opinion in the spirit of educating Commissioner Host and all city officials about the consequences of their official conduct.

By contrast, this matter is not a determination based on a complaint filed against Commissioner Host by a citizen. Were that the case, the Board would determine whether his conduct is in breach of the Code of Ethics and thus is a violation of law. (Birmingham Board of Ethics Rules Chapter 3 and Rule 319).

In light of the record and governing Code of Ethics provisions, the Board of Ethics advises Commissioner Host that some of his conduct in this matter falls short of the public's expectations as expressed in the Code. The Board has four main areas of concern. It encourages him to observe these comments in his future conduct.

### **1. Commissioner Host's Misstatements of Fact**

The Board finds Commissioner Host made misstatements of fact in some of his published communications. His oft-repeated statements that "they're going to rezone to multiples" certain homes and areas throughout the city are untrue and misleading. First, Commissioner Host has known since as early as 2021 that the 2040 Plan is not a zoning ordinance. Although the 2040 Plan certainly will inform future zoning decisions and identify areas where changes in land use might be made, he knows it is not, and does not purport to be, a zoning ordinance.

In stressing that an undefined group of people—*they*—are going to rezone properties, Commissioner Host misleads the public about who will do any rezoning and when that might occur. A reasonable person could fairly interpret his statements to mean that the planning board will rezone. More accurately, of course, the *they* is the Birmingham City Commission on which he sits.

His oft-repeated exhortations to act promptly, such as "45 days to get your opinion in because then it's going to be history after that" or "you got until January 11<sup>th</sup> to let the planner as well as the Planning Board know what you think," tend to mislead people into thinking that city properties will be rezoned by that deadline. He knows his proclaimed urgency is not the case. Only the city commission can rezone, and only then after a substantial public process. And although the planning board will adopt a recommendation for the plan, he also knows that the city commission is free to accept that recommendation, reject and refer it back for consideration, or adopt a modified plan. He will have a say and a vote in whatever the city commission decides.

Through these actions, Commissioner Host is not being fully honest and fair in safeguard of the public confidence under section 2-321. He is not being fully responsible to the people under section 2-320 (1). And he appears to be attempting to make governmental decisions and policy outside proper governmental channels under sections 2-320 (2) and 2-323 (4) of the Code.

To be sure, some of Commissioner's Hosts statements are hyperbole (*e.g.*, developers are "building lot line to lot line"). Some are grounded in the truth that the

Plan can encourage zoning in appropriate areas. But the Board finds that many of his communications were careless and thoughtless.

The Board notes that after City Manager Markus several times corrected Commissioner Host during city commission meetings, he removed his earlier video posts (though imperfectly as one remained for three more weeks), and changed some of his communications to read, not that the 2040 Plan would rezone properties, but that it “encourages” that rezoning. The Board commends Commissioner Host on making his communications more accurate. He continued, however, his misleading suggestion that the January 11 meeting of the planning board would result in adoption of an ordinance when he knew that not to be so.

The Board thus advises Commissioner Host to be aware that his knowing misstatements of fact could suggest he is not impartial and fair, make him appear not able to safeguard public confidence or the integrity of city government, and call his judgment into question.

During his remarks at the November 28, 2022, city commission meeting, Commissioner Host seemed to recognize the importance of the Code’s requirement that Birmingham officials safeguard public confidence by being honest, fair, and respectful of all persons. In reporting on his recent attendance at the annual Michigan Municipal League conference, Commissioner Host said the following:

I went to a session that was titled *Working Together for the Good of the Community*. And that can be challenging. The biggest problem is trust. **And what I learned at that session is that politicians tend to lie, so it’s hard to trust them, and that is one of the hurdles that prohibit better behavior.”**

(Request, at 3 (at 45:35) (emphasis added)).

The Board urges Commissioner Host to heed the lesson he says he learned.

## **2. Commissioner Host’s Advocacy Against the 2024 Plan**

A related concern the Board has is the fact that Commissioner Host is actively advocating against the 2040 Plan, which he will be called upon to review, consider, and act on as a city commissioner. During the Board’s hearing, he testified that “I was not trying to influence people; I was just trying to get them engaged.” The Board sees his actions differently. The Board finds that those actions may have been intended to influence the work of the city staff, consultants, and the planning board, all of whom themselves owe the same duties of loyalty to the city that he does.

The Code of Ethics is clear that Commissioner Host—and the planning board members—must be independent, impartial, and responsible to the people; he and they must make governmental decisions and policy in the proper governmental channels. (Birmingham Code of Ethics § 2-320 (1)-(2)). Commissioner Host is required to avoid *any action which might result in, or create the appearance of*, losing complete independence or impartiality of action, of making a decision outside official channels,

or affecting adversely the confidence of the public or the integrity of the city government. (*Id.*, § 2-323(3)-(5)). Neither may he represent his personal opinion as that of the city. (*Id.*, § 2-324(a)(8)).

Because public office is a public trust (*id.*, § 2-320), Commissioner Host owes a fiduciary duty to the city, a high legal duty. He must carry out impartially the law and discharge his duties faithfully regardless of personal consideration. (*Id.*, § 2-321). Based upon that dictate, the public is entitled to confidence in Commissioner Host, to trust that he is employing judgment in his official decision making. By actively advocating against a plan that will be coming to him for official decision, while premising that actions on statements that he knows not to be true, Commissioner Host suggests to the public he might not be impartial, might not be independent, might not be fair and open minded in his debates with his fellow city commissioners. His actions tend to call into question whether he can carry out his official duties faithfully regardless of personal consideration.

As is every city official, Commissioner Host is entitled to his personal opinion. And as a city commissioner, he is entitled and expected to vote based on his judgment of the merits of the proposal at issue. The Code is never intended to preclude a city official from expressing his or her opinions on matters that come before his or her respective body. It encourages city officials to act independently. If they cannot express opinions, debate the merits of those opinions, and vote their consciences, the quality of our city's democracy would be significantly impaired. (Advisory Opinion 2022-01, at 6, *citing* Advisory Opinion 2007-02).<sup>5</sup> Commissioner Host is also entitled to learn the views of the citizens so he can better represent them.

But what is telling in this case is that Commissioner Host is not exhorting the citizens to give their views *to him*. He is not asking for their perspective on the 2040 Plan to help him fashion *his* official position. Rather, he appears to be directing pressure on the planning board and city staff, resulting in so much agitation that planning board members were communicating the need to request police presence at the public meeting. His actions appear to be an attempt to influence their work.

That influence is improper because those individuals are, like Commissioner Host, bound by the Code of Ethics to work with independence, impartiality, faithfulness, integrity, and responsibility to the people. His actions look as if he is trying to interfere with their responsibilities, thus trying to develop policy and decisions outside of regular governmental channels, which the Code forbids. At the planning board stage of the process, the work is informational, technical, and advisory, but not political. Once the 2040 Plan comes to the city commission for formal consideration, the matter rightly becomes political. Commissioner Host thus is advised to let the city planners and the planning board do their work.<sup>6</sup>

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<sup>5</sup> The Board declines to reach free-speech considerations raised by Commissioner Host because they are not necessary for this decision.

<sup>6</sup> This is one of the reasons why Commissioner Host should abide the city attorney's published guidance on the law and not attend meetings of the planning board or other appointive city body over which the city commission has direct oversight. (*See, e.g.*, Attachment 8 to the Request). Though the Request raised his attendance as a

The Board recognizes the strength of the city's scheme of government that takes advantage of the expertise of its citizenry. (*See* Advisory Opinion 2015-06, at 2). In electing Commissioner Host to office, the voters sought his participation on the city's top elective body. They are entitled to the benefit of his experience, expertise, and judgment, the resources he brings to the city, and to his vote on matters that come to the city commission. The Board counsels Commissioner Host to ensure that his actions do not call into question his impartiality or lead to a disqualifying conflict of interest.

### **3. Potential for the Public to Confuse Commissioner Host's Personal Opinion with the City's Position**

In only one of the nine videos, the letter, or other social media posts in the record did Commissioner Host identify himself by name. In none of them did he identify himself as a city commissioner. Yet, as he said at the hearing, "I happen to know everybody." The record shows that he was the top vote-getter in the city commission election. The Board finds that Commissioner Host could understand that the people watching his videos know who he is and that he holds public office.

No city official may represent his or her personal opinion as that of the city. Nor may a city official use, or attempt to use, his or her official position to secure, request or grant unreasonably any special consideration or preferential treatment beyond that which is available to every other citizen. (Birmingham Code of Ethics §2-324 (2), (8)). To do so places the city official in a potential conflict of interest.

In a 2009 advisory opinion, this Board held that the Code prohibited a city official, in that case Mr. David Wisz, a then-member of the Birmingham Traffic and Safety Board, from using his position on that board or his title associated with it to advocate a personal position unrelated to that board. Such conduct would be permissible, but only if it were germane to his role as a city official and if he stated that he is giving his personal opinion and not that of the traffic and safety board or the city. (Advisory Opinion 2009-02, at 2).

The record shows that Commissioner Host's communications were germane to his role as a city official. As a commissioner, he will vote on whether to adopt the 2040 Plan. But he never stated that he was giving his personal opinion and not that of the city itself. The Board finds that his communications may tend to confuse the recipients as to whether he was advocating on behalf of himself or in his role as city commissioner. 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 opinions of the city or any other city official. (Advisory Opinion 2022-01).

The Board thus advises that, going forward, Commissioner Host use care to differentiate his personal views from the city's official position when communicating

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possible non-conformity with the Code, the record shows that Commissioner Host refrained from attending such meetings after he received guidance from the city attorney. The Board thus declines to address this issue.

on matters of city business.

#### **4. Commissioner Host's Possible Disparagement of the Planning Board**

A member of the citizenry, Linda Orlans, posted a public comment about the contemplated 2040 Plan, saying “Looks like the Planning group has gone Rogue again. What is happening to our family friendly Birmingham! So disappointing.”

In response, Commissioner Host posted, “agree.” (Request, Attachment 5).

The Code of Ethics requires public officials to safeguard public confidence by being honest, fair, and respectful. They must avoid conduct that may tend to undermine respect for city officials and employees and for the city as an institution. (Code of Ethics § 2-321). They must avoid any action which might result in, or create the appearance of, affecting adversely the confidence of the public or the integrity of the city government. (*Id.* § 2-323 (5)).

The Board finds that Commissioner Host's agreement with the “rogue” post could reasonably be read to cast the planning board in disrepute and to undermine respect for that body and the valuable work performed by the staff and officials serving on it—many of whom are volunteers. His agreement could be interpreted as tending to undermine the public confidence and the integrity of the city government that the Code requires him to safeguard.

When challenged by the city manager about the meaning and intent of his statement, Commissioner Host reported he had clarified the statement with Ms. Orlans. He also wrote the manager that he “couldn't conceive agreeing with a ‘rogue’ comment.” Rather, he wrote, his intention was to agree only with the “less friendly local environment” portion of Ms. Orlans' statement.

The Board accepts Commissioner Host's representation that he did not intend to suggest that the planning board had gone rogue; instead, that he was agreeing only with the more limited part of Ms. Orlans post.<sup>7</sup> That is consistent with his published views that Birmingham currently presents a less friendly local environment in certain respects.

But Commissioner Host's intent is not strictly relevant. The Code looks to how the public would tend to view his statements. It requires him to avoid conduct that *may tend* to undermine respect for city officials or *might result in, or create the appearance of*, affecting adversely the confidence of the public. Notably here, he did not publicly retract or even clarify his statement, except to Ms. Orlans. He may have failed to consider how others would view what he wrote. This Board has previously held that “[p]ublic officials are obligated to be aware that their words could be misinterpreted or misread.” (Advisory Opinion 2002-01, at 6.) His statement was, again, careless and thoughtless.

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<sup>7</sup> If Commissioner Host believes that the planning board has gone “rogue,” he might have a duty to raise his concerns with the city commission.

## **CONCLUSION**

The Board of Ethics thanks both City Manager Markus and Commissioner Host for participating in this advisory process. Both showed good faith in presenting reasoned, in-depth positions with vigor. We encourage them to work together to improve city government in service to our citizens.

The Board advises Commissioner Host, his fellow city commissioners, and all city officials and employees as follows.

You have an obligation to be truthful in your statements and dealings. To do otherwise greatly risks harming the public's confidence in our government. It subjects you to personal criticism, thereby diminishing your ability to serve your public role.

You must be careful in trying not to achieve an outcome outside of proper governmental channels. Doing so undermines the public's confidence. It interferes with and diminishes the ability of those rightfully assigned to a task to perform their duties in furtherance of the city's objectives. Advocacy outside of proper governmental channels may result in or create the appearance that you have lost impartiality or independence of action. It also puts you personally at risk of a conflict of interest that could disqualify you from making a decision that you were elected or appointed to make.

When publishing a personal statement about a city matter in which you are identified or widely recognized as a city official, you must use care to differentiate your personal views from those of the city by communicating that the views expressed are your personal views and not those of the city or another city official.

You have an obligation to be aware of how your public statements could be understood, and how they could be misread, misconstrued, or viewed as misleading. When you do not fully consider the impact of those statements, you risk undermining respect for city officials and employees, limiting their ability to fulfill their responsibilities, and subjecting yourself to diminished respect and ability to perform your own official duties.

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James D. Robb, Chairperson

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Sophie Fierro-Share

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John J. Schrot, Jr.

City of Birmingham Board of Ethics  
*Sophie Fierro-Share, James Robb, John Schrot Jr.*

April 12, 2023

Dear Ethics Board Members Fierro-Share, Robb and Schrot:

I have reviewed your draft opinion, and have re-reviewed the RAO and my response to the ROA, as well as the recording of the proceedings on March 7, 2023. While I understand that this submission is not going to be part of the record of these proceedings, and respecting the fact that you are each volunteers doing your level-best to serve our fair city, I wanted to note a few instances wherein the draft opinion is at-odds with the record. I do so not to argue against any decision you may reach, but to afford you the opportunity to correct the below portions of the draft prior to finalization.

1. On page 4, the draft opinion states (emphasis added):

*“At the Board’s hearing on this case, Commissioner Host refused to identify who video-recorded the statements, instead calling that person ‘a friend.’ He said his friend shared his opinion about the 2040 Plan. When asked how it came to be that he, rather than his friend, would appear on camera, Commissioner Host conceded that his role as a city commissioner was determinative. He wanted to show his constituents that he was standing up for them. As Commissioner Host said, “I happen to know everybody.” According to testimony, Commissioner Host received the largest number of votes amongst multiple candidates when he was elected to the city commission.”*

The record, however, reflects no such refusal, no such concession, and that the statement about being known was in an entirely different context. More specifically, a transcript prepared of the relevant exchange from the March 7<sup>th</sup> hearing (at approximately the 2:25 mark) indicates that the at-issue exchange proceeded as-follows:

Board Member: *“Who took those videos? Who recorded, took those . . . because you weren’t doing it as selfie, I can tell.”*

Host: *“A friend of mine took them. A Birmingham resident.”*

Board Member: *“Does that Birmingham resident share the same concern you do with respect to the 2040 plan?”*

Host: *“Yes sir.”*

I answered the question posed and received no follow-up question seeking more information.

With regard to the alleged “concession,” here’s the exchange:

Board Member: *“Is there any reason why you’re on the camera and that person is not? What was the determining factor who’s going to be on the camera? In other words, why weren’t you taking a picture of him?”*

Host: *“That’s a good question. The point is, I want to report to the people. That’s why I was elected. So, that’s why I’m doing the video.”*

Respectfully, I don’t believe this constitutes a “concession.” I answered the question and had never characterized my motivation for making the videos in any other way.

And finally, you quote me in the paragraph as saying, “I happen to know everybody.” Reviewing the recording of the March 7 hearing, my “I happen to know everybody” quote was spoken minutes later in response to an entirely different issue. I suggest that it is therefore out of place and out of context.

3. On page 5, the draft opinion states (emphasis added):

*Shortly after the November 28, 2022, city commission meeting, Commissioner Host deleted four of the five videos but mistakenly left another one up. He testified that, **after he was alerted to the mistake**, he removed the remaining video on December 19, 2022.*

Review of the recording of the hearing, however, makes clear that I was the one who discovered that I had been referring to a no-longer-accurate version of a map that had not been updated in the draft of the 2040 Master Plan I had access to. I was not “alerted” to this mistake, I caught it myself and pulled down that

video.

4. On page 7, the draft opinion incorrectly cites my use of the word “endfill” when the word I actually used was “infill”. More specifically, the draft opinion (quoting one of the at-issue videos) provided (bolding in original, underlining added):

*Video 7 (December 11, 2022): “I’m Brad Host. I’m at Grant and 14 Mile. And on page 46 of the Master Plan it proposes to take these over 45 single family houses between Grant and Woodward and wants to have them zoned to encourage endfill. Well, endfill is townhouses, duplexes, multi-family buildings . . .”*

5. On page 8, the draft opinion incorrectly concludes that I committed a crime I did not commit:

*“Following that city commission meeting, Commissioner Host placed into neighbors’ mailboxes a letter dated December 31, 2022.”*

I was not offered the opportunity to address this baseless assertion during the hearing, but I did not and never have improperly placed any item in someone’s mailbox other than via the USPS. With respect to the at-issue communications, I knocked on doors and if no one answered, I slipped my message under the door or hung it in view at the front door. I understand and respect that only authorized U.S. Postal Service employees are allowed to place anything in a mailbox.

6. And finally, page 13 of the draft opinion states:

*By actively advocating against a plan that will be coming to him for official decision, while premising that actions on **statements that he knows not to be true**, Commissioner Host suggests to the public he might not be impartial, might not be independent, might not be fair and open minded in his debates with his fellow city commissioners.*

Yet, with the limited exception of a position inferred from little more than tone, the record is devoid of any indication that I was advocating against a plan.

I also do not believe the record supports the conclusion that I made statements I knew were not true. As my written response to you and my testimony makes clear, I made every effort to accurately communicate the recommendations and spirit of the 2040 Master Plan, and when City Manager Markus expressed his concerns regarding my representation of the zoning process, I pulled the videos he objected to and made my language more precise. As I have stated on the record, I believed that the

statements I was making and the information I was sharing were accurate and helpful to my neighbors and friends.

I hope you will consider my thoughts as you finalize your opinion. I appreciate your time, attention, and public service. I look forward to seeing you next week.

Respectfully submitted,

Commissioner Brad Host