

**CITY OF BIRMINGHAM
BOARD OF ETHICS AGENDA
JUNE 23, 2023
MUNICIPAL BUILDING, 151 MARTIN
9:00 AM**

I. CALL TO ORDER

James Robb, Chairperson

II. ROLL CALL

Alexandria Bingham, City Clerk

III. APPROVAL OF MINUTES

A. Approval of minutes of May 15, 2023

IV. UNFINISHED BUSINESS

V. NEW BUSINESS

A. Consideration of advisory opinion request 2023-02 by Commissioner Clinton Baller regarding the potential establishment and management of a private, non-profit community foundation in Birmingham

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 on April 25, 2023.

**City of Birmingham
Board of Ethics Minutes
May 15, 2023
151 Martin, Birmingham**

I. CALL TO ORDER

Chair Robb called the meeting to order at 2:00 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 Ms. Fierro-Share:
To approve the minutes of April 18, 2023 as amended.

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

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. Review of the Separate Opinion on 2023-01 by Sophie Fierro-Share

The Chair greeted those in attendance. He noted that all Board discussion about draft advisory opinions occurs in open meetings.

The Chair reviewed the amendments to his draft advisory opinion.

Ms. Fierro-Share said she had no additional recommended changes to the Chair's draft advisory opinion.

Mr. Schrot said he was comfortable with the Chair's draft advisory opinion as written.

The Board acknowledged the work the Chair and Ms. Fierro-Share put into their respective draft advisory opinions.

Ms. Fierro-Share summarized her draft advisory opinion. She stated that she agreed with much of the Chair's draft opinion and that the amendments were also aligned with her thinking.

In reply to Ms. Fierro-Share, the Chair said the Commission tasked the Board with determining potential violations of Ethics ordinance Sections 2-320, 2-321 and portions of 2-323. He noted that in the past the Board has tied its findings and advisory opinions to specific, objective standards included in the Ethics Ordinance. He said that while portions of those sections have been cited in cases, cases have not been decided based on those points.

Ms. Fierro-Share reiterated her concerns as described on page three of her draft opinion that Sections 2-320, 2-321 and portions of 2-323 could be used as 'catchalls for finding fault' since they do not describe objective standards. She said that clarifying those portions of the ordinance would make it clear that conduct needs to fall within certain parameters. She explained that while she was unsure of how to achieve clarity on those points, it was worth further discussion among the Board members in order to minimize potential inconsistencies in the Board's decisions.

Mr. Schrot said he did not recall any case where 'highest standard' or 'above reproach' were used as a determinant of whether someone has not comported with, or violated, the Ethics ordinance. He said he also did not recall any case where the Board determined someone's conduct was both ethical and did not meet the standards of the ordinance. He quoted some portions from his reading regarding government ethics programs. Mr. Schrot concurred with the Chair that the Board was tasked with making decisions, just like any trier of fact. He said the Chair's draft opinion did not fault Commissioner Host for encouraging residents to make their opinions known or find him in violation of the Ethics ordinance. He noted that the Chair's revisions to his draft opinion made that clear.

CA Kucharek said it was important that the record reflect that the Board and Staff had recently had a meeting to determine whether the Board would make any recommended changes to the Ethics ordinance. She noted that the changes that were recommended by the Board to the Commission were presented and passed. She said it was important to recognize that the Board and Staff did a lengthy analysis of this issue independent of a case, in order to determine whether Section 2-321 made actual requirements of behavior or whether it was more of an ideal. She noted that the analysis determined that the actual requirements of the ordinance are set forth in Section 2-324 and portions of Section 2-323.

The Chair and Mr. Schrot signed the advisory opinion authored by the Chair. Ms. Fierro-Share signed the advisory opinion authored by herself.

In reply to CA Kucharek, Mr. Schrot said the Board did not interpret whether Commissioner Host's actions were an Ethics ordinance violation because the Board was not asked to consider whether his actions were an Ethics ordinance violation.

VI. INFORMATION ONLY

The Chair described the meeting he and the City Attorney had with the Village Council of Lake Orion, Michigan to discuss the Village's development of an Ethics ordinance. He said the Board's work was having positive impacts outside of the City.

The Chair noted that representatives from the City would be in attendance at the Detroit Ethics Conference on May 16, 2023. He said he would report back on the Conference.

Ms. Fierro-Share announced her resignation from the Board, effective at the end of the meeting. The Board members expressed their mutual appreciation for each others' work on the Board.

Ms. Fierro-Share thanked CC Bingham and CA Kucharek for their work with the Board as well.

CA Kucharek and CC Bingham explained how the vacancy and alternate positions on the Board would be filled.

VII. PUBLIC COMMENT

David Bloom asked whether limiting Commissioners' ability to advocate would conflict with the United States Constitution's Fourteenth Amendment. He also suggested the Board consider expanding to five members.

VIII. ADJOURN

No further business being evident, the Board adjourned the meeting at 3:21 p.m.

Alexandria Bingham, City Clerk



Laura Eichenhorn, City Transcriptionist



Case No. _____
(Assigned by clerk)

REQUEST FOR ADVISORY OPINION

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

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

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

Name Clinton Baller Phone Number (____) 248-703-8365

Address 822 Shirley Rd., Birmingham, MI 48009
(Number, Street, City, State, Zip)

Position or Board (If Applicable) City Commission

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

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

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

Revised 8/16/12

FOR OFFICE USE ONLY

Accepted by _____ Date _____

ADDENDUM TO REQUEST FOR ADVISORY OPINION
CLINTON BALLER
April 21, 2023

A. The questions below concern the potential establishment and management of a private, non-profit community foundation in Birmingham. The foundation would, among other things, seek donations for the sponsorship and administration of cultural events, and for improvements to the city's park system. It is anticipated that events and improvements would be administered by third parties, including partner organizations such as Next, the Birmingham Bloomfield Art Center, Baldwin Public Library, the Music Hall Center for the Performing Arts, the Birmingham Shopping District, the City of Birmingham and other local and regional organizations involved in the arts and in park design and administration.

1. What are the ethical considerations if an elected official, appointed official or city employee is involved in the establishment and administration of the foundation?
2. Is there any ethical concern if I donate or loan the money (less than \$5,000) to establish the foundation?
3. Are there any other ethical consideration or advice from the Board of Ethics regarding the establishment and administration of a community foundation by persons involved (elected, appointed, employed) in the City of Birmingham?

B. Clinton Baller is a Commissioner in the City of Birmingham. He is among a group of community leaders share an interest in expanding the range of cultural events in Birmingham. Participants have included an appointee to a city advisory board and several employees of the City of Birmingham, among others. The idea of a community foundation has existed in Birmingham for many years. The 2040 master plan currently under review recommends establishment of a community foundation. The City Commission recently followed the advice of counsel and resolved that for the foreseeable future, the city (unlike some other municipalities, including the City of Royal Oak) would not establish a community foundation, and instead would leave it to the private sector to do so.

C. City Attorney Mary Kucharek has advised against the city establishing a foundation, has said that based upon her research, nothing precludes involvement by city officials in a private foundation. She also cautioned that more than three commissioners involved in such an organization might constitute a quorum under the Open Meetings Act. City Manager Tom Markus has indicated that the involvement of a city official in a foundation might give rise to potential conflicts of interest and advised that an Ethics Board opinion be sought.

Additional Ethics Board questions

2 messages

Clinton Baller <clinton@baller4bham.com> Wed, Apr 26, 2023 at 10:56 AM
To: Alex Bingham <abingham@bhamgov.org>, Therese <tmquattro@gmail.com>, Tom Markus <tmarkus@bhamgov.org>

Alex,

Please also ask the Ethics Board to opine generally on involvement of city officials in non-profits. For example, Commissioner McLain is on the board of Next.

Thanks!

Clinton

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Please don't hesitate to call or write.
Clinton
248-971-0123

Alex Bingham <abingham@bhamgov.org> Wed, Apr 26, 2023 at 12:42 PM
To: Clinton Baller <clinton@baller4bham.com>
Cc: Therese <tmquattro@gmail.com>, Tom Markus <tmarkus@bhamgov.org>

Commissioner Baller,
I will add this question to your opinion request.
Wishing you well,

[Quoted text hidden]

--

Alexandria D. Bingham

City Clerk

City of Birmingham

151 Martin Street

Birmingham, MI 48009

(248) 530-1802 Office Direct

(248) 530-1080 Fax

abingham@bhamgov.org

Important Note to Residents

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