

**CITY OF BIRMINGHAM  
BOARD OF ETHICS MINUTES  
NOVEMBER 6, 2015 – 3:00 PM  
151 MARTIN, BIRMINGHAM  
CONFERENCE ROOM 202**

**I. CALL TO ORDER**

Sophie Fierro-Share, Chairperson, called the meeting to order at 3:07 PM.

**II. ROLL CALL**

Present: Ms. Fierro-Share  
Mr. Robb  
Mr. Schrot  
Absent: None

Administration: City Attorney Currier, Clerk Pierce, City Manager Valentine

**III. APPROVAL OF MINUTES**

**MOTION:** Motion by Schrot, seconded by Robb:  
To approve the regular meeting minutes and seminar minutes of September 24, 2015.

**VOTE:** Yeas, 3  
Nays, None  
Absent, None

**IV. NEW BUSINESS**

**1. 2015-06 Advisory Opinion: City Commission referred question of September 21, 2015**

City Commissioner Rinschler explained the question regarding recusal if there was a past relationship with a client or if there could be a future relationship. He commented that there should be some standard for recusal.

Mr. Schrot explained that each case is fact driven and should be analyzed on a case by case basis. If a Commissioner believes that he/she may have a conflict of interest, that item could be raised and discussed by the City Commission. The City Commission would then decide whether a conflict exists. If an individual is going to recuse oneself, they have to perceive that there is a conflict of interest, which could even be an appearance of a conflict.

Mr. Schrot noted that the ethics ordinance addresses the issue of recusal in Section 2-324(b)(2)(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."*

Mr. Schrot explained that City Officials are required to complete the Affidavit and Disclosure form. He noted that it is the responsibility of the individual to disclose a

potential conflict. Section 2-324(b)(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."*

Mr. Schrot noted the definitions of financial and personal interest defined in Section 2-322: *"Financial interest means any interest in money, property or thing of value or benefit." :Personal interest means an interest arising from blood or marriage relationships or any business association."* The individual would then have to make a self-assessment or determination and disclose the conflict on the appropriate record. Section 3-324 (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."*

Mr. Schrot noted that in Section 3-324(4) there is a relationship for directly or indirectly. *"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."* He noted that the City official cannot do anything that would undermine the City or the governance of the City. If one were to engage in that disclosure, they would be enhancing public confidence.

Commissioner Rinschler pointed out that the word "has" is used throughout the ordinance. He suggested that the word "current" would be more clear.

Ms. Fierro-Share commented that relationships are fluid. She noted that a personal or financial involvement has to be disclosed, the next question is whether it is a conflict.

Mr. Robb agreed that the words, verb tense and descriptors are important. The relationship and timing is important. If there is a perceived conflict, the City Commission could have a discussion. If they agree that there is a conflict, the official cannot vote. If he/she does vote, it would then be referred to the Board of Ethics.

Ms. Fierro-Share commented on the idea of an ongoing relationship versus an active relationship. She gave the example of an attorney and client as the relationship could be indefinite. It would need to be acknowledged and disclosed.

City Manager Valentine explained that procedurally, any time there is a board member with a question or concern about a possible conflict, the member should discuss it with their staff liaison who will consult with the City Attorney. He suggested this be included in the next Board of Ethics seminar in December.

Mr. Schrot pointed out Section 2-324(b)(2) discusses the disclosure of conflict of interest and disqualification.

Mr. Currier explained that the first step is to make the disclosure, whether it raises to a conflict to not vote; then state whether you can be impartial. He noted that others have made a personal decision to not vote.

Mayor Pro Tem Hoff noted that up until now, the Commissioners have been recusing themselves due to conflict of interest. ~~She noted that disclosure makes sense which will explain the reason why, then the Commission can decide from there.~~ She noted that the Commission can best make its decision on whether a recusal is in order when the disclosure of a potential conflict of interest is accompanied with an explanation of the reasons.

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

**MOTION:** Motion by Robb, seconded by Schrot:

To determine that the answer is no and to provide a written opinion with advice and rationale to the City Commission on best practices consistent with the ethics ordinance and the City Commission's own procedure documents ~~in~~ how to disclose and perceive potential conflicts.

VOTE:           Yeas, 3  
                  Nays, None  
                  Absent, None

The Board agreed that Ms. Fierro-Share will write the opinion on this.

## **2. 2015-07 Advisory Opinion: City Commission referred question of October 12, 2015**

Commissioner Rinschler provided the background for the question relative to the architect selection for the renovation of a portion of the library. He specifically questioned the involvement of Aaron Cohen.

Mr. Valentine confirmed for Ms. Fierro-Share that there is a formal bid process. Mr. Cohen was hired by the architectural firm that was selected through the bid process.

Mr. Robb explained that the Rules of Procedure to obtain an Advisory Opinion as to whether the requesting party's conduct conforms to the ordinance. He noted that this is not a complaint, more a matter of education. He stated that additional information is needed.

Mr. Schrot questioned who hired the architect, the City or the Library Board. Mr. Valentine confirmed that the process and scope was developed by the Library Board.

Mr. Schrot questioned whether there had been a situation where a successful bidder had to bring in someone not identified in the RFP. Mr. Valentine confirmed that with construction, the general contractor may bring in a subcontractor that is not necessarily identified.

Mr. Valentine explained that the City funds paid for this portion of the project as a joint initiative with the Library. Commissioner Rinschler stated that this is not the normal procedure.

Mr. Schrot agreed that additional information is needed. Commissioner Rinschler confirmed for Mr. Schrot that this situation is unusual because the contractor participated in the political process which enriched them.

Mr. Schrot noted that a review of the selection process in which Cohen was selected should be reviewed. He questioned the process of selecting Luckenbach. Mr. Valentine explained that typically the Library Board will use the City process and modify it for their needs.

Mr. Schrot noted that Procedural Rule #212 allows the Board to request additional documents or information in order to do its due diligence. The Board has to identify the problem and issue and some of these documents may help to frame the issue. The Board requested the following documents:

- Library Board minutes
- City Commission minutes
- RFP
- Library Building Committee minutes
- Lease document between the City and Library
- Copy of the City Charter regarding the Library

Mr. Schrot commented that the question to consider is whether this process created the appearance of giving or accepting preferential treatment. Section 2-323(2) "*Giving or accepting preferential treatment, including the use of city property or information, to or from any organization or person;*"

Mr. Robb noted the following Sections 2-324:

*"(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.*

*(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"*

The meeting recessed at 5:32 PM.  
The meeting reconvened at 5:37 PM.

Mr. Schrot questioned if a successful bidder engages someone to consult, does it have to be disclosed. Mr. Valentine explained that it depends on the type of work. Commissioner Rinschler noted that it should be disclosed since it is City funds and the City owns the building. He suggested that all processes align with the City process.

Mr. Schrot noted that there should be some document related to a lease between the City and the Library. That document is needed to determine the ability of the City to make alterations to the building and the authority of the Library Board to be able to determine what those improvements may be and when they could be done. He questioned if the City has carte blanche. Mr. Valentine explained that it is defined in the general terms in the City Charter.

In response to a question from Mr. Robb, Mr. Valentine explained that the Library Board is spending funds in phases. The Library funded the first piece, the City Commission and Library will fund the next phase. Commissioner Rinschler stated that it should be reinforced to use the established procedures.

The Board agreed that additional information is needed. They scheduled the next meeting for Tuesday, December 1<sup>st</sup> at 3:00 PM.

**V. PUBLIC COMMENT**

**VI. ADJOURN**

The meeting adjourned at 6:11 PM.

Laura M. Pierce  
City Clerk