

**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 other's work on the Board.

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

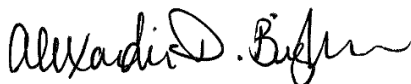
CA Kucharek and CC Bingham explained how the vacancy and alternate positions on the Board would be filled.

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