

**City of Birmingham
Board of Ethics Minutes
January 30, 2023
151 Martin, Birmingham**

I. CALL TO ORDER

Chair Robb called the meeting to order at 11:00 a.m.

II. ROLL CALL

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

Absent: None

Staff: Assistant City Manager Ecker, Assistant City Manager Fairbairn; City Clerk Bingham,
City Attorney Kucharek

III. APPROVAL OF MINUTES

MOTION: Motion by Mr. Schrot, seconded by Ms. Fierro-Share:
To strike the second sentence of the third bullet point of the minutes and to fix the spelling of the word 'judgment'.

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

Nays, None

MOTION: Motion by Mr. Schrot, seconded by Ms. Fierro-Share:
To approve the minutes of November 21, 2022 as amended.

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

Nays, None

Mr. Schrot and the Chair thanked the Clerk's Staff for the minutes.

IV. NEW BUSINESS

The Board decided to modify the agenda to discuss New Business and Information Only before Unfinished Business. The Chair thanked CC Bingham for providing the materials.

The Board authorized the Clerk to set a meeting date for the week of March 6, 2023. They stated a preference for 1 p.m., March 7, 2023 if all parties would be available.

V. INFORMATION ONLY

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

The Chair said he was interested in attending. He said it would be positive if someone on the Commission could attend as well.

CC Bingham stated Mayor Pro Tem McLain had expressed interest in attending.

CC Bingham said that, if it was available, she would email the Commission a copy of Detroit's Ethics Ordinance.

Mr. Schrot recommended the Board provide the Chair with comments on Detroit's Ethics Ordinance prior to his attending the Conference.

The Chair concurred.

B. Gunsberg – Notice of Administrative Dismissal of Ethics Complaint

CA Kucharek explained that the complaint received was incomplete and the complainant was notified of that fact. Consequently, the complaint was administratively dismissed.

The Chair noted that the complaint was dismissed without prejudice.

VI. UNFINISHED BUSINESS

A. Continue the review of the Ethics Ordinance and Board Rules of Procedure

CA Kucharek provided guidance regarding the Board's discussion of the ordinance and on the ordinance overall. She recommended that the ordinance generally remain as-is.

Individual Board comments were:

- Any potential confusion between Section 2-324(a)(6) and 2-324(a)(9) was resolved by the requirement in 2-324(a)(9)(c) that 2-324(a)(8) be complied with;
- 'Section 5 B', as referenced in Section 2-324(a)(6), no longer exists and should be changed to 'Section 2-326',
- It was positive that the ordinance has existed for approximately 20 years and has not needed modifications;
- There was the possibility that if the ordinance were to change now, someone who was found to be in violation in the past could say that if the ordinance were interpreted 'correctly', they had not been found in violation;
- None of the potential modifications discussed thus far were substantive;
- Increased training of public officials regarding the Ethics ordinance would be appropriate. To date, no issues of confusion or interpretation have arisen in trainings regarding the Ethics ordinance;
- Section 2-324(a)(6) and 2-324(a)(9) discuss different aspects of public officials' behavior;
- In the eventuality that a member of the present Ethics Board retires and a new member joins, that new member may recommend changes to the ordinance without a full understanding of Ethics and of the language of the ordinance. Preserving the Ethics ordinance as it presently is would establish the ordinance's history and the authority, and would prevent the ordinance from being modified unless it is found to be inaccurate or incomplete in the future;

- At the same time, conducting the present review of the ordinance was useful to confirm the appropriateness of the ordinance; and,
- In Section 2-324(a)(1), it might be worth clarifying that the 'course of employment' should be expanded to cover either a course of employment or a course of service, since the Section's requirements would apply to both paid City employees and volunteer public officials as set forth in the beginning of sentence.

Ms. Fierro-Share raised a concern about the expedient implementation of Section 2-324(b)(2)(b), and asked whether Section 2-324(b)(2)(b) should allow a provisional vote to occur in the described circumstances. After Board and Staff comment, no recommendation was made to that effect.

CA Kucharek prompted the Board to consider whether clarification should be added to 'which tends to influence the manner in which the official or employee or any other official or employee performs his or her official duties' as stated in Section 2-324(a)(4).

Mr. Schrot and the Chair opined that Section 2-321 and the clause 'tends to influence' sufficiently clarified the expectations of Section 2-324(a)(4).

CA Kucharek said City Staff should remind public officials that, per 2-324(b)(2)(b), if a potential conflict-of-interest is raised and there is disagreement among the board members about whether the relevant board member should recuse, the conversation should immediately cease and the matter should be referred to the Ethics Board for deliberation.

CC Bingham raised questions about succession planning for the Ethics Board. She, ACM Ecker, and CA Kucharek recommended the Board consider training an alternate for their positions who could both vote when necessary and could be trained to become a permanent Board member at a later date.

It was noted that an amendment to the ordinance would be required for the creation of an alternate position on the Board.

MOTION: Motion by Chair Robb, seconded by Mr. Schrot:

To advance to the City Commission for its consideration adopting the following amendments to the Ethics ordinance:

1. In 2-324(a)(1), to insert after 'confidential information acquired in the course of employment', the following phrase: 'or service as a City official'; and,
2. In 2-324(a)(6), to change the reference to 'Section 5 B' to 'Section 2-326'.

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

Nays, None

CA Kucharek said she would return on March 7, 2023 with the proposed ordinance amendments set forth in the motion and proposed language for a potential alternate position.

Chair Robb asked the Board to consider whether Rule 202 in the Rules of Procedure should be modified to have Rule 202(b) begin 'The Board or Chair may [...]' and whether a Rule 202(c)

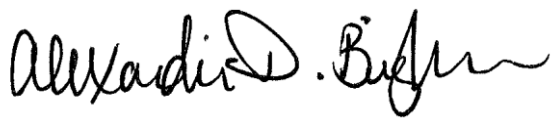
should be added that states 'Any request for advisory opinion dismissed by the City Clerk or the Board Chair under this rule will be reinstated upon written request of a Board member filed with the City Clerk within 30 days after the notice was given.'

Mr. Schrot said he preferred to maintain Rule 202(b) as-is, and voiced his support for the proposed Rule 202(c) with the removal of the reference to the Board Chair.

VII. PUBLIC COMMENT

VIII. ADJOURN

No further business being evident, the Board motioned to adjourn at 12:50 p.m.



Alexandria Bingham, City Clerk



Laura Eichenhorn, City Transcriptionist