

**CITY OF BIRMINGHAM
BOARD OF ETHICS MINUTES
JANUARY 23, 2019 5:00 PM
151 MARTIN ST., BIRMINGHAM MI 48009
CITY COMMISSION ROOM #205**

I. CALL TO ORDER

Chairman Robb called the meeting to order at 5:05 p.m.

II. ROLL CALL

Present: James Robb, Chairman
Sophie Fierro-Share
John Schrot

Absent: none

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

III. APPROVAL OF MINUTES

A. Approval of minutes of October 11, 2019

MOTION: Motion by Mr. Schrot, supported by Ms. Fierro-Share:
To approve the minutes of October 11, 2019 as submitted.

VOTE: Yeas, 3
Nays, 0
Absent, 0

IV. UNFINISHED BUSINESS

None.

VI. NEW BUSINESS

Chairman Robb deviated from the agenda.

B. Report from Chairman Robb regarding his conversation with Alicia Skillman, the Executive Director of the Detroit Board of Ethics, on the topic of ethics training.

Chairman Robb shared the following:

- The Detroit Board of Ethics was established by ordinance and is composed of seven members. Three members are appointed by the mayor, three are appointed by the City Council, and one member is appointed by both.
- The Board has three full-time employees.
- Dawn Whitman, ~~and~~ ^{an}¹ attorney and former FBI agent, is the investigator of ordinance violation claims.
- Ms. Whitman has independent authority to seek out problems. Her job is, in part, to be a watchdog.

¹ As corrected on June 12, 2019.

- Ms. Whitman refers potential issues to the Executive Director, who can direct them to the Board.
- The Board also hears complaints and requests for advisory opinions.
- The City of Detroit has 9,000 employees, and the Board attempts to hold one training session per year.
- The focus of training is on disclosure requirements, campaign contributions, lobbying restrictions, and the general codes of conduct.
- The Board saw a substantial increase in complaints filed once training started.
- The Board has considered a number of commercial platforms for training, and has made a ~~preliminary~~ ^{preliminary}² decision not to use commercial solutions due ^{to}³ price and lack of adaptability. They plan to develop their own content and devise a method by which to share it.
- The Board meets the third Tuesday of every month.

Mr. Schrot suggested developing a handbook for distribution.

Chairman Robb asked if it would be helpful to have a one-pager on the ethics ordinance, which would be a statement of principles and citations.

City Attorney Currier noted the City, its staff and officials must abide by all federal, state and local laws, which is a catchall.

City Manager Valentine suggested identifying goals first, then determining the best approach to meet the goals. He commented, in response to Mr. Robb, that additional education is never a bad thing.

Chairman Robb said he thought the current Food for Thought presentation is a good approach.

Mr. Schrot suggested staff liaisons to City boards and committees should promote awareness of the ethics ordinance periodically with their boards. He noted all material is online and easy to access and also commented that board members have taken an oath to uphold the ordinance.

A. Further Discussion of Conflict of Interest Provisions - Advisory Opinion Draft

Ms. Fierro-Share summarized her separate opinion. If the advisory board of an individual member has made a determination as to that board member meeting the standards of 2-324(a)(9), the Ethics Board should respect that decision unless there is convincing evidence that it is mistaken. In evaluating whether a citizen board member has an indirect financial or personal interest, the Ethics Board should avoid speculation. A citizen board member need only be recused from participating in a matter if he, she, or the board in question has concluded by majority vote that a conflict of interest exists, and referral to the Ethics Board for immediate determination of a conflict of interest should occur when the advisory board has determined there is a disqualifying conflict of interest and the member still objects to recusal.

² As corrected on June 12, 2019.

³ As corrected on June 12, 2019.

Ms. Fierro-Share, referring to Mr. Schrot's opinion, page 7, 4th paragraph, 2nd sentence, recommended changing "may" to "is reasonably likely". She drew the Board's attention to the three requirements which demonstrate that there is no conflict of interest and said that if a board member asserts that they are meeting those requirements, said board member should be believed. She added she did not think a unanimous vote should be necessary, since no other matters before boards and committees require a unanimous vote.

Mr. Schrot said that, in the subject case, the committee chair did not follow procedure by unilaterally deciding that Mr. Kalczynski need not recuse himself. The Advisory Parking Committee (APC) should have had a vote in order to clarify if other members of the Committee were concerned about a potential conflict of interest. Mr. Schrot also said that Mr. Kalczynski's stating there was no conflict of interest did not mean the question was resolved.

Ms. Fierro-Share asked how the Ethics Board proceeds if a member of another board states they have no conflict of interest but there is concern there may be a conflict of interest.

Mr. Schrot said the Ethics Board looked at Mr. Kalczynski's case in the context of the Ethics Ordinance (Ordinance). The Ethics Board found from the standpoint of Mr. Kalczynski's personal conduct he was not attempting to act in his own individual best interest or in his financial best interest. From there, the Ethics Board also had to consider whether there was the appearance of impropriety. The fact that a community leader like Mr. Hohendorf perceived a potential conflict of interest indicated to Mr. Schrot that there was public perception that the Ordinance may have been violated in this case. Mr. Schrot also noted there was history of conflict between the Daxton Hotel, which was the subject of the APC vote in question, and the Townsend Hotel, which is Mr. Kalczynski's employer. The opinion emphasizes that board members must be sensitive to the public appearance of conflict of interest as well as actual conflict of interest.

Ms. Fierro-Share asked if it mattered that no members of the APC objected to the Chair's unilateral finding of no conflict of interest for Mr. Kalczynski.

Mr. Schrot noted that the lack of committee engagement also posed a problem ~~for~~ of the awareness of⁴ the Ordinance, thus compounding the concern, which was why the Ethics Board was called to issue an advisory opinion.

Chairman Robb said that if the majority of the Committee members had voted that there was not a disqualifying conflict, that would have been the end of the matter. The Chairman agreed that a majority vote should suffice in these cases. He also said that he believes the Ethics Board ultimately took Mr. Kalczynski at his word, because Mr. Kalczynski stated, for instance, that he receives no bonus for the performance of the hotel.

Ms. Fierro-Share said the Ethics Board should constrain itself to asking members of other boards and committees to adhere to the three requirements for preventing conflict of interest. If the Ethics Board believes additional guidelines should be added to the Ordinance to guide behavior, it should do so. She added that there is always the potential

⁴ As corrected on June 12, 2019.

for the appearance of a conflict of interest since professionals serve on the City's advisory boards.

Mr. Schrot opined that it was not speculation as to whether Mr. Kalczynski may have had an interest in the parking situation of a rival hotel. He reiterated that if the APC had voted on the matter, as was appropriate, the vote would likely have resolved the question from Mr. Hohendorf. Since a vote was not taken by the APC, it was necessary for the Ethics Board to review the situation when a complaint was filed. The APC did not follow the Ordinance. The advisory opinion stemming from the issue set forth the need for awareness among boards and committees of their responsibilities under the Ordinance.

Chairman Robb and Mr. Schrot agreed with Ms. Fierro-Share that a vote for no conflict on a board or committee need not be unanimous.

Ms. Fierro-Share asked how the Ethics Board would proceed if a board or committee voted for no conflict regarding one of its members and a citizen filed a complaint anyway.

Mr. Schrot said it would still be incumbent on the Ethics Board to review the complaint Mr. Schrot distinguished between there being a recusal question, which a board could vote on, and a conflict of interest question, which may stand regardless of the board's vote for no conflict. Other boards and committees may not make the same distinctions the Ethics Board is bound by.

Chairman Robb, referencing Section 2-324(a)(9), stated that even when a board or committee member says they are adhering to all three requirements, the Ethics Board still retains the right to review the matter. He said the City's boards and committees must be made more aware of the Ordinance and recusal procedure. He asked Ms. Fierro-Share if she would like to propose an amendment to the Ordinance, since that is part of the Ethics Board's purview.

Ms. Fierro-Share said she wanted to revisit some elements in the Ordinance and tighten up the language for clarity. She said that the City may need stronger ethics language than it has now.

Mr. Schrot said that if the Ethics Board was to recommend an amendment to the Ordinance it should be based on the Board's experience. He suggested that the issue stems more from a lack of awareness of the City's ethics requirements than it does from the Ordinance itself.

Chairman Robb asked if there was something the Ethics Board could do in terms of increasing training. He said that no explicit recusal procedures are included in the Ordinance at this time.

City Attorney Currier said the Ethics Board is necessary as a safety valve in case a City board or committee is not carrying out its ethical obligations.

City Manager Valentine confirmed that the question of recusal is the most common question fielded by City staff in regards to the Ordinance.

Chairman Robb said that the next Food for Thought ~~would~~ could⁵ focus on recusal and other practical issues.

City Attorney Currier noted that members of boards will routinely disclose information that could give the appearance of a conflict of interest, even though said member asserts that there is no conflict of interest, and then will ask their fellow board members whether they should remain to vote on the issue. City Attorney Currier noted that at least in this fashion there is disclosure and the opportunity for the board members to voice concerns should any exist. He said while it is not an explicit vote, it does not make the process invalid. He continued that it would be best if the chair asked whether there were any concerns about the disclosed information, and should call for a vote if any concerns are voiced. If City board and committee chairs were made aware of this process, it could alleviate much of the confusion that seems to exist currently.

Mr. Schrot suggested the Ethics Board should meet with the City's board and committee chairs, review the import of the Ordinance, and offer to answer any questions. He recommended the chairs discuss it with their respective boards as an agenda item, determine whether the boards perceive ambiguity, and if so return to the Ethics Board for further clarification.

City Attorney Currier said City staff could also discuss the information with staff board liaisons during department meetings in order to further expand awareness of the available information.

City Manager Valentine recommended filming the proposed meeting between the Ethics Board and board chairs discussing the Ordinance so that it would be available as a future resource.

Ms. Fierro-Share suggested writing a one-page document on the process of recusal that would be available for all boards.

Asking staff board liaisons and board chairs for the most common questions regarding the Ordinance was recommended by Chairman Robb in order to create a more targeted presentation.

Mr. Schrot said putting a frequently asked questions (FAQ) document on the City website regarding the Ordinance would allow easier access to the information. He also noted that it is the responsibility of each board chair to understand what the Ordinance requires.

Chairman Robb said he would also like the opinions of the Ethics Board to be indexed in some way. In drawing the meeting to a close, he invited City staff to determine whether the Ethics Board should meet with staff liaisons and board chairs. He said it would be best to know the questions chairs and staff have before preparing an FAQ or a one-page document with Ordinance information.

City Manager Valentine said the City would come up with dates when the Ethics Board could meet with board and committee members to ascertain what aspects of the Ordinance need clarification. Subsequently, the Ethics Board could take the information

⁵ As corrected on June 12, 2019.

from the meeting and create documentation that could be shared. Ms. Fierro-Share said the atmosphere of the meeting should be intentionally conducive to conversation.

VII. PUBLIC COMMENT

There were no members of the public present.

VIII. ADJOURN

The meeting was adjourned by Mr. Robb at 6:37 p.m.

J. Cherilynn Mynsberge
City Clerk