

CITY OF BIRMINGHAM
ORDINANCE NO.

AN ORDINANCE TO AMEND CHAPTER 2, ADMINISTRATION, OF THE CITY CODE OF THE CITY OF BIRMINGHAM, FOR THE ESTABLISHMENT OF A CITY OF BIRMINGHAM ETHICS ORDINANCE

THE CITY OF BIRMINGHAM ORDAINS:

Chapter 2, Administration, of the Birmingham City Code is hereby amended as follows:

Article IX, Sections 2-320 through 2-326 are hereby added to read as follows:

SECTION 2-320. PUBLIC POLICY.

Public office and employment are public trusts. For government to operate properly, each City official, employee, or advisor must earn and honor the public trust by integrity and conduct.

The City of Birmingham hereby declares that all City officials and employees must avoid conflicts between their private interests and the public interest. Public officials and employees must:

- Be independent, impartial and responsible to the people;
- Make governmental decisions and policy in the proper governmental channels;
- Not use public office for personal gain.

To enhance public trust, the City of Birmingham must provide its officials and employees with adequate guidelines for separating their roles as private citizens from their roles as public servants.

This Code sets minimum standards of ethical conduct for all City officials and employees, elected or appointed, paid or unpaid. It proscribes actions incompatible with the public interest and directs disclosure of private financial or other interests in matters affecting the City.

SECTION 2-321. RESPONSIBILITIES OF PUBLIC OFFICE.

City officials and employees are bound to uphold the Constitution of the United States and the Constitution of the State of Michigan and to carry out impartially and comply with the laws of the nation, state, and the City of Birmingham. City officials and employees must not exceed their authority or breach the law or ask others to do so. City officials and employees are bound to observe in their official acts the highest standards of morality and to discharge the duties of their offices faithfully, regardless of personal consideration, recognizing that their conduct in both their official and private affairs should be above reproach.

All City officials and employees shall safeguard public confidence by being honest, fair and respectful of all persons and property with whom they have contact, by maintaining non-partisanship in all official acts, and by avoiding conduct which may tend to undermine respect for City officials and employees and for the City as an institution.

SECTION 2-322. DEFINITIONS, AS USED IN THIS CODE.

- I. "City official or employee" means a person elected, appointed or otherwise serving in any capacity with the City of Birmingham in any position established by the City Charter or by City Ordinance which involves the exercise of a public power, trust or duty. The term includes all officials and employees of the City, whether or not they receive compensation, including consultants and persons who serve on advisory boards and commissions. "Consultant"

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means a person who gives professional advice or services regarding matters in the field of his or her special knowledge or training.

- II. "Compensation" means any money, property, thing of value or benefit conferred upon or received by any person in return for services rendered or to be rendered to himself or herself or any other party.
- III. "Financial interest" means any interest in money, property or thing of value or benefit.
- IV. "Immediate family" means a City official or employee, or his or her spouse, or any person within the third degree of consanguinity to that City official or employee or his or her spouse, or such person's spouse.
- V. "Official duties" or "official action" means a decision, recommendation, approval, disapproval or other action or failure to act, which involves the use of discretionary authority.
- VI. "Personal interest" means an interest arising from blood or marriage relationships or close business association.
- VII. "Private gain" means any interest or benefit, in any form, received by a City employee or official.

SECTION 2-333. INTENTION OF CODE.

It is the intention of Section 2-334 below that City officials and employees avoid any action, whether or not specifically prohibited by Section 2-334, which might result in, or create the appearance of:

- I. Using public employment or office for private gain;
- II. Giving or accepting preferential treatment, including the use of City property or information, to or from any organization or person;
- III. Losing complete independence or impartiality of action;
- IV. Making a City decision outside official channels; or
- V. Affecting adversely the confidence of the public or the integrity of the City government.

The Code of Ethics is intended to be preventative and not punitive. It should not be construed to interfere with or abrogate in any way the provisions of any Federal or State Statutes, the Birmingham City Charter, the City of Birmingham Ordinances, or any rights and/or remedies guaranteed under a collective bargaining agreement.

This declaration of policy is not intended to apply to contributions to political campaigns, which are governed by State Law.

SECTION 2-334. A CODE OF ETHICS IS HEREBY PROMULGATED AS FOLLOWS:

A. CONFLICT OF INTEREST -- GENERAL.

- I. No official or employee of the City of Birmingham shall divulge to any unauthorized person, confidential information acquired in the course of employment in advance of the time prescribed for its authorized release to the public.
- II. No official or employee of the City of Birmingham shall represent his or her personal opinion as that of the City.
- III. Every official or employee of the City of Birmingham shall use personnel resources, property and funds under his or her official care and control solely in accordance with prescribed constitutional, statutory and regulatory procedures and not for personal gain or benefit.
- IV. No official or employee of the City of Birmingham 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 of Birmingham, invitations to such events as ground breakings, grand openings, charitable or civic events, or inconsequential gifts from established friends.

V. No official or employee of the City of Birmingham shall engage in a business transaction in which he or she may profit because of his or her official position or authority or benefit financially from confidential information which he or she has obtained or may obtain by reason of such position or authority.

VI. No official or employee of the City of Birmingham shall engage in or accept employment or render services for any private or public interest when that employment or service is incompatible or in conflict with the discharge of his or her official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of his or her official duties.

This section shall not prohibit a part-time elected or appointed City official from engaging in private employment or business on his or her own time as a private citizen and where City business is not involved, subject to his or her disclosing such private employment or business on the public record for any matter on which he or she may be called upon to act in his or her official capacity, in accordance with Section 5 B below. He or she shall refrain from voting upon or otherwise participating in debate on any such matter.

VII. No official or employee of the City of Birmingham 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.

VIII. No official or employee of the City of Birmingham 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.

IX. Determination of Conflict of Interest.

A conflict of interest exists if:

A) The City official or employee has any financial or personal interest, beyond ownership of his or her place of residence, in the outcome of a matter currently before that City official or employee, or is associated as owner, member, partner, officer, employee, broker or stockholder in an enterprise that will be affected by the outcome of such matter, and such interest is or may be adverse to the public interest in the proper performance of said official's or employee's governmental duties, or;

B) The City official or employee has reason to believe or expect that he or she will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his or her official activity, or;

C) The public official has any other prohibited interest as defined by Michigan statutes relating to conflicts of interest.

X. Subsequent Conflict of Interest.

No official or employee of the City of Birmingham shall acquire any financial interest in or accept any employment concerning any project which has been granted approval by the City or any commission, board, department or employee thereof within one year of the official's or employee's participation in any manner in considering or recommending the approval or disapproval of said project.

B. FULL DISCLOSURE.

I. 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 of Birmingham 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.

II. Disclosure of Conflict of Interest and Disqualification.

A. Any City official or employee who has a conflict of interest, as defined herein, in any matter before the City shall disclose such fact on the appropriate record of the City prior to discussion or action thereon and shall refrain from participating in any discussion, voting or action thereon, as follows, provided that such exceptions shall be observed as are permitted by law:

- (I) A City Commissioner shall disclose any conflict of interest and the nature and extent of such interest on the record of the City Commission;
- (II) A member of any City board, commission or committee shall disclose any conflict of interest and the nature and extent of such interest on the records of said board, commission or committee;
- (III) A City employee who has a financial or other interest in a matter before the City Commission or any City board, commission or committee and who participates in discussion with, or gives an official opinion to the City Commission, or to such other City board, commission or committee relating to such matter, shall disclose on the records of the City Commission or such other City board, commission or committee, as the case may be, any conflict of interest and the nature and extent of such interest.
- (IV) Otherwise, any appointed City official or employee shall address such a disclosure to the supervisory head of his or her department, and any elected City official shall address such a disclosure to the general public.

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.

C. Within twenty (20) days after election, employment, appointment, or any change in the facts set forth in the City official's or employee's previously filed Disclosure Statement, each City official and employee shall file with the City clerk an Affidavit and Disclosure Statement. The City clerk shall provide each City official or employee with the required Affidavit and Disclosure Statement form immediately upon his or her election, employment or appointment. The Affidavit and Disclosure Statement does not apply to part-time and temporary employees of the City of Birmingham. Additionally, the disclosure requirements on this section do not apply to regular full-time employees below the level of assistant department head, except at the discretion of the City Manager.

SECTION 2-335. VIOLATION, ENFORCEMENT AND ADVISORY OPINIONS.

A. Board of Ethics.

- (I) The City Commission shall appoint a Board of Ethics, consisting of three members, as an advisory body for the purpose of interpreting this Code of Ethics.
- (II) The initial three members of the Board of Ethics shall be appointed for one-, two-, and three-year terms of office respectively, which shall begin on July 1, 2003. If appointed prior to July 1st, they

shall begin their terms of office immediately and their terms shall include the additional time prior to July 1st. Terms of office shall expire on June 30th of the respective years.

Thereafter, all members shall be appointed to three-year terms, beginning July 1, so that only one member's term expires each year. A member shall hold office until his or her successor is appointed. The City Commission shall fill a vacancy by an appointment for the unexpired term only.

- (III) The Board of Ethics shall be made up of residents of the City who have legal, administrative or other desirable qualifications.
 - a) The members of the Board of Ethics shall serve without compensation, and shall not be elected officials, persons appointed to elective office, full-time appointed officials or City employees, nor shall they be currently serving on any other City board or commission.
 - b) The Board shall select its own presiding officer from among its members.

B. Functions of the Board of Ethics.

When there is a question or a complaint as to the applicability of any provision of this Code to a particular situation, that question or complaint shall be directed to the Board of Ethics. It shall then be the function of the Board of Ethics to conduct hearings and/or issue an advisory opinion, as applicable.

(I) Hearings.

The Board of Ethics shall follow the following hearing procedure:

- a) The Board shall, within seven days after any matter is brought to its attention, set a date certain for hearing said matter.
- b) The Board shall, at least twenty-eight days before the hearing date, send notice of such hearing, accompanied by a concise statement of the alleged breach of this Code of Ethics, to any person requested to appear before them, by certified mail, return receipt requested, to addressee only.
- c) Any person requested to appear before a Board of Ethics hearing may request one extension for a period not to exceed twenty-eight days. Extensions thereafter will be granted only under extreme circumstances.
- d) Any person requested to appear before a Board of Ethics hearing may be accompanied by his or her attorney.
- e) All hearings at which any person shall be requested to appear shall be subject to the Open Meetings Act.
- f) All findings of Board hearings shall be published in permanent form and communicated to the City Commission and the public, with any deletions necessary to prevent disclosure of the identity of the official or employee involved.

(II) Advisory Opinions.

All advisory opinions so issued shall also be published in permanent form and communicated to the City Commission and the public, with any deletions necessary to prevent disclosure of the identity of the official or employee involved.

(III) After the Board of Ethics' advisory opinions and/or hearing findings have been published:

- (a) The City Commission shall be responsible for imposing any sanction, up to and including

removal from office, for a violation of this code on one of its members or any person appointed by the Commission to any City Board.

- (b) The City Manager shall be responsible for imposing any discipline for a violation of this code on any employee of the City.

Section 2-336 AFFIDAVIT AND DISCLOSURE STATEMENT

Immediately following an election, employment or appointment of a City official or employee, the City clerk shall provide the individual with an Affidavit and Disclosure Statement form. Within twenty days after election, appointment, employment or any change in the facts set forth in the City official's or employee's previously filed Affidavit and Disclosure Statement, all City officials or employees shall file with the City clerk an Affidavit and Disclosure Statement including the following:

A. A disclosure statement responding in detail to the following questions:

1. Do you or any members of your immediate family own any interest in real property located within the City of Birmingham, in land in communities contiguous to the City of Birmingham, or in any area covered by a 425 Agreement to which the City of Birmingham is party?
2. If your answer to question 1 is affirmative, state the following information for each such interest owned:
 - (a) The nature of your interest in the real property;
 - (b) The location of the real property (for improved property, provide the street address; for unimproved property state its location in relation to existing streets), and;
 - (c) The property's permanent real estate tax identification number.
3. Do you or members of your immediate family own five percent (5%) or more of any business entity?
4. Are you or any members of your immediate family an officer or director of any business entity?
5. Are you engaged in any employment, other than for the City of Birmingham, or gainful activity other than as an officer or director? Substantial non-compensated charitable or public service activities should also be disclosed.
6. If your answer to question 3, 4 or 5 is in the affirmative, state the following:
 - (a) The name of the entity;
 - (b) The address of the entity;
 - (c) The nature of your relationship to the entity, and;
 - (d) The date relationship commenced.
7. To the best of your knowledge, do you or any members of your immediate family have any direct financial or business relationships with any supplier, service provider or contractor of the City of Birmingham from which you or they derive direct compensation or financial benefit that is not reported in the prior answers.
8. To the best of your knowledge, have you or any members of your immediate family given or received any gifts, the value of which exceeds \$50.00, within the last year, or since the effective date of this code, whichever time period is shorter, to or from any person or business or other legal entity doing business with the City, other than legal campaign contributions? If so, list the names and addresses of each donor or donee of each such gift and the date upon which it was made and the nature of the gift.

- B. An affidavit in which the City official or employee states: "I have read and I understand the Code of Ethics of the City of Birmingham and, to the best of my knowledge, I am not in conflict with its provisions."

Dated:

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public

_____ County, Michigan
My Commission Expires: _____

Seth Chafetz, Mayor

Nancy Weiss, City Clerk

Reviewed and Approved as to form:

Department Head

City Manager

City Attorney