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May 7, 2003

Mr. Thomas M. Markus, City Manager
City of Birmingham
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

**Re: Request for Instructions Regarding
Possible Technical Corrections to
The Ethics Ordinance**

Dear Mr. Markus:

This letter is intended to confirm our recent discussion regarding various issues and questions that have been posed to me regarding the recently adopted Ethics Ordinance. To date, the questions that we have received cannot be answered without clarification by the City Commission.

Section 2-322 I. DEFINITIONS, AS USED IN THIS CODE, states, in part, as follows:

- “1. ‘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’ means a person who gives professional advice or services regarding matters in the field of his or her special knowledge or training.”

Does the term “consultant” include the corporate entity for which the consultant works? Is the Ordinance intended to be applicable to those “consultants” who are restricted by state or federal law or professional ethics from making certain disclosures regarding their other clients?

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Section 2-322 IV. DEFINITIONS, AS USED IN THIS CODE further states, in part, as follows:

“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.”

The definition of “immediate family” is extremely broad. I have attached a consanguinity chart to demonstrate the persons that this actually affects. Many of the comments that we have received are really objections to the breadth of the definition of immediate family and the requirement of disclosures where other family members object to the disclosure. As defined, immediate family includes the City official/employee, their parents, grandparents, great grandparents, uncles and aunts, brothers and sisters, nieces and nephews, children, grandchildren and great grandchildren. In addition, it includes the spouse of the City employee, the spouse’s parents, grandparents, great grandparents, uncles and aunts, brothers and sisters, nieces and nephews, children, grandchildren and great grandchildren. Further, it includes the spouse of each of the uncles and aunts, brothers and sisters, nieces and nephews, children, grandchildren and great grandchildren of the official/employee and his or her spouse. Some of the comments received indicate a lack of knowledge of the property ownerships or business dealings of the individual’s extended family as well as objections by the members of the family to having their real estate holdings or business affairs disclosed in documents that would be discloseable under the Freedom of Information Act.

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Section 2-322 DEFINITIONS, VI AS USED IN THIS CODE states, as follows:

“VI. ‘Personal interest’ means an interest arising from blood or marriage relationships or close business association.”

What does “close business association” mean in the definition of personal interest.

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Section 2.334 B. FULL DISCLOSURE II. C., states as follows:

“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.”

This language, when read, literally appears to exempt existing elected officials, employees or appointees from the Ordinance. Is it the intent of the Commission for this to apply to all existing elected officials, employees and appointees of the City? The question is if it is to apply to everyone today, the language should be clarified to make it apply to all people who have already been appointed within a certain time period after the effective day of the Ordinance.

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Additionally, the question has been raised as to whether the Ethics Ordinance applies to members of the Library Board and its employees. Does the Ethics Ordinance apply to the student appointed liaison to our various boards?

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Section 2-335 VIOLATION, ENFORCEMENT AND ADVISORY OPINIONS, Section A. Board of Ethics, states as follows:

“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.
- (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.”

We have not established in the Ordinance any procedures by which complaints should be filed and to whom they are filed with, or are such procedures to be left up for the determination of the Ethics Board?

In Section 2-336 AFFIDAVIT AND DISCLOSURE STATEMENT section A. 1., 2., 3., 4., 6. states as follows:

“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 a 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 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?

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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.”

Does this require the person making the disclosure to investigate the immediate members of their family to the third degree of consanguinity to determine these answers or are they merely making these answers to the best of their knowledge?

In Section 2-336 AFFIDAVIT AND DISCLOSURE STATEMENT section A. 5. states as follows:

“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.”

What does “substantial non-compensated charitable or public service” mean?

In Section 2-336 AFFIDAVIT AND DISCLOSURE STATEMENT section A. 8. states as follows:

“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 within 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.”

Does this prohibit receiving or giving gifts to members of your immediate family (within the third degree of consanguinity) in excess of \$50.00 in a given year?

The foregoing questions have been posed to us to date. We believe that it is appropriate to receive some direction from the Commission as to how we are to proceed with respect to these issues.

I further recommend that after we receive this clarification, that a meeting be held for all persons, which the Ordinance would be applicable in order to explain the Ordinance and give instructions on how to prepare the Disclosure Affidavit.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.



Timothy J. Currier
Birmingham City Attorney

TJC/jc

TABLE OF CONSANGUINITY

Showing Degrees of Relationships

FIGURES SHOW DEGREE OF RELATIONSHIP

