

**City of Birmingham
Board of Ethics Minutes
November 16, 2021
151 Martin, Birmingham**

I. CALL TO ORDER

Chair Fierro-Share called the meeting to order at 2:00 p.m.

II. ROLL CALL

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

Absent: None

Administration: City Clerk Bingham, City Manager Tom Markus, City Attorney Mary Kucharek

III. APPROVAL OF MINUTES

MOTION: Motion by Mr. Robb, seconded by Mr. Schrot:
To approve the minutes of March 29, 2021 as submitted.

VOICE VOTE: Ayes, Mr. Robb
Mr. Schrot
Chair Fierro-Share
Nays, None

IV. UNFINISHED BUSINESS

None.

V. NEW BUSINESS

A. Selection of new chair

MOTION: Motion by Chair Fierro-Share, seconded by Mr. Robb:
To nominate Mr. Schrot as the new Chair of the Board of Ethics.

VOICE VOTE: Ayes, Chair Fierro-Share
Mr. Robb
Mr. Schrot
Nays, None

B. Consideration of Advisory Opinion Request 2021-04

Chair Schrot explained the process that would be followed for reviewing Case 2021-04. He then explained the matter to be reviewed. Chair Schrot asked his fellow Board members to opine as

to whether the Board was solely acting as the City Manager's designee in this matter, or whether the Board should also be treating this matter as an ethics complaint.

The Board concurred that that the public's speaking time should be limited to three minutes each.

Mr. Robb said the Board's responsibility in this matter was solely to act as the City Manager's designee. He noted there was no ethics complaint filed and no request for an ethics advisory opinion. He stated the City Manager requested the Board review the matter according to the City's policy for racial and ethnic conflict, and not under the ethics ordinance. Mr. Robb said he concurred with Chair Schrot's statement that the Board was being tasked with determining whether there were sufficient allegations to warrant the Board to conduct hearings or issue an advisory opinion.

Ms. Fierro-Share noted that while this discussion would not be conducted under the guidance of the ethics ordinance, the Board would undertake a careful review.

Chair Schrot concurred with Mr. Robb in saying that this matter did not constitute an ethics ordinance complaint, noting that the requisite documentation for an ethics complaint had not been submitted. He noted that this matter, rather, pertained to an alleged incident involving racial or ethnic conflict. He concurred with Ms. Fierro-Share's statement as well.

MOTION: Motion by Mr. Robb, seconded by Ms. Fierro-Share:

To accept the designation from City Manager Markus to address advisory opinion request 2021-04.

VOICE VOTE:	Ayes,	Mr. Robb Ms. Fierro-Share Chair Schrot
	Nays,	None

Chair Schrot said the Board should first clarify what the Plan for the City of Birmingham's Response to Incidents Involving Racial or Ethnic Conflict (the Plan) means by an 'incident'.

Mr. Robb noted the term was not defined in the Plan and said the Board should understand 'incident' in accordance with its customary usage.

The Chair said the Board should then review the complaint, determine whether they believed an incident involving racial or ethnic conflict occurred, and should determine whether a hearing or advisory opinion to the City Manager was warranted.

Mr. Robb thanked the members of the public for submitting letters regarding this case. He noted that there was no allegation that Commissioner Baller violated the ethics ordinance, that he made a statement that was facially antisemitic, or that an incident involving racial or ethnic conflict occurred. Mr. Robb stated the allegation against Commissioner Baller was that he used language that is typically used by people who circulate antisemitic tropes. He noted that the allegation did not say Commissioner Baller used an antisemitic trope.

Mr. Robb explained that he utilized resources from the Anti-Defamation League (ADL) and the Louis D. Brandeis Center (Brandeis Center) in his review of this case. He stated that a fact sheet

from the Brandeis Center lists elements of antisemitic discourse, and said that certain kinds of references to money or wealth can constitute antisemitic discourse. He said the Brandeis Center specified that those references usually more specifically include allegations of greed at the expense of others, which he said was significant.

Mr. Robb said he was not inclined to find that Commissioner Baller used an antisemitic trope. He stated that the words in question are commonly used in political discourse and in wider society. Mr. Robb said he has used those words and heard them used in his career as a business lawyer. He said he was unable to find an indication that Commissioner Baller used the words in any way other than how those words are commonly used in politics or business on the basis of the record.

Mr. Robb stated that prior to Carolyn Normandin's letter on behalf of the ADL, he had been unaware that the donors to Mr. Bloom's campaign, as named by Commissioner Baller, were of the Jewish faith. Mr. Robb noted that said donors were not identified as such by Commissioner Baller. Mr. Robb stated that the discourse was not improper since knowing who supports a candidate allows voters to know a bit more about the candidate. Mr. Robb stated that criticism of political candidates for fundraising practices is not uncommon and is not limited to candidates of any creed, ethnicity or background.

Based on this information, Mr. Robb contended that the Board would have to extrapolate from Commissioner Baller's writings to establish that an incident involving racial or ethnic conflict occurred. Mr. Robb said he did not see that there were sufficient allegations of complaint to warrant the Board conducting hearings or offering an advisory opinion on whether an incident of racial or ethnic conflict occurred.

Ms. Fierro-Share said that one can never be sure how one's words will be interpreted, and that this case may be an example of that. She said there are some words that are unequivocally racist, and other words that are used in many contexts and are not inherently ethnically derogatory. Finding Commissioner Baller's language to be in the latter category, Ms. Fierro-Share said she agreed with Mr. Robb that the Board could not establish that Commissioner Baller had racially or ethnically biased intentions, or that an incident involving racial or ethnic conflict had occurred.

Ms. Fierro-Share said she did feel that the speech in question was hurtful and unfortunate. She said that it hurt many people in the process.

Chair Schrot stated that he also looked at the ADL's resources to get a better sense of the allegations and antisemitic tropes. He concurred with Mr. Robb and Ms. Fierro-Share that an incident of racial or ethnic conflict did not occur in this case. Based on this, he also concurred with his colleagues that there was no basis for holding a hearing or issuing an advisory opinion. He said it seemed that this matter would be best addressed at the ballot box. He noted that when people donate to a political campaign it does become a matter of public record.

Chair Schrot then noted that the ethics ordinance has requirements for the behavior of public officials. He noted that this was addressed in the Board's Case 2020-01 opinion as well.

Chair Schrot, Mr. Robb, and Ms. Fierro-Share said the City should pursue the Board's recommendations from Case 2020-01 to establish a social media policy and to provide guidance to public officials on when they should offer a disclaimer for their communications. There was Board consensus that having clearer policies would better allow the Board to determine when those policies have been violated.

Chair Schrot said he did not profess to know the legalities of devising a social media policy, and that the City Attorney would have to review that. He provided documents regarding potential policies to his fellow Board members, and said he would also provide them to the City Attorney and the City Clerk to include in the record.

Mr. Robb said the Board could also potentially assist in crafting a social media policy and guidance on when public officials should offer disclaimers.

Chair Schrot invited public comment.

VI. PUBLIC COMMENT

David Bloom, Ed Schulak, Ann Gross, Donna Klein, Paul Reagan, and Jane Schulak expressed the harm they saw done by Commissioner Baller's writings both in email and on social media.

Mr. Bloom explained that while he was not accusing Commissioner Baller of being antisemitic, he was accusing him of using antisemitic tropes to undermine Mr. Bloom's 2021 campaign for the office of City Commissioner.

Mr. Schulak and Ms. Gross said that the Board's understanding of its task was perhaps too narrow, and that the Board should review Commissioner Baller's conduct vis-a-vis his written communications more generally.

Ms. Klein said that Commissioner Baller had not reformed his approach to writing after Case 2020-01. She asserted that Commissioner Baller's statements seemed to be dog-whistles, which are racially- or ethnically-biased views meant to be imperceptible to the general public but recognizable to those who hold similarly biased views. She said the City should be taking the correspondence from the ADL more seriously, and noted that while a number of Jewish residents were expressing concern, three non-Jewish Board members were finding that there was no racial or ethnic incident. She said it should be sufficient to know that Commissioner Baller's correspondence was offensive to some residents. She encouraged the Board to rethink their stance.

Mr. Reagan said that if a separate complaint were raised regarding this matter under the ethics ordinance, he hoped that the Board would review the matter without prejudice as to their findings in the current case. He said that developing a social media policy would be superfluous since the ethics ordinance already adequately deals with public officials' communications. He asserted that the lines between being a Commissioner and citizen have been intentionally confused in Commissioner Baller's conduct and that the roles needed to be more clearly disentangled.

Ms. Schulak said Commissioner Baller was showing disrespect for his office, the City and the public. She said this incident did not represent how City officials nor the City should conduct itself.

VII. ADJOURN

Mr. Robb thanked the public for attending and for offering their perspective.

MOTION: Motion by Mr. Robb, seconded by Ms. Fierro-Share:
To adjourn the meeting at 3:12 p.m.

VOICE VOTE:	Ayes,	Mr. Robb Ms. Fierro-Share Chair Schrot
	Nays,	None

Alexandria Bingham, City Clerk

DRAFT