

**CITY OF BIRMINGHAM
BOARD OF ETHICS AGENDA
NOVEMBER 15, 2024
MUNICIPAL BUILDING, 151 MARTIN
1:00 PM**

I. CALL TO ORDER

James Robb, Chairperson

II. ROLL CALL

Alexandria Bingham, City Clerk

III. APPROVAL OF MINUTES

A. Approval of minutes of September 20, 2024

IV. UNFINISHED BUSINESS

V. NEW BUSINESS

A. Review of draft opinion for case 2024-01 Shell re Pielack

VI. PUBLIC COMMENT

VII. BOARD COMMENT

VIII. ADJOURN

Should you wish to participate, you are invited to attend the meeting in person or virtually through ZOOM:

<https://us06web.zoom.us/j/99656852194> Meeting ID: 996 5685 2194

You may also present your written statement to the Board of Ethics, City of Birmingham, 151 Martin Street, P.O. Box 3001, Birmingham, Michigan 48012-3001 prior to the meeting.

NOTICE: Individuals requiring accommodations, such as mobility, visual, hearing, interpreter or other assistance, for effective participation in this meeting should contact the City Clerk's Office at (248) 530-1880 (voice), or (248) 644-5115 (TDD) at least one day in advance to request mobility, visual, hearing or other assistance.

Las personas que requieren alojamiento, tales como servicios de interpretación, la participación efectiva en esta reunión deben ponerse en contacto con la Oficina del Secretario Municipal al (248) 530-1880 por lo menos el día antes de la reunión pública. (Title VI of the Civil Rights Act of 1964).

I, Alexandria Bingham, the duly appointed City Clerk for the City of Birmingham, certify this meeting notice was posted at all four entrances into the Municipal Building, and to www.bhamgov.org on November 12, 2024.

**City of Birmingham
Board of Ethics Minutes
September 20, 2024
151 Martin, Birmingham**

I. CALL TO ORDER

Chair Robb called the meeting to order at 1:00 p.m.

II. ROLL CALL

Present: Chair James Robb; Board Members Michael Coakley, Melissa LeDuc; Alternate Board Member Irene Hathaway (non-voting)

Absent: Alternate Board Member Judy Doyle

Staff: CM Ecker (arrived 1:05 p.m.); City Clerk Bingham, City Attorney Kucharek, Museum Director Pielack

III. APPROVAL OF MINUTES

A. Approval of minutes of January 19, 2024

MOTION: Motion by Coakley, seconded by LeDuc:
To approve the minutes of January 19, 2024.

VOICE VOTE: Ayes, Chair Robb
 Mr. Coakley
 Ms. LeDuc

Nays, None

IV. UNFINISHED BUSINESS

V. NEW BUSINESS

- A. Welcome and introduction of new members: regular member Melissa Leduc and alternate member Irene Hathaway
- B. Ethics Complaint 2024-01 Shell re Pielack

The Chair reviewed the meeting's procedures, ensured the record was complete, and swore in Jay Shell, Leslie Pielack, and Caroline Ashleigh. It was noted that Ms. Ashleigh would be serving as a witness for Mr. Shell.

Mr. Shell, Ms. Ashleigh, James Hunter, attorney for MD Pielack, and MD Pielack then spoke and answered informational questions from the Board. CM Ecker also answered informational questions from the Board.

Mr. Hunter provided an additional exhibit to the Board and Mr. Shell.

Board members raised the following points in the course of discussion:

- Tab C was an email that included a warning regarding the Open Meetings Act (OMA).

- There was no evidence in the record that Section 2-320 was violated by MD Pielack.
- The record demonstrated that MD Pielack requested reimbursement appropriately.
- The record did not demonstrate any inappropriate relationship between MD Pielack and the Chair of the Birmingham Museum Board.
- The record did not demonstrate that MD Pielack exerted control over the Birmingham Museum Board.
- There was no evidence that Section 2-321 was violated by MD Pielack.
- The email from Mr. Shell to Parks and Recreation Manager Laird could have appeared to be making a communication to her on behalf of the Birmingham Museum Board, in Mr. Shell's official capacity.
- MD Pielack's response noted that the Ethics Ordinance (Ordinance) disallows City officials from representing their personal positions as City positions. Her email to Mr. Shell was alerting him to the possibility that in doing so, he could have been subject to criticism for violating the Ordinance.
- Matters have appeared before the Ethics Board in the past regarding City officials using their official titles, with intent or inadvertently, in ways in which a reader or listener could interpret their personal position as a position of the City.
- While MD Pielack's email to Mr. Shell might have been embarrassing, it was not defamatory. The email was the Museum Director's effort to educate the members of the Museum Board regarding conduct required by the Ordinance.
- The email from MD Pielack to Mr. Shell did not indicate retaliation for Mr. Shell's support of Ms. Ashleigh.
- It is important for all City officials to be aware of potential violations of the OMA, though violations of the OMA are not part of the Ethics Board's purview.
- The Ethics Board does not decide matters of defamation.
- It is important that questions regarding the ethics of a City official or employee should be brought to the Ethics Board.
- The discussion of this matter by the Ethics Board did not indicate that the matter should not have been brought, nor did it indicate that the Ethics Board should not consider it.
- While Ms. Ashleigh's disqualification from serving on the Birmingham Museum Board was not presently before the Ethics Board, the Ethics Board could have served as a resource to the City regarding the question of the disqualification.
- In the case of a disclosed conflict-of-interest on the part of a Commissioner who does not elect to recuse, the Commission can refer the question to the Ethics Board to determine whether recusal would be required. The findings of the Ethics Board would then be binding on the Commission.
- There was no evidence that Section 2-323 was violated by MD Pielack, as once again, the record demonstrated that MD Pielack requested reimbursement appropriately.
- There was no indication that MD Pielack used her public employment for private gain.
- There was no indication in the record of preferential treatment by MD Pielack.
- Relationships with or between board members can affect other board members or officials, but the record did not indicate anything that would amount to a violation of 2-323.
- There was no indication in the record that the confidence of the public in the Birmingham Museum or the Birmingham Museum Board had been diminished.
- There was no indication of duress in terms of Mr. Shell's support for the reimbursement.
- The reimbursement request was appropriate since it was an educational opportunity for a City official that fell within said official's duties for the City.
- Ms. Ashleigh's conflict-of-interest matter was public information, and any discussion of the matter on MD Pielack's part did not violate the Ordinance. The details of Ms.

Ashleigh's conflict-of-interest also were referenced in the Birmingham Museum Board's minutes.

- The Friends of the Museum Board is a private corporation, not a City institution.
- Mr. Shell had a fiduciary duty to the Friends of the Museum Board, as a member of said institution's Board of Directors. If he had a concern about MD Pielack's conduct vis-a-vis that institution, his remedy would be with that corporation.
- There was no evidence of defamation or an attack on Mr. Shell.
- The Commission, and not MD Pielack, determines who is appointed to the Birmingham Museum Board.
- One of the allegations was that the petition for reimbursement was not made directly to the Friends of the Museum Board, but the record showed it was made directly to them.
- The governance of the Museum might be more appropriately addressed with the Commission. Alleged challenges with Museum governance did not amount to an ethical violation on the part of MD Pielack.
- The Friends of the Museum Board property name on file with the Michigan Department of Licensing and Regulatory Affairs is the Birmingham Historical Society.

MOTION: Motion by Robb, seconded by Coakley:
That the complaint be dismissed.

VOICE VOTE: Ayes, Chair Robb
 Mr. Coakley
 Ms. LeDuc

Nays, None

Writing of the draft opinion was assigned to Mr. Coakley. The Chair thanked MD Pielack, Messrs. Shell and Hunter, and Ms. Ashleigh.

The Board briefly recessed, and returned from recess.

C. Update from Clerk Bingham regarding Detroit Ethics Board conference

CC Bingham presented the update and the Board briefly discussed the conference.

VI. PUBLIC COMMENT

VII. BOARD COMMENT

The Chair welcomed the new Board members and provided brief background information on the Board.

VIII. ADJOURN

No further business being evident, the Board motioned to adjourn at 3:11 p.m.



Alexandria Bingham, City Clerk

Laura Eichenhorn, City Transcriptionist

DRAFT

**STATE OF MICHIGAN
CITY OF BIRMINGHAM BOARD OF ETHICS**

OPINION AND ORDER

In Re: Leslie Pielack

Case No.: 2024-01

Jay R. Shell (“Complainant”) filed the above captioned complaint with the City Clerk on June 26, 2024. In his Complaint, Complainant alleges violations of three (3) sections of the City of Birmingham’s Ethics Ordinance: Section 2-232-Public Policy, Section 2-321-Responsibility of Public Office, and Section 2-323-Intention of Code. For the reasons and on the grounds stated below, we find the Complaint to be without merit in its entirety.

Opinion

I. Section 2-320 Public Policy

In all actions affecting the City, City Officials must be “independent, impartial and responsible to the people.” (§2-320(1)). As a Director of the Birmingham Historical Museum, Leslie Pielack is a City Official obligated to comply with Section 2-320(1). (§2-320)

Complainant alleges that Ms. Pielack’s “impartiality is questionable” because she “appears to have a personal relationship with ... the Chair of the Birmingham Museum Board [“Museum Board”] and Treasurer of the Friends of the Birmingham Museum Board” [“Friends Board”], Marty Roush-Logue, and through that relationship appears to exert “significant control over the Chair of the Birmingham Museum Board and indirectly the [Friends Board].”

(Complaint Form, Attachment, p.1)

We held a hearing September 20, 2024 on the Complaint (“Hearing”) at which we admitted the documents submitted by the parties, heard testimony from Complainant and his

witness Caroline Ashleigh, and argument of counsel for Ms. Pielack, James J. Hunter of the law firm Collins Einhorn Farrell PC (“Counsel”). The gist of the claim under §2-320 appears to be that Director Pielack used her alleged control over the Chair of the Museum Board, Ms. Roush-Logue, to cause the Museum Board to assert that Museum Board Member Caroline Ashleigh had a conflict of interest arising from the fact she is a named plaintiff in a class action brought against the City in an unrelated matter, as a result of which Ms. Ashleigh resigned from the Museum Board.

Based on the documentary evidence, the testimony and arguments presented at the Hearing, we find that Ms. Pielack did not have such control over the Museum Board Chair Ms. Roush-Logue. We also find that the Museum Board acted independently, and that Ms. Ashleigh voluntarily resigned from the Museum Board.

For the same reasons and on the same grounds we find that Director Pielack did not have “significant control” over the Friends Board. Merely having a “personal relationship with [a] former Museum employee family member” who also is a City Official by itself does not call into question Director Pielack’s impartiality, let alone show a violation of Section 2-320. Complainant merely alleges that “[t]hrough this relationship, it would appear that” Director Pielack “exude(s) (sic) significant control over” the Friends Board. Complainant did not present evidence at the Hearing or in the documentary evidence that Director Pielack possessed such control or through a personal relationship with a City Official, acting in her official capacity, demonstrated a lack of impartiality.

II. Section 2-321-Responsibility of Public Office

The alleged violation of §3-321 centers on an email dated June 21, 2024 sent by Director Pielack to Complainant and copied to a number of City Officials regarding “City trees and

clarification of Museum Board Decision.” (Museum Director Leslie Pielack’s Response to Ethics Complaint, Exhibit C.) The decision Complainant references is the Museum Board’s unanimous decision on May 2, 2024, approving a landscape design plan for the Museum’s property that includes planting two disease resistant elm trees on Museum property. (id.) Complainant objected to planting two elms based on his belief that planting two trees of the same species risked spreading disease among elms on the property. (ibid.) After the Museum Board’s unanimous decision, recorded in the minutes of the meeting which Complainant approved, he emailed “[a]s a Birmingham Museum Board Member ...” a City Official (Carrie Laird, Parks and Recreation Manager) regarding the decision. Complainant’s email was not authorized by the Museum Board. Director Pielack then sent Complainant her e-mail of June 21 explaining why she found Complainant’s email to Ms. Laird problematic. It is this email that Complainant alleges is “reckless, disrespectful and defaming behavior that appears to be retaliatory” for his support of Caroline Ashleigh, former Museum Board Member. (Complaint Form, Attachment p. 2)

On its face, Director Pielack’s June 21 email is neither reckless, disrespectful, defaming nor retaliatory. To the contrary, we find the e-mail respectful and even-handed in explaining why Director Pielack considered problematic Complainant’s e-mail and contact with Parks and Recreation Manager Ms. Laird. Complainant did not present evidence at the Hearing that would lead us to a different conclusion regarding Director Pielack’s June 21 email.

III. Section 2-323-Intention of Code

Complainant alleges violation of §2-323 by “[u]sing public employment or office for private gain.” (§2-323(1)) The central allegation under §2-323(1) is the claim that Director Pielack allegedly petitioned the Friends Board for \$750.00 to cover some of the expenses she

would incur from attending a historical association leadership development institute without petitioning the Friends Board directly, but instead submitted her petition through Marty Rousch-Logue, Chair of the Museum Board/Friends Treasurer. (Complaint Form, Attachment p.2) The evidence presented at the Hearing refutes the allegation entirely in that it shows the petition was indeed made to the entire Friends Board. (Pielack e-mail dated Feb 29, 2024.) In addition, Complainant himself expressly approved the petition stating: “I support both professional development opportunities!” (Jay Shell e-mail dated Thu, May 7, 2024.) Accordingly, we find this claim to be entirely without merit.

The other claims asserted under §2-323 are either not within our jurisdiction (i.e. Friends governance structure) or merely expand on claims we address above. Finally, in Complainant’s correspondence dated August 14, 2004 he does not assert a new claim, but instead simply provides additional details to support his claims which details we find do not change either our analysis or findings above.

Conclusion and Order

Having conducted an on the record public hearing and considered the submissions, testimony and arguments of the parties, the Complaint shall be and hereby is dismissed in its entirety.

So Ordered.

James D. Robb, Esq., Chairperson

Michael P. Coakley, Esq. - Member

Melissa Leduc, Esq. - Member

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