

Roll Call

A regular work session of the Kalamazoo City Commission was held on Monday, July 24, 2017 at 6:00 p.m. in the City Commission Chambers at City Hall. The purpose of the meeting was to discuss the Foundation for Excellence.

COMMISSIONERS PRESENT: Mayor Bobby J. Hopewell
Vice Mayor Don Cooney
David Anderson
Erin Knott
Matt Milcarek
Shannon Sykes
Jack Urban

COMMISSIONERS ABSENT: None

Also present were City Manager Jim Ritsema, City Attorney Clyde Robinson, and City Clerk Scott Borling.

Discussion of the
Foundation for
Excellence Articles of
Incorporation and
Bylaws

City Attorney Robinson delivered a PowerPoint presentation entitled *City of Kalamazoo Foundation for Excellence: City Commission Work Session, July 24, 2017*. City Attorney Robinson also reviewed the draft *Articles of Incorporation* (Articles), *Bylaws*, and *Statement of Donor Intent* (Statement of Intent) for the Foundation for Excellence (FFE). Copies of these documents and the presentation were filed with the papers for this meeting.

City Attorney Robinson provided the following answers to questions from City Commissioners:

- the term "registered elector" meant "registered voter." (Commissioner Milcarek)
- the reference to the "Statement of Donor Intent" in Section 9.05(C) of the Bylaws referred to the statement currently at hand and not future statements. (Commissioner Milcarek)
- the FFE Board of Directors (FFE Board) would not have the authority to elect members to the board apart from the City Commission nomination process. (Commissioner Milcarek)
- if the City Commission rejected a nominee to the FFE Board from a stakeholder group, that group would need to reconvene and nominate another person. (Commissioner Urban)
- the section on "minimum distribution" (Bylaws, Section 9.07) took a pessimistic view of municipal funding; \$14 million was required on an annual basis to maintain the status quo with regard to property tax revenue replacement and budget stabilization. (Commissioner Urban)
- there was no discussion or debate involved with setting at seven (rather than nine) the minimum number of resident members on the FFE Board. Most other City boards required a majority of the members to be City residents. (Commissioner Knott)

- the drafters of the Articles and Bylaws wanted to balance the need for having enough members with not making the FFE Board so large as to hinder the work of the board. (Commissioner Sykes)
- there was no legal prohibition on having representation from all neighborhoods on the FFE Board, but there was a practical concern for keeping the board to a manageable size. (Commissioner Sykes)
- the idea behind the Statement of Intent was to create statement of purpose as a guide and reminder for current and future leaders. (Commissioner Sykes)
- City Commissioners have had the opportunity to review the Articles, Bylaws, and Statement of Intent, and their suggestions and feedback were incorporated into the current draft. (Commissioner Anderson)
- articles of incorporation followed a general format, and the philanthropic approach of the FFE dovetailed nicely with provisions in municipal law. The work of drafting the documents involved putting the general principles of the FFE into action. (Commissioner Anderson)
- the Articles could be changed, but it would require the approval of the City Commission, the FFE Board, and the Michigan Attorney General's Office. This process would balance the need for stability and flexibility over time. (Commissioner Anderson)
- the Statement of Intent could be included with the City's application to the IRS for tax exempt status, but it would not be a determining factor. (Commissioner Urban)

Discussion of the
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Bylaws (cont'd)

In response to a question from Commissioner Knott, City Manager Ritsema indicated it would be the responsibility of the FFE Board to contract with an outside organization like the Kalamazoo Community Foundation (KCF) for support services.

Next, Commissioner discussion took place.

Commissioner Sykes indicated she was extremely uncomfortable with the FFE model and stated accountability needed to be with the voters rather than donors. Commissioner Sykes expressed disappointment that the draft Articles and Bylaws were made available to the public only earlier that day, and she requested that the public be given at least one Commission meeting before a vote was taken. Commissioner Sykes suggested the FFE Board be citizen led, with a supermajority of members being City residents, and including identity diversity and representation from all City neighborhoods.

In response to questions from Commissioner Anderson, City Attorney Robinson indicated small changes to the documents would not be difficult, but significant changes would take time. Delays in finalizing the documents would delay fundraising, as that could not begin until the FFE

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was incorporated. The City Commission appointed members to the FFE Board, and large donors were precluded from serving on the Board.

Commissioner Anderson remarked that the City was imagining possibilities for the future and was no longer in the place of managing decline. Commissioner Anderson compared the FFE to The Kalamazoo Promise and noted both were an investment in people.

Vice Mayor Cooney expressed support for the FFE and encouraged Commissioners to avoid letting “the best” become the enemy of “the good” with regard to the Articles and Bylaws. Vice Mayor Cooney suggested the FFE Board have more representation of low income people.

Commissioner Knott requested an increase in the number of City residents required to be on the FFE Board.

Commissioner Urban questioned whether the Articles and Bylaws needed to include a “trigger point” that would signal the failure of the FFE and allow the City to move forward with a consideration of an income tax. Commissioner Urban acknowledged that donors would be able to influence the spending of FFE funds through restricted gifts. Commissioner Urban expressed trust that the people who served on boards and committees would look beyond their own narrow self-interest.

Commissioner Milcarek noted the minimum distribution described in the Bylaws would only provide the property tax revenue replacement and budget stabilization funds needed to support the FY2017 budget, and a total endowment of \$685 million was necessary to fund these categories as well as the aspirational projects. Commissioner Milcarek requested that the Articles and Bylaws require at least nine City residents on the FFE Board, but he stated a board with more than 13 members would be inefficient. Commissioner Milcarek asked that Article II(H) of the Articles be amended to completely ban political advocacy. Commissioner Milcarek indicated he was not comfortable with the language about “funds restricted by donors” in Section 4.18(B) of the Bylaws, and he requested that the Articles include a prohibition against restricted donations. Commissioner Milcarek questioned what legally triggered the designation of a donor as a “large donor,” which would preclude that donor from serving on the FFE Board.

City Attorney Robinson provided the following responses to questions from Commissioner Milcarek and Mayor Hopewell:

- there was not a clear answer as to what qualified a donor as a “large donor,” but for sure the lead donors and their families would considered large donors.
- restricted donations were purposefully allowed in the Articles and Bylaws, as there was a potential benefit to keeping that option open. Whether the FFE Board actually accepted restricted donations would be a matter of Board policy.

- increasing the required number of residents on the FFE Board would not be a problem.
- the FFE Board meetings would be open to the public.
- resources consulted by the drafters included: the framework provided by the Michigan Home Rule Cities Act; the founding documents from the Western Michigan University Foundation and a foundation created to benefit New York City; and legal counsel from the law firm Miller, Canfield, Paddock, and Stone.

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City Attorney Robinson indicated he would need to research the basis for the required distribution calculation in Section 9.07 of the Bylaws.

City Manager Ritsema remarked on the role of the FFE Board and the Imagine Kalamazoo 2025 (IK2025) process as accountability channels for how the FFE funds were used. City Manager Ritsema indicated IK2025 was a great way for citizens to be engaged with the FFE. City Manager Ritsema noted use of the KCF as a "supporting organization" was suggested by Rob Collier, CEO of the Council of Michigan Foundations.

In response to a question from Commissioner Anderson, City Attorney Robinson suggested the language in the Articles regarding political advocacy be left unchanged, as the specific terms and phrases used were language the IRS recognized.

Commissioner Sykes questioned whether the FFE Board would be guided by the Statement of Intent or IK2025, and whether future FFE Boards would be required to follow the results of IK2025. Commissioner Sykes noted The Kalamazoo Promise was a great program, but did not address systemic inequality. Commissioner Sykes stated the use of FFE funds should be directed by citizens and nobody else, and she noted that restricted donations would allow donors to be "hands on" rather than "hands off." Commissioner Sykes spoke about the reality of implicit bias and suggested the FFE Board use the KCF to recruit for diversity and neighborhood representation. Commissioner Sykes requested the City Commission not vote on the Articles and Bylaws until August 21st.

Commissioner Milcarek suggested that Article IV(D) of the Articles include language to prohibit the members of the Administrative Committee from serving as any of the three City Commission representatives on the FFE Board. Commissioner Milcarek stated the framework for the use of FFE funds was good, making restricted donations unnecessary. Commissioner Milcarek expressed support for postponing action on the Articles and Bylaws until August 21st.

Commissioner Urban urged the Commission to trust future generations and cautioned against creating rigid requirements in the Articles and Bylaws.

Mayor Hopewell expressed support for postponing action on the Articles and Bylaws until August 21st. Mayor Hopewell urged the Commission to allow future City Commissions to work out how their representatives on the FFE Board were selected.

Citizen Comments

When an opportunity was given for general citizen comments, the following people addressed the City Commission:

Zach Lassiter, City resident, stated citizens did not have enough time to review the draft Articles and Bylaws, and he expressed opposition to the FFE allowing donor restricted funds. Mr. Lassiter asked whether the FFE board meetings would be open to the public and whether the FFE donors' names and dollar amount would be public.

Chris Wahmhoff, City resident, offered remarks on his experience in the mental health field, commented on the lead donors for the FFE, and announced he was running for Mayor.

Citizen Comments
(cont'd)

Andrew Argo, City resident, requested more time for citizens to review the draft Articles and Bylaws. Mr. Argo expressed distrust for large donors to the FFE and spoke of the need to uphold transparency and the democratic process. Mr. Argo submitted written remarks, which were filed with the papers for this meeting.

Norah Getz, City resident, expressed concerns about the lack of transparency and accountability in the draft Articles and Bylaws. Mr. Getz expressed appreciation for the City's move to single stream recycling.

Tammy Hibner, City resident, thanked Commissioners Sykes and Milcarek for requesting more time to review the draft Articles and Bylaws, and she requested a community education session about these documents. Ms. Hibner expressed skepticism about the FFE concept and stated donors would be expecting a benefit.

Kevin Coultas, City resident, identified sections of the documents that were numbered incorrectly and sections that were difficult for him to understand. Mr. Coultas requested more time to review the documents.

Dorothy Appleyard, City resident, stated she had recently moved to the City and requested more information on the connection between IK2025 and the FFE.

Commissioner
Comments

Finally, an opportunity was given for miscellaneous comments and concerns from City Commissioners.

Commissioner Milcarek thanked City staff for their work and pointed out that the Articles and Bylaws distributed at the meeting were the "final version." Commissioner Milcarek stated everyone in the community needed to understand the significance of the FFE and what was at stake. Commissioner Milcarek discussed the need for clarity on the parameters for using the FFE dollars.

Commissioner Urban expressed support for postponing action on the FFE until August 21st.

Commissioner Knott indicated she was excited about the FFE and the opportunity it presented.

Commissioner Sykes thanked Commissioners for agreeing to postpone action on the Articles and Bylaws until August 21st. Commissioner Sykes expressed hope that the recommended changes would be made to the documents, especially the elimination of donor restricted funds.

Vice Mayor Cooney pointed out the FFE was great, but it would not be the solution to all of the community's problems. Vice Mayor Cooney stated the current version of the Articles and Bylaws was not far from addressing peoples' concerns about transparency and democracy.

Mayor Hopewell expressed frustration that the FFE documents were not available on July 21st, and he expressed support for postponing action on the FFE document until August 21st. Mayor Hopewell stated there needed to be both trust and skepticism about the FFE, and he remarked on the great things that had happened in the Kalamazoo community because of philanthropy. Mayor Hopewell noted IK2025 would play a large role in the process for allocating FFE dollars.

The meeting adjourned at 9:00 p.m.

Respectfully submitted,

Scott A. Borling
City Clerk

For City Commission approval on September 18, 2017

Approved by: _____
Bobby J. Hopewell, Mayor
Dated: September 18, 2017

Commissioner
Comments (cont'd)

Adjournment