

# Ethical Practices Board Rochester, MN

## Annual Report 2015



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City Attorney's Office – Room 247  
Rochester, MN 55904

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<http://www.rochestermn.gov/ethics>

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**Ethical Practices Board**  
2015

**Members**

**Joseph F. O'Toole Jr., D. Min. (Vice Chair)**

3218 James Lane NE  
Rochester, MN 55906  
(507) 206-3543 (home)  
(507) 696-1831 (cell)

Appointment: May 1, 2014 - April 30, 2017

**Audrey Ericksen (Chair)**

312 11<sup>th</sup> Avenue NE  
Rochester MN 55906  
(507) 289-6007 (home)

Appointment: May 1, 2014 - April 30, 2017

**Annie Henderson**

908 First Street SW  
Rochester, MN 55902  
(507) 273-6881 (home)

Appointment: May 1, 2013 – April 30, 2016

**Kylie Osterhus**

1224 Harbor Drive SE  
Rochester, MN 55904  
(507) 421-2947 (home)

Appointment: May 1, 2015 – April 30, 2018

**Kay Batchelder (Secretary)**

415 16<sup>th</sup> Avenue SW  
Rochester, MN 55902  
(507) 282-8139

Appointment: May 1, 2015 - April 30, 2018

**Staff**

**Terry Adkins** (City Attorney)

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## **Ethical Practices Board**

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## **Foreword from the Chair**

The membership of the Ethical Practices Board (EPB) welcomed two new members in 2015. In January, Annie Henderson joined the board to fill an unexpired term due to a resignation at the end of 2014. Annie has extensive history of serving the community and is an active member of several organizations in Rochester. In June, Kylie Osterhus was named as a new member as a result of an expired term in April. Kylie is engaged in many local initiatives involving the social and behavioral sciences. Kay Batchelder was also re-appointed in April for another term on the EPB.

In June, the board held its annual election of officers. All of the officers were unanimously re-elected to their positions:

Chair – Ms. Audrey Ericksen

Vice-Chair – Mr. Joe O'Toole

Secretary – Ms. Kay Batchelder

While a code of ethical conduct has been present in both the Rochester City Charter and Rochester City Ordinance, an oversight group had not previously existed that could serve as a body for deliberation of issues related to ethical conduct nor was there a clearly defined process for resolution of complaints. The EPB was formed in 2008 to address items and concerns which arise in the normal course of government activity.

The items of interest that have come to the EPB in this seventh year have been similar in nature to the inquiries that had arisen in the past. The majority of the EPB's activities were related to providing advice and guidance. At each of the EPB meetings we hear and review several questions that the City Attorney has received from various City Department Heads, employees and elected officials. Typically the City Attorney has fielded and provided the appropriate response to the raised items and then subsequently informed the EPB of those findings and responses. The EPB then has the opportunity to provide direction and feedback to the City Attorney. The EPB is truly appreciative of all the information and service that the City Attorney and his office has provided and has found the insights, responses and legal reviews to be invaluable to the operation of the Board.

An important goal of the EPB is that of education. As a result of much investigation and discussion, we now have formed a 'Speakers Bureau' and a variety of print and electronic media for presentation purposes. Members are available to speak to audiences about the function of the EPB. The brochure can be found on the EPB website at <http://www.rochestermn.gov/government/boards-and-commissions/ethical-practices-board>

It has been my pleasure to serve as a member and as the Chair of the Ethical Practices Board the last year, and I would ask that the following report be accepted as a summary of the EPB activities for 2015.

Audrey Ericksen

## **Introduction**

It is imperative that all persons acting in the public service not only maintain the highest possible standards of ethical conduct in their transaction of public business but that such standards be clearly defined and known to the public as well as to the persons acting in public service.

The proper operation of a democratic government requires that public officials be independent, impartial, and responsible to the people. Governmental decisions and policies must be made in the proper channels of the governmental structure. Public office may not be used for personal gain. Citizens must have confidence in the integrity of their government officials.

Public officials are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of the State of Minnesota, and to carry out impartially the laws of the nation, state and municipality so as to foster respect for all government. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their primary concern.

In recognition of these goals, there is an established Code of Ethics for elected or appointed public officials, citizen volunteers, and candidates for public office. The purpose of the Code is to establish ethical standards of conduct for such persons by establishing acts which are incompatible with the City's best interests and requiring disclosure of private or financial interests in matters involving the City. The provisions and purposes of this Code of Ethics are declared to be in the best interests of the City of Rochester.

## **Authorization**

The purpose of the City of Rochester Ethical Practices Board is to further the goals of the established Code of Ethics and as such the Board was formed via city ordinance in December 2008.

The Board is comprised of five citizen members who are appointed by a committee consisting of the President of Rochester Community and Technical College, the Chancellor of the University of Minnesota Rochester and the highest ranking officer of the Olmsted County Bar Association not associated with the Rochester City Attorney's Office. Members serve a three year term and may serve up to two consecutive terms or six years, whichever is longer.

## **Organization**

The Ethical Practices Board is composed of five members who are residents of the City of Rochester and serve without compensation. EPB members are appointed by an Appointing Committee (see Authorization paragraph).

The EPB is organized with a chair, vice chair and secretary who are elected by the membership in May of each year. Board members serve a three year term and may serve two consecutive terms.

No member of the EPB may be an elected official, an appointed official, a city employee, related to a local official or city employee, a candidate for elected public office, a person who, for compensation, represents the private interests of others before the city council or mayor, or a paid campaign worker or political consultant of a current local official.

Board action requires the affirmative vote of at least three members of the EPB.

## **Code of Ethics**

The Code of Ethics is generally covered in Chapter 13 of the Rochester City Ordinances and covers a broad range of areas including conflict of interest, use of city property and improper conduct. The intent of the Code is to provide broad overview of expected conduct and in some cases offer specific guidance regarding certain activities. Areas not specifically covered in the Code may be addressed to the City Attorney's office or the Ethical Practices Board for further clarification. In some cases there may arise a topic not previously considered by the Code which may result in the issuance of a formal opinion by the Board.

## **Rules and Procedures**

In carrying out its duties, several responsibilities for the Board are specified in the ordinance. Among these are the following.

- The Board shall have jurisdiction to review and make findings concerning any alleged violation of RCO Chapter 13 by any public official.
- To make notifications, extend deadlines, conduct investigations, make findings of fact, conclusions of law and order, review allegations and conduct hearings as needed to decide specific cases in which a violation of RCO Chapter 13 is alleged.
- To report its findings regarding any complaint to the person's Appointing Authority and to the City Administrator.
- To issue ethics opinions to public officials regarding the propriety of any matter within the Board's jurisdiction.

- To conduct a preliminary investigation of a filed complaint, or of any circumstance or situation of which the Board may become aware that appears to violate any provision of RCO Chapter 13.
- To cooperate with the human resources department in the design of ethics education seminars, and to promote the city's ethics program and high ethical standards in city government.
- To make recommendations for changes to the Code of Ethics or the governing ordinance which the Board believes would enhance their purpose.

Except as provided elsewhere in city ordinances, a Public Official who violates the Code of Ethics may be subject to disciplinary action up to and including termination of city employment/city volunteer duties.

An elected official or an appointed member of any board or commission, whose discipline is addressed by the City of Rochester Home Rule Charter or the Rochester Code of Ordinances and who violates the Code of Ethics may be subject to such disciplinary action as is provided by the Home Rule Charter or the Code of Ordinances. The EPB is not involved in determining whether disciplinary action should occur.

## **Jurisdiction**

The Code of Ethics pertains to and is applicable to public officials including elected officials and city employees as defined in RCO 13.01 Subd. 7. Also included, but not limited to, are members of the following boards and commissions:

- Building Code Board of Appeals
- Downtown Development District Advisory Board
- Ethical Practices Board
- Housing and Redevelopment Authority
- Heating, Ventilation and Air Conditioning Board of Review
- Housing Board of Appeals
- Music Board
- Park Board
- Planning and Zoning Commission
- Public Utility Board
- Library Board
- Zoning Board of Appeals
- Mayo Civic Center Commission
- Energy Commission
- Heritage Preservation Commission

The Board has jurisdiction to review and make findings concerning any alleged violation of this chapter by any public official.

In June, a concern was raised regarding the breadth of the committees, commissions and boards operating under the Code of Ethics. It was noted that the newly created Police Oversight Board and Mayo Civic Center Commission are not currently included under the Code of Ethics. As a result the EPB suggested this change:

All members of Boards, Commissions and Committees created by ordinances passed by the City Council, City of Rochester, will from here-on-in fall under the requirements set forth in the Code of Ethics, City of Rochester.

This change was accepted by the City Council in September and will require all boards and commission members to complete the Disclosure Form

## **2015 Complaint Disposition**

In 2015 there were two formal inquiries received by the Board. In January, a complaint was received and reviewed, but it was agreed that the complaint was not within the scope of the EPB. A letter was sent to the complainant regarding this decision. In April, an inquiry form from a patient in a State-run facility was reviewed. He was informed that this complaint was not in the purview of the City of Rochester and instructions were offered to contact the State of Minnesota.

## **Inquiries**

Throughout the year the City Attorney's office receives a variety of inquiries related to ethical issues. The City Attorney is most often able to provide appropriate guidance immediately. For awareness, a summary of those issues is provided to the Board at each meeting and those that require further discussion are addressed as necessary. Inquiries brought to the Board's attention can be found in our meeting minutes at <http://www.rochestermn.gov/government/boards-and-commissions/ethical-practices-board/agenda-minutes/2015>

Several informal inquiries were received which resulted in resolution being rendered by the City Attorney's office. The EPB finds the information provided by the City Attorney to be absolutely crucial, and finds that by receiving and reviewing the issues and items that come to the City Attorney, the EPB is able to discern issues and items that may lead to the issuing further advisory guides and enhances the EPB's understanding of what they may have to address in the future regarding ethics educational needs of city employees and others.

The following are some examples of the inquiries discussed at the meetings:

Question: A City Council member or board member is heavily involved in a private matter that will come before the council/board. That Councilmember/board member intends to recuse himself/herself when that matter does come before the council/board. Can the councilmember/board member become fully involved in that private matter knowing that he/she will recuse himself/herself when it reaches the council/board?

Conclusion: Yes.



Question: A couple of questions were asked regarding free tickets that were given to city employees or elected officials to an event for which the public must pay to attend. Can the employees or members use the tickets?

Conclusion: No- the tickets must be returned. The city's Code of Ethics prohibits city officials and employees from using their public positions to gain a personal benefit not otherwise available to the public.

Question: If an elected official were to become a member of a private entity Board of Directors, what ethical issues might result from said membership?

Conclusion: Be aware that any private entity matter may find its way to the City Council, and if so, the member can not participate in any part of the matter that reaches the City Council.

Question: Can city staff participate in a complimentary breakfast provided at a meeting by the interested party?

Conclusion: Yes, as long as the meeting was requested and scheduled at a certain time by the city staff, and not the interested party.

Question: Can a person sit on a city advisory committee when the person's occupation may be affected by the recommendations of that committee?

Conclusion: No- there is a conflict of interest because the person has a direct or indirect personal or financial interest in matters under consideration by its committee.

The EPB members are very appreciative of the City Attorney's transparency in sharing these questions and have learned a great deal from the discussion at our meetings.

## **Administrative Matters**

In the past, the EPB has found the need to engage an outside investigator to assist in the response to citizens' complaints and inquiries. A major finding within the process has been the need for an assessment form to provide clarity and transparency to city employees regarding possible potential conflicts of interest. The Investigative firm engaged by the EPB provided a 'Conflict of Interest Assessment Form' that other clients of the investigator's firm have found valuable.

In 2013, The EPB worked with senior City administrative staff regarding the development of a 'Conflict of Interest Assessment Form' to be used preliminarily as a needed tool to aid in the transparency and clarity of city operations and city employees openness regarding real or potential conflicts of interest. It was determined that the form would be recommended if there was anything that would prevent an unbiased, unprejudiced decision from being made. If there is even a perception of a conflict of interest, then the form should be completed. Simply stated, the form is protection for the employee, supervisor, and the City of Rochester. Examples might include a perceived financial interest or someone from a family that might benefit from a project or decision. This form continues to be a helpful tool for city administration.

See Appendix A for sample of the form.

In other business for 2015, the City Attorney opened the subject of making some change to the website for the EPB, further clarifying the issue of confidentiality as it pertains to the submission of complaints. He noted that the change to the website as to

confidentiality results from confusion by some as to what is and what is not confidential in terms of the EPB complaint process. While some have been under the impression that a submitted complaint to the EPB will be accorded high secrecy and will not be divulged to anyone, others have assumed the EPB conducts its proceedings behind closed doors. Neither of these is correct. The changes to the website are an attempt to give advance notice to potential complainants as to how the Board conducts its proceedings and with whom the Board shares the complaints. Further, this change shows that the respondent may distribute the complaint and other documents as he or she sees fit.

The City Attorney's Legal Assistant attended one of the EPB's meetings to make a presentation on the City of Rochester's new website. The changes are much more colorful and user-friendly. The new design also helps to make the website easier to navigate and includes specific direction for citizens to find information on the EPB.

In June, the issue of the disclosure form was brought to the board's attention by the City Attorney. When he met with the Planning and Zoning Commission to discuss the Code of Ethics for the City of Rochester, concerns were raised about the first question on the form, which has been noted as confusing in the past by some board members. The EPB agreed to change the format on the Disclosure form slightly as follows to separate the employee questions from the volunteer questions:

**CITY OF ROCHESTER EMPLOYEES:**

What is your job title or position with the City of Rochester? \_\_\_\_\_  
What City department is this position associated with? \_\_\_\_\_  
When did you begin your employment? \_\_\_\_\_

**VOLUNTEERS:**

What is the board or commission on which you serve? \_\_\_\_\_  
Is this an appointed or an elected position? Appointed \_\_\_\_\_ Elected \_\_\_\_\_  
When were you appointed or elected to this position? \_\_\_\_\_

Also noted by the City Attorney, there are citizens who feel that the county should also have an Ethical Practices Board. The City attorney has answered various inquiries from county officials as to how the City's Ethical Practices Board was created and operates.

**Appendix A**

**CITY OF ROCHESTER ORGANIZATIONAL CONFLICT OF INTEREST ASSESSMENT FORM**

Project/Initiative Description: \_\_\_\_\_

Appointed Official / Employee Name: \_\_\_\_\_

Employee Job Title: \_\_\_\_\_

Department Head Name & Job Title \_\_\_\_\_

**DEPARTMENT HEAD CONFLICT OF INTEREST REVIEW AND ASSESSMENT**

I have reviewed the following information for the purpose of assessing actual and potential conflicts of interest (check all that apply):

- Conflict of Interest Disclosure Form dated \_\_\_\_\_, and on file with the City Clerk’s office in accordance with Rochester Code of Ordinances 13, Section 13.05.
- Other relative documents (Specify): \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Based upon my review and in my professional judgment (check all that apply):

- No actual conflict of interest exists.
- No potential conflict exists.
- An actual or potential and disqualifying conflict of interest exists. The employee or appointed official will not take part in the project / initiative.
- An actual or potential conflict of interest may exist. The attached plan for management of the situation is in place and will be reviewed \_\_\_\_\_ (specify review period) to ensure that the potential conflict of interest is eliminated, minimized and/or appropriately managed.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**CITY ATTORNEY'S OFFICE CONFLICT OF INTEREST REVIEW**

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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**EMPLOYEE/APPOINTED OFFICIAL ACKNOWLEDGMENT**

I \_\_\_\_\_ (employee or appointed official name) acknowledge receipt of and accept responsibility for complying with the aforementioned recommendations, decisions, and review timelines to ensure that the actual or potential conflict of interest is eliminated, minimized and/or appropriately managed.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_