

# Ethical Practices Board Rochester, MN

## Annual Report 2016



201 4<sup>th</sup> Street SE  
City Attorney's Office – Room 247  
Rochester, MN 55904

(507) 328-2100

Email address

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

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## Ethical Practices Board 2016

### Members

As of December 31, 2016

**Kay Batchelder (Secretary)**

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

Appointment: September 30, 2010 - April 30, 2012

Re-Appointment: May 1, 2012 - April 30, 2015

Re-Appointment: May 1, 2015 - April 30, 2018

**Audrey Ericksen (Chair)**

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

Appointment: May 1, 2011 - April 30, 2014

Re-appointment: May 1, 2014 - April 30, 2017

**Regina Mustafa (Vice-Chair)**

5246 King Arthur Drive NW  
Rochester, MN 55901  
(612) 986-7724 (cell)

Appointment: May 1, 2016 - April 30, 2019

**Robyn Munsch (Wood)**

829 11th Avenue SE  
Rochester, MN 55904  
(507) 250-4354

Appointment: July 13, 2016 - April 30, 2017

VACANCY

Appointment: Expires April 30, 2018

### Staff

**Terry Adkins (City Attorney)**

201 4<sup>th</sup> Street SE – Room 247  
Rochester, MN 55904  
(507) 328-2100

## Ethical Practices Board

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## Foreword from the Chair

The membership of the Ethical Practices Board (EPB) welcomed two new members in 2016. We also had two resignations this year- Joe O'Toole resigned in June and Kylie Osterhus resigned in December. We will miss both of these members, as they were both very valuable assets to our meetings and provided great insight to the issues at hand.

In July, two new members were welcomed to the EPB:

- Regina Mustafa was appointed to a full three-year term. Regina is very active in several community organizations, non-profit organizations, and is very involved with various Islamic organizations.
- Robin Munsch was appointed to fill the remainder of Joe O'Toole's term which ends this April. Robin is a probation officer specialist for Olmsted County, and also is engaged in animal rescue, neighborhood associations, and sports teams in the community.

The year ended with one vacancy on the board when Kylie Osterhus resigned in December. That position will be filled in April along with two other expiring terms.

Also in July, the board held its annual election of officers. Kay Batchelder asked to be relieved of the secretary position and Kylie Osterhus was elected Secretary. Audrey Ericksen was re-elected as Chair, and Regina Mustafa was elected to be Vice-Chair.

This year, 2016 was our eighth year of existence. 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.

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.

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 2016.



Audrey Ericksen, Chair

## **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
- Mayo Civic Center Commission
- Police Oversight Commission

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

Committees created by ordinances passed by the City Council, City of Rochester, will fall under the requirements set forth in the Code of Ethics, City of Rochester. Therefore, all boards and commission members must complete the Disclosure Form

## 2016 Complaint Disposition

In 2016 there were several formal complaints received by the Board.

A person experienced an extreme physical reaction after riding his/her bike on a path that a Park Department employee had just sprayed with a herbicide without public notification. The individual sought disciplinary charges against supervisor. The EPB ruled that was not a breach of the Code of Ethics, as there was no conflict of interest in this situation. The Board noted that possible recourse would be to contact the Park Board. This ruling was followed up with a letter to the complainant.

A person charged that the City Council's monthly dinner meetings at various Rochester restaurants is a violation of the Open Meeting law because the public cannot hear the conversations between Council members for various reasons, depending on the location. The complaint also stated that the meetings move around to different restaurants in town, ranging from the Rochester Golf and Country Club to McDonald's. The Board ruled that this does not represent a conflict of interest as defined by the ordinance and therefore is not a breach of the Code of Ethics. The City Council is governed by the Home Rule Charter and this is not in the scope of the EPB. City Attorney Adkins further noted that this meeting does comply with the Open Meeting Law. As recourse, the complainant might consider contacting the Rochester Charter Commission to change the Home Rule Charter or taking private legal action. A letter explaining the board's conclusion was sent to the complainant.

Two separate formal complaints were also issued by one complainant alleging that one council member and another city official did not disclose their involvement with local organizations on their Ethics Disclosure form. The complaint also alleged that the Code of Ethics was violated by the same two people when they did not recuse or abstain from discussion on public funding for an organization they were involved in. The EPB concluded that it was true that the Ethics Disclosure forms were not complete. As provided in the EPB jurisdiction, a letter was sent explaining the failure to disclose information on the form to the appointing authority, which is in both cases the City Council. The second part of the complaints were dismissed in both cases by the EPB, concluding that there is some confusion and not clear enough language to determine specifically what is meant by "community, civic, or nonprofit organizations".

## 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: An appointed person to a voluntary city board recused himself/herself from hearing a matter because of personal or financial interest in the applicant. If a different applicant assumes control of the matter and the matter proceeds, can the member participate in hearing the matter assuming he/she has no personal or financial interest in the new applicant?

Conclusion: Yes. If there is no personal or financial interest in the applicant or the matter, the appointed person can participate in hearing and voting upon the matter. It was suggested to complete Conflict of Interest Assessment Form to document the changed circumstances.

Question: Can a vendor that might want to do business with the city pay for a city employee's airfare to the vendor's training session?

Conclusion: No. The state law prohibiting gifts to public officials would prohibit such a payment. Instead, the vendor can make a donation to the City. The city employee should process his or her traveling expenses through the city.

Question: If a board member knows the person who is appearing before the board to ask for specific action, should the board member participate in the board action?

Conclusion: It depends. If the board member knows the person, but does not have such a strong relationship with the person that would prevent the board member from rendering an unbiased and independent judgment, then a disclosure to all is suggested, with no abstention from board participation. If, on the other hand, there is a strong personal relationship that would interfere with the board member's public duty, then abstention is appropriate.

Question: Can a public official accept a free meal at a program at which the official has been invited to speak? What about the official's spouse?

Conclusion: Yes and no. The State Gift Law allows a public official to receive food and beverage at a presentation at which the official is speaking, but the exception does not cover the official's spouse.

Question: A private group is sponsoring an event to which the public must pay to attend. The group offers complimentary tickets to the Council. May the Council accept?

Conclusion: No. The City's Code of Ethics prohibits the use of one's public position to secure special privileges or personal gain. The State's prohibition against gifts to public officials may also apply.

Question: Can a private group that invited a public official to speak at their gathering provide free food and beverage to that official?

Conclusion: Yes. The State's Gifts to Public Officials Law does allow a public official to receive free food and beverage at an event at which the public official is speaking.

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**

The EPB made some changes in 2016 after some questions arose about what the Code of Ethics intended. For example- The board received an informal request for an opinion on this matter. There was no allegation of impropriety; it was for an opinion only:

Should a person who is paid to lobby the city of Rochester on policy by a private organization (as their primary occupation) be appointed by the city council to serve on public boards steering

public policy or directing public investment?

The board discussed the question in light of section 13.04, subdivision 2(E). This subdivision, if read literally, would cause any person to have a conflict of interest if that person sits on any City body and represents any private interest before any other City body. The board believed that was not the intent of this ordinance. For the purpose of clarification, the board decided to recommend to the City Council that subdivision 2(E) be amended to make it clear a conflict of interest occurs only if the commission member participates in the commission's review of an application and the commission member then undertakes to represent that application before another City body. The board believed the person needed to make a decision as to which role the person would play: commission member or advocate.

The board also concluded that the requirement for the completion of an Ethics Disclosure Form should be extended to include applicants for new positions or vacancies on City boards, commissions, and committees. Use of this form would increase public awareness of potential conflicts a prospective appointee might have. In discussing this issue, board members questioned the circumstances that are involved with the process of board appointments in general. Board members agreed that there appears to be inconsistencies and conflicting information about how that process is carried out and that it could lead to a conflict of interest in the future. The conclusion to the discussion was to make recommendations to the City Council that may help to clarify the requirements for application and appointment to voluntary boards.

A letter of recommendations was sent to the City Council with these points:

- Consider adding the Ethics Disclosure Form to the application package
- The need for a formalized, consistent, and transparent appointment process that is followed in all cases involving a vacant or new position on a City board, commission, or committee.
- The manner in which vacancies or new positions are publicly announced and applications are solicited.
- The manner in which interviews are conducted for each vacancy or new position.
- The need for an adequate and reasonable time period to occur between the times the mayor makes the appointments and the council approves the appointments.
- The need for a more concerted effort to include gender and ethnic diversity so as to ensure the City's boards, commissions, and committees are reflective of the City's diverse population.

An EPB member also suggested that the board include an open comment period at the beginning of the meetings to bring the community's voice to the table about ethics and public service. The EPB decided to apply this practice with a time limit of fifteen minutes, with each speaker limited to four minutes. The open comment period will be re-evaluated after a year.

Other recommendations to the city Council are still being discussed, such as possible changes made to the Ethics Disclosure forms so that the expectations of all are clearly understood.

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.

**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 \_\_\_\_\_

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**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: \_\_\_\_\_