

Ethical Practices Board Rochester, MN

Annual Report 2017



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

Ethical Practices Board 2017

Members

Kay Batchelder (Chair)
211 2nd Street NW
Rochester, MN 55901
(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

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

Appointment: May 1, 2016 - April 30, 2019

Linda Gentling
2221 Baihly Court SW
Rochester, MN 55902
(507) 288-2851 (home)
(507) 993-5902 (cell)

Appointment: May 1, 2016 - April 30, 2019

Lawrence T. Collins
3052 Monroe Drive NW
PO Box 6390
Rochester, MN 55903
(507) 993-0352 (home)

Appointment: May 1, 2017 - April 30, 2020

Kim Keilholtz
2739 Spyglass Court NW
Rochester, MN 55901
(612) 926-8567 (cell)

Appointment: May 1, 2017 – April 30, 2020

Jose Rico
1012 First Street SW
Rochester, MN 55902
(612) 402-4090

Appointment: May 17, 2017 – April 30, 2019

Faye Harris
2625 60th Street NW
Rochester, MN 55901
(815) 501-7126 (cell)

Appointment: May 17, 2017 – April 30 2019

Staff

Terry Adkins (City Attorney)
201 4th Street SE – Room 247
Rochester, MN 55904
(507) 328-2100

Jody L. Houghton (Legal Assistant)
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Ethical Practices Board

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Foreword from the Chair

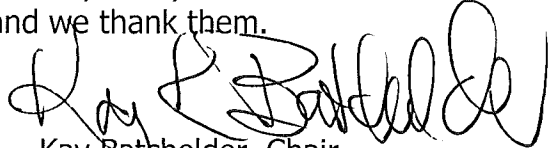
The year 2017 marked the ninth year of the operation of the Ethical Practices Board ("EPB") established by the City of Rochester, MN. While a code of ethical conduct has been present in both the Rochester City Charter and Rochester City ordinance, an oversight group had not previously existed that could serve as a body for deliberation of issues related to ethical conduct nor was there a clearly defined process for resolution of complaints.

At the meeting of the EPB, we hear and review 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 questions and then informed the Board of those findings and responses and given opportunity to provide direction and feedback. The EPB is so appreciative of all the information and service that City Attorney Adkins and his staff have provided and we have found the insights, responses, and legal review to be invaluable to the effective operation of the Board.

2017 marked some major changes in the operation and structure of the Ethical Practices Board. Established as a five member board, it was determined that adding two members would make the Board operation more efficient and therefore more able to serve the needs of the community. Quorum rules caused the Board to cancel several stated meetings for lack of a quorum. A public board of five requires a minimum of three members present to conduct business and several times, the work demands of members caused unexpected absences and those present could not legally meet. The decision to expand the Board to seven was approved by the City Council and the applicable Ordinance was amended. The other operational change was the addition of a 15 minute Public Comment period occurring at regular meetings between the Setting of Agenda and Reports. This was instituted as a trial and now continues on a permanent basis.

The annual meeting for the EPB was held in May and officers elected for 2017/18 were: Kay Batchelder, Chair; Regina Mustafa, Vice Chair; and appointing City Attorney Adkins Legal Assistant Jody Houghton to serve as Secretary, who accepted the assignment. As a result of the change from five to seven EPB members, five new members were appointed by the Appointing Committee and in July, Linda Gentling, Lawrence T. Collins, Kim Keilholtz, Jose Rico and Faye Harris were sworn in.

In conclusion, this has been an active year for the Ethical Practices Board and we acknowledge the valuable counsel of the retiring City Attorney Terry Adkins and the most willing assistance of Legal Assistant Jody Houghton and we thank them.



Kay Batchelder, 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 impartially carry out 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 seven 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 seven 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.

A member of the EPB may not 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 four 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 a topic may arise 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:

- Airport Commission
- Building Code Board of Appeals
- Citizens Advisory on Transit
- Committee on Urban Design and Environment
- Downtown Development District Advisory Board
- Energy Commission
- Ethical Practices Board
- Fire Civil Service Commission
- Heating, Ventilation and Air Conditioning Board of Review
- Heritage Preservation Commission
- Housing Board of Appeals
- International Affairs Committee
- Library Board
- Mayo Civic Center Commission
- Music Board
- Park Board
- Planning and Zoning Commission
- Police Civil Service
- Police Policy Oversight Commission
- Public Utility Board
- Zoning Board of Appeals

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.

2017 Complaint Disposition

The Ethical Practices Board's (EPB) experienced the city's first-ever EPB hearing, resulting from a complaint filed by Greater Rochester Arts and Cultural Trust CEO, Bari Amadio, who alleged Council Member, Michael Wojcik, violated the code of ethics while attempting to secure an early copy of the Trust's master plan for public art, which was partially funded by the city. Board Chairwoman, Kay Batchelder, and Vice Chairwoman, Regina Mustafa, recused themselves from the discussion.

Special Council Justin Templin was appointed by the EPB to research and provide the investigative report.

On July 19, 2018, a public hearing was held to hear from the complainant and respondent and to answer any questions from the EPB arising from the complaint. Ground rules were established and procedural questions asked prior to the hearing commencing. There was an audio recording of the proceedings. Following the hearing, a thoughtful discussion ensued by the Board.

Special Counsel Justin Templin presented his Findings of Fact based on the July 19 public hearing to the Ethical Practices Board on July 25, 2017 for their review and action.

From the Findings of Fact and as agreed to by the Ethical Practices Board, an Order was issued indicating that the EPB did establish that Mr. Wojcik was in violation of the City of Rochester's Code of Conduct by failing to uphold the responsibilities of public office. Specifically, and with respect to the city's code of ethics, Mr. Wojcik failed to "work in full cooperation with other public officials and employees unless prohibited from doing so by law." Furthermore, it was determined that Mr. Wojcik violated the code by participating in a conflict of interest abusing the parameters of his public position as a council member. The order in its entirety is listed below. These findings were reported to the Rochester City Council, the Acting City Administrator, and the city Mayor for their action.

The formal Order with specific wording as agreed to by the EPB is listed below.

ORDER

The Ethical Practices Board of the City of Rochester, pursuant to R.C.O. § 13.10, subd. 4, does hereby sustain the Complaint insofar as Mr. Wojcik's conduct violated the City's Code of Ethics by failing to uphold the responsibilities of public office as stated in

R.C.O. § 13.02, specifically that Mr. Wojcik failed to “work in full cooperation with other public officials and employees unless prohibited from doing so by law.” Further, the Ethical Practices Board of the City of Rochester does hereby find that Mr. Wojcik’s conduct violated the City’s Code of Ethics by engaging in a conflict of interest as defined in R.C.O. § 13.04, specifically that Mr. Wojcik attempted to use his “public position to secure special privileges or exemptions for the person or for others.” The allegation in the Complaint that Mr. Wojcik used the protection of his public office to commit libel is outside the scope of the jurisdiction of the Ethical Practices Board of the City of Rochester and is therefore hereby dismissed.

The foregoing Findings of Fact, Conclusions of Law, and Order shall be reported to the City Administrator, the Common Council, and the Mayor pursuant to R.C.O. § 13.10, subd. 5(F).

On April 7, 2017 an ethics complaint was issued against Councilman Michael Wojcik by Mr. Mark Bransford alleging Mr. Wojcik improperly demonstrated his support for the Alatus Development project slated for his ward, therefore violating the Code of Ethics of the City of Rochester. After discussion by EPB members who had not recused themselves from participating in discussion and disposition of the matter, voted to direct the City Attorney to hire an outside investigator to review the matter. After investigation by outside counsel, a public hearing was held before the Board on January 31, 2018 to address the matter. The results will be reported in the 2018 report.

Out of the three allegations considered by the Board, the first allegation was dismissed as being time-barred, concluding that complained of events occurred more than one year before complaint was filed. The second allegation, the Board concluded the Complainant failed to show Respondent’s attendance at an August 2015 meeting resulted in a violation of the Code of Ethics or Opinion #09-01. In terms of the third allegation, the Board concluded that Complainant failed by preponderance of evidence that that special references to development project by Respondent violated the Code of Ethics or Opinion #09-01.

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: Can a city employee receive a gift when the employee is the only public official of a much larger group receiving the same gift?

Conclusion: Yes. The state law banning gifts to public officials has an exception for instances when the public officials are part of larger group receiving the same gift.

Question: Can a Public Official who is asked to speak at a presentation/program receive free food and beverage.

Conclusion: Yes. The State's ban on gifts to public officials contains an exemption for public officials invited to speak who also receive free food and beverage.

Question: Can a public official participate in Wills for Heroes program sponsored by the Minnesota State Bar Association?

Conclusion: Yes. The State's ban on gifts has an exception for instances when the public officials are part of a larger group receiving the same gift. No conflict of interest is present.

Question: Can a public official receive a free admission ticket to an event for which all others must pay to attend?

Conclusion: No. Both state law and the Code of Ethics forbids the giving or the receipt of a gift by a public official where the gift is intended solely for that public official.

Question: Can a city employee accept a free meal from an outside vendor that wants the employee to come to a presentation concerning outside vendor's products and services?

Conclusion: No. Both state law and the City's Code of Ethics prohibit an interested party (outside vendor) from attempting to influence a city employee's purchasing decisions or recommendations by way of free food and beverage

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 a few amendments to Sections 13.02, 13.03, and 13.05 of the City's Code of Ethics as it relates to the responsibilities of public office and persons covered by the disclosure form requirement. The proposed changes were submitted to the Common Council for consideration and the Ordinance was amended on December 4, 2017 to reflect the following changes:

13.02. Responsibilities of Public Office. Public officials hold office on behalf of the public. They are bound to uphold the Constitution of the United States and the Constitution of the State of Minnesota. Public officials must carry out impartially the laws of the nation, state, and city in fostering respect for all government. They are bound in their official acts the highest standards of morality and to discharge faithfully the duties of their office. Public officials shall be dedicated to fulfilling their responsibilities of office. They shall be dedicated to the public purpose and all programs developed

by them shall be in the community interest. Public officials shall not exceed their authority or breach the law or ask others to do so. ~~They shall work in full cooperation with other public officials and employees unless prohibited from doing so by law.~~

13.03. Scope of Persons Covered. Subdivision 1. ~~Except as to section 13.05, the provisions of this chapter are applicable to all public officials.~~

~~Subd. 2. Notwithstanding the provisions of this section, the disclosure requirements of section 13.05 are applicable only to elected officials, city employees (including department heads and supervisors) who have the authority to approve the expenditure of funds, members of boards or commissions created by ordinance, and any person who has filed an affidavit of candidacy for an elective city office, and any person who seeks appointment to any City board, commission, agency, or committee.~~

13.05. Disclosure. Subdivision 1. The disclosure requirements of this section are applicable only to elected officials, city employees (including department heads and supervisors) who have the authority to approve the expenditure of funds, members of boards or commissions created by ordinance, and any person who has filed an affidavit of candidacy for an elective city office, and any person who seeks appointment to any City board, commission, agency, or committee.

~~Subd. 12. Within sixty days after the effective date of this Code of Ethics, Every person subject to these disclosure requirements shall file with the City Clerk a disclosure statement indicating the following:~~

- A. A list of interests in real property, except for the person's homestead, located within the City of Rochester.
- B. A list of interests in a business doing business with the City.
- C. A list of interests in any business located within the City.
- D. Current place of employment.
- E. Such other information required by the Ethical Practices Board in order to fulfill the objectives of the Ethics Disclosure Form.

Subd. 2 3. Every person who files as a candidate for an elective city office must file the statement required by subd. 1 2 at the time the affidavit of candidacy is filed.

Subd. 3 4. Material changes in a person's interest or in place of employment shall be disclosed by filing an amended disclosure statement within thirty days after the new interest is obtained or the change in employment occurs.

Subd. 4-5. For purposes of this section, "interest" shall mean a substantial financial interest through the ownership of stocks, bonds, notes, or other securities. "Doing business" shall mean engaged in any contractual relationship with the City or making application for such relationship or for any relief or benefit available from the City, including but not limited to variance, permit, license, or plat approval.

Subd. 5 6. The City Clerk shall prepare disclosure forms, as approved by the Ethical Practices Board, necessary for compliance with this section. The City Clerk shall notify the Ethical Practices Board should any person described in subdivision 2 1 fail to file or update a disclosure form. In response, the Ethical Practices Board shall inquire of the matter and, if appropriate, inform the person's Appointing Authority of the person's failure to file or update a disclosure form.

In late 2016, an EPB member suggested that an open comment period be implemented at the beginning the meetings. The implementation of this procedure has gone well and the EPB will continue the practice of having a 15 minute open comment period.

In the future, the Board will be looking to the direction of the City Attorney staff for recording of the meetings and posting the necessary information to the Ethical Practices Board webpage.