

Ethical Practices Board Rochester, MN

Annual Report 2018



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

(507) 328-2100

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

Ethical Practices Board 2018

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

Linda Gentling

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

Appointment: April 27, 2017 - April 30, 2018
Re-Appointment: May 1, 2018 – April 30, 2021

Kim Keilholtz

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

Appointment: May 1, 2017 – April 30, 2020

Faye Harris

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

Appointment: May 17, 2017 – April 30, 2019

Peter Amadio

816 9th Avenue SW
Rochester, MN
(507) 281-3772

Appointment: May 1, 2018 – April 30, 2021

Regina Mustafa (Vice-Chair)

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

Appointment: May 1, 2016 - April 30, 2018
Resigned: April 20, 2018

Lawrence T. Collins

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

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

Vivek Prasad

1721 3rd St SW #304
Rochester, MN 55902
(317)883-7105

Appointment: May 1, 2018 – 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)
201 4th Street SE – Room 247
Rochester, MN 55904
(507) 328-2100

Retired effective March 1, 2018

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

Ethical Practices Board

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Foreword from the Chair

The year 2018 marked the tenth 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 meetings 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 Attorneys Adkins and Jason Loos, Legal Assistant Jody Houghton, and the rest of the staff have provided. City Attorney Adkins attended his last meeting in February before his retirement, at which point City Attorney Jason Loos took over as advisor for the EPB. We have found their insights, responses, and legal review to be invaluable to the effective operation of the Board.

The annual meeting for the EPB was held in May and officers elected for 2018/19 were: Faye Harris, Chair; Linda Gentling, Vice Chair; and appointing Kim Keilholtz as Secretary while City Attorney Loos’ Legal Assistant Jody Houghton accepted the assignment to continue to write the meeting minutes. As a result of the resignation by Regina Mustafa and the conclusion of the appointment of Kay Batchelder, two new members were appointed by the Appointing Committee and in May, Peter Amadio and Vivek Prasad 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, City Attorney Jason Loos, and the most willing assistance of Legal Assistant Jody Houghton and we thank them.

Faye Harris
Faye Harris, 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 [which may be shorter if the member was appointed to replace a board member who resigned or otherwise left the EPB before completing their 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.

2018 Complaint Disposition

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, and did not recuse himself when Alatus matters came before the city council, therefore violating the Code of Ethics of the City of Rochester. After discussion the 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. An investigation was conducted and completed in 2017. A hearing on the matter was conducted January 31, 2018, and findings of fact approved in February.

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.

In February 2018 a complaint was received by Abe Sauer regarding a member of the Heritage Preservation Commission, Tasos Psomas, and a vote he made regarding the preservation status of the Days Inn Building, of which Psomas was a lease holder via his ownership of a restaurant located inside the building. Probable cause was found and a hearing scheduled for April 9, 2018. The findings of fact confirmed that by voting in the matter, Psomas had violated the code of ethics via a conflict of interest.

In March 2018 City Attorney Loos gave a PowerPoint presentation as to the Board's responsibilities and served as an initial conversation about what kinds of updates to the code the board was interested in pursuing.

In July, after several months of discussions, it was decided to take no further action or propose any code changes in response to an inquiry by Ray Schmitz regarding stronger language about campaign contribution limits for disclosure. It was felt by the board that the current language/law of requiring disclosures >\$100, consistent with state law, was sufficient.

Also in July, a complaint was brought forward about a Rochester Police Policy Oversight Commission member. The complaint was found to have probable cause and a hearing was scheduled for August 14, 2018. Mr. Omerichamoi was accused of having

attempted to use his position as a Police Policy Oversight Commission member to get a speeding ticket dismissed. At the hearing it was confirmed that Mr. Omerichamoi had been notified of the hearing and given the opportunity to reschedule, but he declined to attend. The board and hearing attendees listened to testimony of Captain Satzke and Captain Sherwin of the Rochester Police Department, as well as listened to audio and watched video recordings of the alleged incidents. The board found Mr. Omerichamoi to be in violation of City's code of ethics 13.04 Subd. 2 (b), (c), and (d).

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 <https://www.rochestermn.gov/government/boards-and-commissions/ethical-practices-board/agenda-minutes>

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:

1/31/18 Question: Can a company that has a contractual relationship with the City offer to pay travel, food, and lodging for one of the City's employees to participate in a peer group review of one of the company's customer's issues?

Conclusion: No. All of the participants on the peer group review are current customers of the company. This appears to be an effort to reward the City for its past business dealings with the hope those dealings continue in the future.

11/26/18 Question: Should a planning commission member, who also is a business owner, recuse themselves if a business they have done work for in the past has an item on the current agenda for voting? Conclusion: Loos indicated there were two way for a legal conflict to exist. 1. Objective standard – you have a direct pecuniary (financial) interest in the project (or applicant) before the commission. In Rochester it is also a conflict if you have a personal interest. Our code defines this as “Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business or political association

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

It was discussed several times regarding what to disclose when a complaint was filed to the EPB. With the guidance of City Attorney Loos, it was affirmed that all contents and identified individuals mentioned in a complaint would remain confidential, private data, until such time as the EPB found the complaint to have probable cause and to be escalated to an investigation and/or hearing. An exception to this is if the complaint was lodged against an elected city official, at which time the subject of the complaint may be revealed, but the details remain private data.

Over several months, changes to the language of RCO chapter 13 were discussed. Many were small housekeeping changes such as updating the number of committee members, and section labeling/placement. The statute of limitation for an ethics violation was discussed clarified to indicate that the violation occurs at the time of voting or other action that could be considered unethical. The statute of limitations was also extended to 4 years. Additionally, the scope of unethical behavior was discussed. Items of the LMCIT Template Code of Conduct were incorporated into a draft of the city's code to be submitted to the city council for final approval.

Materials to be included on the website were discussed a few times this year. In the spirit of transparency, the board is in favor of posting all materials the members of the EPB receives before each meeting as long as the City Attorney does not find the material to be in violation of private data. Meeting minutes would be posted following formal Board approval of the draft.