

13. CODE OF ETHICS

13.01. Policy and Purpose. 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.

Subd. 2. 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.

Subd. 3. 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.

Subd. 4. In recognition of these goals, there is hereby established a Code of Ethics for elected or appointed public officials, citizens 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.

13.011. Definitions. Subdivision 1. For purposes of this Chapter, the following terms, phrases, words and their derivatives shall have the meanings given herein.

Subd. 2. The term "Appointing Authority" means the Common Council, the Mayor or any other person who appoints a person to a Public Position.

Subd. 3. The term "Appointing Committee" means 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.

Subd. 4. The term "Board" means the Ethical Practices Board.

Subd. 5. The term "Official Action" means any act, action, approval, decision, denial, directive, disapproval, inaction, order, performance, nonperformance, recommendation, vote or other direct result of a public official's exercise of discretionary authority in connection with the Public Official's Public Position.

Subd. 6. The term “Public Body” means the Common Council, any City agency, board, commission, committee or other voting body authorized to act in any capacity on behalf of the City of Rochester.

Subd. 7. The term “Public Official” means any member of the Common Council, any City agency, board, commission, committee, or other voting body, and any department head, employee, official, supervisor, volunteer or other person who is elected, appointed, employed, hired by contract or in any other manner authorized to act in any capacity on behalf of the City of Rochester.

Subd. 8. The term “Public Position” means any elected, appointed or employed position that is authorized to act in any capacity on behalf of the City of Rochester.

Subd. 9. The term “Voting Body” means the Common Council and any other City authority, board, commission, committee, council or group, regardless of whether its function is legislative, administrative, quasi-administrative or quasi-judicial or any combination thereof, which, in order to take any official advisory or final action, must act as a body on the basis of a vote of some or all of its members.

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 to discharge faithfully the duties of their office. Public officials 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. (4324, 12/4/17)

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. (4324, 12/4/17)

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.
(3947, 11/2/09; 4118, 7/15/13; 4202, 7/20/15, 4252, 7/6/16)

13.04. Conflict of Interest. Subdivision 1. No Public Official shall knowingly engage in a conflict of interest.

Subd. 2. A conflict of interest shall include the following:

A. Engage in any business or transaction, or have a direct or

indirect financial or personal interest, which is incompatible with the proper discharge of the person's official duties or which would tend to impair the person's independent judgment or action in the person's performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business or political association. For purposes of this clause, "financial interest" shall mean a substantial financial interest through the ownership of stocks, bonds, notes or other securities.

- B. Use of the person's public position to secure special privileges or exemptions for the person or for others.
- C. Use of the person's public position to solicit personal gifts or favors.
- D. Use of the person's public position for personal gain.
- E. Represent private interests before the Common Council or any City committee, board, commission, or agency where the person has participated in the review of those private interests as a member of any City committee, board, commission, or agency. (4252, 7/6/16)
- F. Possess interest in legislation to the extent that private interest takes precedence over public interest and duty.
- G. Accept or receive any gift of substance, whether in the form of money, services, loan, travel, entertainment, hospitality, promise or any other form, under circumstances in which it could be reasonably expected to influence the person, the person's performance of official action, or be intended as a reward for the person's official action.
- H. Disclose to the public, or use for the person's or other's personal gain, information that was gained by reason of the Public Official's Public Position if the information was not public data.
- I. Disclose information that was received, discussed or decided in conference with the Public Body's legal counsel that is protected by the attorney-client privilege unless a majority of the Public Body has authorized the disclosure.

Subd. 3. It is not a conflict of interest under this section if a Public Official publicly

discloses a potential conflict of interest, and refrains from participating in the discussion and voting on the matter when it comes before the Public Body of which the Public Official is a member.

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

Subd. 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. 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. 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 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.

(4324, 12/4/17)

13.06. This section repealed by Ordinance #3898, 12/15/08.

13.07. Effect. This ordinance shall be in full force and effect sixty days from and after its passage and publication as required by law.

13.10. Ethical Practices Board. Subdivision 1. There is hereby created an Ethical Practices Board ("Board"). The Board will be composed of seven members who are residents of the City and shall serve without compensation. (4293, 4/10/17)

Subd. 2. The Board shall be appointed by the Appointing Committee. In making the appointments to the Board, the Appointing Committee shall determine an application procedure and take the following steps:

- A. The City Clerk shall notify the general public; non-partisan, non-political and non-profit civic and community groups; colleges and universities; and neighborhood associations of the application procedure for those interested in applying for a position on the Board.
- B. At least 30 days prior to making an appointment, the Appointing Committee shall submit the names of the finalists for the Board to the Mayor and Common Council for comment.
- C. Within 14 days of receiving the names, the Common Council shall hold a public hearing to solicit input from the public as to the finalists.
- D. The Common Council shall share the input received from the public hearing with the Appointing Committee. In turn, the Appointing Committee shall make the appointments to the Board.

Subd. 3. The Board shall be organized as follows:

- A. The chair, vice chair and secretary of the Board shall be elected by the membership from among its members.
- B. Initially, two members of the Board will be appointed for a term of three years each. Two members of the Board shall be appointed for a term of two years each. One member of the Board shall be appointed for a term of one year. The two additional members appointed in 2017 shall be appointed for a term that expires April 30, 2019. All subsequent appointments will be made for three year terms. All members shall serve until their successors have been appointed and qualified. The

Appointing Committee may remove a Board member for cause at any time during the Board member's term of office. (4293, 4/10/17)

- C. No member of the Board 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.
- D. The affirmative vote of at least three members of the Board shall be required to decide any matter before the Board.

Subd. 4. The Board shall have jurisdiction to review and make findings concerning any alleged violation of this chapter by any public official. The Board may not consider any alleged violation that occurred before the adoption of this chapter or more than one year before the date of the filing of a complaint.

Subd. 5. The Board has the following powers:

- A. To establish, amend and repeal rules and procedures governing its own internal organization and operations in a manner and form consistent with this chapter.
- B. To administer oaths.
- C. To meet as often as necessary to fulfill its responsibilities.
- D. To request from the mayor and city council the appointment of such staff as is necessary to carry out the duties of the board.
- E. 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 this chapter is alleged.
- F. To report its findings regarding any complaint to the person's Appointing Authority and to the City Administrator.
- G. To issue ethics opinions to public officials regarding the propriety of any matter within the Board's jurisdiction.

- H. To prescribe and make available forms for use under this chapter.
- I. 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 this chapter.
- J. To review, index, maintain on file and dispose of complaints.
- K. 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.
- L. To review disclosure statements for completeness, consistency and accuracy, and to report its findings regarding those statements to the person's Appointing Authority and to the City Administrator.
- M. To make recommendations for changes to the Code of Ethics or this chapter which the Board believes would enhance the purposes of this chapter.
- N. Such other powers as are specifically granted in this chapter.

Subd. 6. The Board shall prepare and submit an annual report to the mayor and the city council detailing the ethics activities of the Board and the city during the prior year. The format of the report must be designed to maximize public and private understanding of the Board and city ethics activities. The report may recommend changes to the text or administration of this chapter. The city clerk shall take reasonable steps to ensure wide dissemination and availability of the annual report of the Board and other ethics information reported by the Board.

Subd. 7. Should one or more members of the Board recuse himself or herself from the consideration of any matter brought to the Board, the remaining Board members or, should all Board members recuse themselves, the City Attorney may request the Appointing Committee to appoint temporary members to sit on the Board in place of the recused members. The temporary members shall exercise all powers provided to the appointed Board members only for the matter under consideration. The Appointing Committee shall respond to the request as it deems appropriate and in its sole discretion. If the Appointing Committee grants the request, it shall appoint temporary board members using any process the Committee deems appropriate and necessary in light of the need for a timely resolution of the matter pending before the Board.
(4293, 4/10/17)

13.11. Legal Counsel. The City Attorney or the City Attorney's designee shall act as the Appointing Committee's and the Board's legal counsel. If required by this chapter or the Minnesota Rules of Professional Responsibility, the City Attorney shall retain outside legal counsel to act as the Appointing Committee's or Board's legal counsel.

13.12. Board Action. Subdivision 1. Any person may file a complaint with the Board. Any person, either personally or on behalf of an organization or governmental body, may request the Board to issue an ethics opinion regarding the propriety of any matter within the Board's jurisdiction.

Subd. 2. Any complaint or request for an ethics opinion shall be in writing and signed by the person making the request.

Subd. 3. Upon receipt of a complaint or upon learning of any circumstance or situation that appears to violate any provision of this chapter, the Board shall conduct a preliminary investigation. If, upon completion of that investigation, the Board determines there is no reasonable grounds to believe that a violation has occurred or that the complaint is frivolous, made in bad faith, brought for vexatious reasons or is filed principally for the purpose of harassment, it shall dismiss the complaint.

Subd. 4. The Board shall hold a hearing on a complaint that is not dismissed, and shall report its findings to the City Administrator and to the person's Appointing Authority. The chair of the Board may obtain subpoenas from the district court to compel the attendance of witnesses or the production of documents at any hearing.

13.13. Code of Ethics Violations. Subdivision 1. A Public Official must report any conduct by another Public Official that he or she believes violates this Code of ethics.

- A. The improper conduct of a non-appointed Public Official must be reported to either the alleged violator's supervisor or department head.
- B. The improper conduct of an appointed Public Official who is not a department head must be reported to the alleged violator's supervisor, department head or Appointing Authority.
- C. The improper conduct of a department head or an elected official must be reported to the Board.

Subd. 2. Once a situation is reported under subdivision 1(A) or 1(B) above, the supervisor or department head has a duty to immediately investigate the alleged violation. When a situation reported under subdivision 1(A) or 1(B) above is resolved, the supervisor or department head must notify the Board of the report and resolution.

13.14. Sanctions. Subdivision 1. Except as provided in subdivision 2, a Public Official who violates this chapter may be subject to disciplinary action up to and including termination of city employment/city volunteer duties.

Subd. 2. 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 this chapter may be subject to such disciplinary action as is provided by the Home Rule Charter or the Code of Ordinances.

13.45 Use of City Property. Subdivision 1. A city employee shall not use or allow the use of city time, supplies or city-owned or leased property and equipment for the employee's private interests or any other use not in the city's interest, except as provided by law.

Subd. 2. A city employee may use city time, property or equipment to communicate electronically with other persons including, but not limited to, elected officials, the employer, or an exclusive bargaining representative under Minn. Stat. Chapter 179A, provided this use, including the value of the time spent, results in no incremental costs to the city or results in an incremental cost that is so small as to make accounting for it unreasonable or administratively impracticable.

Subd. 3. The city administrator shall issue a citywide policy on the use of electronic mail and other forms of electronic communications by city employees. The policy shall permit city employees to make reasonable use of City time, property and equipment for personal communications and shall address issues of privacy, content of communications and the definition of reasonable use as well as other issues the city administrator deems to be necessary and relevant.

(2742, 5/21/91; 2896, 10/5/93; 3162, 4/21/98; 3403 7/17/01; 3898, 12/15/08; 3947, 11/2/09; 4118, 7/15/13; 4202, 7/20/15; 4252, 7/6/16; 4270, 12/5/16; 4293, 4/10/17; 4324, 12/4/17)