

**Ethical Practices Board
Rochester, MN**

Annual Report 2019



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

(507) 328-2100

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

Ethical Practices Board 2019

Members

Faye Harris

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

Appointment: May 17, 2017 – April 30, 2019
Re-appointment: May 1, 2019 – April 30, 2022

Jose Rico

1923 Viking Drive, Apt. #35
Rochester, MN 55901
(612) 402-4090

Appointment: May 17, 2017- April 30, 2019
Re-Appointment: May 1, 2019 – April 30, 2022

Linda Gentling

2221 Baihly Court SW
Rochester, MN 55902
(507) 993-5902

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

Lawrence T. Collins

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

Appointment: May 1, 2017 - April 30, 2020

Peter Amadio

816 9th Avenue SW
Rochester, MN 55902
(507) 281-3772

Appointment: May 1, 2018 – April 30, 2021

Kim Keilholtz

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

Appointment: May 1, 2017 – March 31, 2019

Cassandra Ramel

2003 20th Avenue NW
Rochester, MN 55901
(507) 319-7546

Appointment: May 1, 2019 – April 30, 2022

Vivek Prasad

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

Appointment: May 1, 2018 – April 30, 2019

Carrie Kowalczyk

2829 43rd Street NW
TownePlace Suite #329
Rochester, MN 55901
(952) 232-9850

Appointment: May 1, 2019 – April 30, 2020

Staff

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

Jody L. Houghton (Executive Assistant)
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Ethical Practices Board

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Foreword from the Chair

The year 2019 marked the eleventh 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 Attorney Jason Loos and Legal Assistant Jody Houghton, and the rest of the staff have provided. We have found their insights, responses, legal review, as well as logistical coordination activities, to be invaluable to the effective operation of the Board.

The annual meeting for the EPB was held in July. It is usually held in May, but was postponed this year until the July meeting due to several member absences. Officers elected for 2019/2020 were: Faye Harris, Chair; Linda Gentling, Vice Chair; and appointing Jose Rico 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 resignations of Vivek Prasad and Kim Keilholtz and the conclusion of the appointment of Faye Harris and Jose Rico, two new members were appointed by the Appointing Committee and in May, Casandra Ramel and Carrie Kowalczyk were sworn in. Faye Harris and Jose Rico were re-appointed and sworn in as well.

With no hearings conducted this year, the EPB saw less activity than in previous years. However, we took the opportunity to more deeply look at and discuss some of the general EPB protocols and rules of conduct. We acknowledge the valuable counsel of City Attorney Jason Loos and the most willing assistance of Legal Assistant Jody Houghton, and we thank them.

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 2-16 of the Rochester City Code 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 2-16 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 2-16 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 2-16.
- 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 2-16-4. 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.

2019 Complaint Disposition

In March 2019 a complaint was reviewed by the board. After discussion on disclosures of the names of individuals in the context of private data, it was noted that as the complaint did not involve any elected officials, names on the complaint are considered confidential. Based on board discussion, it was felt that the EPB was not the best forum to address the complaint and it was recommended it be forwarded to the police department. The complaint was dismissed unanimously.

In May 2019 another complaint was received in which the named individuals will be kept private as they are not elected officials. The complaint was dismissed unanimously as not being within the purview of the EPB. This prompted discussion on the role of the EPB and how that role is being communicated to the community. Later actions will involve adding clarifying language to the complaint submission form to aid in better informing the public on what kinds of complaints would be appropriate for the EPB would hear.

In July 2019 a complaint was reviewed regarding the behavior of an individual in the Building Safety Department. It was noted that the complaint had also been received by, and would be investigated by, the relevant Human Resources Department. The complaint was unanimously dismissed as not being within the purview of the EPB.

In August 2019 a complaint was reviewed regarding bus stop placement. The board unanimously dismissed the complaint as not within the purview of the EPB. Suggestions of proper channels for this complaint were included in the dismissal letter.

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-and-minute>.

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:

March 2019 Question: Questions arose as to whether the Mayor could participate as a private citizen at events and Loos affirmed that she may attend as a private citizen and pay like general public.

Conclusion: If the elected official is part of a program, panel or gives a speech, the elected official may accept the free invitation and receive a free meal as part of the program. If official is not part of the program, they may not accept a free invitation or meal. This mirrors State law.

April 2019 Question: During a city council meeting, Councilmember CM Wojcik commented on the appointment of board members to the EPB and actions taken by the EPB. Conclusion Attorney Loos addressed the Board and touched on the comment made by CM Wojcik at the April 15th council meeting during the time of open comment period in which the potential candidates for the Ethical Practices Board were being reviewed. Loos indicated that he discussed this matter with CM Wojcik after the meeting, The Appointing Committee, made up of the Chancellor of U of M – Rochester, President of RCTC & the Chair of the Olmsted County Bar Association, is a separate independent body and are not required to complete ethics disclosure forms. Those individuals are tasked with appointing members to this Board as a requirement of their job position; they are not appointed to this Committee. Additionally, (May 2019) Attorney Loos came forward to say that he had discussed this with Councilmember Wojcik. Loos said that Wojcik was not really looking for a formal response but rather was merely making a comment. Chair Harris asked Loos to clarify the specific question relating to the board's specific authority. Thoughtful discussion was held amongst the Board, concerns were addressed and Loos felt no formal response would be needed. After further discussion, the Board decided they would withhold further discussion until after Attorney Loos drafted the Code of Conduct

May 2019. Question: can a citizen donate money to the City for the sole purpose of allowing the Mayor to attend events? Conclusion: Loos indicated that under State law, an elected official cannot use city money to attend events unless there is a public purpose. The Common Council would need to accept monetary gifts to the City and once Council accepts those gifts, same rules would apply. The Council discussed this matter at a recent Study Session and

tabled this matter as Council is uncomfortable in accepting money for this purpose and feels it may set bad precedent. The Council directed Attorney Loos to come back to a future Study Session with more information on what the law states and provide other options. Attorney Loos indicated that in other Cities, there is a budget for this purpose whereby a formal resolution is passed indicating the public purpose. Discussion was held and questions were asked by Board on what the parameters would be and what happens when money is depleted? Further (July 2019), Attorney Loos spoke on the continuous discussions of monetary donations. The Common Council discussed this further at a Study Session. This specific donation in question is for the specific purpose of Mayor to attend non-profit/community events. Currently, the Mayor does not have a budget for this and Council prefers to not accept gifts for one elected official to attend events. City staff has been directed to form a budget for Mayor to attend these types of community events.

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 board made an effort to add clarity to the complaint submission process by adding language to the submission form reiterating the scope of the EPB (Nov.2019). The board notes and appreciates the willingness of city staff to work with us as we review the online submission process. It is the hope that these changes will decrease the amount of complaints the board receives which are not within the purview of the EPB.

Following a motion made in August 2019, passed unanimously, the EPB has moved the open public comment period to later in the meeting. The intent is to make sure interested persons of the public have a chance to be heard even if they are a few minutes late to the meeting.

Over several months, changes to the language of the Rochester Code of Conduct were discussed and the Rules of Procedure were reviewed to try to better standardize them among the city boards and commissions. Changes were primarily housekeeping in intent, such as specifying that a delegate can conduct EPB business should both the chair and vice chair be unavailable (but a quorum still met). These changes have yet to be reviewed by the city council.

Mayor Norton has shown much interest in the scope and business of the many boards of the city. Attorney Loos attended several other board/commission meetings to provide an ethics/public records 101 session, but is holding off on continuing these presentations pending further direction from the Mayor.

Materials to be included on the website were discussed a few times this year. As noted last 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. To further increase public access and transparency to local government actions, an open meeting law was passed by the city council on 7/1/2019, requiring all meetings of boards and commissions to be video and audio recorded. The board is supportive and appreciative of these efforts to make their meetings more accessible.