

# Ethical Practices Board Rochester, MN

## Annual Report 2020



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

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## Ethical Practices Board 2020

### Members

**Faye Harris, Chair**

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

**Jose Rico, Member**

Appointment: May 17, 2017 – April 30, 2019  
Re-appointment: May 1, 2019 – April 30, 2022  
Resigned: August 14, 2020

**Linda Gentling, Vice Chair**

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

**Lawrence T. Collins,**

Appointment: May 1, 2017 – April 30, 2020

**Peter Amadio, Member**

Appointment: May 1, 2018 – April 30, 2021

**Carrie Kowalczyk, Member**

Appointment: May 1, 2019 – April 30, 2020

**Cassandra Ramel, Member**

Appointment: May 1, 2019 – April 30, 2022  
Resigned: February 14, 2020

**Ryan Williams, Member**

Appointment: August 21, 2020 – April 30, 2022

**Daniel Borup, Secretary**

Appointment: May 1, 2020 – April 30, 2023

**Brenda (Benitez) Ferraro, Member**

Appointment: May 1, 2020 – April 30, 2023

**Timothy Hornseth, Member**

Appointment: May 1, 2020 – April 30, 2022

### Staff

**Jason Loos** (City Attorney)  
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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 2020 marked the twelfth 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 Executive 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.

With the outbreak of the Covid 2019 pandemic, 2020 presented many unique challenges to the world at-large, the country, state, and the city of Rochester, MN. As such, operations of The Ethical Practices Board were inhibited in several ways:

- 1). Member turnover left positions difficult to fulfill and in response the city posted the openings several times in an attempt to gather more applicants.
- 2). A rather light load of incoming ethics complaints, new logistical challenges to set up meetings, as well as an initial freeze on meetings, resulted in the EPB conducting only 3 meetings during 2020.
- 3) While low in quantity, the three meetings were productive and all members were able to successfully join virtually. The board thanks the city staff, and Jody Houghton in particular, for all their work to make sure all members were able to navigate the new technology.

At the February meeting the resignation of Cassie Ramel was noted due to her accepting a position requiring relocation. The board wishes her well. Additionally, following the February meeting the positions of Carrie Kowalczyk, Jose Rico, and Lawrence Collins expired. The board wishes to express gratitude for the time each served on the board and for sharing their valuable and unique points of view.

In September, the board was pleased to gain four new board members to fill terms previously vacant.

The EPB usually elects officer positions at the annual May meeting. However due to the pandemic, and to give new board members a chance to acclimate, the elections were not conducted until October. Officers elected for 2020/2021 were: Faye Harris,

Chair; Linda Gentling, Vice Chair; and Daniel Borup as Secretary. City Attorney Loos' Executive Assistant Jody Houghton accepted the assignment to continue to write the meeting minutes with Mr. Borup assisting.

A continuing theme of the meetings this year was to discuss ways to limit the amount of complaints the board receives that are summarily dismissed due to not fitting the scope of the EPB. Improvements were made to the electronic submission form including language describing the purpose of the EPB and drop down menus to insure only people for whom the EPB has oversight are the subject of complaints received. We hope this increases understanding of the general public regarding appropriate EPB complaint subjects.

We look forward to a new year of a new normal and fulfilling our role to help safeguard a fair city for all. We would also like to gratefully acknowledge the valuable counsel of City Attorney Jason Loos and the most willing assistance of Executive Assistant Jody Houghton.



Faye R. 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 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 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 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 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.

## **2020 Complaint Disposition**

In February 2020 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 public 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 the complainant submit their complaint to the Building Safety/Community Development Departments. The complaint was dismissed unanimously.

In September 2020, three complaints were reviewed. However all three were unanimously dismissed due to the determination that the individual subject of the complaint was not covered under the jurisdiction of the EPB or the complaint did not relate to a possible ethics violation as outlined by the city code, i.e. no allegation of any financial conflict of interest was present.

In October 2020 one complaint was reviewed, but unanimously dismissed as it was determined it did not involve a city employee or volunteer and was therefore outside the scope of the EPB.

## **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 summary includes the inquiries discussed in 2020 meetings:

In September, a city citizen requested a review of code section 2-16-5. Specifically, requesting the board to consider amending the code to include adding "employer" to the definition of a conflict of interest through ones employment. Attorney Loos was directed to review the policies of other cities to give the board more situational context in which to consider the request. The board was provided with a short review of the variety found in the policies of other cities. Some included this provision, most seemed not to. The primary concern of the citizen regarded the high rate of Mayo Clinic employees also serving in various capacities for the city in the form of the city council and boards and commissions (including the EPB) which may hear matters relating to Mayo Clinic business. The board discussed this topic in consultation with the city attorney. It was noted that even with the addition of the word "employer" to the code, the EPB would still be charged with determining conflict of interest primarily in a financial sense. It was concluded as unlikely that an individual employed by Mayo Clinic, and conducting city business as a city representative, would be in a position to personally receive financial benefit from a decision rendered by the city council or a board or commission. With that understanding, the EPB decided to pass on changing the code language at this time or any other action, but acknowledges that it could be something good to revisit at a later time should there be a need.

Additionally, Attorney Loos related that he addressed several general inquiries from those running for City Council positions on various ethics rules and regulations.

In October 2020 Attorney Loos indicated there was one inquiry from an employee of the Rochester Fire Department, who asked for an opinion on a business his wife has; wherein she wanted to put in a bid for products to sell to the Rochester Police Department. Employee would have an interest in business because of being married. Loos indicated that legally there was no conflict of interest so long as RFD employee did not have a say in the process or decision making should City accept the bid. However, Loos indicated he encouraged the RFD employee to inform his direct supervisor in the event it is perceived as a conflict.

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**

Last year 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). In February 2020 further edits to the Ethics Complaint Form were approved by the EPB unanimously to include drop down menus on the online form to limit submissions to try to limit complaint subject submissions to only subjects for which the EPB has jurisdiction. It is hoped that these changes will decrease the amount of complaints the board receives which are not within the purview of the EPB.

In February the EPB voted unanimously to approve the EPB Code of Conduct Policy.

EPB webpage board member contact information was discussed in October. In the spirit of transparency and state law, the board is in favor of posting some information on board members, including a short bio listing employment. However due to member privacy concerns, and the possibilities of data mining for nefarious purposes, it was decided to remove member personal mailing address and phone numbers. Board members will still be reachable for the general public by emailing the government email address listed on the contact page. The city will forward emails to the members of the EPB as appropriate.

Also new in 2020 was the ability and streamlining of virtual attendance to EPB meetings for both board members and public citizens prompted by social distancing needs. With this change, and greater variability in how council members indicated their names using the virtual tools, Chair Harris referred to council members more informally than in the past by using first names to address members, after first securing method of address preferences for each council and staff member. These recordings will be available on the website for the EPB. We hope these measures will make our meetings and actions more accessible to anyone interested in the actions of the Rochester Ethical Practices Board and its role in the city.