

**Ethical Practices Board
Rochester, MN**

Annual Report 2021



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

(507) 328-2100

web address

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

Ethical Practices Board 2021

Members

Faye Harris, Chair 6/1/21 – 5/31/21

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

Peter Amadio, Chair 6/1/21 – Present

Appointment: May 1, 2018 – April 30, 2021
Re-appointment: May 1, 2021 – April 30, 2024

**Linda Gentling, Vice Chair 1/1/21-5/31/21
Secretary 6/1/21- Present**

Appointment: April 27, 2017 – April 30, 2018
Re-appointment: May 1, 2018 – April 30, 2021
Re-appointment: May 1, 2021 – April 30, 2024

**Daniel Borup, Secretary 1/1/21-5/31/21
Vice Chair, 6/1/21 - Present**

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

Ryan Williams, Member

Appointment: August 21, 2020 – April 30, 2022

Staff

Jason Loos (City Attorney 2018-2021)

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

Jody L. Houghton (Executive Assistant)

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Michael Spindler-Krage (City Attorney 2021-)

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Ethical Practices Board

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Foreword from the Chairs

The year 2021 marked the 13th 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, who may seek guidance on conflicts of interest, or other ethical issues. 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 Jason Loos and Michael Spindler-Krage, 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.

In 2021, the Board continued to function with virtual meetings, with one exception during a relative lull in the pandemic in the summer. Several meetings were canceled due to a lack of agenda items. Indeed, there was only one incoming ethics complaint in 2021. Despite the improvements made to our website in 2020, in early 2021 the EPB continued to receive complaints that were outside the scope of the EPB, but this problem appears to have been resolved by a further web site redesign over the summer.

Board members Amadio and Gentling were reappointed in 2021, and in May the Board elected Peter Amadio as Chair, Daniel Borup as Vice Chair, and Lin Gentling as Secretary. Executive Assistant Jody Houghton accepted the assignment to continue to write the meeting minutes with Ms. Gentling assisting.

In addition to the ethics and other complaints that were considered in 2021, at the March meeting Councilmember Bransford asked the Board to consider the ethics of the quasi-judicial role of the City Council. After discussion, the matter was tabled, awaiting Council action on the matter.

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 Attorneys Jason Loos and Michael Spindler-Krage, and the most willing assistance of Executive Assistant Jody Houghton.

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 Teams technology, but we look forward to resuming in person meetings when it is safe to do so.

The image shows two handwritten signatures in blue ink. The signature on the left is for Faye R. Harris, and the signature on the right is for Peter C. Amadio. The signatures are written in a cursive, flowing style.

Faye R. Harris and Peter C Amadio, Chairs

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.

2021 Complaint Disposition

One ethics related complaint was reviewed in 2021. A total of 7 non-ethics complaints were submitted through the Board web site, which actually related to other issues, such as use of social media, neighborhood cleanliness, and noise. These were all referred to the appropriate city department for disposition.

The ethics-related complaint related to an e-mail sent using a City issued e-mail account, and the complainant was questioning the appropriateness of the use of City email for this correspondence. Attorney Spindler-Krage addressed the Board and gave an overview of the City policy regarding appropriate use of City issued e-mail accounts. After discussion, the Board voted to dismiss the complaint, as it did not concern a conflict of interest, and referred the matter to Human Resources, which oversees email policies.

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>

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

Improvements to the Board website in mid-year resulted in elimination of non-ethics complaints to the Board, with routing from the web site to the appropriate city

department. We believe that this has improved the quality of public service, by more rapidly routing citizen concerns to the proper department