

**Ethical Practices Board
Rochester, MN**

Annual Report 2023



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 2023

Members

Peter Amadio, Chair 6/1/21 – Present

Appointment: May 1, 2018 – April 30, 2021

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

Linda Gentling, 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, Vice Chair, 6/1/21-Present

Appointment: May 1, 2020 – April 30, 2023

Re-appointment: May 1, 2023 - April 30, 2026

Timothy Hornseth, Member

Appointment: May 1, 2020 – April 30, 2022

Re-Appointment: May 1, 2022 – April 30, 2025

James Rechs, Member

Appointment: May 1, 2022 – April 30, 2025

Christine Li, Member

Appointment: May 1, 2022 – April 30, 2025

Gloria D DeBusman, Member

Appointment: May 1, 2023 - April 30, 2026

*denotes original appointee from Board of 2009

Staff

Michael Spindler-Krage (City Attorney)

201 4th Street 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 2023 marked the 15th 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 greatly appreciative of all the information and service that City Attorney 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 2023, the Board continued in person meetings, but several meetings were canceled due to a lack of agenda items. Despite the improvements made to our website in 2020, the EPB continues to receive complaints that are outside the scope of the EPB, which we do triage to the relevant City Department for disposition.

EPB leadership remained unchanged in 2023, with Peter Amadio as Chair, Daniel Borup as Vice Chair, and Lin Gentling as Secretary. Executive Assistant Jody Houghton continues to write the meeting minutes, with Ms. Gentling assisting. Former EPB member Brenda Ferraro completed her term, and was thanked for her service. The EPB welcomed new member Gloria DeBusman who was appointed to a three year term, commencing May 1, 2023. Daniel Borup, Vice Chair, was reappointed to a three year term as well, effective May 1, 2023 through April 30, 2026.

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



Peter C Amadio, 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 full 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
- Board of Appeals
- Citizens Advisory on Transit
- Energy Commission
- Ethical Practices Board
- Fire Civil Service Commission
- Heritage Preservation Commission
- Library Board
- Mayo Civic Center & Rochester Convention and Visitors Bureau Board
- Music Board
- Park Board
- Pedestrian & Bicycle Advisory Commission
- Planning and Zoning Commission
- Police Civil Service
- Police Policy Oversight Commission
- Public Utility Board
- Sustainability and Resiliency Commission

- 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.

One other issue that the Board has discussed over the past several years, following a question raised in 2021 by Councilmember Bransford, is policy related to situations in which the City Council or any of the other entities listed above serves in a “quasi-judicial” role, which is to say when these bodies act to interpret or apply laws or regulations, for example to decide if a specific zoning regulation applies in a specific circumstance. This is different from the legislative role such bodies may play, in making or amending laws, policies, or regulations. The EPB initially established policies related to the quasi-judicial function of City entities in 2009 and 2011. All City Board and Council members do receive training on the quasi-judicial function, and a conflict of interest policy is in place, which requires disclosure of conflicts prior to engaging on Council or Board deliberations. The EPB reviewed existing City policy and collected information from both legal sources and from other communities within Minnesota. While not recommending any changes to City policy, the EPB provides the following recommendations for consideration for City entities which may serve in a quasi-judicial role as a part of their normal operations:

Recommendations

The Ethical Practices Board does not recommend adopting any changes to Chapter 2-16 of the Code of Ordinances at this time. However, the EPB does wish to emphasize the importance of maintaining impartiality, as well as public trust in that impartiality, in the handling of quasi-judicial matters. It is thus the recommendation of the Ethical Practices Board that the following actions be taken:

1. Members of the Common Council and other city boards and commissions should continue to receive regular education on which matters fall (or may fall) under the umbrella of “quasi-judicial”, as well as the members’ expected behavior when handling such matters.
2. Members of the Common Council should continue to be conscientious in updating conflicts of interest regularly, as required by Section 2-16-6 of the Code of Ordinances.
3. The Common Council should adopt standardized language to be read publicly when a quasi-judicial matter is raised for discussion and/or a vote. This language should state that the issue being raised is of a quasi-judicial nature, and (briefly) remind the council and members of the public of all relevant expectations. For example: ‘The next item pertains to a quasi-judicial matter. As a reminder for Council members [or board

members, etc.] and the public, quasi-judicial matters are distinct from legislative issues and require impartial judgment against a legal standard. Council members/board members receive training from city staff on potential conflicts (such as financial conflicts) and must recuse themselves from discussion and/or voting on this issue if unable to maintain impartiality'. If multiple quasi-judicial issues are raised in a single meeting, the first sentence could be repeated when the second and subsequent issues are raised.

4. The Common Council should continue to devote attention to the issue of impartiality in quasi-judicial matters. If desired, the Council as a whole, or any Councilmember individually, may submit additional inquiries to the Ethical Practices Board. The EPB would be happy to engage in further study of the topic and/or to make further recommendations to the Common Council.

2023 Complaint Disposition

No ethics related complaint was reviewed in 2023. A total of eleven non-ethics complaints were submitted through the Board web site, which actually related to other issues, such as the SW Trail project and other neighborhood issues. These were all referred to the appropriate city department for disposition, although the SW trail project complaints did require some investigation before a determination that these were not ethical practice issues.

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 located on the EPB webpage located [here](#).

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 has not resulted in elimination of non-ethics complaints to the Board, although it has expedited routing 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.