



STAFF REPORT

TO: Mayor Keis and Members of the City Council

FROM: Heidi Heller, City Clerk/HR Manager
Chris Heineman, City Administrator

DATE: January 12, 2022

RE: Consider Adoption of a City Council Code of Conduct Policy

ACTION TO BE CONSIDERED

Consider adopting a Code of Conduct for City Council members.

BACKGROUND

In November 2021, when Council was reviewing the updated City Staff Personnel Policy, Councilmember McGraw stated that he would like to have a Code of Conduct adopted for the City Council. There was Council consensus for staff to bring back examples from other cities and information about this type of policy.

League of MN Cities: Handbook for Minnesota Cities - information for City Councils:

<https://www.lmc.org/resources/handbook-for-minnesota-cities-chapter-6-elected-officials-and-council-structure-and-role/>

<https://www.lmc.org/resources/handbook-for-minnesota-cities-chapter-7-meetings-motions-resolutions-and-ordinances/>

<https://www.lmc.org/resources/official-conflict-of-interest/>

RECOMMENDATION

Discuss adopting a City Council Code of Conduct, and provide direction to staff.

Attachments:

1. Article - Beyond Ethics: Establishing a Code of Conduct to Guide Your Council
2. City Example: Edina
3. City Example: Delano
4. City Example: Mankato
5. City Example: Rochester

Beyond Ethics: Establishing a Code of Conduct to Guide Your Council

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It is often said that ethics is the foundation of public service and essential for public trust and confidence in public officials. This is true, but ethics alone is not enough.

A 2019 study conducted by the Pew Research Center reports that public trust in government remains near historic lows. The current dearth of public confidence in government requires elected and appointed officials to lead by example even more than in the past. This means conducting themselves with the highest levels of civility and decorum, thereby giving residents a reason to reconsider negative stereotypes of government leaders and to modulate their own behavior when engaging with government officials.

Many observers lament the coarsening of civic dialogue in the United States and note its creeping effects in council chambers. Sometimes this manifests in a few shrill advocates and critics who spew vitriol and discord to disrupt the public process. At other times, council members themselves display an appalling lack of respect for each other, staff and/or the public they serve. Invariably, the council's example sets the tone. Disrespectful conduct on the council's part normalizes such behavior by the

public attending the meeting or watching it on television or online. The cycle then repeats — for the worse.

Elected officials' lack of civility impedes governance in many ways, such as stalling the decisionmaking process, undermining employee retention and recruitment, fueling political apathy and discouraging public participation. Over time, the standard set for acceptable behavior becomes increasingly lower.

Although cities periodically conduct ethics training for officials as required by state law (AB 1234, Chapter 700, Statutes of 2005), most don't take the time to discuss *how* they govern. This is puzzling because local government can be seen as the ultimate team sport, where everyone must play their roles well for civic progress to occur.

Fostering Focused and Productive Dialogue

How often do councils and senior staff take time to discuss what is working and what can be improved in the ways they interact and carry out their duties? What benchmarks do they use to measure their behavior? Most importantly, how do they hold themselves and each other accountable?

Many cities have adopted codes of ethics for their organizations and/or city councils, which is positive and appropriate. Some are taking the additional step of defining how the elected leaders and staff are to behave in carrying out their duties. These policies are typically called codes of conduct or council guidelines or norms. In such policies, the local government leadership sets the rules and expectations for how they govern their cities — defining a civil and respectful governing culture consistent with best practices.

How to Develop a Code of Conduct

Whether the city council members are experienced or fairly new, each member articulates their vision of the organizational culture and values for the governing body when the council spends time developing a code of conduct. This also sets the tone for future councils.

This type of exercise should be conducted as an off-site workshop rather than as part of a council meeting with a packed agenda. Welcome the public and media to attend this open workshop but make it clear that the council will focus on the process of governing, not on addressing local issues.

When developing a code of conduct, consider these tips for a successful session:

- Create an informal atmosphere with seating arranged so that everyone can see each other, rather than using auditorium-style seating;
- Engage a neutral facilitator so that everyone may participate freely;
- Provide food, beverages and breaks; and
- Encourage the use of humor.

Use the theme of commitment to community to get things started. This can be accomplished through a team-building conversation that allows the council members to express why they ran for office, what they hope to accomplish, their greatest satisfaction in serving in elected office and the legacy they hope to create.

Sshepard

A discussion about the habits of highly effective councils can help clarify the roles of the key local government players before developing the code of conduct or civility. To support such a discussion, the Institute for Local Government website (www.ca-ilg.org) offers useful resources that include the articles “Attributes of Exceptional Councils” and “A Key Ingredient for Success: An Effective City Council-City Manager Relationship.” The first offers best practices and the second explores roles and how they function in complementary ways for greatest effectiveness. This information sets the stage for an in-depth discussion of the norms of conduct that the council wishes to embrace.

Some councils may find it useful to see codes or policies developed by other cities and borrow specific guidelines that best fit their current situation. Other councils may

wish to begin “from scratch” by brainstorming the principles, standards and behaviors that they expect — and draft the code of conduct after the session. Either way is acceptable.

Don't attempt to edit the document to perfection in the group setting. After the session, have your best writer polish the draft and bring it back for formal adoption at the next regularly scheduled council meeting. This gives the community a better chance to weigh in and take note of how the council is committing to carry out the public's business.

Code of Conduct Models and Examples

Avoid attempting to address every eventuality. If the document is too dense, it will be ignored. Keep it general, in the council's words and in terms that everyone can easily grasp. The following examples offer some typical elements, but this list is not intended to suggest that a code of conduct would include all of these elements.

- Demonstrate honesty and integrity in every action and statement;
- Inspire public confidence in our city government;
- Work for the common good, not personal interest;
- Respect the proper roles of elected officials and city staff in ensuring open and effective government;
- Disagree agreeably and professionally (use appropriate language, tone, nonverbal gestures, etc.);
- Share information and avoid surprises;
- Approach the business of governing in a professional manner — conduct business in a way that brings honor to the institution of government;
- Praise in public, criticize in private;

- Work together as a body, modeling teamwork and civility for our community;
- Communicate through the city manager;
- Prepare in advance of council meetings, be familiar with issues on the agenda and ask questions of the city manager before the meetings so everyone can be fully prepared when the meeting occurs;
- Fully participate in city council meetings and other public forums while demonstrating respect, consideration and courtesy to others;
- Participate in scheduled activities to increase council effectiveness;
- Share information with other council members about committee meetings attended;
- Work for win-win — strive for consensus and seek common ground; and
- Honor “discussion” before “decisions” — delay making formal motions until initial discussions have taken place.

Commitment and Accountability

The council’s determination of how it will enforce the code of conduct — informally and/or formally — is just as important as the principles expressed in the code of conduct.

Enforcing the code can take the form of a personal pledge to behave consistently with its policies and to gently remind one’s peers if they are straying from the joint commitments in the code. It may also involve more formal actions like censure under prescribed rules. Regardless of the enforcement method, council members should not expect the city manager or city attorney to do it for them; imposing this expectation on staff is unreasonable.

Annual Self-Assessment: Reflection, Learning and Continuous Improvement

It is absolutely essential that the council meet at least once a year to take stock and evaluate how it is performing with respect to the code of conduct. This process provides a chance to discuss what is working well, identify areas for improvement, examine what should be emphasized and clarify what needs to stop if the council is to function for the greatest community good — and build trust and confidence in the city. It may be useful to consider recent successes and how they were achieved. Conversely, clear-eyed diagnosis of setbacks — without devolving into blaming and finger-pointing — is important. Skilled neutral facilitation is key to making this happen. Again, in such discussions, a little team building can go a long way.

The follow-up meeting is also the time to consider amendments to the code of conduct as needs arise or understandings evolve. Debrief afterward to improve the next session; these governance tuneups should become easier and more meaningful over time. This annual exercise should be considered as important as the evaluation of the city manager. It is critical governance hygiene.

The Bottom Line

Ethics is the bedrock on which strong cultures are built. A code of conduct can help shape a civil and effective governance culture.

Related Resources

[The “Front Page” Test: An Easy Ethics Standard](#)

[#MeToo 2.0: A Guide to Help Navigate New Workplace Harassment Laws](#)

Code of Conduct

The Edina City Council developed a Code of Conduct for all elected City officials at a series of retreat meetings that concluded in Spring of 2020. Most standards in this code are principles the City Council already followed.

Council members also approved three value statements: Community Engagement, Equity and Sustainability.

Code of Conduct Highlights

Introductory Pledge: All City Council members pledge to follow laws, their respective roles, policies and act in the best interest of the City and all residents both financially and legally.

Compliance and Enforcement: City Council members will hold themselves and each other accountable for ethical conduct and discuss any suspected violation of the law with the City Manager.

Comply with the Law: All members will comply with all applicable federal and state laws and city ordinances including Open Meeting Law, policies on gifts, use of the City logo and conflicts of interest.

Roles of Council, Staff and Commissions: Know, understand and respect the roles of their positions, staff and commissions, including adhering to the Council-Manager (Plan B) structure of Edina city government as outlined in [MN Statute 412](#).

Working with the Community: Council members will refer residents with concerns to the City Manager. In working with businesses or other interests, Council members will not grant any special consideration or treatment, will honor rules about public testimony, make themselves available to all parties on an equal basis and not prejudge an issue before Council deliberations.

Intergovernmental Relations: Members will represent positions approved by the City Council when working with other agencies or governments.

See the full [Code of Conduct \(PDF\)](#).

Value Statements

Community Engagement

As the Edina City Council, we are dedicated to fostering an engaged community built on a foundation of trust. We will do this by intentionally focusing on equity, diversity and inclusion and creating a dialogue of perspectives. We will build trust by demonstrating our engagement principles of Relationships, Equity, Inclusivity, and Accountability.

- Relationships: make relationships foundational; strengthen relationships and build new ones; develop a trust between the City and residents
- Equity: engage with residents where they are; remove barriers for participation; provide multiple options for participation
- Inclusivity: strive to provide meaningful engagement opportunities; invite underrepresented groups to participate; make all feel welcomed and valued
- Accountability: make a plan; do what we say we are going to do; don't change the rules; make a decision; communicate how participation influenced decision

Equity

As the Edina City Council, we are dedicated to creating an environment in our community where residents have equitable opportunities to participate in their city government and access the City's institutions, facilities and services.

Our commitment to diversity, equity and inclusion will be a continuous process of learning and adapting to the multiple needs of all in the community, while consistently applying an equity lens in all decisions and interactions. Our vision of a welcoming Edina includes removing systemic and institutional barriers to create opportunities for all in the community to thrive.

Sustainability

As the Edina City Council, we are dedicated to building a sustainable environment where current and future generations benefit from clean air and water, climate and community resiliency, and access to nature.

We recognize that the City's natural environment, and the health and quality of life of its residents are just as, or even more, important, than the financial factors. We will ensure that our policies, decisions and future plans have a positive impact on people and the planet, in addition to profit.

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or by these rules, the proceedings of the Council shall be conducted in accordance with the most recent edition of Robert's Rules of Order.

Subd. 14. Meetings Conducted By Interactive Television. A City Council meeting may be conducted by interactive television if all of the following provisions are met:

- A. At least one member of the Council is physically present at the regular meeting location.
- B. All members must be able to hear and see each other and all discussion and testimony presented at any location at which at least one member of the Council is present.
- C. All members of the public at the regular meeting location must be able to hear and see all discussion and testimony and all votes of all members of the Council.
- D. Each location at which a member of the Council is present must be open and accessible to the public.

SECTION 202.01. DUTIES AND SALARIES, OF MAYOR AND CITY COUNCIL MEMBERS.

- A. The duties of the Delano Mayor and City Council Members shall be all duties prescribed by state statute and City Code.
- B. The salary of the Mayor and Council Members shall be as follows:
 - 1. The sum of \$550 per calendar month for the Mayor;
 - 2. The sum of \$375 per calendar month for each Council member;
 - 3. The additional sum of \$50 for each special or emergency Council meeting attended in a calendar month; and
 - 4. The additional sum of \$10 for each meeting attended which concerns City business, but excluding the following:
 - (a) All regular, special and emergency City Council meetings;
 - (b) Ceremonial and social functions;
 - (c) Such meeting compensation shall not exceed \$10.00 per day.

SECTION 203.01. CODE OF ETHICS FOR ELECTED PUBLIC OFFICIALS.

Subd. 1. General Declaration of Policy. The proper operation of democratic government requires that public officials be independent, impartial, and responsible to the people; that governmental decisions and policies be made in the proper channels of the governmental

structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. To further achieve these goals there is hereby established a code of ethics. This code of ethics is in addition to, and not in lieu of, other laws and regulations concerning ethics, conflicts of interest, and the integrity of public officials.

Subd. 2. Scope of Persons Covered. The provisions of this code of ethics shall be applicable to the Mayor and Council Members as well as candidates for the offices of Mayor and Council Member.

Subd. 3. Standards of Conduct.

- A. No Special Privileges. The Mayor and Council Members shall not use their positions to secure special privileges or exemptions for themselves or others or to intentionally jeopardize the position or employment of others.
- B. Conflict of Interest. The Mayor and Council Members shall not participate in deliberations in any matter before the Council which affects that official's financial interests directly or indirectly or those of a business with which the official is associated. Whenever such conflict is recognized, the affected City official shall disclose such interest prior to any discussion or vote and shall be disqualified from any further official activity on the issue.
- C. Agent or Attorney. The Mayor and Council Members shall not act as agents or attorneys for another in any matter before the Council.
- D. Compensation or Gratuity. The Mayor and Council Members shall not directly or indirectly receive, or agree to receive, any compensation, gift, reward or gratuity as an inducement to support or influence any matter proceeding connected with, or related to, the duties of the office.

Subd. 4. Public Disclosure by Public Officials.

- A. The Mayor and Council Members shall annually file with the Clerk, a signed disclosure statement identifying any interests or rights in real property (except the official's homestead) located within the City and disclosing any proprietary interest of 10% or more in any company, business enterprise, corporation, partnership, labor union or association doing business with the City, and any positions, including whether said positions are gratuitous or for compensation, held as officer, director, partner, agent, proprietor or employee with any such company, business enterprise, corporation, partnership, labor union or association.
- B. Each person who files as a candidate for election as Mayor or Council Member shall file, at the time of filing as a candidate for any such office, a disclosure statement as specified in Subd. 4, A..

- C. Within 30 days after a person has been elected such person shall file a disclosure statement, unless such person has done so pursuant to subparagraphs A or B hereof.
- D. In the event any person fails to file a complete disclosure statement within the times provided in subparagraphs A, B or C hereof, the Clerk or the Clerk's designee shall give written notice of the provisions of this Section to such person, who shall thereafter file a disclosure statement within 10 days of said notice.
- E. Any material change in property or business interests or rights shall be disclosed by filing an amended disclosure statement within 30 days after such change has occurred.
- F. This code of ethics shall not be construed to require the filing of any information relating to any person's affiliation with, or interest in, any professional society, charitable, religious, social, fraternal, educational, recreational, public service, civic, governmental, political, or similar organization.

Subd. 5. Enforcement. Upon the signed written complaint of any person questioning adherence to the requirements of this Section, or on the Council's own volition, the Council shall refer the matter to the City attorney for investigation and the City attorney shall report the results of his investigation to the Council within 45 days thereafter. A copy of the City attorney's report shall be furnished to the person complained against, who may request a hearing on the matter before the Council. The request for hearing shall be filed with the Clerk not later than 10 days following receipt of the City attorney's report by the person complained against. Upon receipt of the City attorney's report and at the conclusion of any hearing on the matter, the Council, by majority vote, may dismiss the complaint as having no merit or may adopt a resolution of censure.

SECTION 204.01. BOARDS, COMMISSIONS AND TASK FORCES.

Subd. 1. Generally. Except as otherwise provided with respect to a specific board, commission or task force, the provisions of this Section shall apply to all boards, commissions and task forces referred to in this Chapter 2.

Subd. 2. Open Meeting Law and Data Practices Act. All meetings and matters of any City board, commission, or task force shall be subject to the Minnesota Open Meeting Law and the Minnesota Government Data Practices Act.

Subd. 3. Conflict of Interest. No member of any City board, commission or task force may vote on a matter in which the member has a direct or indirect financial interest or other substantial interest.

Subd. 4. Vacancies and Removal of Members.

- A. Vacancies: Except as otherwise specified in this Chapter, a member's position shall become vacant upon the occurrence of any of the following:

Chapter 13: Code of conduct

The mayor and council members are dedicated to promoting values and integrity of local government and democracy and committed to governing efficiently and effectively. After taking oath of office as a city council member, they agree to conduct themselves in accordance with the following code of conduct:

- ◆ The professional and personal conduct of council members must be above reproach and avoid the appearance of impropriety. Members should refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of the council, boards, commissions, staff or the public intended to disrupt and not further the city's business.
- ◆ Council members abide by applicable state laws, city ordinances and other doctrines relating to conduct of a council member, including, but not limited to: conflict of interest, data practices and the open meeting law.
- ◆ Council members maintain the confidentiality of information concerning property, personnel or legal affairs of the city. They shall neither disclose confidential information, without proper legal authorization, nor use such information to advance their personal, financial or other private interests.
- ◆ A council member does not use the official position to secure special privileges or exemptions for themselves or others.
- ◆ Each member supports the maintenance of a positive and constructive work place environment for city staff, private citizens and businesses dealing with the city. Council members will recognize their roles, as delineated in the city charter, city code and state statutes and in individual dealings with city staff.
- ◆ No member shall, except as specifically permitted by Minnesota statutes, 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 member in the performance of the member's official duties or intended as a reward for the member's official actions.
- ◆ Members of the council will not testify in their capacity as a council member, before any other board, commission, administrative officer or agent of the federal government, the state of Minnesota or of any county or other municipal corporation, including cities, except as provided. Exceptions to the policy:
 - if the member is testifying in such capacity pursuant to a lawfully issued subpoena;
 - in the event the council has designated the member or members to act as a spokesperson for the council as a whole to explain the majority vote or council's position.
- ◆ Council members serve as a whole when representing the official policies and positions of the city council. If speaking as an individual citizen, it's important to share that's the perspective being presented and not on behalf of the city or council. In addition, council members refrain from testifying orally or in writing as to any quasi-judicial matter being heard, or having the possibility of being heard by the council.

Conflict of interest

Generally, state law prohibits public officers from having a personal financial interest in a sale, lease, or contract they are authorized to make in their official capacity. A “public officer” would include a mayor, council member, etc.

An interested officer should disclose his or her interest at the earliest stage and abstain from voting or deliberating on any contract in which he or she has an interest. There are some exceptions to the general prohibition on contracting with city officials defined in state law. When the exceptions are used, generally the contract must be approved by unanimous vote of the council. To help determine if a conflict exists consider the:

- ◆ nature of the decision being made;
- ◆ nature of the financial interest;
- ◆ effect of the individual interest on the outcome of the decision by the council.

Another conflict of interest situation may occur when the official’s own personal interest is so distinct from the public interest that the member cannot be expected to represent the public interest fairly in deciding the matter. Some common areas are planning and zoning issues, public improvements, special assessments, licenses, land purchases and vacation of streets. Some other areas are church memberships, family associations and club memberships.

There are detailed procedures that must be followed to use any exception to the conflict of interest law. State statute and the city attorney should be consulted on procedures to follow.

Incompatible offices

Generally, individuals in elected office are prohibited from holding incompatible offices. The city attorney should be consulted on concerns about elected officials holding two separate offices. Mankato city council members cannot hold any other city office or city employment during tenure as a council member. A former member of the city council cannot be employed by the city until one year after the term they were elected for has expired.

Gifts

Elected and appointed “local officials” may not receive a gift from any “interested person.” An “interested person” is a person, or representative of a person or an association, who has a direct financial interest in a decision that a local official is authorized to make. If a public official knowingly accepts a gift, the official may be guilty of a gross misdemeanor.

Some commonly encountered exceptions to the gift law include lawful campaign contributions and food or beverages given at a reception, meal, or meeting the official has been invited to attend. If there is ever any question about accepting or declining a gift, the best option may be to decline.

Liabilities

The city of Mankato carries personal liability insurance policies on elected officials, appointed officials, employees and officers. The city defends a person who is performing job duties and is not guilty of malfeasance in office, willfully neglecting their duties or acting in bad faith.

Ethical leadership

Ethical leadership is vital to the functioning of the city and to maintain the public's trust and confidence in the city and democratic process.

Key traits of ethical leaders

- ◆ *Recognize that ethical questions may be complex.* As a result, they are willing to seek and accept the advice of knowledgeable officials such as the city manager, city attorney or city staff.
- ◆ *Understand that ethical conflicts are inevitable and should be dealt with forthrightly.* Elected officials are human and citizens of their community. On occasion, it is expected that they will have needs or roles in their private lives that conflict with public office obligations. Ethical officials are open about potential conflicts of interest and follow applicable rules for disclosing and dealing with the conflict (such as refraining from voting on a particular issue) to avoid even the appearance of impropriety.
- ◆ *Driven by fairness.* The most ethical council members recognize that many city decisions will have an adverse, as well as positive outcomes and they, therefore, strive to make the best decision as defined by its ultimate fairness to all concerned. This often means making impartial decisions on the merits of the issues alone, while disregarding personal allegiances. It can also mean taking into account interests of citizens who are not present or who have not otherwise commented, but who are nonetheless affected by a decision. Ethical officials try to make decisions in the best interest of all in the community, not just those who show up at a meeting or protest the loudest.
- ◆ *Know the importance of conscientious and ethical government as a value in itself.* Ethical council members do not use their office or authority for revenge, prestige, or personal gain. Ethical council members recognize that government is a human institution. As a result, the human motivations of those in government will determine if the government itself is effective or ineffective, good or bad, ethical or unethical. Ethical council members care enough to make a positive difference and then act accordingly.

Recall of elected officers

The city of Mankato charter does not permit the city council to remove or recall an officer from office. The holder of any elective office may be removed at any time by registered voters under [Mankato city charter section 5.01](#), available online.

If the council should desire to have a public censure process this will need to be drafted as a policy and formally adopted.

CHAPTER 13. CODE OF ETHICS

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.

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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

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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

CHAPTER 13. CODE OF ETHICS

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)