



# City of Rochester

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## CITY OF ROCHESTER BOARD of ETHICS RULES of PROCEDURE

Pursuant to Sections 3-1 through 3-7 of the Rochester, Michigan City Code, Chapter 3, Ethics.

### **Section 1. Policy and Construction**

#### Rule 1.01 Intent

The City of Rochester Board of Ethics (Board) promulgates these rules pursuant to Chapter 3 of the Rochester, Michigan, Code of Ordinances (Ethics Ordinance) with the intent of effectuating the policies, intent and purpose set forth in the Ethics Ordinance. It is further intended that the Board act as an advisory and fact finding body for the purpose of interpreting the Ethics Ordinance, issuing advisory opinions, resolving alleged violations of the Ethics Ordinance and deciding referred questions of disqualification due to conflict of interest and prohibited beneficial or personal interests. (Sec. 3-7 (a) (3) (c)1-3. The Board has no authority to impose sanctions or disciplinary actions, but may include recommendations with regard to sanctions or disciplinary actions within its written opinions and hearing decisions. Such recommendations shall be considered and used by the City Council and City Manager when imposing sanctions or discipline for a violation of the Ethics Ordinance. (Sec. 3-3; 3-7 (a) (1) & (b) (3) .

#### Rule 1.02 Construction

These rules are to be construed to achieve the timely, efficient and cost effective determination of matters brought before the Board.

#### Rule 1.03 Modification

Modification or amendment of these rules requires approval by a majority vote of the City Council. (Sec.3-7 (a) (3) c )

### **Section 2. Procedure for Obtaining Advisory Opinions**

#### Rule 2.01 Requests for Advisory Opinion

An individual who is subject to the Ethics Ordinance or who supervises another whose conduct falls within the scope of the Ethics Ordinance, may request an advisory opinion as to whether his, her or its conduct or anticipated conduct conforms to the Ethics Ordinance. That individual may bring the matter before the Board by filing with the city clerk a request for an advisory opinion on the form prescribed by the clerk. The person filing the request is

called the requesting party. The requesting party may include with the request any documents or other materials that may assist the Board in responding to the request.

#### Rule 2.02 Meeting Date

The clerk will set the matter for a meeting of the Board on a date certain and place the matter on the Board's calendar.

#### Rule 2.03 Notice of Meeting and Request to Appear

The clerk will send notice of the meeting to the requesting party. The Board may request other persons to appear at the meeting by directing the clerk to send notice of the meeting and a request to appear, accompanied by a copy of the request for an advisory opinion.

#### Rule 2.04 Appearance of Requesting Party or Representative

The requesting party or a representative of the requesting party may appear at the meeting, present information in support of the request, and respond orally to questions presented by the Board.

#### Rule 2.05 Meetings

The Board will conduct a meeting on the matter set forth in the request for an advisory opinion. Any person requested to appear at the meeting may be accompanied by an attorney.

#### Rule 2.06 Presiding Officer

The Presiding Officer will conduct the meeting or may assign another member of the Board to conduct the meeting. Any Board member assigned to conduct the meeting assumes the role and responsibilities of the Presiding Officer as set forth in these Rules. The Presiding Officer will officiate over the meeting, moderate the questions and answers among the members of the Board, the requesting party and any other witnesses; and rule on questions of procedure and the admissibility of evidence.

#### Rule 2.07 Presentation of the Request and the Evidence

The requesting party will state the issue to be resolved and offer any evidence that bears on the matter. The Board may request that its inquiry into the matter be expanded to include testimony of other witnesses and the introduction of exhibits or other evidence relevant to the matter. The requesting party and any member of the Board may question any witness in the manner prescribed by the Presiding Officer. All witnesses will give testimony on sworn oath or affirmation.

#### Rule 2.08 Post-Meeting Evidence

The Board may ask the requesting party or any other person to submit post-meeting evidence, if warranted.

#### Rule 2.09 Closure of the Record

The record is closed at the conclusion of the meeting or, if the Board requests any person to submit post-meeting evidence, at the earlier of the submission of the evidence or the deadline for submitting it. The Board may re-open the record and take additional evidence prior to rendering its decision.

#### Rule 2.10 Advisory Opinion

The Board will determine whether the conduct or anticipated conduct of the requesting party conforms to the Ethics Ordinance. The Board will make its decision upon a vote of

the majority of the Board based on the evidence in the record and controlling law. The Board will issue its decision in the form of a written advisory opinion, and include any dissenting or concurring opinion. Once issued, the opinions are final.

#### Rule 2.11 Transmittal of the Advisory Opinion

The Board will send its advisory opinion to the city clerk who will distribute it to the City Council, City Manager and the requesting party, and, in a manner that conforms to applicable law, make it available to the public.

### **Section 3. Procedures for Resolving Complaints**

#### Rule 3.01 Filing a Complaint

A person who has a complaint against a city official, city employee, city contractor or city consultant (a "Public Servant" as that term is defined in the Ethics Ordinance) involving the applicability of any provision of the Ethics Ordinance with respect to the conduct of such Public Servant may bring the matter before the Board by filing with the city clerk a complaint on the form prescribed by the clerk. The person who files the complaint is called the complainant. The person who is alleged to have breached the Ethics Ordinance is called the respondent. (Sec. 3-2;3-3; 3-4)

#### Rule 3.02 Investigatory Review

The city clerk will notify the Board of the filing of the complaint and within seven (7) days of such notice, will set the matter for hearing and place the matter on the Board's calendar for a determination of whether the complaint is subject to administrative dismissal for one or more of the reasons set forth in the Ethics Ordinance. The Board's investigatory review of the complaint will be conducted in accordance with applicable law ; however this initial review of the merits of the complaint shall be deemed an ongoing investigation of a potential violation of the Ethics Ordinance , during which the identities of the complainant and the respondent shall remain confidential to the Board and not subject to public disclosure except as required by law. (Sec. 3-7 (b) (1) a )

#### Rule 3.03 Summary Dismissal of the Complaint

The Board will meet to conduct an investigatory review of the complaint and make a determination of whether the complaint should be dismissed for any of the reasons set forth in the Ethics Ordinance for administrative or summary dismissal. Upon a majority vote by the Board that the complaint should be summarily dismissed, the Board will issue its decision in the form of a written determination which will include the basis for dismissal of the complaint. Written notice of the decision, including the decision itself will be sent to the complainant and respondent. This notice and the included notice of the filing of the complaint and the Board's determination regarding its dismissal, remain confidential and are not subject to public disclosure, except as required by law. . Administrative or summary dismissals made under these Rules and the applicable provisions of the Ethics Ordinance are final decisions of the Board. (Sec. 3-7 (b) (1) a)

#### Rule 3.04 Hearings on Complaints; Notice

In the event that the Board does not summarily dismiss the complaint as provided under these Rules, within seven (7) days after issuance of the administrative decision allowing the complaint to proceed, the city clerk will set the matter for hearing upon a date certain. The hearing date will be set no sooner than 28 days after notice. Notice of the hearing will be accompanied by a concise statement of the alleged violation of the Ethics Ordinance. Notice

will be sent to the person accused of the violation (the respondent) , the complainant and all other persons requested by the Board to appear at the hearing. All such notices will be issued by hand delivery or certified mail, return receipt by addressee only. Any person so requested to appear may seek one extension of the hearing date, said extension not to exceed 28 days from the originally scheduled date. Any requests for additional extension of the hearing date will be considered by the Board in its discretion and in consideration of the goal of achieving timely disposition of matters brought before it. (Sec. 3-7 (b) (1) a.8;b-d)

#### Rule 3.05 Answer of Respondent

Before the hearing date, the respondent may submit a written answer to the complaint by filing that answer with the city clerk. In the answer , the respondent may respond to the allegations set forth in the complaint and may further provide information , including documents relevant to the matter. In lieu of a written answer, the respondent may appear at the hearing and respond orally to the allegations.

#### Rule 3.06 Conduct of Proceedings

At the scheduled time, the Board will conduct the hearing. Any party who has been requested to appear may be represented by legal counsel. The Presiding Officer will conduct the hearing or may assign another member of the Board to be the hearing officer. The assigned hearing officer assumes the role and responsibilities of the Presiding Officer as set forth in these rules. The Presiding Officer will officiate over the hearing and rule on questions of procedure and the admissibility of evidence.

#### Rule 3.07 Opening Statements

The opening statement provides an opportunity for the complainant and respondent to introduce the matter to the Board, summarize the evidence that will be presented during the hearing and state the relief that is being requested. Usually, the complainant will give the first opening statement but the Board in its discretion may vary this procedure, including directing a waiver of one or more of the opening statements.

#### Rule 3.08 Order of Presentation of Evidence

The complainant shall present evidence to support its claim. The respondent shall then present evidence to support its defense. Witnesses for each party may be questioned by the Board and shall also submit to questions, if any, from the complainant and respondent. The Board has discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

The Board, in the exercise of its discretion, shall conduct the proceedings with the goal of expediting the resolution of the dispute and may direct the order of proof, bifurcate the proceedings, or direct the parties to focus their presentations on the issues that may be dispositive of all or part of the case.

#### Rule 3.09 Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the Board may deem necessary to its understanding and determination of the dispute. Conformity to the legal rules of evidence is not necessary. All evidence shall be taken in the presence of the Board and all of the parties, except where any of the parties is absent, in default or has waived the right to be present.

The Board shall determine the admissibility, relevance and materiality of the evidence offered and may exclude evidence deemed by the Board to be cumulative or irrelevant.

The Board shall take into consideration applicable principles of legal privilege such as those involving the confidentiality of communications between attorneys and their clients.

#### Rule 3.10 Closing Statements

When both parties have completed the presentation of their evidence, each may make a closing statement summarizing the evidence, stating the requested relief, and arguing in favor of that relief. Usually, the respondent will make the first closing statement, to be followed by the complainant. The process for closing statements may be varied at the discretion of the Board.

#### Rule 3.11 Post-Hearing Briefs

The Board may request the parties to submit post-hearing briefs.

#### Rule 3.12 Closing of the Record

The record is closed at the conclusion of the hearing, or, if post hearing briefs are requested, at the earlier of the submission of the briefs or the deadline for submitting them. In its discretion, the Board may re-open the record to take additional evidence at any time prior to rendering its decision.

#### Rule 3.13 Decision

The Board will determine whether the respondent's conduct as alleged in the complaint or as demonstrated at the hearing is in violation of the Ethics Ordinance. The Board will make its decision upon a vote of a majority of the Board based upon the evidence presented and the controlling law. The Board will issue its decision in the form of a written opinion, which will include any dissenting or concurring opinions. Once issued, the decisions and opinions are final.

#### Rule 3.14 Distribution of the Decision

The Board will send its decision to the city clerk who will maintain it in the manner specified in the Ethics Ordinance and in conformity with applicable law. The clerk will provide a copy to each party and any affected city department a copy of the decision. (Sec. 3-7 (b) (1) g)

### **Section 4 Procedure for Referred Questions of Disqualification Due to Personal Benefit or Conflict of Interest**

#### Rule 4.01 Scope

The rules in this Section apply to situations where, under Section 3-6 (i).(l), and (m) of the Ethics Ordinance, a Public Servant has a direct or indirect beneficial interest or a conflict of interest with regard to any matter before him or her, whether disclosed or undisclosed and has declined to recuse himself or herself from participating in any discussion, voting, approving, disapproving, recommending or otherwise acting upon such matter.

The affected city body may request that the Board decide the question of whether the public servant must refrain from participating in any discussion, deliberation, action, voting, approval, disapproval, recommendation or action because of disqualification due to a conflict of interest or beneficial interest in that matter. These rules contemplate that such referred questions be decided on an expedited basis.

#### Rule 4.02 Referral of Question

The City, its council, or any city board or committee, which is called the referring body, may refer to the Board the question of whether the Public Servant is disqualified from taking action as noted in Rule 4.01 and the Ethics Ordinance on any pending matter due to a conflict of interest or beneficial interest in the matter. The referring body will refer the question to the Board by filing the question with the city clerk on the form prescribed by the clerk. The referring body may include with the question any information and documents that may assist the Board in answering the referred question. The person who is alleged to have the beneficial interest in the matter or a conflict of interest is called the respondent.

#### Rule 4.03 Referral of Question for which no Disclosure has been filed

Section 3-6 of the Rochester Ethics Ordinance requires disclosure by public servants of conflicts of interest and direct or indirect beneficial interests in matters pending before them. If the question received from a referring body involves an undisclosed, alleged conflict of interest or direct or indirect beneficial interest relating to a matter pending before that body, the city clerk will so advise the Board, the referring body and the respondent, and the referred question will be treated as a complaint alleging a violation of the Ethics Ordinance and will proceed in the manner set forth under Rules 3.01-3.13.

#### Rule 4.04 Hearing Date

As soon as practicable after the referred question is filed, the clerk will set the matter for hearing on a date certain, which may be that same day and place the matter on the Board's calendar. The Board may convene and conduct the hearing immediately upon the clerk's receipt of the referred question, or may set another time for the hearing.

#### Rule 4.05 Notice of Hearing

The clerk will notify the referring body and the respondent of the hearing. Notice may be given orally or in any other form reasonably calculated to give the date, time, location and subject matter of the hearing. The board may request other persons to appear at the hearing by directing the clerk to notify those persons of the request and transmitting a copy of the referred question to them.

#### Rule 4.06 Hearings

At the scheduled time, the Board will conduct the hearing in accordance with the procedures set forth in Rule 3.06.

#### Rule 4.07 Opening Statements

The opening statement provides an opportunity for the referring body and respondent to introduce the matter to the Board, summarize the evidence that will be presented during the hearing and state the relief that is being requested. Usually, the referring body will give the first opening statement but the Board in its discretion may vary this procedure, including directing a waiver of one or more of the opening statements.

#### Rule 4.08 Order of Presentation of Evidence

The referring body shall present evidence to support its claim. The respondent shall then present evidence to support its defense. Witnesses for each party may be questioned by the Board and shall also submit to questions, if any, from the referring body and respondent. The Board has discretion to vary this procedure, provided that the parties are treated with

equality and that each party has the right to be heard and is given a fair opportunity to present its case.

The Board, in the exercise of its discretion, shall conduct the proceedings with the goal of expediting the resolution of the dispute and may direct the order of proof, bifurcate the proceedings, or direct the parties to focus their presentations on the issues that may be dispositive of all or part of the case.

#### Rule 4.09 Evidence

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the Board may deem necessary to its understanding and determination of the dispute. Conformity to the legal rules of evidence is not necessary. All evidence shall be taken in the presence of the Board and all of the parties, except where any of the parties is absent, in default or has waived the right to be present.

The Board shall determine the admissibility, relevance and materiality of the evidence offered and may exclude evidence deemed by the Board to be cumulative or irrelevant.

The Board shall take into consideration applicable principles of legal privilege such as those involving the confidentiality of communications between attorneys and their clients.

#### Rule 4.10 Closing Statements

When both parties have completed the presentation of their evidence, each may make a closing statement summarizing the evidence, stating the requested relief, and arguing in favor of that relief. Usually, the respondent will make the first closing statement, to be followed by the referring body. The process for closing statements may be varied at the discretion of the Board.

#### Rule 4.11 Post-Hearing Briefs

The Board may ask the parties to submit post-hearing briefs.

#### Rule 4.12 Closing of the Record

The record is closed at the conclusion of the hearing, or, if post hearing briefs are requested, at the earlier of the submission of the briefs or the deadline for submitting them. In its discretion, the Board may re-open the record to take additional evidence at any time prior to rendering its decision.

#### Rule 4.13 Decision

The Board will determine whether the respondent is disqualified from participating in any discussion, voting, approving, disapproving, recommending or otherwise acting upon the matter pending before the referring body due to a conflict of interest or beneficial interest in the matter. The Board will make its decision upon a vote of a majority of the Board based upon the evidence presented and the controlling law. The Board will issue its decision in the form of a written opinion, which will include any dissenting or concurring opinions. Once issued, the decisions and opinions are final.

#### Rule 4.14 Distribution of the Decision

The Board will send its decision to the city clerk who will maintain it in the manner specified in the Ethics Ordinance and in conformity with applicable law. The clerk will provide a copy of the decision to the referring body, the respondent and any affected city department.