

DIVISION 3.

ETHICS*

* **State Law References:** Local government ethics, Wis. Stats. § 19.59.

Sec. 2-135. Declaration of policy.

(a) It is declared that high moral and ethical standards among city officials and employees are essential to the conduct of free government. The common council believes that a code of ethics for the guidance of city officials and employees will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of Mequon in their officials and employees.

(b) It is the intent of the common council that the ethics board in its operations shall protect to the fullest extent possible, the rights of individuals affected.
(Code 1957, § 30.01; Ord. No. 98-250, 7-14-1998)

Sec. 2-136. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Anything of value means any money or property, favor, service, payment, advance, forbearance, loan or promise of future employment, but does not include compensation and expenses paid by the city, fees and expenses of more than \$100.00 which are permitted and reported to the ethics board under section 2-140(b), political contributions which are reported under Wis. Stats. ch. 11, or hospitality extended for a purpose unrelated to city business by a person other than an Organization.

Associated, when used with reference to an organization, includes any organization:

- (1) In which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least ten percent of the outstanding equity, voting rights, or outstanding indebtedness, or
- (2) Of which an individual or a member of his or her immediate family is an authorized representative or agent.

Board means the ethics board.

City official or employee means any individual employed by or holding an office or position, whether elected or appointed, paid or unpaid, full-time or part-time, as the case may be, (including members of councils, boards, committees, commissions or similar entities), but not including an office of position subject to the jurisdiction of the fire and police commission.

Immediate family means:

- (1) An individual's spouse; and
- (2) An individual's relatives by marriage, lineal descent or adoption.

Internal revenue code has the meaning given under Wis. Stats. § 71.01(5).

Ministerial action means an action that an individual performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to the exercise of the individual's own judgment as to the propriety of the action being taken.

Organization means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic. (Code 1957, § 30.02; Ord. No. 98-250, 7-14-1998)

Cross References: Definitions generally, § 1-2.

Sec. 2-137. Standards of conduct.

(a) *Generally.* The common council hereby reaffirms that a city official or employee holds his or her position as a public trust, and any effort to realize substantial personal gain through official conduct is a violation of that trust. This division does not prevent any city official or employee from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her duties to this city. The common council further recognizes that city officials and employees are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government; that city officials and employees retain their rights as citizens to interests of a personal or economic nature; that standards of ethical conduct for city officials and employees need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are substantial and material and that city officials and employees may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, or may need to maintain investments, which activities or investments do not conflict with the provisions of this division.

(b) *Prohibited practices.*

- (1) No city official or employee may use his or her public position or office to obtain financial gain or anything of substantial value for the city official's

or employee's private benefit or that of his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit an elected official from using the title or prestige of his or her office to obtain contributions permitted and reported under Wis. Stats ch. 11.

- (2) No person may offer or give to a city official or employee, directly or indirectly, and no city official or employee may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the city official's vote, the city official's or employee's official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the city official or employee. This subsection does not prohibit a city official or employee from engaging in outside employment.
- (3) No city official or employee may intentionally use or disclose information gained in the course of or by reason of his or her official position or activities in any way that could result in the receipt of anything of value for himself or herself, for his or her immediate family, or for any other person, if the information has not been communicated to the public or is not public information. This provision shall not be interpreted to prevent such city official or employee from reporting violations of this division or other illegal acts to the proper authorities.
- (4) No city official or employee may use or attempt to use his or her position to influence or gain unlawful benefits, advantages or privileges for himself or herself or others.
- (5) No city official or employee, member of such city official's or employee's immediate family, nor any organization in which the city official or employee or a member of such city official's or employee's immediate family owns or controls at least ten percent of the outstanding equity, voting rights, or outstanding indebtedness may enter into any contract or lease with the City of Mequon involving a payment or payments of more than \$3,000.00 within a 12-month period unless the city official or employee has first made written disclosure of the nature and extent of such relationship or interest to the board and to the department involved in regard to the contract or lease. Any contract or lease entered into in violation of this subsection may be voided by the city in an action commenced within three years of the date on which the board, or the department or officer acting for the city in regard to the allocation of funds from which such payment is derived, knew or should have known that a violation of this subsection had occurred. This subsection does not affect the application of Wis. Stats. § 946.13.
- (6) No city official or employee may represent a person for compensation

before a city department or any employee thereof, council, board, committee, commission or similar entity, except:

- a. In a contested case which involves a party other than the city with interests adverse to those represented by the city official or employee; or
- b. At an open hearing at which a stenographic or other record is maintained; or
- c. In a matter that involves only ministerial action by the department.

This subsection does not apply to representation by a city official or employee acting in his or her official capacity.

(7) No former city official or employee for 12 months following the date on which he or she ceases to be a city official or employee, may, for compensation:

- a. On behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of a department with which he or she was associated as a city official or employee within 12 months prior to the date on which he or she ceased to be a city official or employee.
- b. On behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any official or city employee of a department in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding which was under the former city official's or employee's responsibility as a city official or employee, within 12 months prior to the date on which he or she ceased to be a city official or employee.
- c. On behalf of any party other than the city, act in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding in which the former city official or employee participated personally and substantially as a city official or employee.

(c) *Inquiries by city official.* This section does not prohibit an elected city official from making inquiries for information on behalf of a person or organization or from representing a person or organization before a department if he or she receives no

compensation therefor beyond the salary and other compensation or reimbursement to which the elected city official is entitled by law.
(Code 1957, § 30.03; Ord. No. 98-250, 7-14-1998)

Sec. 2-138. Conflict of interest prohibited; exception.

- (a) Except in accordance with the board's advice under subsection (b) and except as otherwise provided in subsection (c), no city official or employee may:
- (1) Take any official action substantially affecting a matter in which the city official or employee, a member of his or her immediate family, or an organization with which such city official or employee is associated has a substantial financial interest.
 - (2) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the city official or employee, one or more members of the city official's or employee's immediate family either separately or together, or an organization with which the city official or employee is associated.
- (b) Advisory opinions.
- (1) Any individual, and specifically including former city officials and employees, either personally or on behalf of an organization or governmental body, may request of the board an advisory opinion regarding the propriety of any matter or matters to which the person is or may become a party, and any appointing officer, with the consent of a prospective appointee, may request of the board an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party. The board shall review a request for an advisory opinion and may advise the person making the request.
 - (2) Advisory opinions and requests therefor shall be in writing. Requests for advisory opinions, records obtained or filed in connection with requests for advisory opinions and advisory opinions rendered shall be closed in whole to public inspection. The board's deliberations and actions upon requests shall be in meetings not open to the public. It is prima facie evidence of intent to comply with this division when a person refers a matter to the board and abides by the board's advisory opinion if the material facts are as stated in the opinion request.
 - (3) No member of the board may make public the identity of the individual requesting an advisory opinion or of individuals or organizations mentioned in the opinion. This shall not be interpreted to preclude the board from compiling or publishing summaries of opinions rendered if no identification of the requestor or any organization identified in the opinion

is made. A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of the person is deemed to have waived the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the board in connection with the request for an advisory opinion.

(c) This section does not prohibit a city official or employee from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or prohibit a city official or employee from taking official action with respect to any proposal to modify law.
(Code 1957, § 30.04; Ord. No. 98-250, 7-14-1998)

Sec. 2-139. Exception: honorariums, fees and expenses.

(a) Generally. Every city official and employee is encouraged to meet with clubs, conventions, special interest groups, political groups, school groups and other gatherings to discuss and to interpret legislative, administrative, executive or judicial processes and proposals and issues initiated by or affecting any city department or agency.

(b) Reporting required:

(1) Except as provided in subsection (b)(2) of this section, every city official and employee who receives for a published work or for the presentation of a talk or participation in a meeting, any lodging, transportation, money or other thing with a combined pecuniary value exceeding \$100.00 excluding the value of food or beverage offered coincidentally with a talk or meeting shall, in the manner prescribed by the city administrator, report the identity of every person from whom the city official or employee receives such lodging, transportation, money or other thing of pecuniary value during his or her preceding taxable year, the circumstances under which it was received and the approximate value thereof.

(2) A city official or employee need not report under subsection (b)(1) of this section information pertaining to any lodging, transportation, money or other thing of pecuniary value which:

a. The city official or employee returns to the payor within 30 days of receipt.

b. The city official or employee can show by clear and convincing evidence was unrelated to and did not arise from the recipient being or having been a city official or employee and was made for a purpose unrelated to the purpose specified in subsection (a).

c. The city official or employee has previously reported to the board

as a matter of public record.

d. Is paid by the city.

(c) Notwithstanding section 2-138:

- (1) A city official or employee may receive and retain reimbursement or payment of actual and reasonable expenses and an elected city official or employee may retain reasonable compensation for a published work or for the presentation of a talk or participation in a meeting related to topic specified in subsection (a) if the payment or reimbursement is paid or arranged by the organizer of the event or the publisher of the work.
- (2) A city official or employee may receive and retain anything of value if the activity or occasion for which it is given is unrelated to the city official's or employee's use of the city's time, facilities, services or supplies not generally available to city residents and, the city official or employee can show by clear and convincing evidence that the payment or reimbursement was unrelated to and did not arise from the recipient's holding or having held a public office and was paid for a purpose unrelated to the purposes specified in subsection (a).
- (3) A city official or employee may receive and retain from the city, or on behalf of the city, transportation, lodging, meals, food or beverage, or reimbursement therefor or payment or reimbursement of actual and reasonable costs that the city official or employee can show by clear and convincing evidence were incurred or received on behalf of the city and primarily for the benefit of the city and not primarily for the private benefit of the city official or employee or any other person.
- (4) A city official or employee may receive and retain from a political committee under Wis. Stats. ch. 11 transportation, lodging, meals, food or beverage, or reimburse therefor a payment or reimbursement of costs permitted and reported in accordance with Wis. Stats. ch. 11.

(d) If a city official or employee receives a payment not authorized by this division, in cash or otherwise, for a published work or a talk or meeting, the city official or employee may not retain it. If practicable, the city official or employee shall deposit it with the city treasurer. If that is not practicable, the city official or employee shall return it or its equivalent to the payor or convey it to a charitable organization other than the one with which he or she is associated.

(Code 1957, § 30.05; Ord. No. 98-250, 7-14-1998)

Sec. 2-140. Organization, composition and operation of the board of ethics.

- (a) *Creation.* There is recreated an ethics board of the City of Mequon.

(b) *Purpose.* The ethics board shall advise the common council with respect to appropriate rules of ethics which shall govern city officials and employees in their duties, and shall administer the city ethics code including rendering advisory opinions, undertaking investigatory inquiries, and conducting enforcement hearings.

(c) *Membership and term of office.* The Mequon ethics board shall consist of nine members who are residents of the city and shall serve without compensation unless the common council otherwise provides. Members of the board of ethics shall not be elected officials, persons appointed to elective office, full-time appointed officials whether exempt or nonexempt, or city employees, nor shall they be currently serving on any other city board or commission. Board members shall be selected in the following manner and shall be submitted by the mayor to the common council for confirmation. Each alderman shall appoint a resident of his/her aldermanic district. If during his or her term, the member shall no longer reside in such district but continues to reside in the city, he or she may serve until a successor is duly appointed. The mayor shall make one appointment of a resident of any aldermanic district. All appointees shall be subject to confirmation by the common council. Terms of office shall be three years and shall be coterminous with the terms of office of the city official making the appointment.

(d) *Chairman.* The members of the board shall select their own officers.

(e) *Quorum.* Five members shall constitute a quorum for the transaction of the business of the ethics board.

(f) *Meetings.* Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine.
(Code 1957, § 30.06; Ord. No. 98-250, 7-14-1998; Ord. No. 2004-1093, § 1, 2-11-2004)

Sec. 2-141. Duties of the board.

The board may:

- (1) Adopt written rules as may be necessary to carry out this chapter. A copy of the rules shall be filed with the city clerk. The board shall give prompt notice of the contents of its rules to city officials and employees who will be affected thereby.
- (2) Prescribe and make available forms as may be necessary for use under this chapter.
- (3) Retain outside counsel and other experts, including without limitation clerical support and court reporting service for hearings as needed after solicitation of recommendations from the city attorney and upon contract for services approved for form and content by the city attorney.

- (4) Designate the person who shall act as legal custodian and accept and file any information related to the purposes of this chapter, which is voluntarily supplied by any person in addition to the information required by this chapter.
 - (5) Prepare and publish special reports and technical studies, as the board deems appropriate, to further the purposes of this chapter.
- (Code 1957, § 30.08; Ord. No. 98-250, 7-14-1998)

Sec. 2-142. Complaints.

(a) The board shall accept from any individual, either personally or on behalf of an organization or governmental body, a complaint in writing verified under oath which states the names of any person alleged to have committed a violation of this chapter and which sets forth the particulars thereof. The board shall within ten days following receipt of the verified complaint, forward to the accused a copy of the complaint and a general statement of the applicable provisions with respect to such verified complaint.

- (1) If the board determines that the verified complaint does not allege facts sufficient to constitute a violation of this chapter, it shall dismiss the complaint and notify the complainant and the accused.
- (2) If the board determines that the verified complaint alleges facts sufficient to constitute a violation of this chapter, it may make an investigation with respect to any alleged violation.
- (3) If the board determines that the verified complaint was brought for harassment purposes, the board shall so state.

(b) Following the receipt of a verified complaint or upon the receipt of other information, whether or not under oath, that provides a reasonable basis for the belief that a violation of this chapter has been committed or that an investigation of a possible violation is warranted, the board may investigate the circumstances concerning the possible violation. Prior to invoking any power under section 2-143, the board shall authorize an investigation by a motion of the board which shall state the nature and purpose of the investigation and the actions or activities to be investigated. Upon adoption of a motion, the board shall notify each person who is the subject of the investigation pursuant to subsection (3). If the board, during the course of an investigation, finds probable cause to believe that a violation of this chapter has occurred, it may:

- (1) If no verified complaint has been filed, make upon its own motion a verified complaint, which shall be in writing, shall state the name of the person who is alleged to have committed a violation of this chapter and shall set forth the particulars thereof. The board shall forward to the

accused within ten days a copy of the complaint, a general statement of the applicable provisions with respect to such verified complaint and a specific statement enumerating the source or sources of information upon which the complaint is based.

- (2) If a verified complaint has been filed and the board finds probable cause to believe that a violation of this chapter, other than one contained in the complaint, has occurred, it may amend the complaint, upon its own motion, to include such violations. If the complaint is so amended by the board, a copy of the amendment shall be sent to the person complained against within 48 hours.

(c) Upon adoption of a motion authorizing an investigation under subsection (b), the board shall mail a copy of the motion to each alleged violator who is identified in the motion together with a notice informing the alleged violator that the person is the subject of the investigation authorized by the motion and a general statement of the applicable provisions with respect to such investigation. Service of the notice is complete upon mailing.

(d) No action may be taken on any complaint which is filed later than three years after a violation of this chapter is alleged to have occurred.
(Code 1957, § 30.09; Ord. No. 98-250, 7-14-1998)

Sec. 2-143. Additional powers of the board.

Pursuant to any investigation or hearing conducted under this chapter, the board has the power:

- (1) To require any person to submit in writing such reports and answers to questions relevant to the proceedings conducted under this chapter as the board may prescribe, such submission to be made within such period and under oath or otherwise as the board may determine.
- (2) To administer oaths and to require by subpoena issued by it the attendance and testimony of witnesses and the production of any documentary evidence relating to the investigation or hearing being conducted. Issuance of a subpoena requires action by the board in accordance with this chapter.
- (3) To order testimony to be taken by deposition before any individual who is designated by the board and has the power to administer oaths, and, in such instances, to compel testimony and the production of evidence in the same manner as authorized by subsection (2).
- (4) To pay witnesses the same fees and mileage as are paid in like circumstances by the courts of this state.

- (5) To request and obtain from the department of revenue copies of state income tax returns and access to other appropriate information under Wis. Stats. § 71.78(4), regarding all persons who are the subject of such investigation.
 - (6) To retain outside counsel and other experts as needed after solicitation of recommendations from the city attorney and upon such contract for services approved for form and content by the city attorney.
- (Code 1957, § 30.10; Ord. No. 98-250, 7-14-1998)

Sec. 2-144. Probable cause of violation.

(a) At the conclusion of its investigation, the board shall, in preliminary written findings of fact and conclusions based thereon, make a determination of whether or not probable cause exists to believe that a violation of this chapter has occurred.

(b) If the board determines that no probable cause exists, it shall immediately send written notice of such determination to the accused and to the party who made the complaint.

(c) If the board determines that there is probable cause for believing that a violation of this chapter has been committed:

- (1) Its preliminary findings of fact and conclusions may contain an order setting a date for hearings to determine whether a violation of this chapter has occurred. The board shall serve the order upon the accused.
- (2) A hearing ordered under this subsection shall be commenced within 30 days after the date it is ordered unless the accused petitions for and the board consents to a later date.
- (3) Prior to any hearing ordered under this subsection, the accused is entitled to full discovery rights, including adverse examination of witnesses who will testify at the hearing at a reasonable time before the date of the hearing.
- (4) The board shall inform the accused or his or her counsel of exculpatory evidence in its possession.

(Code 1957, § 30.12; Ord. No. 98-250, 7-14-1998)

Sec. 2-145. Hearing procedure.

(a) Any hearing by the board shall be conducted in accordance with the following provisions:

- (1) The city official or employee must be given at least 20 days notice of the

hearing date.

- (2) The rules of evidence shall apply to the hearing. All evidence, including certified copies of records and documents which the board considers shall be fully offered and made part of the record in the case. A verbatim transcript of the testimony shall be made. Each party shall be afforded adequate opportunity to rebut or offer countervailing evidence.
- (3) During the entire hearing conducted under the provisions of this chapter, the city official or employee or any person whose activities are under investigation shall be entitled to be represented by counsel of his or her choosing. The board shall immediately disclose and forward to the city official or employee or his or her counsel any evidence which is possessed that may tend to clear the city official or employee.
- (4) The city official or employee or his or her representative shall have an adequate opportunity to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses to establish all pertinent facts and circumstances, and to question or refuse any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses. Upon the request of the officer involved, the board shall subpoena named individuals to appear as witnesses at the hearing, if such action is necessary to compel their attendance.
- (5) The board shall have the power to compel the attendance of witnesses and to issue subpoenas for books, records, documents or papers therein to be designated under the authority granted to it by Wis. Stats. § 88.501(3).
 - (b) The board may request the Wisconsin department of revenue for permission to have a designated public officer examine the income tax returns of the city officials or employee whose conduct or activities are under consideration by the board. The examination of the city official's or employee's income tax returns shall be in accordance with Wis. Stats. § 71.78(4).
 - (c) The board may appoint a hearing examiner to conduct hearings under this section. The board may also retain outside counsel and other experts as needed with respect to hearings in accordance with its policies. The selection of a hearing examiner and outside counsel or other experts and any contract for such persons shall be made after solicitation or recommendations from the city attorney and the contract shall be approved for form and content by the city attorney. Any person whose name is mentioned or who is otherwise identified during a hearing being conducted by the board and who, in the opinion of the board, may be adversely affected thereby, may, upon request of the person or representative of the person, or upon the request of any member of the board, appear at the hearing to testify on his or her own behalf or have a representative appear to so testify, and the board may permit any other person to appear and to testify at a hearing.

(d) The board shall not find a violation of this chapter except upon clear and convincing evidence admitted at the hearing.

(e) After the conclusion of the hearing the board shall as soon as practicable begin deliberations on the evidence presented at such hearing and shall then proceed to determine whether the accused has violated this chapter.
(Code 1957, § 30.13; Ord. No. 98-250, 7-14-1998)

Sec. 2-146. Determinations; board actions; penalties.

(a) If the board determines that no violation of this chapter has occurred, it shall immediately send written notice of such determination to the accused and to the party who made the complaint.

(b) If the board determines that a violation of this chapter has occurred, the board shall set forth its findings of fact and conclusions. According to such findings of fact and conclusions, the board may admonish the city official or employee, reprimand the city official or employee, make recommendations to the appropriate appointing authority or where it is determined that criminal misconduct or malfeasance may have occurred, the board shall refer the matter to the district attorney.

(c) Decisions of the ethics board shall be final and not subject to appeal or review by any city department or any employee thereof or by any council, board, committee, commission or similar entity or member thereof. Nothing herein shall limit the right of any person to pursue legal remedies otherwise available.
(Code 1957, § 30.14; Ord. No. 98-250, 7-14-1998)

Sec. 2-147. Reimbursement of legal expenses.

City funds shall be used to reimburse city officials and employees for reasonable legal expenses incurred in their successful defense of charges filed against them with the board, including when the matter is dismissed before hearing or determination as to whether a violation of the code was committed.
(Code 1957, § 30.16; Ord. No. 98-250, 7-14-1998)

Sec. 2-148. Public inspection of records.

(a) Except as provided in subsection (b) of this section, all records in the possession of the Board are open to public inspection at all reasonable times.

(b) Notwithstanding subsection (a) of this section, the following records in the board's possession are not open for public inspection.

- (1) Records obtained in connection with a request for an advisory opinion other than summaries of advisory opinions that do not disclose the identity

of individuals requesting such opinions or organizations on whose behalf they are requested. The board may, however, make such records public with the consent of the individual requesting the advisory opinion or the organization or governmental body on whose behalf it is requested.

- (2) Records obtained or prepared by the board in connection with an investigation, except that the board shall permit inspection of records that are made public in the course of a hearing by the board to determine if a violation of this chapter has occurred.

(Code 1957, § 30.17; Ord. No. 98-250, 7-14-1998)

State Law References: Public inspection of records, Wis. Stats. § 19.31 et seq.

Secs. 2-149--2-179. Reserved.