



*** All present are expected to conduct themselves in accordance with our City's Core Values ***

OFFICIAL NOTICE AND AGENDA

of a meeting of a City Board, Commission, Department, Committee, Agency, Corporation, Quasi-Municipal Corporation, or sub-unit thereof.

Meeting of: **ETHICS BOARD**
Date/Time: **Monday, November 18, 2024 at 3:00 PM**
Location: **City Hall (407 Grant Street) - Maple Room**
Members: Kay Palmer (C), Douglas Hosler (VC), Robyn DeVos, Calvin Dexter, Brian Mason

AGENDA ITEMS FOR CONSIDERATION (All items listed may be acted upon)

Call to Order/Roll Call

- 1 Discussion with the City Attorney regarding a recommendation for amendments to Chapter 2.03, Code For Public Officials and Employees.
- 2 Discussion with the City Attorney on the proposed Recusal Rule.

Adjournment

Kay Palmer, Chair

This Notice was posted at City Hall and faxed to the Daily Herald newsroom on 11/15/2024 at 4:00 PM.

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990 (ADA), the City of Wausau will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs or activities. If you need assistance or reasonable accommodations in participating in this meeting or event due to a disability as defined under the ADA, please call the ADA Coordinator at (715) 261-6590 or ADAServices@ci.wausau.wi.us to discuss your accessibility needs. We ask your request be provided a minimum of 72 hours before the scheduled event or meeting. If a request is made less than 72 hours before the event the City of Wausau will make a good faith effort to accommodate your request.

Recommended Ordinance Amendments 6/4/24 [DRAFT]

Additions shown with underlining, deletions shown with ~~strikeout~~.

(1) 2.03.020 Definitions. Add the following definition:

Unlawful means any act or omission prohibited by statute, ordinance or regulation of the United States, the State of Wisconsin or the City of Wausau.

[COMMENT: Existing 2.03.030(d) and (j) of the ordinance use the terms "lawful" and "unlawful". The addition of a definition would be helpful for the current ordinance and would be important for the proposed recommendations set forth below relating to standards (a), (c) and (d).]

[It has been suggested that there are "more appropriate venues" than a municipal ethics board, such as the courts, for dealing with violations of federal, state and local law. This suggestion ignores the Declaration of Policy set forth in the ordinance. That declaration identifies underlying policy that is distinct from the purposes of criminal codes and civil legal action.]

(2) 2.03.030 Standards of Conduct. Revise paragraph (a) to read as follows:

No official/employee shall use his or her public position, office, or title to obtain financial gain or anything of value for the private benefit of himself or herself or his or her immediate family, or for an organization with which the official/employee is associated, or to unlawfully cause or attempt to cause physical harm or economic or reputational damage to another person.

[COMMENT: Most of the standards proscribe conflicts of interest and using the office or employment for individual advantage. Use of city office or employment to unlawfully harm or damage other persons is an abuse of power that should be considered at least as unethical as conduct seeking or obtaining individual financial advantage. Abuse of power to harm others is "incompatible with the impartial and responsible exercise of the public trust." If abuse of power to harm other persons takes place and has not been designated by ordinance as unethical, it will damage the policy underlying the code to "improve the quality and integrity of public service and [to] promote, strengthen and nurture the faith and confidence of the citizens of this community in their public officials and employees."]

[As to concerns that the terms "harm" and "damage" may be unconstitutionally vague, note that the proposals here specify "physical" harm and "economic or reputational" damage. More importantly, the harm or damage must be "unlawful". Presumably, the statute, ordinance or regulation that the harm or damage violates is not itself unconstitutionally vague, therefore the recommended change to these ordinances is not unconstitutionally vague.]

(3) 2.03.030 Standards of Conduct. Revise paragraph (c), to read as follows:

No official/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 unlawful physical harm or economic or reputational damage to another person or 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.

[See COMMENT under (2) above.]

(4) 2.03.030 Standards of Conduct. Revise paragraph (d) to read as follows:

No official/employee shall use or attempt to use his or her public position, office or title to influence or gain unlawful benefits, advantages or privileges for himself, herself or other persons, or to unlawfully cause or attempt to cause physical harm or economic or reputational damage to another person.

[See COMMENT under (2) above.]

(5) 2.03.030 Standards of Conduct. Change paragraph (j) to read as follows:

No official/employee shall, while using his or her official title or while otherwise purporting to act in his or her official capacity, do any act or use his or her official title in performing any act, which ~~he or she knows~~ is in excess of his or her lawful authority or which ~~he or she knows he or she is forbidden by law to do in his or her official capacity.~~

[COMMENT: This simplifies the language of a standard that generally designates as unethical action that exceeds lawful authority. The requirement that the official/employee "knows" he or she is acting in excess of lawful authority is problematic. It invites an easy defense of "I didn't know that exceeded my authority." Rather than requiring a complainant to try to prove what the respondent knew, a respondent should be presumed to know the limits of authority for his or her position. If the respondent can produce convincing evidence of lack of proper training or other circumstances making a lack of knowledge a mitigating factor, the Ethics Board has the authority under 2.03.090(f) to make "such other recommendation or order as may be necessary and appropriate and as consistent with the intent and purposes of this chapter." In other words, the board could issue a warning rather than recommending censure, suspension or removal from office.]

(6) 2.03.040 Organization, Composition and Authority of the Board. Change the last sentence relating to Alternate Members in paragraph (a) to read as follows:

Alternate members shall act with full authority when a member of the board or other alternate member is absent, or recuses himself or herself from acting on a complaint before the board, ~~or abstains from voting or acting under this chapter.~~

[COMMENT: This change recognizes that abstention is not removal from participation on a matter before the board. The member may speak on the motion, possibly even voting on proposed amendments to the motion before abstaining on the ultimate vote. And even though the abstainer withholds his or her vote on the motion, the abstention can affect the outcome of a decision being made by a quorum of the board. If alternate members have authority to vote when a member abstains, the size of the board, at least for the vote before the board, is expanded to six, which is contrary to 2.03.040(a).]

City of Wausau Ethics Board Rule on Recusal

Adopted by the Ethics Board on October 7, 2024, subject to approval by the Common Council.

Section 1 - Definitions. In this rule:

- (a) All definitions in City of Wausau ordinance Chapter 2.03 Code of Ethics for Public Officials and Employees (the Code) shall apply.
- (b) “Member” means a member of the Ethics Board.
- (c) To “recuse” means to remove oneself from participating in a board proceeding to avoid a conflict of interest or to avoid the appearance that the member may be unable to act in an impartial manner in the proceeding.
- (d) “Proceeding” or “board proceeding” means any board activity related to a complaint filed pursuant to the Code.

Section 2 - Purpose. This rule is intended to assist individual members and the board in furthering the policies of the Code of Ethics. It does not create any right in any other person who is not a member to disqualify any member in any proceeding.

Section 3 - Scope. Recusal applies to participating in a proceeding on a complaint. Abstaining from voting on a motion made at a board meeting is distinct from recusal from a proceeding.

Section 4 - Effecting Recusal.

- (a) Members must initially determine for themselves whether they are subject to mandatory recusal at the time that the board determines a verified complaint has been received that alleges facts sufficient to constitute a violation of the Code of Ethics.
- (b) When mandatory recusal is not required, members should determine whether to exercise their discretion to recuse as soon as they have sufficient information to make that decision.
- (c) A member who has decided to recuse himself or herself from a proceeding shall announce the recusal during a public meeting of the board. Recusal shall constitute the member’s withdrawal from any remaining proceedings on the complaint.

Section 5 - Mandatory Recusal. A member shall recuse himself or herself from any proceeding of the board in which:

- (a) Participating in the proceeding would constitute a conflict of interest as described in the Code of Ethics.
- (b) The member is the complainant or respondent involved in the proceeding.

- (c) The member is in the immediate family of either the complainant or the respondent involved in the proceeding, or the member is divorced from, resides with or has previously resided with either the complainant or respondent.
- (d) The member can be expected to be a material witness in the proceeding, such as by providing an affidavit or testimony relating to the proceeding, except that the board may decide that mandatory recusal is not required if the board determines that an attempt to make the member a witness is a device to force the member to recuse.

Section 6 - Discretionary Recusal.

- (a) A member may recuse himself or herself from any proceeding of the board in which the member determines in the exercise of the member's discretion that for any reason, the member cannot be impartial in the proceeding or there is a substantial risk that it will appear that the member cannot be impartial.
- (b) In determining the risk of an appearance of inability to be impartial, the member should consider:
 - a. the public policies underlying the Code of Ethics, and whether recusal would further or undermine those policies,
 - b. the extent and nature of any connection the member may have with a party or witness to the proceeding,
 - c. the reality that participating in commerce, government and community organizations in a community of the size of Wausau makes it likely a member will have knowledge of or be acquainted with one of the parties, and the effect that recusal will have on the Ethics Board's functioning with limited membership.

Section 7 - Enforcement. If a member refuses to comply with the mandatory recusal requirements of Section 5, the remaining members of the board may take any of the following actions:

- (a) Proceed under Ethics Code Section 2.03.060(c) with a verified complaint against the member on the board's own motion.
- (b) Adopt a resolution specifying how the member violated this rule and send the resolution to the mayor and common council.