

*Code of
Ethics
for
Public
Officials
and
Employees*



Chapter 2.03

CODE OF ETHICS FOR PUBLIC OFFICIALS AND EMPLOYEES

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2.03.010 Declaration of policy. (a) Moral and ethical standards among city public officials and employees are essential to the conduct of representative government; and, the common council believes that a code of ethics, to establish standards of conduct for government officials and employees by setting forth those acts or actions that are incompatible with the impartial and responsible exercise of the public trust and avoid conflicts between personal interests and public responsibilities, will improve the quality and integrity of public service and promote, strengthen and nurture the faith and confidence of the citizens of this community in their public officials and employees.

(b) This code does not prevent any official/employee from accepting other employment or following any pursuit, which in no way interferes with the full and faithful discharge of his or her public duties. The common council recognizes that citizens who serve the city as public officials/employees retain their rights as citizens to interest of a personal or economic nature; that standards of ethical conduct for public officials/employees of the city 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/employee may need to engage in employment, professional or business activities, other than official duties, in order to support themselves and/or their families, to maintain a continuity of professional or business activity or may need to maintain investments, when activities or investments do not conflict with the specific provisions of this section. (Ord. 61-4706 ' 1(Exh. A)(part), 1990.)

2.03.020 Definitions. For the purpose of this chapter, the words set out in this section shall have the following meanings:

(a) “Anything of value”:

(1) Means any money, property, favor, service, payment, advance, forbearance, loan, guarantee of loan or promise of future employment;

(2) Includes, without restriction by enumeration, tickets, passes, admission offered and provided by sponsors or organizations doing business with the city;

(3) Shall not preclude an official/employee from attending programs or events sponsored by an agency of city government to which an official/employee shall attend or participate in the course of official/employee duty, and it shall not include political contributions which are reported under Chapter 111 of the Wisconsin Statutes, or hospitality extended for a purpose unrelated to city business by a person other than an organization;

(4) Shall not include fees, honorariums, compensation or reimbursement of expenses, provided reimbursement does not exceed one hundred dollars for a published work, meeting, presentation of a paper, talk or demonstration. If the value of the above exceeds one hundred dollars, the official/employee shall report such receipt to the board, with a brief report of the event concerned. The report shall be made within sixty days of its receipt.

(b) “Associated,” when used with reference to an organization, means any organization 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, at least ten percent of the outstanding equity, voting rights or indebtedness, whether individually or in the aggregate.

(c) “Board” means the ethics board.

(d) “City” means the city of Wausau.

(e) “Employee” means any person excluded from the definition of an official who is employed by the city.

(f) “Financial interest” means any interest, which yields a monetary or other material benefit to the official/employee or to any person employing or retaining the services of the official/employee.

(g) “Gift” means the payment or receipt of anything of value without valuable consideration.

(h) “Immediate family” means:

(1) An individual's spouse;

(2) An individual's relative by marriage, lineal descent or adoption, who receives, directly or indirectly, more than fifty percent of his or her support from such individual or from whom such individual receives, directly or indirectly, more than fifty percent of his or her support.

(i) “Income” has the meaning given under Section 61 of the Federal Internal Revenue Code.

(j) “Internal Revenue Code” has the meaning given under Section 71.02(1) (a) and (2) (b) of the Wisconsin Statutes.

(k) “Ministerial action” means an action performed in a prescribed manner in obedience to the mandate of legal authority without regard to the exercise of judgment as to the propriety of the action being taken.

(l) “Official” means any official holding an elected city office, any candidate for elected city office and all members of boards, commissions or committees appointed by the mayor or common council.

(m) “Organization” means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, unincorporated association, receivership, trust or any legal entity organized for profit, other than an individual or government entity.

(n) “Payor” means any person providing anything of value to the official/employee, and his or her spouse.

(o) “Person” means any individual, person or organization. (Ord. 61-4706 ' 1(Exh. A) (part), 1990.)

2.03.030 Standards of conduct. (a) No official/employee shall use his or her public position or office 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.

(b) No official/employee shall solicit or accept from any person, directly or indirectly, anything of value, if it could reasonably be expected to influence the official's vote, official/employee actions or judgments, or could reasonably be considered as reward for any official/employee action or inaction on the part of the official/employee. This subsection does not prohibit an official/employee from engaging in outside employment or his or her normal course of business.

(c) No official/employee shall 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.

(d) No official/official shall use or attempt to use his or her public position to influence or gain unlawful benefits, advantages or privileges for himself, herself or other person.

(e) No official/employee and no organization in which an official/employee or a member of his or her immediate family is associated shall enter into a contract with the city, for more than three thousand dollars per year, without first disclosing it at and entering it into the minutes of the meeting of the appropriate governmental body. 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 official/employee acting for the city, in regard to the allocation of city funds from which payment is derived, knew or should have known that a violation of this subsection occurred. This subsection does not affect the application of Section 946.13 of the Wisconsin Statutes.

(f) An official/employee may appear on behalf of and may make inquiries for information for a person before any city employee, department, board, commission or other agency, only if the official/employee receives no compensation therefor beyond the salary and other compensation or other reimbursement due which the official/employee is entitled by law.

(g) No official/employee shall engage in or accept private employment or act in regard to any financial interest, direct or indirect, which is incompatible with the proper discharge of his or her official/employee duties, if it could reasonably be expected to influence the official's vote, official/employee actions or judgment or could reasonably be expected to influence the official's vote, official/employee actions or judgment or could reasonably be considered as a reward for any official/employee action or inaction on the part of the official/employee, unless otherwise permitted by law and unless disclosure is made, as hereinafter provided.

(h) No official/employee shall, for compensation, act on behalf of any person other than the city, in connection with any judicial or quasi-judicial proceeding or matter which might give rise to a judicial or quasi-judicial proceeding in which the official/employee has at any time participated personally in his official/employee capacity.

(i) No official shall vote on any matter when the official or the official's immediate family has a personal financial interest.

(j) No official/employee shall in his or her official capacity do 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.

(k) No official/employee, without common council authorization, shall use or permit the use of any city property for personal convenience, use or profit.

(l) No former official shall, for compensation, for twelve months following the date on which he or she ceases to be an official, act on behalf of any person other than the city in connection with any judicial or quasi-judicial proceeding or matter which might give rise to a judicial or quasi-judicial proceeding in which the former official participated personally and substantially as a city official.

(m) No official/employee shall grant special consideration, treatment or advantage to any person, beyond that which is available to every other person.

(n) This section does not prohibit an official/employee of the city from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual necessary expenses, or prohibit an official/employee from taking official action with respect to any proposal to modify city ordinances or resolutions. (Ord. 61-4706 ' 1(Exh. A)(part), 1990.)

2.03.040 Organization and composition of the board. (a) There is created a board with five members appointed by the mayor and subject to confirmation by the common council. Members should be from diverse segments of the community. Each board member shall be a resident of the city and shall serve without compensation. The term of office shall be five years. On the first appointment of the board, board members shall be appointed for terms of one, two, three, four, and five years respectively.

(b) The members of the board shall select their own chairperson annually and shall adopt such rules as may be necessary to carry out the duties and responsibilities of the board under this chapter. Any rules adopted shall be subject to the approval of the common council.

(c) The city attorney shall furnish the board whatever legal assistance is necessary and proper to carry out its functions. The board or the city attorney may request the common council to authorize special counsel for the board. The board shall be furnished with whatever staff assistance is required to fulfill its duties. (Ord. 61-4706 ' 1(Exh. A)(part) , 1990.)

2.03.050 Duties of the board. Duties of the board are set out as follows:

- (a) Prescribe and make available forms for use under this chapter;
- (b) Accept and file any information related to the purposes of or required by this chapter;
- (c) Investigate any violation of this chapter on its own motion or upon complaint properly filed with it;
- (d) Maintain a record of its investigation, inquiries and proceedings. The findings of the board shall be public records;
- (e) Any person who is involved or about to be involved in any matter than could involve conduct prohibited by this chapter, or could result in a material conflict of interest on his or her part, may apply to the board for an advisory opinion. The board will not issue any opinion on conduct which may, in the judgment of the board, involve a violation of state or federal law. Such person may be guided by the opinion rendered by the board and the board is prohibited from issuing any complaint against any such person who acts in accordance with the opinion. Such person shall have the opportunity to present his or her interpretation of the facts at issue and of the applicability of provisions of this chapter before the advisory opinion is rendered. A

material conflict of interest on the part of any person is deemed to exist whenever the person's action or failure to act could reasonably be expected to produce or assist in producing a substantial benefit, directly or indirectly, for the person or his or her immediate family or an organization with which he or she is associated or the matter in question is one in which the official/employee, in his or her private capacity, or a member of his or her immediate family or an organization with which he or she is associated, has a substantial interest;

(f) 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, are not open for public inspection. 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. A person who makes or reports 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 any of the records obtained or prepared by the board, in connection with the request for an advisory opinion.

(g) Records obtained or prepared by the board, in connection with an investigation, are not open for public inspection, except that the board shall permit inspection of records that are made public in the course of hearing by the board to determine if a violation of this chapter has occurred. Whenever the board refers such investigation and hearing records to the city or a district attorney, they may be made public in the course of a prosecution;

(h) Maintain a current list of persons doing business in or engaged in transaction with or affecting the city for use by officials/employees. (Ord. 61-4706 '1(Exh. A)(part), 1990.)

2.03.060 Investigation of complaints. (a) The board shall accept from any individual, either personally or on behalf of an organization or governmental body, a verified complaint, in writing, signed and sworn to under oath, which states the name of any person alleged to have committed a violation of this chapter and which sets forth the particulars thereof. The board shall forward to the accused, within ten days, a copy of the complaint and a general statement of the applicable ordinances with respect to such verified complaint. 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. If the board determines that the verified complaint was brought for harassment purposes, the board shall so state.

(b) The board shall investigate any complaint properly filed with it. Pursuant to any investigation conducted under this section, 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 section, 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 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;

(3) To order testimony to be taken by deposition before any person, 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 (b)(2) of this section;

(4) To pay witnesses the same fees and mileage as are paid in like circumstances by the courts of Wisconsin.

(c) 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. No investigation of any person may be commenced until it has been authorized by the board, by a majority vote, and until the person, who is the subject of the investigation, has been notified of the investigation, pursuant to subsection (c)(3) of this section. During the course of an investigation, if the board finds probable cause to believe that a violation of this chapter has occurred, it may:

(1) If no verified complaint has been filed, upon its own motion, make 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. Within ten days, the board shall forward to the accused a copy of the complaint and a specific statement enumerating the source or sources of information on 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 of within forty-eight hours.

(3) As soon as it becomes apparent to the board that there exists probable cause for the belief that a particular person has committed a violation of this chapter, the board shall notify the alleged violator, by mailing a copy of a notice informing the alleged violator that such person is the subject of the investigation authorized by the board, and a general statement of the applicable ordinances with respect to such investigation. Service of the notice is complete upon mailing.

(4) 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. (Ord. 61-4706 '1(Exh. A)(part), 1990.)

2.03.070 Probable cause of violation. At the conclusion of this investigation, the board shall, in preliminary written findings of fact and conclusions based thereof, make a determination of whether or not probable cause exists to believe that a violation of this chapter has occurred. 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. If the board determines that there is probable cause for believing that a violation of this chapter has been committed, the preliminary findings and fact and conclusions may contain:

(a) A recommendation for prosecution, which shall be referred to the city attorney or district attorney, as appropriate;

(b) An order setting a date for hearing before the board to determine whether a violation of this chapter occurred. Such order shall be served upon the accused. A hearing ordered under this subsection shall be commenced within thirty days of the date it is ordered, unless the accused petitions for and the board consents to a later date. (Ord. 61-4706 ' 1 (Exh. A)(part), 1990.)

2.03.080 Hearing procedure. During any investigation and during any hearing which is conducted to determine whether a violation of this chapter has occurred, the person under investigation or the accused may be represented by counsel of his or her choosing and the accused or his or her representative, if any, shall have an opportunity to challenge the sufficiency of any complaint, which has been filed against him or her, to examine all documents and records obtained or prepared by the board in connection with the matter heard, to bring witness, to establish all pertinent facts and circumstances, to question or refute testimony or evidence, including the opportunity to confront and cross examine adverse witnesses. During any hearing conducted by the board to determine whether a violation of this chapter has occurred, all evidence, including certified copies or records, which the board considers, shall be fully offered and made a part of the record in the proceedings. Upon request of the accused, the board shall issue subpoenas to compel the attendance of necessary witnesses. The standards of evidence and the burden of proof applicable to civil forfeiture actions shall apply to hearings under this section. A hearing shall not be held with less than four members in attendance for the entire hearing. The board shall make a determination upon such evidence submitted by an affirmative vote of at least three members present at the hearing. (Ord. 61-4759 ' 1(part), 1991; Ord. 61-4706 ' 1(Exh. A)(part), 1990.)

2.03.090 Findings of fact and conclusionsOrders and recommendations. 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. If the board determines that violation of this chapter has occurred, its findings of fact and conclusions may contain one or more of the following orders or recommendations:

(a) In the case of any appointed officer or employee, a recommendation that he or she be censured, suspended or removed from office or employment. Such recommendation shall be made to the appropriate authority which may censure, suspend or take action to remove the official/employee from office or employment;

(b) In the case of an elected city officer, a recommendation that the officer be censured, suspended or removed from office. Such recommendation shall be made to the common council;

(c) In the case of a municipal justice, a recommendation that the justice be reprimanded, censured, suspended or removed from office. Such recommendation shall be sent to the Wisconsin Supreme Court and to the city of Wausau common council;

(d) An order requiring the official/employee to conform his or her conduct to this chapter;

(e) An order requiring the official/employee to forfeit not less than one hundred dollars or more than one thousand dollars, for each violation of this chapter. The city attorney, when so requested by the board, shall institute proceedings to prosecute and recover any forfeiture incurred under this section, which is not paid by the person against whom it is assessed;

(f) Such other recommendation or order as may be necessary and appropriate and as consistent with the intent and purposes of this chapter. (Ord. 61-4759 ' 1(part), 1991; Ord. 61-4706 ' 1(Exh. A)(part), 1990.)

2.03.100 Removal, suspension and censure. Upon receipt of a recommendation from the board that an officer be censured, suspended or removed from office, the appropriate appointing authority or common council, as the case may be, may proceed in accordance with procedures outlined in the municipal code and/or state statutes; but no officer subject to a civil service or to a police and fire commission law, or whose removal is governed by such law, shall be censured, suspended or removed otherwise than as therein provided. (Ord. 61-4706 ' 1(Exh. A)(part), 1990.)

2.03.110 Costs. (a) If the board finds that a complaint filed under this chapter was willful and malicious and without probable cause, the expenses of investigation and hearing of any such complaint by the board shall be paid by the person making the complaint. In all other cases such expenses shall be paid by the city.

(b) If any board proceedings are discontinued or dismissed or are determined favorably to an official/employee the city shall pay all reasonable expenses which the official/employee necessarily expended by reason of such proceedings. (Ord. 61-4706 ' 1(Exh. A)(part), 1990.)