



*** 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, September 11, 2023 at 3:00 PM**
Location: **City Hall (407 Grant Street) - Board Room (2nd Floor)**
Members: Robyn DeVos, Calvin Dexter Douglas Hosler, Brian Mason, Kay Palmer

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

Call to Order/Roll Call

- 1 Discussion and possible action on electing a chair and vice-chair person for the board
- 2 Approve minutes of the May 23 2022 Meeting
- 3 Discussion and possible action on amendments to chapter 2.03 Code of Ethics for Public Officials and Employees

Adjournment

Doug Hosler, Chair

This Notice was posted at City Hall and faxed to the Daily Herald newsroom on 9/06/2023 at 12:30 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.

Distribution: Media, Common Council, Jacobson, Rosenberg

ETHICS BOARD

Time and Place: Monday May 23, 2022 @ 3:00 pm, City Hall (407 Grant St.) – Council Chambers
Members Present: Doug Hosler, Calvin Dexter, Robyn DeVos, Brian Mason, and Kay Palmer
Others Present: Attorney Anne Jacobson, Mary Goede

In accordance with Chapter 19, Wisc. Statutes, notice of this meeting was posted and sent to the Daily Herald in the proper manner. The meeting was called to order by Acting Chair Doug Hosler at 4:00 pm. Roll Call indicated all 5 members present.

(1) Discussion and possible election of Chair and Vice Chair

Doug Hosler indicated he was willing to continue as chair, but noted his term would end in December. He felt the chairperson position should be limited to two years and they should alternate.

Motion by DeVos, seconded by Palmer to nominate Doug Hosler as Chair. Doug Hosler was elected to Chair 4-0, with one abstention.

Motion by Dexter, seconded by DeVos to nominate Kay Palmer to Vice-Chair. Kay Palmer was elected to Vice Chair 5-0.

(2) Approve minutes of the March 28, 2022 Meeting

Motion by Dexter, second by Mason to approve the minutes. Motion carried 5-0.

(3) Discussion and possible action approving response to request from Attorney O'Connor in letter received March 30, 2022

Anne Jacobson stated Attorney O'Connor's letter is in the meeting packet because it is public record, however, she did not have any open session discussion.

(4) CLOSED SESSION pursuant to 19.85(1)(g), Wisconsin Statutes, conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved, regarding response to letter received March 30, 2022

Motion by Hosler, second by Palmer to convene into Closed Session. Roll Call Vote: Ayes: Mason, Palmer, DeVos, Dexter, and Hosler. Motion carried unanimously. *The Board convened in Closed Session in the Maple Room.*

RECONVENED into Open Session

Jesse Kearns, Alternate Board Member, entered the meeting to observe.

(5) Discussion regarding recommendations to staff for procedural changes warranting ordinance amendments

Calvin Dexter questioned whether the board can legally make suggestions or recommendations to the City Council regarding changes to the Ethics Code rather than just make decisions on a complaint that comes before us.

Doug Hosler stated it was his understanding this item was on the agenda for the board to make suggestions on possible changes we'd like to see made to the ordinance to the City Attorney's Office, not the Council, based on our experiences going through the process of a filed complaint.

Anne Jacobson stated her office was currently in the process of amending the code where it is ambiguous and/or duplicative, etc., so this would be a good time to hear from the board regarding issues they struggled with, such as having to start and stop with multiple meetings.

Robyn DeVos commented the Declaration of Policy itself had good language and she did not think it needed any changes, but the Standards of Conduct does not necessarily match that original Declaration.

Dexter indicated he still had a real concern with Paragraph J of the Standards of Conduct (below) and Jacobson agreed it was too broad.

(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.

She suggested that it read “purporting” to act in their official capacity.

Discussion took place regarding clarification of “verified complaints” and investigation language that was confusing. Doug Hosler commented he would like to have a basic flow chart on the process for the board to use. Jacobson indicated she wouldn’t incorporate a chart into the ordinance, but it could be a Board Rule.

Dexter suggested putting together some guidelines on recusal, which he felt should be strictly voluntary for the member. He indicated he had been working on a rough draft of it that he thought may be helpful. He didn’t believe it needed to be a rule but could be a resource for guidance. He indicated it was based on a recusal statute for judges and he was willing to share it with the board.

A question was proposed as to whether elected officials for the city have general expectations of conduct. Anne Jacobson stated there are Council Rules enacted by ordinance, but has very little about conduct; however, there are Core Values established for both elected officials and employees.

Anne Jacobson suggested the board individually send suggestions to her office and the staff will work on them and provide a draft to review at a future meeting.

(6) Next meeting

Will be set

.

Adjournment

Motion to adjourn by Mason, seconded by DeVos. Motion passed unanimously. Meeting adjourned at 4:35 pm.

Respectfully Submitted,
Mary Goede, Deputy Clerk

Chapter 2.03 CODE OF ETHICS FOR PUBLIC OFFICIALS AND EMPLOYEES

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 **and avoid conflicts between personal antagonisms 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/employees 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.

Commented [TA1]: Chairperson proposed comment.

Section 1. That Section 2.03.020 Definitions is hereby amended to read as follows:

2.03.020 Definitions.

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

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 Wis. Stats. ch. 111, 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 \$100.00 for a published work, meeting, presentation of a paper, talk or demonstration. If the value of the above exceeds \$100.00, the official/employee shall report such receipt to the board, with a brief report of the event concerned. The report shall be made within 60 days of its receipt.

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.

Board means the Ethics Board.

City means the City of Wausau.

Employee means any person excluded from the definition of an official who is employed by the City.

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.

Gift means the payment or receipt of anything of value without valuable consideration.

Immediate family means:

- (1) An individual's spouse;
- (2) An individual's relative by marriage, lineal **ascent, lineal** descent or adoption, who receives, directly or indirectly, more than 50 percent of his or her support from such individual or from whom such individual receives, directly or indirectly, more than 50 percent of his or her support.

Income has the meaning given under section 61 of the Federal Internal Revenue Code.

Internal Revenue Code has the meaning given under Wis. Stats. **§71.01(6)**, ~~§71.02(1)(a) and (2)(b)~~

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.

Official means any ~~official~~ **individual** holding an elected City office, any candidate for elected City office and all members of boards, commissions or committees appointed by the Mayor or **appointed or confirmed by the** Common Council.

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.

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

Person means any individual, person or organization.

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 **or to unlawfully attempt to damage another person.**
- (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, **without proper legal authorization, disclose confidential information concerning the property, government, or affairs of the City. This includes information protected by attorney-client privilege or discussed in closed session. 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 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.

Commented [TA2]: Chairperson proposed comment.

- (d) No official/employee 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 **or to attempt to cause unlawful damage to another 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 \$3,000.00 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 Wis. Stats. § 946.13.
- (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 status as a city official/employee.**
- ALTERNATE (j): No official/employee shall use in his or her official title capacity in performing 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 12 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 **or to grant less than 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

Commented [TA3]: Chairperson proposed comment.

Commented [TA4]: Chairperson proposed comments.

Commented [TA5]: Chairperson proposed comments

Commented [TA6]: Chairperson proposed comments.

official/employee from taking official action with respect to any proposal to modify City ordinances or resolutions.

Section 2. That Section 2.03.040 Organization and composition of the board is hereby amended to read as follows:

2.03.040 Organization, and composition and authority of the board.

- (a) There is created an ethics 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. Two similarly qualified alternate members may also be appointed by the Mayor and subject to confirmation by the Common Council. The Mayor shall designate such alternate members as first and second alternates. Alternate members shall act with full authority when a member of the board or other alternate member is absent or abstains from voting or acting under this chapter because of a conflict of interest. On the first appointment of the board, board members shall be appointed for terms of one, two, three, four, and five years respectively. On the first appointment of the board alternates, the first alternate shall be appointed for a term of five years, and the second alternate shall be appointed for a term of two years.
- (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.~~ The board is empowered to investigate any alleged violation of this chapter upon the properly filed written complaint of a third party. To fulfill such purposes, the board shall have the powers set forth in section 2.03.075 and may prescribe and make available forms for use under this chapter.
- (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.~~ Meetings of the board shall be held as needed, except that an annual meeting shall be held on the third Wednesday of January of each year. At such annual meeting, the members of the board shall select their own chairperson and vice-chairperson and may adopt such rules as may be necessary to carry out the duties and responsibilities of the board. Any rules shall be subject to the approval of the Common Council.
- (d) The board may recommend amendments of this chapter to the Common Council.
- (e) Any action or determination of the board requires the affirmative vote of the majority of its members.
- (f) 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.
- (g) All documents received in connection with an alleged violation of this chapter are subject to the provisions of the open records law, Wis. Stat. §§19.31 – 19.39. All meetings of the board, including hearings under this chapter, are subject to the provisions of the open meetings law, Wis. Stat. §§19.81 – 19.98.

Section 3. That Section 2.03.050 Duties of the board is hereby repealed and recreated as Section 2.03.050 Advisory opinions.

Commented [TA7]: The current ordinance requires the board to select their own chairperson annually and adopt rules as necessary. This doesn't appear to be happening, so perhaps setting a firm day in the ordinance would be beneficial to making sure the board get together at least once a year?

Commented [TA8]: Green Bay and Madison have a similar provision. I don't think this is necessary to explicitly state in an ordinance in order for the board to be able to make recommendations, however, it may be of interest to the members for them to realize this may be done.

Commented [TA9]: The duties of the board section is repetitive in some places and the statement that one of its "duties" is to "investigate any violation" isn't really true. It doesn't have to investigate a violation or shouldn't have to investigate one that on its face doesn't set forth a reasonable basis for belief that a violation of the chapter has been committed.

2.03. 050 Advisory opinions.

- (a) Any person who is involved or about to be involved in any matter that could constitute a violation of this chapter may apply to the board in writing for an advisory 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. It is prima facie evidence of intent to comply with this section when a person refers a matter to the board and abides by the advisory opinion, if the material facts are as stated in the opinion request. 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.
- (b) No member of the board may make public the identity of an individual requesting an advisory opinion or of individuals or organizations mentioned in the opinion. Requests for confidential advisory opinions, records obtained or filed in connection with requests for confidential advisory opinions and confidential advisory opinions shall be closed in whole to public inspection pursuant to the open records law. 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. The board may compile or publish summaries of opinions rendered if identification is not made, directly or indirectly of the requestor or of any organization identified in the opinion. 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 waives the confidentiality of the request for an advisory opinion and any records obtained or prepared by the board in connection with the request for an advisory opinion.
- (c) Deliberations and actions of the board on a request for an advisory opinion shall be in meetings not open to the public.

Commented [TA10]: This provision used to include a clause that said "or could result in a material conflict of interest on his or her part..." This appears to conflict with the standards of conduct at 2.03.030 as they do not reference the concept of "material conflict of interest." Also deleted is the later provision that stated "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."

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 that 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,

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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.

Section 4. That Section 2.03.060 Investigations of complaints is hereby repealed and recreated as follows:

2.03.060 Violations and complaints.

- (a) Filing of complaints. Any resident of the City, either personally or on behalf of an organization or governmental body, may file a verified complaint, in writing, signed and sworn to under oath, which states the name of any person covered by this chapter, alleged to have committed a violation of this chapter and which sets forth the particulars thereof. The complaint shall be filed with the board in care of the City Clerk. Prior to acceptance of a complaint, the City Clerk shall determine whether or not the complaint is in proper form. If the complaint is not in proper form, the City Clerk shall return it to the complainant for further action. The City Clerk shall forward a copy of a properly submitted complaint and any supporting documents to the board and the accused within three working days of its acceptance and, upon consultation with the board chairperson, schedule the initial meeting of the board for consideration of the complaint. The City Clerk shall notify the accused and the complainant in writing of the time and date of the initial meeting of the board.
- (b) Time limitation. No action may be taken on any complaint filed more than 12 months after a violation of this chapter is alleged to have occurred.
- (c) Initial determination by board. The board shall review a third-party complaint at a duly called meeting and determine whether it alleges facts sufficient to constitute a violation of this chapter. 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 in writing. 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, may proceed directly to order a hearing before the board, or may make a referral to the district attorney's office recommending further investigation and possible prosecution. In the event the board determines to proceed directly to hearing, it shall provide the accused and the complainant a notice of the date and time of the hearing which shall be commenced within 30 days, unless the accused petitions for, and the board consents to a later date.
- (d) Investigations. The board shall authorize any investigation by resolution which shall state the nature and purpose of the investigation and the actions or activities to be investigated. A copy of the resolution shall be mailed to each person identified in the resolution as a subject of the investigation and a general statement of the statutes and ordinances applicable to the investigation. Service of the resolution is complete upon mailing. If the board determines that a verified complaint was brought for harassment purposes or is frivolous, the board will so state.

Commented [TA11]: Madison provides "[a]ny resident of the City may complain..."

Commented [TA12]: This would seem to save time. Milwaukee's Board of Ethics Rules and Procedures contains something similar.

Commented [TA13]: Why can't the Clerk forward the complaint to the accused...to save a meeting? Then the board can convene at a meeting to review and determine whether it alleges sufficient facts to allege a violation of the chapter has occurred?

Commented [TA14]: The City's current ordinance provides "[n]o 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. There are other cities that have a one year limit.

(e) Contact with board members. No person who has been notified that he/she is the subject of an investigation being conducted by the board, or who has been notified that he/she is the subject of a complaint filed with the board or by the board, shall contact any board member about his/her case except during a hearing conducted by the board.

(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 48 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.~~

Section 5. That Section 2.03.070 Probable cause of violation is hereby repealed and recreated with the following:

2.03.070 Probable cause.

- (a) Determination of probable cause. At the conclusion of an 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. If the board determines that no probable cause exists, it shall promptly send written notice of such determination to the accused and, if applicable, 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 occurred, its preliminary findings of fact and conclusions may contain an order setting a date for a hearing to determine whether a violation of this chapter has occurred and/or a referral to the district attorney's office recommending further investigation and possible prosecution. The board shall serve the preliminary findings of fact and conclusions and the order for hearing, if any, upon the accused. A hearing ordered under this section shall be commenced within 30 days after the date that it is ordered, unless the accused petitions for, and the board consents to a later date.
- (b) Issuance or amendment of complaint by board. If the board, during the course of an investigation, 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 violation. If the complaint is so amended by the board, the board shall send a copy of the amendment to the person complained against within 10 days.

~~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 30 days of the date it is ordered, unless the accused petitions for and the board consents to a later date.~~

Section 6. That Section 2.03.075 Powers of board is hereby created to read as follows:

2.03.075 Powers of Board.

Pursuant to any investigation or hearing conducted under this chapter, the board has the following powers and authority:

- (a) Require any person to submit, in writing, reports and answers to questions relevant to the proceedings within a specified time period and under oath or as the board may otherwise determine acceptable.
- (b) Administer oaths and require by subpoena, the attendance and testimony of witnesses and the production of documents.
- (c) Order testimony by deposition to be taken before any person designated by the board.
- (d) Pay witnesses fees and mileage in a like manner as set forth in section 814.67, Wis. Stats.
- (e) Retain or designate an investigator to assist the board from a list provided by the City Attorney's Office, based upon the availability of funds.

Section 7. That Section 2.03.080 Hearing procedure is hereby amended to read as follows:

2.03.080 Hearing procedure.

- (a) Due process. The board shall conduct any public hearing ordered by the board pursuant to section 2.03.070(a) in accordance with all common law requirements of due process. The accused or the accused's representative shall have an adequate opportunity to:
 - (1) Exercise full discovery rights, including adverse examination of witnesses who will testify at the hearing, within a reasonable time before the date of the hearing.
 - (2) Have the board inform the accused or his/her counsel of exculpatory evidence in its possession.
 - (3) Have witnesses heard.
 - (4) Establish all pertinent facts and circumstances.
 - (5) Question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.
 - (6) Be represented by counsel of his or her choosing at his or her own expense.
 - (7) Upon request of the accused, have the board issue subpoenas to compel the attendance of necessary witnesses.

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.

(b) Evidence and burden of proof. Chapters 901 through 911, Wis. Stats., apply to the admission of evidence at the hearing. The board shall not find a violation of this chapter except upon clear and convincing evidence admitted at the hearing.

Section 8. That Section 2.03.090 Findings of fact and conclusions—Orders and recommendations is hereby amended to read as follows:

2.03.090 Findings of fact and conclusions after hearing—Orders and recommendations.

Within seven (7) days after a hearing, the board shall prepare its written findings of fact and conclusions and deliver a copy to the accused and the party who made the complaint advising of its determination as to whether or not a violation of this chapter has occurred. ~~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 \$100.00 or more than \$1,000.00, 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.

2.03.095 Changes recommended by board.

If the board unanimously finds that an action of an official or employee is contrary to the Declaration of Policy without technically violating any specific section outside of that Declaration of Policy and the board unanimously finds that the act both violates the trust the community would reasonably have in its city officials and city employees and would lower the public status of those who are peers of the accused, the board shall submit to the City Attorney a request for a restatement of an item on the list of proscribed actions in section 2.03.030 or for an addition to that list – either of which would capture what the board unanimously found unethical but could not charge the accused with committing. This change would be submitted to the Common Council for approval or rejection.

2.03.100 Removal, suspension and censure.

Upon receipt of a recommendation from the board that an **officer official** 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 official** 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.

Section 9. That Section 2.03.110 Costs is hereby amended to read as follows:

2.03.110 Costs.

- (a) If the board finds that a complaint filed under this chapter was **wilful willful** and malicious and without probable cause, the expenses of investigation and hearing of any such complaint by the board **and the reasonable costs of defense of the accused** shall be **paid the responsibility of and borne** by the person making the complaint. ~~In all other cases such expenses shall be paid by the City.~~ **The City shall pay the accused for the reasonable cost of his or her defense upon assigning to the City any cause or action he or she may have for malicious prosecution against the complainant.**
- (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.

Commented [TA15]: Chairperson proposed comments. I do think this would be adequately covered under Section 2.03.040 (d)

Commented [TA16]: Does the City want this changed? Beloit, Green Bay, LaCrosse, Madison, are silent on costs. Kenosha pays if the charges are dropped or dismissed. Milwaukee pays upon successful defense. West Allis will also pay and its provision is identical to Wausau's. The language about assignment of any cause of action is similar to Kenosha.