



ADMINISTRATIVE COMMITTEE ***AMENDED** AGENDA

Date and Time: ***Friday, August 10, 2018 at 12:00PM CDT**

Location: **City Hall Council Chambers, 101 South Boulevard, Baraboo, WI 53913**

Notices:

Full Paper to Members:	Alderspersons: John Alt, John Ellington & Michael Zolper
Full Paper to Others:	Mayor, Mike Palm
Paper excluding Closed Session:	Library for subsequent posting
E-mail:	Media-Committee e-mail group, Clerks
Outlook Meeting Calendar:	Administrator, Ed Geick; Police Chief, Mark Schauf; Clerk, Brenda Zeman; Engineer, Tom Pinion
Citizens' notices:	Eric Kaun; Melissa Barnes

1. Call to Order:

- a. Note Compliance with Open Meeting Law.
- b. Approve minutes – July 2, 2018.
- c. Approve agenda.

2. Action Items:

- a. Review and recommendation to the Common Council to update the Council Member's Handbook. **See the following attachments:**
 - i. Common Council Handbook, current
 - ii. Common Council Handbook, proposed revision
- b. Consider recommendation to the Common Council to change the City Code Chapter 14.13, "Private Swimming Pools" for the purpose of allowing pool covers as a substitution to fences – referred to in section (4) "Fences." **See the following attachments:**
 - i. Memo City Administrator
 - ii. Memo City Attorney
- c. Tavern Operator License Appeal for Eric Kaun – Review and Recommendation to Common Council. **See the following attachments:**
 - i. Tavern Operator license Application
 - ii. Email communication Chief Schauf
- d. Consider application for keeping Chickens:
 - i. Melissa Barnes @ 955 2nd Street

3. Information Items;

- a. Date and time of next meeting: September 3, 2018 at 12:00PM CDT

4. Adjournment;

John Alt, Chairman

For more information about the City of Baraboo, visit our website at www.cityofbaraboo.com.

Amended Agenda prepared by Brenda Zeman, 08/06/2018

Any person, who has a qualifying disability as defined by the Americans with Disabilities Act and requires the meeting or materials at the meeting to be in an accessible location or format, should contact the Baraboo City Clerk at 101 South Boulevard or phone (618) 355-2700 during regular business hours at least 48 hours before the meeting to ensure reasonable arrangements are made to accommodate each request.

Administrative Committee

July 2, 2018

Present: Alderpersons John Alt and John Ellington

Absent: Alderperson Michael Zolper

Also Present: Mayor, Mike Palm; City Administrator, Ed Geick; Attorney, Emily Truman; Police Chief, Mark Schauf; Finance Director, Cynthia Haggard and City Clerk, Brenda Zeman

The meeting was called to order by Chairman John Alt at 12:00PM CDT., noting compliance with the Open Meetings Law.

Moved by Ellington to approve the minutes of June 4, 2018, seconded by Alt and unanimously carried.

Motion by Ellington to approve agenda, seconded by Alt and unanimously carried.

Review and recommendation to the Common Council to update the Council Member's Handbook.

Truman informed the Committee that what was before them now is the same as what was presented to them last month: A copy of the current Council Members' Handbook and the proposed new one. As was mentioned last month, Truman stated she was getting rid of the legalese contained in original version. She emphasized her desire to make the language more user friendly. Ellington mentioned that he and others could always refer back to the ordinances, if needed. Truman concurred.

Truman mentioned she started the revision process over a year ago. The point of reference she was using was the 2001 version, which until just recently, was the handbook available online. She also mentioned she was motivated by the Library's handbook (given out to Library Board Members).

Truman presented to the committee two questions: 1) Are there any changes the Committee wanted to make to the handbook? 2) Should the City provide this handbook and other material to newly elected officials in binders?

Ellington questioned quorums: He recited, from the handbook, that 2/3 of the members of Council is quorum. He mentioned there was a meeting with five (5) and wanted to know what that meant. Truman responded, that it's in chapter 2 of the Code of Ordinances, and that it was a very good question. She sought resolve by mentioning that Council could adopt a rule whereby less than 2/3, they can suspend the rules to allow what is considered a standard Robert's Rules Quorum – the majority. Alt asked if the Committee should recommend the change now. Truman was in favor of it.

Ellington mentioned he would like to see page numbers added to the handbook and directed the Committee to the last page. This section contained the wording about the quorum. Truman stated that if the Committee wanted to recommend to change the Ordinance, she would bring the revised Ordinance and revised handbook (which would mirror the change in the Ordinance) to the next meeting.

Mayor Palm added that if the Ordinance was going to change, he suggested a simple majority. Truman added that Chapter 2 of the Code of Ordinances may need additional changes. Truman wanted guidance on whether to revise this particular portion of Chapter 2 or look at the Ordinance in its entirety for other potential changes. Ellington responded that the entire Chapter should be reviewed. Truman concluded with asking if there were other changes to the handbook.

Ellington wanted confirmation as to his understanding about the Library Board. He stated, according to the handbook, the municipality could have a member chosen for the Library Board, but just couldn't have two (2). Truman concurred. Mayor Palm added that the makeup of the Library Board is very specific and that it will be reviewed. Truman asked if the Committee wanted a list of members serving on committees in the handbook. Ellington and Alt both responded that they like the summary of all the Boards and Committees in the handbook to include a list of who is assigned to them.

Truman asked if the Committee wanted the handbook in a binder. Both Ellington and Alt wanted the handbook in a binder.

Motion to hold this item until the August 6, 2018 meeting by Ellington, seconded by Alt and unanimously carried.

Consider recommendation to the Common Council to change the City Code Chapter 14.13, "Private Swimming Pools" for the purpose of allowing pool covers as a substitution to fences – referred to in section (4) "Fences."

Ellington wanted to hear from Chief Schauf. Schauf commented that he has seen these covers and believes it meets the insurance institute's standards. However, the problem is how easy it is to open the covers. He added that a fence is a visible barrier, as well as a physical barrier. The covers are easily seen. Truman added that pool covers are not an issue with the City's insurance carrier: If the City changes the Ordinance, there are no liability concerns. Geick interjected that there is a lot of abuse by citizens who have pools as to what they do and don't do when following the rules – there are pools with partial railings.

Motion to recommend to Council by Ellington, not seconded and does not pass for lack of second.

Review and recommendation to the Council on the proposed changes to the Special Event License Ordinance.

Truman introduced the item summary, redline version of current ordinance and the proposed ordinance. The reason this change has come about, is the City is encountering some special events and given the current definition of a special event under the City's Ordinance, it's too broad. She continued. Basically any event on public or private property, where the public is invited, is a special event. Truman is not comfortable, legally speaking, with the breadth of the meaning. She wants to better define the definition. She wants to limit it to events that take place on public property, City property and owned or managed property that's beyond the normal and ordinary use of the property. It encompasses some events on private property, if the event will affect other people's normal and ordinary use of the property. Other changes:

- Security requirements – someone from the event and during the event be reachable by phone.
- Requirements of event organizer – must be at least 18 years of age.
- Places requirements – bathroom facility and recyclable facility.
- Extending the deadline for filing a license to 30 days
- Deadline for all other costs 14 days.

Under the current and proposed special event ordinance, there is still an application fee of \$150. This fee is waived for nonprofits and government entities. Aside from the application fee, there is a cost for City services. In instances where City services are used above \$500, such as police, the City is to be reimbursed. The City is also not requiring a bond unless it's a huge event. Alt questioned Schauf on how many of these the City handles. Schauf responded that it happens daily – most are minor.

Motion to recommend to the Council on the proposed changes to the Special Event License Ordinance by Ellington, seconded by Alt and unanimously carried.

Consider applications for keeping Chickens

Alt identified five (5) new applications on the agenda. Alt asked Schauf about how many issues the City has had with chicken farmers. Schauf indicated there have been no issues. The only place there was an issue was with a fox being caught in a chicken coop - an unlicensed one.

Motion by Ellington to approve applications for keeping chickens, seconded by Alt and unanimously carried.

Member comments

The next meeting will be August 6, 2018 at 12:00PM CDT. Meeting location will be 101 South Boulevard. Moved by Ellington to adjourn, seconded by Alt and unanimously carried. Meeting adjourned at 12:39PM CDT.

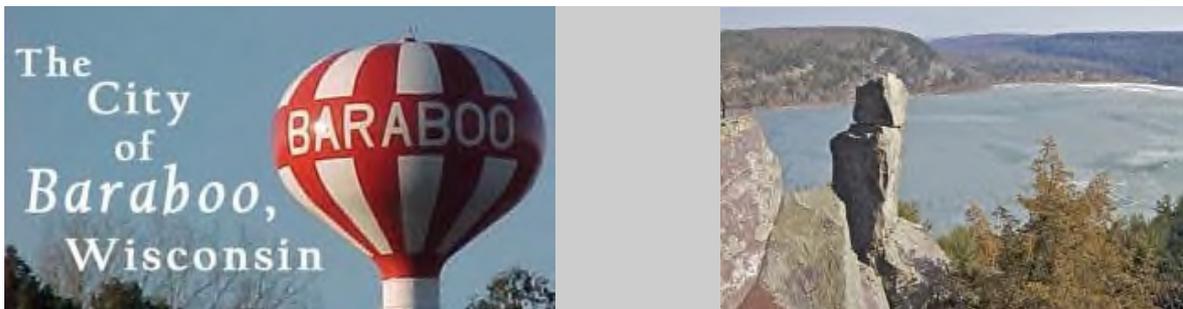
Respectfully submitted,
Cynthia Haggard, Finance Director

Action Item 2.a. Attachments

Common Council Handbook
City of Baraboo, Sauk County, Wisconsin



Congratulations on your successful election and welcome to the Baraboo Common Council. This Handbook will set forth some basics regarding Council proceedings, and the requirements of State Law that effect the operations of the Council. This Handbook is meant to be a guide. Should you have other questions, or specific concerns regarding any situation, you should contact the City Administrator or the City Attorney for guidance regarding your situation or issue.



Where laws end, tyranny begins. –
William Pitt, the Elder.

1.86 CODE OF CONDUCT FOR ELECTED AND APPOINTED OFFICIALS

(1) The proper operation of democratic government requires that public officials be independent, impartial, and responsible to the people; that decisions and policy be made in the best interests of the people, the community, and the government; that public office not be used for personal gain; and that the public has confidence in the integrity of its government. In recognition of these goals, this Code of Conduct shall apply to all elected and appointed officials of the City of Baraboo. Nothing contained herein is intended to deny to any individual those rights granted by the United States Constitution, the constitution and laws of the State of Wisconsin. The purpose of this code is to establish a minimum standard of conduct to assist public officials in avoiding those acts or actions that are incompatible with the best interests of City government and the people of the City of Baraboo. Further, this Code provides the process by which determinations are made that public officials have acted in ways which are incompatible with the best interests of City government and of the people of the City of Baraboo. This Code of Conduct neither supplants the City of Baraboo Code of Ethics, nor supersedes State Laws relating to the conduct of public officials.

(2) **COUNCIL CONDUCT WITH ONE ANOTHER.** Councils are composed of individuals with a wide variety of backgrounds, personalities, values, opinions, and goals. Despite this diversity, all have chosen to serve in public office in order to preserve and protect the present and the future of the community. In all cases, this common goal should be acknowledged even as Council may “agree to disagree” on contentious issues.

(a) **IN PUBLIC MEETINGS.** Elected and appointed officials shall conform with the following standards in public meetings:

1. Practice civility and decorum in discussions and debate. Councilmembers and members of committees shall not make personal, slanderous, threatening, or abusive comments. No shouting or physical actions that could be construed as threatening are allowed.
2. Honor the role of the Chair in maintaining order. Councilmembers and members of committees shall honor the Chair in focusing discussion on current agenda items. Disagreements regarding the agenda or the Chair’s actions, shall be voiced politely and with reason, following procedures outlined in parliamentary procedure.
3. Release of Confidential Information Prohibited. Members of Council and committees have a duty to hold in strict confidence all information concerning matters dealt with in Closed Session. The release of any confidential information to third parties is prohibited, including but not limited to the release of records prohibited by §19.35, §19.356, §19.36, Wisc. Stats., or any other statutory or common law limitation on the release of records, and any document made available as a part of a closed session by the Council or committee. A Councilmember or a committee member shall not, either directly or indirectly release, make public, or in any way divulge any such information, or any aspect of the closed session deliberations to anyone, unless expressly authorized by Council or required by law to do so;

(b) **IN PRIVATE ENCOUNTERS.** Elected and appointed officials shall conform with the following standards in private encounters with the public:

1. Continue respectful behavior in private. The same rules regarding respect and consideration of differing view points and speakers applicable to meetings shall be maintained in private conversations regarding City business.
2. Be aware that written notes, voicemail messages, and email may be public records. Written notes, voicemail messages and email are subject to the same rules regarding respect and consideration as would be applicable to conduct in public meetings and private encounters. Such items shall be treated as public communications subject to the Wisconsin Open Records Law.
3. Applicability of City Harassment Policy. The City of Baraboo maintains a Harassment Policy. City elected and appointed officials are subject to this policy the same as City employees. Violations of the Harassment Policy by elected or appointed official may subject the City and its taxpayers to liability. Without limiting the generality of the foregoing, members of council and committees shall not engage in any of the following when directed at or to City officials, employees, contractors and their employees, and the general public while engaged in City business:

Prohibited Activity (Sexual Harassment and Harassment)

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or

Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee; or

Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive working environment.

Harassment is any verbal, written, visual, or physical act that creates a hostile, intimidating, or offensive work environment or interferes with an individual's job performance.

No employee shall either explicitly or implicitly ridicule, mock, deride, or belittle any person.

Employees shall not make offensive or derogatory comments to any person, either directly or indirectly, based on race, color, sex, religion, age, disability, marital status, sexual orientation, national origin, and other forms of discrimination prohibited by the Wisconsin Fair Employment Act. Such harassment is a prohibited form of discrimination under state and federal employment law and/or is also considered misconduct subject to disciplinary action by the City.

- (3) **Council Conduct with City Staff.** Governance of a City relies on the cooperative efforts of elected officials and committee members, who set policy, and City staff who implements and administers the Council's policies. Therefore, every effort should be made to be cooperative and show mutual respect for the contributions made by each individual for the good of the community. Elected and appointed officials shall therefore:

Democracy is two wolves and a lamb voting on what to have for lunch. – Benjamin Franklin.

- (a) Treat all staff as professionals.
- (b) Council questions/inquiries to City staff.
 - 1. General. Council and committee communications with City staff should be limited to normal City business hours unless the circumstances warrant otherwise. Responses to questions posed outside of normal business hours should be expected no earlier than the next business day.
 - 2. Requests for General Information and Inquiries. Councilmembers and members of committees may contact staff directly for information made readily available to the general public on a regular basis or for easily retrievable information not routinely requested by the general public. Under these circumstances staff shall treat the Councilmembers and members of committees no differently than they would the general public, and the Councilmembers and members of committees shall not use their status to secure preferential treatment.
 - 3. Non-Routine Requests Requiring Special Effort. Any Councilmembers and members of committees requests or inquiries that requires staff to compile information that is not readily available or easily retrievable and/or that requests staff to express an opinion (legal or otherwise) must be directed to the City Administrator, or to the City Attorney, as appropriate. The City Administrator (or City Attorney as appropriate) shall be responsible for distributing such requests for follow-up and shall review them for potential conflicts of interest. Advisory Legal Opinions from the City Attorney may be requested pursuant to §1.83, Ordinances.
 - 4. Public Safety and Personnel Restrictions. Requests for information regarding personnel or Police Department actions are legally restricted. It is the policy of the City of Baraboo to adhere to confidentiality with all applicable legal authorities governing the release of personnel information, law enforcement, and other public records.
- (c) Councilmembers and members of committees shall not disrupt City staff while they are in meetings, on the phone, or engrossed in performing their job functions in order to have their individual needs met.
- (d) Councilmembers and members of committees shall not attempt to influence City staff on the making of appointments, awarding of contracts, selecting of consultants, processing of development applications, or granting of City licenses and permits, when the Councilmembers or members of committees may have a conflict of interest. Such attempts may violate the criminal laws of the State of Wisconsin and thereafter result in prosecution by the District Attorney.

- (e) Check with City staff on correspondence before taking action. Before sending correspondence, Councilmembers and members of committees shall check with City staff to see if an official City response has already been sent or is in progress.
- (f) Limit requests for staff support. Routine secretarial, exchange server support for public email accounts, and consultative support will be provided to all Councilmembers and members of committees. Requests for additional staff support – even in high priority or emergency situations – shall be made to the City Administrator.
- (g) Do not solicit political support from staff. Councilmembers and members of committees shall not solicit any type of political support (financial contributions, display of posters or lawn signs, name on nomination petitions, etc.) from City staff at the workplace or during work hours.

I must study politics and war that my children may have liberty to study philosophy and mathematics. – John Adams.

(4) COUNCIL CONDUCT WITH THE PUBLIC.

(a) **In Public Meetings.** No signs of bias, prejudice or disrespect should be evident on the part of individual Councilmembers and members of committees toward an individual participating in a public forum. All efforts shall be made to be fair and impartial in listening to public testimony.

1. Public speakers shall be treated with respect.
2. Ask for clarification, but do not debate and argue with the public. Only the Chair – not individual Councilmembers and members of committees – may interrupt a speaker during a presentation. A speaker shall never be belligerently challenged or belittled. Councilmembers and members of committees’ personal opinions or inclinations about upcoming votes shall not be revealed until after the public hearing is closed.
3. No personal attacks of any kind, under any circumstance. Councilmembers and members of committees shall be respectful of all speakers before them, and shall not be intimidating.

(b) **IN UNOFFICIAL SETTINGS.** Elected and appointed officials shall:

1. Make no promises on behalf of the Council, and shall not overtly or implicitly promise Council action, or promise City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.).
2. Members of Council and committees shall accurately communicate the attitudes and decisions of the Council or committee, even if they disagree with Council’s or the committee’s decision, such that respect for the decision-making processes is fostered.

(5) COUNCIL CONDUCT WITH OTHER PUBLIC AGENCIES. In dealing with other public agencies, bodies and commissions, elected and appointed officials shall:

- (a) Be clear about representing the city or personal interests. If a Councilmembers or members of committees appears before another governmental agency or organization to give a

statement on an issue, Councilmembers and members of committees must clearly state: 1) if his or her statement reflects personal opinion or is the official stance of the City; 2) whether this is the majority or minority opinion of the Council. If the Councilmembers and members of committees is representing the City, the Councilmembers and members of committees must support and advocate the official City position on an issue, not a personal viewpoint. [See Baraboo Code of Ethics, §§1.70-1.85, Ordinances.]

- (b) Correspondence must be equally clear about representation. City letterhead may be used when the Councilmembers or a committees chair is representing the City and the City's official position. A copy of official correspondence shall be given to the City Clerk as part of the permanent public record. City letterhead shall not be used for personal correspondence of Councilmembers or other public officials or representatives. Councilmembers and committee chairs may use City letterhead for correspondence sent in an official capacity regarding an issue the City is involved in.

(6) **COUNCIL CONDUCT WITH BOARDS AND COMMISSIONS.** The City has established several Committees and Commissions as a means of gathering more community input and the more in depth examination of issues affecting the City. Citizens who serve on Committees and Commissions become more involved in government and serve as advisors to the City Council. They are a valuable resource to the City's leadership and should be treated with respect.

- (a) If attending a Board or Commission meeting, be careful to only express personal opinions. Councilmembers may attend any Committee or Commission meeting. However, they should be sensitive to the way their participation – especially if it is on behalf of an individual, business or developer – could be viewed as unfairly affecting the process. Any public comments by a Councilmembers at a Committee or Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council.
- (b) Limit contact with Committee and Commission members to questions of clarification. It is inappropriate for a Councilmembers to contact a Committee or Commission member to lobby on behalf of an individual, business, or developer in circumstances when the Conflicts of Interest rules apply. (See §1.77, Ordinances). It is acceptable for Councilmembers to contact Committee or Commission members in order to clarify a position taken by the Board or Commission.
- (c) Committees and Commissions serve the community, not individual Councilmembers. The Mayor or City Council appoints individuals to serve on Committees and Commissions, and it is the responsibility of Committees and Commissions to follow policy established by the Council. Committee and Commission members do not report to individual Councilmembers, nor do Councilmembers have the power or right to threaten Committee and Commission members with removal if they disagree about an issue. A Committee or Commission appointment shall not be used as a political “reward.”
- (d) Be respectful of diverse opinions. A primary role of Committees and Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Councilmembers may have a closer working relationship with some individuals serving on Committees and Commissions, but must be fair

The measure of a man's character is what he would do if he knew he would never be found out. – Thomas Babington Macaulay.

and respectful of all citizens serving on Committees and Commissions.

- (e) Keep political support away from public forums. Committee and Commission members may offer political support to Councilmembers, but not in a public forum while conducting official duties. Conversely, Councilmembers may support Committee and Commission members who are running for office, but not in an official forum in their capacity as a Councilmembers and members of committees.
- (7) **COUNCIL CONDUCT WITH THE MEDIA.** The Mayor is the official spokesperson and representative on City positions. The Mayor shall be the designated representative of the Council to present and speak on the official City position. If individual Councilmembers or members of a committee are contacted by the media, the Councilmember or member of a committee should be clear about whether their comments represent the official City position or a personal viewpoint.
- (8) **ALCOHOL AND OTHER INTOXICANTS.** Elected and appointed officials shall not engage in any official duties while under the influence of alcohol, an intoxicant, a controlled substance, a controlled substance analog, or any combination of substances, to a degree which renders them incapable of exercising sound judgment in their official duties.
- (9) **VIOLATIONS OF CRIMINAL LAW.** It is a violation of the ethical standards of the City of Baraboo for a Councilmember or member of a committee to engage in violations of criminal law. A violation of criminal law occurs when, during their term of office, there is a guilty plea or plea of no contest to the criminal laws of any state or the United States or the ordinances of any municipality substantially conforming to a criminal statute.
- (10) **SANCTIONS.** Councilmembers and members of committees should point out to offending members infractions of the Code of Ethics or Code of Conduct. If offenses continue, the matter should be referred to the Mayor in private. If the Mayor is the individual whose actions are being challenged, then the matter should be referred to the Council President.

The Mayor may privately address any conduct concern with Councilmembers or committee members, including but not limited to: discussing and counseling the individual on the violations, referring the matter to the Ethics Board for consideration, or recommending sanction to the full Council to consider in a public meeting. Nothing in this section shall act to limit or restrict the right of any official or citizen to refer a matter to the Ethics Board pursuant to the procedures established in §1.84, Ordinances.

The Mayor and all Councilmembers may initiate action by referral of the matter to the Ethics Board if a Councilmembers or committee member's behavior may warrant sanction. City Councilmembers and members of committees who intentionally fail to follow proper conduct may be reprimanded or formally censured by the Council, lose committee assignments, or have official travel restricted. Serious infractions of the Code of Ethics or Code of Conduct are neglect of duty and may lead to removal from office for cause, pursuant to §§17.12(1)(a), and 62.11(3), Wisconsin Statutes.

The greatest enemy of a good plan,
is the dream of a perfect plan. –
Carl von Clausewitz.

ROBERT'S RULES IN SHORT: A GUIDE TO RUNNING AN EFFECTIVE MEETING

Importance of Rules to an Effective Meeting:

While groups sometimes proceed informally or by consensus, it is generally accepted that deliberative bodies operate much more effectively when they follow known rules of procedure.

In most instances and except as changed by the deliberative body, the rules to be followed are **Robert's Rules of Order** (hereinafter referred to as RR). These rules were first established by General Henry M. Robert in 1876. The latest edition of RR is the 10th edition.

A complete copy of RR runs nearly 700 pages. Even abridged versions, which are quite useful, often run 200 pages. This manual will be much shorter.

RR defines the role of the chair, of members of the body, and establishes rules of procedure. These rules have been crafted and adjusted over the years to assist in effective meetings, and to balance carefully the rights of the majority to act and the rights of the minority to be heard, and in some cases, prevent action.

Proper Notice and Agenda for a Meeting:

While RR require that there be an order of business for a meeting, the major law governing notice and agenda for meetings is the Wisconsin Open Meetings Law, §19.81, *et seq.*, Wisc. Stats., and §2.02(5), Baraboo Ordinances. This manual is not a complete analysis of the Open Meetings Law, but those conducting a meeting should know some of the basic rules. They are:

1. All meetings must be preceded by adequate notice. This is generally 24 hours, although it may be two hours in the case of an emergency. The giving of the notice should be coordinated through the City Clerk's Office.
2. The notice must include all items to be taken up at the meeting in such a manner as to apprise the public of the nature of the public business. Broad items such as "Report of the Chair" should be avoided.
3. Except for meetings that provide for public comment, there can be no discussion of any item not on the agenda. Nor can there be action on any item not on the agenda. A "Public Comment" section allows the public to talk about anything, and the board may question them, but no further action or discussion is allowed.
4. There may be action on any item on the agenda, unless the agenda explicitly states something to the effect of "for information only – no action."

5. Special rules govern when a body may go into closed session. Consult the City Attorney for procedures.

Those who can make you believe absurdities can make you commit atrocities. - Voltaire

Rascals, do you want to live forever? – Frederick II the Great, King of Prussia.

Special Procedures, Chapter 2,

Baraboo Ordinances:

The Baraboo Common Council has a body of standing rules set out in Chapter 2, Baraboo Ordinances. In addition, every board or commission has the right to adopt its own rules of procedure. To the extent there are not specific rules, Robert's Rules of Order are to be applied. §2.04(18), Ordinances.

This manual will not review all of the provisions in Chapter 2 of the Standing Rules of the Common Council. In a number of instances, those rules simply adopt a provision of RR. However, some key rules are:

Section 2.03(3), Order of Business. This sets out the normal order of business for the council, which may be modified by a suspension of the rules on a two-thirds vote. It often is modified.

Section 2.04(2), Introduction of Business. Generally, any item to be taken up by the Council must be in writing and first be reviewed by the appropriate committee, board, or commission

Section 2.04(9)(c), Majority Vote of All Members Required. The Council requires a majority vote of the Council members present to pass ordinances, resolutions, and motions. A quorum of the Council is comprised of 2/3^{rds} of the members of the Council. §2.04(9)(a).

Section 2.04(12), Ordinances. Under the Council rules, no ordinance shall be passed except upon the affirmative vote of the Council at two consecutive meetings. The Council may suspend the rules to allow both readings at the same meeting, but the motion to suspend for this purpose requires the unanimous approval of the Council. All other motions to suspend the rules require a 2/3^{rds} affirmative vote of the Council §2.04(20)(a).

Section 2.04(15), Committee of the Whole. The Council may, by a majority vote, enter into a Committee of the Whole. This is generally done to give guidance to the Council or to discuss in a general way a specific topic. Actions or votes of any kind taken while action as a Committee of the Whole are deemed advisory only and do not authorize any official act by the Council.

It should be noted that under the Council's operations, a report and recommendation of a committee or commission will contain recommendations. In almost all instances, this report and the recommendations contained therein become the main motion on the floor when an alder moves the adoption of an action.

Robert's Rules of Order / Common Motions

This section will summarize some of the provisions of RR.

- A. Proceed by Motion. The most basic element of RR is that matters come before the body by motion. An alder makes a motion simply by saying “I move that “ or “Move adoption of”, or “Move referral of”, or “I move to amend”. It is not the form of the motion, but the substance of it which governs.
- B. Role of the Chair. It is the obligation of the Chair to run an orderly meeting. The Mayor is the Chair of Council meetings, and when he is not present, the Council President presides. Members of the body are not to speak until they have been recognized by the Chair. Except for a limited class of motions, a member may not interrupt another member when they have the floor. The Chair also rules on any votes and rules on any questions of proper procedure. In the event of a disruption in the meeting, the Chair may call on the Police Chief or others to return the meeting to order.
- C. Types of Motions. Under RR, motions generally fall into one of four classes. These are:
1. The Main Motion: This is the matter that is before the body at that moment. Nearly all other motions bear some relation to the main motion.
 2. Subsidiary Motions: These are a series of motions which propose to do something to or with the main motion. Examples include amendment, referral, laying on the table, calling the question. These motions are all subject to an order of precedence which will be discussed below.

Note that what is the “main motion” for application of the rules of precedence may change during the course of consideration of a matter. For example, if the main motion is to adopt a resolution, and a member offers a subsidiary motion to amend the resolution, the proposal for amendment becomes the main motion for purposes of consideration of the order of precedence of other motions. That is, the motion to amend is subject to further amendment, referral, laying on the table, etc. It is only when that motion has been disposed of that the motion to adopt is then back before the body for consideration.
 3. Incidental Motions: Incidental motions relate to the pending matter, but generally relate to it in a procedural way such that the incidental motion must be dealt with before the body may return to either the main or subsidiary motion before it. Incidental motions take precedence over whatever motion is before the body, and in some instances, may be made when the mover does not have the floor. Examples of incidental motions are a point of order or procedure, appeal of a ruling on a point of order or procedure, a point of information, call for a roll call (division of the assembly), or a suspension of the rules.
 4. Privileged Motions: These are very few motions that take precedence over all other motions. They include motion to recess, question of privilege, and a motion to adjourn.
- D. Common Motions. An almost limitless number of motions may be made. RR lists at least 84 potential motions. This section will discuss some common motions; the reader is also referred to the accompanying “cheat sheet” attached as an appendix to this manual.

1. Adjourn: To end the meeting. Not debatable.
2. Adoption: This is to adopt the matter before the body.
3. Amendment: To modify the main motion before the body.
4. Division of Assembly / Roll Call: A call for division is the same as calling for a roll call vote. Any member may do this and the motion need not be seconded; it is simply granted when asked for. It is not debatable.
5. Division of the Question / Separation: This is a request to have separate votes on different paragraphs or portions of the proposal before the body. It is not debatable, but does require a second.
6. Lay on the Table / Take off the Table: This is a motion to temporarily defer consideration of a matter and then to ask that the matter be taken up again. It is often used, when, for some reason, a member of the assembly or some information necessary for consideration is temporarily unavailable. Motions to lay on the table or take off the table are not debatable. The motion is often made simply as a motion to “table”. The motion should not be used if the intent is essentially to kill a proposal.
7. Place on File/Postpone Indefinitely: This is a common motion used in proceedings of the Madison Common Council and is the equivalent of a motion to postpone or defer indefinitely. This is the motion to be used if the intent is to not adopt the matter before the Council, without explicitly voting it down.
8. Point of Information: This is an incidental motion in which a member of the assembly desires some information prior to proceeding to a vote on the matter before the body. It does not require a second and no vote is actually taken on the point of information. A member simply says “I rise to a point of information” or “Point of Information?” It is proper when another has the floor.
9. Point of Order or Procedure: This is another incidental motion and again is not subject to a second or a debate. It raises a question about the procedure being followed by the body. The ruling on the Point of Procedure is committed to the Chair of the body. If a member of the body disagrees with the ruling, they may appeal the ruling of the Chair to the full body. An appeal does require a second, and a majority of the body must disagree with the Chair's ruling for it to be reversed.
10. Point of Privilege: This is one of the privileged motions, and again does not require a second, nor is it debatable. This normally relates to some personal matter or something relating to the operation of the body, such as a room that is too hot, too cold, too loud, some confidential information which should not be discussed before the body, etc.
11. Previous Question: This is a motion requesting that the body immediately vote on whatever matter is otherwise before it; it cuts off debate and proceeds to an immediate

Every post is honorable in which a man may
serve his country. – George Washington.

vote. The motion can be made either by “calling the question”, “moving the previous question”, or simply stating “Question”. The motion requires a second and is non-debatable and requires a two-thirds vote.

12. Recess. The motion asks that the body take a short break. The length of time of the recess should be established. This is a privileged motion, in that it takes precedence over almost all other pending motions. It requires a second, it is not debatable, and requires a majority vote.
13. Reconsideration: A motion for reconsideration asks that the body reconsider something it has already acted upon. It must be made either at the same meeting at which the matter was considered, or at the next succeeding meeting. If it is to be made at the next succeeding meeting, it must be on the official agenda of the meeting.

A motion to reconsider may only be made by a member who voted on the winning side of the prior question. This normally will be a member in the majority, but if a matter fails because it does not reach the required majority, it may be that the motion for reconsideration may be made by a member who actually is less than a majority. For example, if a matter needing a 2/3rd vote falls one vote short of 2/3rd, reconsideration may only be moved by a member of the minority. If the motion to reconsider is approved, the prior proposal is then again before the body.

14. Motion to Refer/Commit: This is a subsidiary motion which asks that a matter be referred to another body, or to another meeting of the same body. Called a motion to commit in RR.
15. Suspension of the Rules: This is an incidental motion because it relates to the manner in which the body will take up an issue. It requires a two-thirds majority, but is not debatable.

- E. Debate. Once a debatable motion is before the body, members of the body proceed to debate. In both the making of motions and in debating the motions, members should wait to be recognized by the Chair. The standing rules of the Common Council limit the number of times and length of time that a member of the body may participate in debate.
- F. Unanimous Consent. Asking for unanimous consent is a quick way to dispose of non-controversial items. The Common Council does this by proposing a “consent agenda” near the beginning of every meeting. Items that no member of the body objects to are disposed of by unanimous approval. The Chair may ask for unanimous consent, or a member may ask for it on any pending matter. The Chair may do this by asking: “Is there any objection to recording a unanimous vote on item?”

Precedence of Motions

Some common motions are listed in descending order of precedence, that is, a motion is not in order if it has a higher number than the pending matter.

Undebatable Motions

1. Adjourn
2. Recess
3. Question of Privilege
4. Lay on the Table
5. Previous Question
6. Limit or Extend Debate

Debatable Motions

7. Postpone to a Definite Time
8. Refer or Commit
9. Amend
10. Postpone Indefinitely / Place on File
11. Main Motion

Divide and rule, a sound motto. Unite and lead,
a better one. – Johann Wolfgang von Goethe.

Incidental Motions (e.g., Point of Order, Point of Information, Suspend the Rules, Division of the Assembly or of the Question) take precedence over whatever matter is pending.

Recognizing & Avoiding Conflicts of Interest

By: Claire Silverman, Legal Counsel, League of Wisconsin Municipalities

I. Introduction

A. Coverage. This outline provides an overview of state laws that guide the actions of municipal officials when those officials (or a member of their family or an organization with which they are associated) have a financial or other special interest in a governmental matter. In particular, this outline provides an overview of the state ethics code applicable to local officials, the statute governing private interests in public contracts, statutory provisions defining official misconduct, and the compatibility doctrine.

B. Identifying Potential Conflict Situations. The state statutes contain minimum standards of ethical conduct by local government officials. The statutes relating to ethics and conflicts of interest are interrelated and can be quite complicated.

Problems in this area can be avoided primarily by using common sense and applying the “smell test.” Stated broadly, when an official, a member of the official's family or a business organization with whom the official is associated is involved in a municipal matter, the official needs to step back and question whether there are problems concerning his or her involvement in the matter. The official may want to discuss the situation with the municipal attorney. Local officials may also contact the League's attorneys to discuss ethics issues.

Many times it might not be clear whether a conflict, as defined by state law, exists. In these gray areas, the official needs to balance the benefits of involvement (e.g., representing the electors, using the official's expertise) against the drawbacks (e.g., how it would look, the risk of violating a law). Sometimes, even if it may be legal to act on a matter, you may not feel comfortable doing so or it may not look good to do so.

Against stupidity, the gods themselves contend in vain. – Frederick von Schiller.

II. State Code of Ethics for Local Government Officials. (Sec. 19.59, Stats.)

A. Background. The state code of ethics for local officials was created in the 1991 legislative session and took effect in 1992. The law applies to “local governmental units,” including counties, cities, villages and towns, as well as special purpose districts, such as town sanitary districts. Sec. 19.42(7u), Stats. The law also covers joint bodies and subunits of local governmental units.

B. Municipal Officials Affected. The state ethics code applies to “local public officials” who hold “local public office.” Sec. 19.42(7w) and (7x), Stats.

1. “Local public office” includes elected municipal officers; city and village managers, appointed municipal officers and employees who serve for a specified term; and officers and employees appointed by the governing body or executive or administrative head who serve at the pleasure of the appointing authority.
2. The term does not include independent contractors and persons who perform only ministerial (i.e., non-discretionary) tasks, such as clerical workers. In addition, the term omits officials and employees who are appointed for indefinite terms and are only removable for cause, such as police chiefs and fire chiefs.

C. Prohibited Conduct. The state ethics law for local officials, sec. 19.59, Stats., prohibits the following conduct:

- 1. Use of Office for Private Gain.** Public officials are prohibited from using their offices to obtain financial gain or anything of substantial value for the private benefit of themselves, their immediate families, or organizations with which they are associated. Sec. 19.59(1)(a), Stats.
- 2. Offering or Receiving Anything of Value.** No person may give and no public official may receive “anything of value” if it could reasonably be expected to influence the local public official's vote, official action or judgment, or could reasonably be considered as a reward for any official action or inaction. Sec. 19.59(1)(b), Stats.

3. Taking Action Affecting a Matter in Which Official Has Financial Interest. Local officials may not take official action substantially affecting a matter in which the official, an immediate family member, or an organization with which the official is associated has a substantial financial interest. Nor may an official use his or her office in a way that produces or assists in the production of a substantial benefit for the official, immediate family member or organization with which the official is associated. Sec. 19.59(1)(c), Stats.

a. Exceptions. The prohibitions under no. 3 above do not prohibit local officials from taking lawful actions concerning payments for employee salaries, benefits, or expense reimbursements. The above prohibitions also do not prohibit local officials from taking action “to modify” an ordinance. Sec. 19.59(1)(d), Stats.

B. Definitions:

1. “Immediate Family” means an official's spouse or relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the official or contributes, directly or indirectly, that amount for the official's support. Sec. 19.42(7), Stats.

2. “Organization” is broadly defined to cover “any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic.”

3. “Associated” with an Organization. An official is “associated” with an organization for purposes of the state ethics law when the individual or a member of the individual's immediate family is an officer, director or trustee, or owns at least 10% of the organization. An individual is not associated with an organization merely because the individual is a member or employee of an organization or business. Sec. 19.42(2), Stats.

4. “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 state, fees and expenses which are permitted and reported under s. 19.56, political contributions which are reported under ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization. Sec. 19.42(1).

C. Abstaining from Official Action. The Wisconsin Board of Ethics suggests that when a matter in which a local official should not participate comes before a board, commission or other body which the official is a member, the official should leave that portion of the body's meeting involving discussion, deliberations, or votes related to the matter. When, because of a potential conflict of interest, an official withdraws from the body's discussion, deliberation, and vote, the body's minutes should reflect the absence.

D. Local Ordinances. Municipalities can adopt ethics ordinances that:

- require disclosure of economic interests
- establish ethics boards

- prescribe standards of conduct
- establish forfeitures not exceeding \$1,000

E. Ethics Advisory Opinions. Local officials may request advisory ethics opinions from the municipal ethics board or, if there is none, from the municipal attorney.

1. Effect of Opinion. The local ethics board or attorney may issue a written advisory opinion. If the official follows the advice in the opinion, it is evidence of intent to comply with the law.

F. Penalties & Enforcement. Any person who violates the state ethics law may be required to forfeit up to \$1,000. The law is enforced by the district attorney.

G. Interpretation. The state code of ethics for local officials has not been interpreted in any published court decisions. However, the Wisconsin Ethics Board has issued guidelines.

1. Participating in General Policy Decisions. The Wisconsin Ethics Board has advised that an official may participate in an action in which he or she has a personal interest as long as: (a) the action affects a class of similarly-situated interests; (b) the interest of the official, an immediate family member or an organization with which the official is associated not significant when compared to other members of the class; and (c) the effect of the action on the interests of the official, an immediate family member or an organization with which the official is associated not significant when compared to other members of the class.

No problem can stand the assault of sustained thinking. – Voltaire.

2. Receipt of Goods & Services. Under the state ethics code, local officials may receive: (a) items and services that are unrelated to their public service; (b) payment or reimbursement for costs relating to their work as public officials; and c) items of insubstantial value.

Under the state ethics code, local officials may not: (a) receive items or services offered because of their public position, unless the value of such items or services is insubstantial; (b) receive items or services that could reasonably be expected to influence their judgment or could reasonably be considered a reward for official action or inaction. See Eth 219 (attached).

3. Seminars & Conferences. Generally, officials attending such functions may accept the meals and refreshments provided or approved by the event's organizer and approved by the local governmental unit. An official should generally not accept food, drink or entertainment offered outside of the conference or activities at hospitality suites, receptions or similar activities.

III. Private Interest in Public Contracts (Section 946.13, Stats.)

A. General Prohibition. To protect against self dealing by public officials, sec. 946.13, Stats., generally prohibits municipal officials from having a private financial interest in a public contract. Thus, local governing body members are generally prohibited from entering into a contract for goods, services, construction or employment with the municipality.

1. Prohibition Against Official Action. A public official may not participate in the making of a contract in his or her official capacity if the official has a direct or indirect financial interest in the contract. Sec. 946.13(1)(b).

Since this is a prohibition on official action, abstaining from voting on the contract will prevent violation .

2. Prohibition Against Private Action. A public official may not in his or her private capacity negotiate or bid for or enter into a contract in which the public official has a direct or indirect financial interest if the official is “authorized or required by law to participate in his capacity as such officer or employee in the making of that contract.” Sec. 946.13(1)(a).

This latter provision is a prohibition on private action and a public official cannot avoid violating it merely by abstaining from voting because all that is necessary for a violation to occur is that the official be authorized to vote on or exercise discretion with regard to a contract in which the official has a private financial interest and the official has negotiated, bid for, or entered into the contract.

3. Exceptions:

a. \$15,000. Contracts in which receipts and disbursements do not, in the aggregate, exceed \$15,000 in any one year. This means that a municipal governing body member can enter into a total of \$15,000 in business with the municipality in any calendar year. Note: Since the law refers to payments and disbursements in any year, if amounts in excess of \$15,000 are involved, payments may be spread out over more than one year to avoid violating the law.

b. Bankers. Bankers who receive less than \$10,000 per year for serving on the city council or village board are exempted, unless the banker's compensation is directly dependent on procuring public business.

c. Attorneys. Partners in a law firm that serves as legal counsel to the municipality who receive less than \$10,000 per year for serving on the city council or village board are exempted, unless the individual has an interest in the law firm greater than 2% of its net profit or loss; the individual participates in the making of a contract between the municipality and the law firm; or the individual's compensation from the law firm is directly dependent on procuring public business.

d. 2% of stock. There is an exception from sub. (1)(b), the prohibition on official action, for persons who own no more than 2% of the stock of the corporation involved.

4. Penalty: Violation of the statute is a Class E felony and subjects the person to a fine of not more than \$10,000, imprisonment for not more than 2 years, or both.

IV. Incompatibility Doctrine

A. Common law Prohibition. The same person cannot hold two offices or an office and a position where one post is superior to the other or where, from a public policy perspective, it is improper for one person to discharge the duties of both posts. For example, in *Otradovec v. City of Green Bay*, 118 Wis.2d 393 (Ct. App. 1984), the court held that a common council member could not work as assistant appraiser in the city assessor's office.

1. Result. If a second office is taken that is incompatible with an existing office, the first office is vacated. In the case of office/position incompatibility, the outcome is unclear -- person runs risk of losing first post, but court might allow choice.

2. General Rule of Thumb: Municipal governing body members may not hold other municipal offices or positions, unless specifically authorized by statute. This is because the governing body exercises control over such matters as the salaries, duties, and removal or discipline of most other municipal officers and employee.

3. Statutory Exception. Elected city, village and town officers can also serve as volunteer firefighters, EMTs or first responders when annual compensation from one or more of those positions, including fringe benefits, does not exceed \$15,000. Sec. 66.0501(4).

B. Related Statutory Provisions.

1. Section 66.0501(2) generally prohibits governing body members from taking municipal jobs. Under the statute:

a. Governing body members are prohibited, during the term for which the member is elected, from taking new municipal jobs created during their term of office even if they resign.

b. A governing body member may be appointed to an office or position which was not created during the member's term in office as long as the member resigns first.

c. Governing body members may run at any time for new or existing elective office, but the compatibility doctrine applies if elected and the official would be required to choose between the two offices. Individuals may run for two elected local offices at the same time. Sec. 8.03(2m).

d. Governing body members may be appointed to serve on local boards and commissions (e.g., library board, police and fire commission and plan commission) where no additional remuneration is paid to such officers except that such officers may be paid a per diem if other members of the board or commission are paid a per diem.

2. Section 59.10(4), Stats., provides that municipal governing body members may serve as county board supervisors.

V. Other Statutory Prohibitions

A. Misconduct in Office. Section 946.12 is a criminal statute that prohibits public officers and employees from intentionally performing, or refusing to perform, certain acts. A violation of sec. 946.12 is punishable by up to two years in prison, a fine of up to \$10,000, or both.

1. Section 946.12(1) intentionally failing or mandatory, of his office or employment within the time or in the manner required by law.”

One man with courage makes a majority. – Andrew Jackson.

prohibits a public official from refusing to perform a “known nondiscretionary, ministerial duty

2. Section 946.12(2) prohibits a public official from doing an act which he or she knows is forbidden by law to do in an official capacity.

3. Section 946.12(3) provides that a public official may not, by an act of commission or omission, exercise a discretionary power in a manner inconsistent with the duties of office or the rights of others, with an intent to obtain a dishonest advantage for himself or another.

B. Bribery. Section 946.10(2) prohibits public officials from taking bribes. Section 12.11 prohibits public officials from promising an official appointment or anything of value to secure votes.

C. Sale to Employees Prohibited. No municipal department or member of a municipal governing body may sell or procure for sale any municipal article, material or product to city or village employee; except meals, public services and special equipment necessary to protect the employee's safety and health. Sec. 175.10. This statute is designed to prohibit governmental acquisition of products for resale to government employee.

D. Sale to Licensees Prohibited. No municipal governing body member may sell to any person holding or applying for an alcohol beverage license any bond, material, product or thing which may be used by the licensee in carrying on the licensee's business. Sec. 125.51(1)(b).

VI. A Final Word

Ordinances and Common Law Rules Relating to Ethics. This outline focuses on state statutes that establish minimum standards of ethical conduct for public officials. These laws provide a good starting point for local officials seeking to assure themselves that they are acting appropriately. However, municipal officials should be mindful of other relevant laws governing ethical issues. These include ordinances, local rules of procedure and the common law (i.e., published court decisions).

For example, the Wisconsin Supreme Court has held that members of a legislative body or municipal board are disqualified to vote on propositions in which they have a direct pecuniary interest adverse to the municipality. *Board of Supervisors of Oconto County v. Hall*, 47 Wis. 208 (1879). Additionally, many municipalities have adopted *Robert's Rules of Order* (Newly Revised) as their local rules of procedure. Section 44 of *Robert's* provides: “No member should vote on a question in which he has a direct personal or pecuniary interest not common to other members of the organization.”

Chance Committee Meeting? Are You Breaking the Law?

by James H. Schneider, League Legal Counsel

The Open Meetings Law¹ is probably the single most important state law for governing body members to be aware of. This law establishes the basic policy of open government and therefore requires that meetings of governmental bodies must be properly noticed and open to the public, although in certain cases they may be closed.² Judging from the number of questions at ETN programs on this topic, there is a continuing need for information on this law. With the recent election of municipal officials, now is a good time for an overview of the Open Meetings Law.

Definitions - The definitions are important because they are the basis for the applicability of the law. The two key terms are “governmental body” and “meeting.”³

A “governmental body” includes a local board, committee, council and “formally constituted” subunits of any of these bodies. A governmental body does not include, however, a body, committee or subunit formed for the purpose of collective bargaining.⁴ Thus, a common council and village board are obviously subject to the Open Meetings Law, as are municipal committees, boards and commissions.

A “meeting” is defined as the convening of members of a governmental body for the purpose of exercising the responsibilities of that body. A meeting does not include social or chance gatherings not intended to avoid the law. Furthermore, when one-half or more of the members of a governing body are present, a meeting is “rebuttably presumed” to be for official purposes.

In addition, an “open session” is defined as a meeting “which is held in a place reasonably accessible to members of the public and open to all citizens at all times.”⁵

When Is There A Meeting Subject To The Law?

The simplistic answer to this question is, “Whenever a governmental body meets.” In most cases, there is no question of the applicability of the law - whenever the council, board or local committees or commissions meet they are subject to the law. However, the answer to the question of when there is a “meeting” is sometimes far from clear and there are pitfalls to be avoided.

The statutory definition of a meeting, which provides that a meeting is presumed if one-half of the members of a governmental body are present at a meeting, may lull officials into a false sense of security. The trouble is that the courts have interpreted the law to apply when there is less than one-half of the body present. Most people (including most attorneys) would not guess that this is the law from a reading of the statute. In the Showers case (1987),⁶ the Wisconsin Supreme Court ruled that the test of whether a meeting occurs is twofold:

“First, there must be a purpose to engage in governmental business, be it discussion, decision or information gathering. Second, the number of members present must be sufficient to determine the parent body's course of action regarding the proposal discussed.”

With regard to the second test, when a proposal requires a two-thirds vote of the entire body, such as a change in a budget under sec. 65.90(5), Stats., if one-third plus one of the governmental body members are present at a meeting, a court would find that there had been an Open Meetings Law violation if that particular proposal were discussed. This is what happened in the Showers case, where four out of 11 members met to discuss a budget matter. Similarly, where the vote of a majority of all members is required, as in the case of confirmation of mayoral appointments under sec. 62.11(3)(b), for example, a minority plus one may determine the outcome. This test is theoretically easy to apply when the vote required is expressed as a fraction of the whole body, as in the Showers case.

The same principle would seem to apply with regard to matters which may be passed by a vote based on the quorum rather than total membership, such as a majority or fraction of a quorum. In such cases, the safest approach to figure the number of votes to block the matter is to subtract from the quorum the number of votes required to pass the measure and then add one. However, it will be noted that this minimum figure for determining whether the Open Meetings Law is triggered may be lower than the figure obtained if it is assumed that more than a quorum will be present at a subsequent meeting on the issue. For example, if a village board has seven members and all attend a meeting, a matter requiring a majority vote may be blocked by four members. But if four members attend, the matter may be blocked by only two.⁷

Also in this vein it should be noted that the courts have said that a series of gatherings of a small enough number of officers so as not to trigger the law at one specific gathering may constitute an illegal meeting.⁸

In addition to being careful about the number of members of a particular body that gather to talk about topics pertaining to that body, it is important to be aware that a “meeting” might take place when a sufficient number of members are present at other meetings. Of course joint meetings of governmental bodies must be noticed, but if, for example, another unit of government has a meeting to talk about an issue pertaining to a municipality and a sufficient number of members of a governmental body of the municipality are present in the audience and discuss the issue, a court might find that an illegal meeting of the municipal body had occurred.⁹ If there is any question about whether there is a meeting, it is best to play it safe and follow the Open Meetings Law.

One village officer called recently with an interesting misunderstanding. He was afraid that a village board meeting would have to be noticed whenever the village public safety committee met because that committee had three members and that made up a quorum of the board. Here, although the numbers test is satisfied, the question remains as to whether the purpose test is met. There is no problem as long as the members of the committee (at a properly noticed committee meeting) confine their discussion and actions to committee matters, but if they go outside of the purview of the committee and discuss other village matters, then they are probably acting as the village board at an improperly noticed meeting.

Also, too much reliance should not be placed on the exception to the definition of a meeting for chance or social gatherings. Remember, that exception is qualified by the tag “not intended to avoid” the law. If a negative quorum (or more) of a body gets together by chance or for a social occasion there is no problem unless the discussion turns to matters pertaining to that body, in which case there is probably a violation of the law.

It should by now be clear that governmental body members should be very careful when discussing public body business with other members outside of a properly noticed meeting. This is particularly true where a violation might be deemed to occur when only two members of a body meet to talk. The obvious problem is that this does not jibe with how government works - officials need to discuss matters they are working on. There was a suggestion in an earlier case that such one-to-one discussions would be protected by the First Amendment and would not constitute violations of the Open Meetings Law, but, unfortunately, this was not discussed in the recent Showers case.¹⁰

If governmental body members should violate the law by discussing matters outside of a meeting, a wise course to take would be to make sure that the matter is fully discussed at a properly noticed meeting before it is voted on. This could very likely avoid prosecution and ensure that a court would not void the action.

Notice Requirements

The presiding officer of a governmental body, or that person's designee (typically the clerk), must give proper notice¹¹ of a meeting 24 hours in advance. Notice may be given, however, two hours in advance of the meeting for good cause. If the notice is mailed, it must be mailed early enough to allow it to arrive within the statutory time frame.¹² The notice must specify the time, place and subject matter of the meeting, and any contemplated closed sessions must be included.

The notice must be in such form as is "reasonably likely to apprise" the public and news media.¹³ Therefore, the notice of the subject should be fairly explicit,¹⁴ although it is permissible to take up unforeseen matters under an "other business" category.¹⁵ In most cases late-breaking events may either be noticed by an amended notice, at least two hours' prior to the meeting, or the matter may be put off until the next meeting.¹⁶ Minor matters may appropriately be subsumed under broader topics, but matters of particular interest should be given explicit notice. A good test is for the person writing the notice and agenda to ask if he or she would be interested in an item if he or she were a reporter, and to consider whether anyone is likely to get upset or excited over a matter. If the answer is yes to either of these questions, the matter should be explicitly noticed.

Notice has to be given to any news medium that has requested the notice, and must be given to a news medium, such as a newspaper, TV or radio station, that is likely to give notice in the area.¹⁷ There is no requirement that the notice actually be published,¹⁸ although certain notices under other statutes must be published [e.g., a proposed zoning amendment under sec. 62.23(7)(d)2].¹⁹ As an alternative to written notice, telephone or other verbal communication to members of the news media is sufficient.²⁰

The law also requires some form of direct notice to the public; this requirement may be met by posting the notice in one, or preferably several, public places.²¹

An exception to the notice requirement is that subunits of governmental bodies²² may meet during the meeting of the parent body, during a recess, or directly after such meeting to discuss or act on matters that were the subject of the meeting of the parent body.²³ The presiding officer of the parent body must announce the time, place and subject matter of the subunit meeting in advance at the meeting of the parent body. This announcement must mention any contemplated closed session.²⁴

Finally, no charge may be made for providing notice to meet the requirements of the Open Meetings Law. However, once these notice requirements have been met, charges may be made, under the public records law, for additional notices and supplementary information.²⁵

Closed Sessions

The law authorizes, but does not require, meetings to be closed for certain purposes. Going into closed session without authority, along with attending improperly noticed meetings, is the source of most of the prosecutions under the Open Meetings Law. It is therefore a good idea to remember the statutorily expressed policy of open government²⁶ and err on the side of openness.

Before mentioning reasons for closing a meeting, a suggestion: use the term “closed session” or “closed meeting” instead of “executive session.” The use of the latter term is better avoided because it suggests that meetings may be closed whenever the body wishes to take action on a matter.

Meetings may be closed for a number of authorized reasons,²⁷ including the following: (a) deliberating after a quasi-judicial hearing; (b) considering the discipline of an employee or person licensed by the municipality; (c) considering employment, promotion, compensation or performance evaluation data of a public employee; (d) deliberating or negotiating the purchase of public properties, or conducting other business whenever competitive or bargaining reasons require a closed session; (e) considering financial, medical, social, personal history and disciplinary data of specific persons or specific personnel problems which, if discussed in public, would be likely to have a substantially adverse effect on the person's reputation; and (f) conferring with legal counsel with respect to litigation in which the body is involved or is likely to become involved. Here a good rule of thumb is to ask the preliminary question, “Is there a reason why this matter is best discussed privately, other than the desire to escape the glare of the public eye or the media?”

When closing a meeting is appropriate, it is important to follow the statutory procedures. As mentioned above, closed sessions planned in advance must be specified in the public notice; however, if the closed session was not contemplated, it may be closed for a valid reason.²⁸ The body must first convene in open session and vote to go into closed session. The vote of each member must be recorded and preserved. The presiding officer must announce the nature or the business to be discussed and the specific statutory provision which authorizes the closed session.²⁹

Attendance at the closed session is limited to the body, necessary staff and other officers, such as the clerk and attorney, and any other persons whose presence is necessary for the business at hand. If the meeting is of a subunit³⁰ of a parent body, such as a committee meeting, the members of the parent body (i.e., the common council or village board) must be allowed in the closed session, unless the rules of the parent body provide otherwise.³¹

Finally, it should be noted that the discussion in closed session must be limited to the topics for which the meeting was closed,³² and the body may not reconvene in open session until 12 hours have elapsed (and proper notice given), unless the subsequent open session was noticed at the time of the notice of the meeting convened prior to the closed session.³³

Penalties and Remedies

Violations of the Open Meetings Law may be prosecuted by the district attorney, the attorney general (which is rarely, if ever, done), or by a private individual, if the district attorney does not take the case.³⁴

Governmental body members who violate the Open Meetings Law are subject to a forfeiture of between \$25 and \$300; this is a personal liability which may not be reimbursed by the municipality.³⁵ However, members may seek reimbursement for costs incurred in prosecutions which were successfully defended or dismissed.³⁶ Members may protect themselves from liability by voting in favor of a motion to prevent the violation (e.g., voting against going into an unauthorized closed session).³⁷

In addition to finding personal liability for violations of the law, a court may also order the violations to cease and void action illegally taken.³⁸

Conclusion

The above discussion should make it clear that it is important for every member of local governmental bodies to be well-acquainted with the Open Meetings Law. As with other legal matters, officials should consult their municipal attorneys if they have questions. Further information may be found in the League opinions footnoted in this Comment and especially in chapter 2 of the League handbooks, "The Conduct of Common Council Meetings" and "The Conduct of Village Board Meetings." A copy of the appropriate procedural handbook was sent to each clerk after publication in 1987.³⁹ In addition, a talk on the Open Meetings Law and the Public Records Law will be given by the League Legal Counsel at the New Officials' Workshops, which are scheduled in Madison (Friday, June 2), Appleton (Wednesday, June 7) and Eau Claire (Friday, June 9).

NOTES:

1 Secs. 19.81 to 19.98, Stats.

2 Secs. 19.81 and 19.83, Stats.

3 Sec. 19.82(1) and (2), Stats.

4 Note that final ratification or approval of a collective bargaining agreement must be done in open session. Sec. 19.85(3), Stats.

5 Sec. 19.82(3), Stats.

6 State ex rel. *Newspapers, Inc. v. Showers*, 135 Wis.2d 77 (1987).

I speak Spanish to God, Italian to women, and German to my horse. – Charles V, King of France.

7 A recent law review note criticized the *Showers* court for not considering this issue, and recommended that "To be safe, officials will need to hold in public all meetings at which at least a majority of a quorum is present." 1988 Wis. L. Rev. 827, 851, 856. This is hardly the safe approach where, as in the example in the above text, less than a majority of the quorum can block a matter. Consider also an 11 member village board. A quorum is six and four is thus a majority. So three can defeat a matter if only six are present.

8 See *Showers*, 398 N.W.2d at 161, 164; 1988 Wis. L. Rev. at 846-7, 855.

9 See 66 OAG 254 (1977); and *Paulton v. Volkman*, 141 Wis.2d 370 (Ct. App. 1987). In *Paulton* the court held that there was no meeting of a school board when a quorum of the board attended a meeting in a neighboring town. It seems that this fact-specific decision, which was based on a fine distinction, might have been decided the other way.

10 The earlier case is *State v. Conta*, 71 Wis.2d 662 (1976), and this issue is discussed in *Governing Bodies #309*, which was published in the July 1987 issue of *THE MUNICIPALITY*, pp.262-263.

11 See sec. 19.84, Stats.

12 OAG 69-88 (Dec. 19, 1988).

13 Sec. 19.84(2).

14 In a recent case a court ruled that a notice stating the intent to go into closed session under sec. 19.85(1)(b), Stats., “to conduct a hearing to consider the possible discipline of a public employee” was sufficient. *State ex rel. Schaeve v. Van Lare*, 125 Wis.2d 40 (Ct. App. 1985). Note that the employee did not have to be named in the notice.

15 66 OAG 68 (1977); 66 OAG 143 (1977); 66 OAG 195 (1977).

16 *Governing Bodies #266*; See 66 OAG 93 (1977).

17 Sec. 19.84(1)(b).

18 *Martin v. Wray*, 473 F. Supp. 1131 (E.D. Wis. 1979); OAG 69-88 (Dec. 19, 1988).

19 Notice requirements of other statutes must be met in addition to the requirements of the Open Meetings Law. Sec. 19.84(1)(a).

20 OAG 69-88 (Dec. 19, 1988).

21 Sec. 19.84(1)(b); 63 OAG 509, 510-11 (1976); 66 OAG 93, 95 (1977).

22 The League has opined that statutory boards or commissions,

such as a library board, a utility commission and a police and fire commission, are probably not subunits of a common council or village board, although committees (e.g., a finance committee, a public safety committee) are subunits. *Governing Bodies #310*.

23 Sec. 19.84(6).

24 65 OAG Preface vi (1976).

25 OAG 69-88 (Dec. 19, 1988); *Governing Bodies #323*.

26 Secs. 19.81 and 19.83, Stats.

27 Sec. 19.85(1), Stats.

- 28 Sec. 19.84(2), Stats.
- 29 Sec. 19.85(1), Stats. These requirements also apply to a closed session of a subunit meeting without notice as provided by sec. 19.84(6). 65 OAG Preface vi (1976).
- 30 See footnote 22.
- 31 Sec. 19.89, Stats.
- 32 Sec. 19.85(1), Stats.
- 33 Sec. 19.84(2), Stats.
- 34 Sec. 19.97(1), (2) and (4), Stats.
- 35 Sec. 19.96, Stats.
- 36 Secs. 62.115, 895.35 and 895.46(1)(a), Stats.; OAG 39-88 (Aug. 18, 1988).
- 37 Sec. 19.96, Stats.
- 38 Sec. 19.97(3), Stats.
- 39 Extra copies of the handbooks may be ordered from the League at a cost of \$6.00 each.

FREQUENTLY ASKED QUESTIONS

(Answered by the League of Municipalities)

Can members of a governmental body violate the open meeting law by communicating regarding city or village business via telephone or e-mail?

Yes, members of a governmental body can violate the open meeting law by communicating regarding city or village business if there is communication amongst a sufficient number of the members. The Wisconsin Supreme Court has held that the open meeting law applies whenever members of a governmental body meet to engage in government business, whether it's for purposes of discussion, decision or information gathering, if the number of members present are sufficient to determine the parent body's course of action regarding the proposal discussed at the meeting. *State ex rel. Showers*, 135 Wis.2d 77, 398 N.W.2d 154 (1987). In *Showers*, the court recognized that members of a governmental body can violate the open meeting law by participating in what is called a "walking quorum." A walking quorum is a series of gatherings among separate groups of members, each less than quorum size, who agree, tacitly or explicitly, to act and vote in a certain manner in numbers sufficient to reach a quorum. See Informal Op. Att'y Gen to Paul Kritzer dated August 20, 1996; 69 Op. Att'y Gen. 143 (1980); and League opinion Governing Bodies 339.

What action can a governmental body take against a member who discloses confidential information obtained during a closed session?

If a member discloses confidential information obtained during a closed session, it is not a violation of the open meetings law. However, such behavior is understandably a matter of concern for governmental bodies and governing bodies can prohibit and establish consequences for such behavior. Some municipalities have local rules or ordinances which prohibit the use or disclosure of confidential information by municipal officials. Possible penalties include a fine or public censure. Another potential consequence for violation of these local restrictions is criminal prosecution under Wis. Stat. sec. 946.12 for misconduct in public office.

*Cedant arma togae, concedant
laurea laudi. – Cicero.*

Do the open meeting law exceptions for closed sessions in Wis. Stat. sec. 19.85 compel the use of a closed session?

No. The authorizations for closed sessions set forth in Wis. Stat. sec. 19.85 merely permit closed sessions in the specified circumstances. None of the authorizations require a closed session. However, the closed session exceptions encompass some subject areas that implicate other legal duties. These non-open meeting law duties can prohibit public disclosure and discussion of certain information (e.g., confidentiality of health care records).

How specific does an agenda item have to be to satisfy the open meeting law notice requirement?

Wisconsin's open meeting law provides that "the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business." Wis. Stat. sec. 19.81(1). To that end, the law requires that all meetings of governmental bodies be preceded by public notice. The notice must set forth the time, date, place and subject matter of the meeting "in such form as is reasonably likely to apprise members of the public and the news media thereof." Wis. Stat. secs. 19.84(1) and (2).

In *State ex rel. Buswell v. Tomah Area School District*, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804, overruling *State ex rel. H.D. Enterprises v. City of Stoughton*, 230 Wis. 2d 480, 602 N.W.2d 72 (Ct. App. 1999), the Wisconsin Supreme Court held that notice of an agenda item must be reasonably specific and that reasonably specific notice will depend on the particular circumstances associated with the item and other considerations including:

1. The burden of providing more detailed notice. The public official must consider the amount of time and effort required to assess what information should be included in the notice, keeping in mind that the demands of specificity should not "thwart the efficient administration of governmental business."
2. The public interest in the subject matter. The public official must consider the number of interested citizens and the intensity of the interest. The greater the public interest, the greater specificity required.

3. The public ability to anticipate the subject matter. If the item involves a “novel” or non-routine matter that the public is unlikely to anticipate under more general agenda language, then greater specificity is required.

All three of the above considerations require a case-by-case analysis based on what the public officer preparing the meeting notice knows, or reasonably should know, at the time the notice is provided. Accordingly, the presence of a large crowd at a meeting that the official did not know would be present or did not have any reasonable basis to believe would be present will not determine compliance or noncompliance with the open meeting law notice requirement under the *Buswell* standard.

Does the Open Meeting law apply to city or village committees created by a city council or village board?

Yes. The Open Meeting law applies to governmental bodies and "governmental body" is defined to include a "state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order . . . or a formally constituted subunit of such body." Wis. Stat. Sec. 19.82(1). Thus, city or village committees created by a city council or village board pursuant to a city or village ordinance, rule or order are subject to all Open Meeting law requirements.

What law requires that ordinances be read a certain number of times before they are voted on?

There is no state law which governs the reading of ordinances prior to their being voted on by the governing body. Many municipalities, however, have local rules of procedure which do require a certain number of readings. Local rules of procedure can often be waived by a requisite number of governing body members. Because any requirement that ordinances be given a certain number of readings is local in nature, it can be modified or eliminated if the governing body desires.

Does an e-mail message sent to or by a municipal employee or official constitute a public record under the public records law?

Yes, provided the message relates to the employee or official's responsibilities and is not purely personal in nature. A “record” under the public records law is broadly defined to include any material on which written, printed, visual or electromagnetic information is recorded or preserved which has been created or is being kept by a municipal employee, official or office. Wis. Stat. sec. 19.32(2). Clearly, e-mail constitutes a record subject to the public records law. E-mail should be retained as long as any written communications are required to be retained, which is generally seven years in the absence of a records retention ordinance establishing a reduced retention period.

The City provides council members with an email address through the City's domain (www.CityofBaraboo.com). In order to remain in compliance with the public records law, you should conduct City business involving emails through your City email account.

RULES FOR DEALING WITH THE PUBLIC AND OTHER AGENCIES

The Council has adopted as §1.86, Code of Ordinances, a Code of Conduct for Elected and Appointed Officials. The entire Code is printed above. This article emphasizes those sections relating to dealing with the public and other agencies as a member of the Council.

While elected officials remain citizens and do not give up any of their Constitutional and 1st Amendment rights, Council members should be aware of the possibility of conflicts between their personal positions and decisions and policies established by the Council. The City has adopted a Code of Conduct for Elected Officials that includes the following provisions.

Elected officials shall make no promises on behalf of the Council, and shall not overtly or implicitly promise Council action, or promise City staff will do something specific (fix a pothole, remove a library book, plant new flowers in the median, etc.).

In dealing with other public agencies, bodies and commissions, elected and appointed officials shall be clear about representing the city or personal interests. If Council members appear before another governmental agency or organization to give a statement on an issue, Council members must clearly state: 1) if his or her statement reflects personal opinion or is the official stance of the City; 2) whether this is the majority or minority opinion of the Council. If the Council member is representing the City, the Councilmember must support and advocate the official City position on an issue, not a personal viewpoint.

Correspondence, whether public or private, must be equally clear about representation. City letterhead may be used when the Council member is representing the City and the City's official position. A copy of official correspondence shall be given to the City Clerk as part of the permanent public record. City letterhead shall not be used for personal correspondence of Council members. Council members may use City letterhead for correspondence sent in an official capacity regarding an issue the City is involved in.

If attending a Board or Commission meeting *not* as a member of that Board or Commission, be careful to only express personal opinions. Council members may attend any Committee or Commission meeting. However, they should be sensitive to the way their participation – especially if it is on behalf of an individual, business or developer – could be viewed as unfairly affecting the process. Any public comments by a Council member at a Committee or Commission meeting should be clearly made as individual opinion and not a representation of the feelings of the entire City Council.

Limit contact with Committee and Commission members to questions of clarification. It is inappropriate for a Council member to contact a Committee or Commission member to lobby on behalf of an individual, business, or developer in circumstances when the Conflicts of Interest rules apply. (See §1.77, Ordinances). It is acceptable for Council members to contact Committee or Commission members in order to clarify a position taken by the Board or Commission.

Committees and Commissions serve the community, not individual Council members. The Mayor or City Council appoints individuals to serve on Committees and Commissions, and it is the responsibility of Committees and Commissions to follow policy established by the Council. Committee and Commission members do not report to individual Council members, nor do Council members have the power or right to threaten Committee and Commission members with removal if they disagree about an issue. A Committee or Commission appointment shall not be used as a political “reward.”

Be respectful of diverse opinions. A primary role of Committees and Commissions is to represent many points of view in the community and to provide the Council with advice based on a full spectrum of concerns and perspectives. Council members may have a closer working relationship with some individuals serving on Committees and Commissions, but must be fair and respectful of all citizens serving on Committees and Commissions.

Keep political support away from public forums. Committee and Commission members may offer political support to Council members, but not in a public forum while conducting official duties. Conversely, Council members may support citizens who are running for office, but not in an official forum in their capacity as a Council members.

The Mayor is the official spokesperson and representative on City positions. The Mayor shall be the designated representative of the Council to present and speak on the official City position. If individual Council members or members of a committee are contacted by the media, the Councilmember or member of a committee should be clear about whether their comments represent the official City position or a personal viewpoint.

And when Alexander saw the breadth of his domain, he wept, for there were no more worlds to conquer. – Plutarch.

CITY OF BARABOO COUNCIL HANDBOOK

DRAFT 7-31-18



City of Baraboo, Sauk County, Wisconsin

Date Adopted by Council: _____

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SECTION I: INTRODUCTION

Welcome to the City of Baraboo's Common Council! You have been chosen to represent your district and their interests. It is important for you to be aware that you also represent the entire City of Baraboo. Sometimes you will find that it is very difficult to balance the two positions. However, if you keep yourself informed, have an open mind to all viewpoints, and listen to your colleagues, the differences of opinion and variety of viewpoints will generally lead to the best solution for the City. If we all practice the following rules, we will avoid many of the problems that might arise from these differences of opinion. When in doubt, do what is best for the City.

MISSION STATEMENT OF THE CITY OF BARABOO

We envision the City of Baraboo:

- As a vibrant, innovative and well planned community
- Exemplifying a high quality of life and being a safe place to live, work and play
- Having a government with the highest standards of ethics and integrity
- Having a government that informs its citizens and encourages active and positive participation in support of the community
- Having a government that provides quality, efficient, responsive service to our customers
- Having a government that is fiscally responsible by providing necessary services in a cost effective manner
- Having a Council that is competent, well informed and responsive to provide vision and act in the best interest of the entire City
- Having a government workforce that is highly competent and productive
- Having a government that has a high level of respect for its employees and provides an attractive, challenging and rewarding work environment

RESPONSIBILITY OF PUBLIC OFFICERS

City officials are agents of public purpose and hold office to serve the public interest. They are found to uphold the Constitution of the United States, the Constitution of the State of Wisconsin, and to carry out efficiently and impartially all laws of the United States, the State of Wisconsin, and the Ordinances of the City of Baraboo. Further, they are found to observe in their official acts, the standards of ethics set forth in this code and to faithfully discharge the duties of their office. The public interest must be their primary concern.

YOUR ROLE AS A POLICY MAKER

What is a policy maker? What is an administrator? Sometimes, as an Alderperson, you may have a difficult time deciding whether you are a policy maker or an administrator. It is extremely important that you know that YOU ARE A POLICY MAKER. As a policy maker, you determine the policy for the City. It is the role of the City Administrator and the City's Department Heads to administer the policies you set.

The first line of administration is the City Administrator. You must allow the City Administrator and the Department Heads to do his/her jobs to the best of his/her ability as a trained professional. It is imperative towards meeting the Council's goals to work together with your City Administrator.

If you do not agree with the way a certain policy is being administered, you could attempt to change that policy. However, keep in mind that not everyone will agree with your point of view in regard to how a given policy should be administered. Talk to your colleagues, get their opinion, and talk to the staff. You may find that there is a good reason for administering a policy a certain way. On the other hand, you may discover that the policy should be changed; if so, get it done through the resolution process.

COUNCIL PRESIDENT

The Council President is elected by the Council at the organizational meeting held on the third Tuesday in April. This is the first official meeting of the newly elected Council. There are several very important duties of the Council President:

- The Council President is the official spokesperson for the Council. Although individual Alderpersons can speak for themselves, they do not represent the entire Council, just their district.
- If the Mayor has to miss all or a part of a Council meeting, the Council President assumes the chair for that meeting or portion of the meeting.
- If for any reason the Mayor were incapacitated and not able to perform the necessary duties, the Council President becomes the Acting Mayor. If the Mayor left office, the Council President assumes this position until the Council selects a temporary Mayor. The temporary Mayor serves until a city-wide election is held. The newly-elected Mayor's term of office would be for the remaining term of the previous Mayor.
- The Council President should review this Handbook on an annual basis and, if necessary, have it updated so that the information it contains is accurate.
- The Council President serves as a mentor to new Alderpersons to make their transition easier, and is available to all members of the Council to answer questions or direct their inquiries to the proper City departments.
- The Council President leads the Council in reciting the Pledge of Allegiance during Council meetings.
- The Council President works closely with the Mayor and all members of the Council by encouraging professionalism, participation, honesty, and trust.

SECTION II: ETHICS

In a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government. Standards of conduct for public officials need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society and those conflicts which are substantial and material. The Wisconsin State Statutes creates a code of ethics for local elected and appointed officials. §19.59, Wis. Stat. Other laws, notably §946.13, Wis. Stat., may also apply.

ACTING IN AN OFFICIAL CAPACITY

An Alderperson should not, in an official capacity, participate in or perform any discretionary action with respect any City action, such as the making, granting, or imposition of an award, sanction, permit, license, zoning change, contract, resolution, ordinance, offer of employment, or agreement, in which the Alderperson or a member of the Alderperson's immediate family or a business or organization with which the Alderperson is associated has a substantial financial interest, whether it is direct or indirect interest. In

addition, an Alderperson should not, in an official capacity, participate in a matter affecting a business or organization from which the Alderperson or a member of the Alderperson's immediate family receives substantial compensation or income.

ACTING IN A PRIVATE CAPACITY

Usually, an Alderperson should not, in a private capacity, apply, negotiate, bid for, or receive any award, sanction, permit, license, zoning change, contract, offer of employment, or agreement in which the Alderperson has a private financial interest, whether direct or indirect, if the Alderperson is authorized to perform in regard to it any governmental function requiring the exercise of discretion, even if the official does not participate in the governmental action or exert any influence on his or her own behalf. In addition, an Alderperson should not, for compensation or on behalf of an employer, represent an individual, business, or organization before a board, commission, or other body of which an official is a member. The statutory code of ethics is not an obstacle to a local official's partner or business associate representing a client before such board, commission, or other body as long as the official is not financially interested in, and does not exercise control over, the representation.

HOW TO WITHDRAW FROM OFFICIAL ACTION

When a matter in which an Alderperson should not participate comes before the Council, a board, commission, or other body of which the Alderperson is a member, the Alderperson should leave that portion of the body's meeting involving discussion, deliberations, or votes related to that matter and ask that the body's minutes reflect the absence. The body's remaining members may review the matter and take whatever action they find appropriate.

ADVISORY OPINIONS

Any Alderperson may request of the City Attorney an advisory opinion regarding the propriety of any matter to which the person is or may become a party, as it relates to a question of ethics in their role as an Alderperson. Advisory opinions and requests must be in writing and must state all material facts. It shall be *prima facie* evidence of intent to comply with the City's Code of Ethics when a person refers a matter to the City Attorney and abides by the advisory opinion if the material facts are as stated in the opinion request.

Records of the City Attorney's opinions, opinion requests and investigations of violations shall be closed to public inspection as required by Ch. 19, Wis. Stats. Except as provided by §19.59(5)(b), Wis. Stats., the City Attorney shall not make public the identity of any person requesting an advisory opinion or of persons or organizations mentioned in the opinion.

QUESTIONS AND ANSWERS REGARDING ETHICS

Q: Where can I find the City of Baraboo's Code of Ethics?

A: The City's Code of Ethics is contained in Chapter 1 of the City of Baraboo Code of Ordinances.

Q: What kinds of conduct are addressed by the City's Code of Ethics?

A: The Code of Ethics covers:

- Using City property such as vehicles, supplies, or equipment, or city services for unauthorized personal convenience or for profit.

- Granting any special consideration, treatment, or advantage to any citizen beyond that which is available to any other citizen.
- Accepting a gift, favor, service, or promise that could reasonably be expected to influence the employee in the performance of his or her duties or could be considered as a reward for performing those duties.
- Engaging in or accepting private employment or rendering service for a private interest where such employment or services are incompatible with the employee's job with the City.
- Disclosing privileged information to a person not authorized to receive such information or using privileged information to advance one's personal or family

Q: What does the City's Code of Ethics say about the fair and equal treatment of citizens?

A: Section 1.76(2) of the City Code states: *"An official or employee shall not grant any special consideration, treatment, or advantage to any citizen beyond which is available to every other citizen. This section does not affect the duty of the Common Council members to diligently represent their constituency."*

Q: What does the City's Code of Ethics say about the receipt of gifts and favors?

A: There are two sections of the Ethics Code which deal with the potential receipt of gifts and favors:

First, §1.77 of the City Code declares that the receipt of gifts and gratuities can constitute a conflict of interest: *"Receipt of Gifts and Gratuities Prohibited: An official or employee shall not accept anything of value whether in the form of a gift, service, loan, or promise from any person which may impair his or her independence of judgment or action in the performance of his or her official duties."*

Second, §1.80 of the City Code states: *"An official or employee shall not accept from any person or organization, directly or indirectly, anything of value without full payment, if it could reasonably be expected to influence his or her vote, governmental actions or judgments, or is provided to such official or employee because of his/her position or office and could reasonably be considered as a reward for any governmental action or inaction...."*

Q: Each of the above provisions prohibits the receipt or acceptance of "anything of value." What does this term mean?

A: The City Code defines "anything of value" as: *"Any money or property, favor, service, advance, forbearance, loan or promise of future employment, but this term does not include such things as: (1) compensation and expenses paid by the City, fees, and honorariums, or (2) "unsolicited" advertising or promotional materials such as pens, pencils, notepads, calendars, informational or educational materials or unexceptional value, plaques, other advertising giveaways, or (3) any other thing which is "not likely to influence the judgment of individuals covered by the code."*

Q: Are there any circumstances where Officials may accept and retain a gift, such as food, drink, favors, or services?

A: Yes. Officials may accept and retain items and services unrelated to his/her position or if the item or services is of minimal, insignificant or trivial value.

Example One: If the item or service is offered for a reason unrelated to your position with the City and the item or service could not reasonably be expected to influence your actions or judgment, or reasonably be considered a reward for action or inaction, the item or service may be accepted and retained. E.g., getting free samples of food at the grocery store; an Alderperson who works full time at a factory receives a holiday bonus from her employer.

Example Two: If the item or service is provided by the City or is for the benefit of the City as a whole, and not for private benefit, the item or service may also be retained. E.g., the City provides all of the Alderpersons with a free email address.

Example Three: If the item or service is of only nominal, insignificant, or trivial value, it may also be accepted and retained. E.g., an Alderperson accepts a cough drop from a constituent.

Q: Does the Code of Ethics establish a dollar value for an item or service that is considered of “nominal or insignificant value”?

A: No.

SECTION III: CONDUCT FOR ALDERPERSONS

The City of Baraboo has codified in Chapter 1 of the Baraboo Municipal Code standard rules of conduct for all Alderpersons. These rules include expected conduct behavior both during meetings and well as when you are interacting with the public. Alderpersons are expected to abide by these rules of conduct at all times. The following list of expected conduct is not exhaustive, but provides a general outlines of how Alderpersons are expected to act within the scope of their elected position.

- Listen to all sides.
- Treat everyone with respect.
- Be honest.
- Deal openly with City staff and use and trust their expertise and assistance.
- Arrive at all appointments and meetings on time or call the Chairperson, City Administrator or Mayor prior to the appointment if you will be unable to attend.
- Be aware that written notes, voicemail messages, and email may be public records. Written notes, voicemail messages and email are subject to the same rules regarding respect and consideration as would be applicable to conduct in public meetings and private encounters regarding City business. Such items shall be treated as public communications subject to the Wisconsin Open Records Law.
- You have a duty to hold in strict confidence all information concerning matters dealt with in Closed Session. You shall not, either directly or indirectly, release, make public, or in any way divulge any such information, or any aspect of the closed session deliberations to anyone, unless expressly authorized or required by law to do so.
- When you are a member of a committee, commission or board:
 - Learn your role and the purpose of the committee, commission or board.
 - Maintain a professional attitude.
 - Speak after being recognized by the Chairperson.
 - Do not make comments while others are speaking.
 - If you must miss a meeting, inform the Chairperson prior to the meeting.
 - Read all materials before the meeting.
 - Keep the discussion on topic.
 - Let others have a chance to speak.
 - When members of the audience are speaking, listen courteously.
- As a member of the Council:
 - Do not hold side conversations while business is being conducted.

- Study all reports prior to the meeting. These reports are included in your agenda packet.
- Keep your comments to the topic under discussion.
- Don't be afraid to disagree with a fellow Council member or staff member, but do not make your disagreement a personal attack.
- In referring to another Alderpersons, use the formal "Aldersperson Jones" or "my colleague" rather than first names.
- Refer to other elected officials and department heads in a formal manner such as "Police Chief Jones," "the Fire Chief," or by a surname such as "Mr. Jones."
- The Mayor should be addressed formally, using "Mayor Jones" or "Your Honor."
- Know and obey the Council rules.
- During the public participation portion of the meeting, listen respectfully to the speakers.
- If you feel you have a conflict of interest on a certain vote, you may abstain from voting on that issue. You should also abstain from discussion on the issue.
- If someone has made your point during the discussion, you don't need to make it again.
- Council rules limits Council members to speak for no more than ten minutes on a particular topic.
- Try to keep an open mind.
- Try not to needlessly re-hash or over-analyze an issue.
- Do not move around the room or leave the Council Chambers during Council meeting except when necessary.
- Check your Council mailbox and email frequently.
- Remember that Council meetings are broadcast live! Refrain from critical facial expressions and eye rolling. The microphones are very sensitive and pen clicking, finger drumming and coughing interferes with our audience's viewing pleasure.

SECTION IV: BOARDS, COMMITTEES AND COMMISSIONS

Unless otherwise stated, committee, commission and board members are appointed by the Mayor and confirmed by the Common Council. Except for the boards and commissions where the Mayor serves as chair, the chairperson is selected by the members of the committee, commission or board. Generally the chair is elected to a one-year term.

STANDING COMMITTEES

All standing committees consist of a chairperson and two alderpersons appointed by the Mayor. Normally, the standing committees meet once each month. Prior to the first official meeting of the new Council, you can request the committees, commissions, and boards to which you would like to be appointed by contacting the Mayor. There is no guarantee that you will get your preferred committees, commissions or boards, but it does give some guidance to the Mayor.

- Finance/Personnel Committee. The Finance/Personnel Committee advises the Common Council on all matters dealing with finance, bond issues, regulation of rates and fees, except where these are directly administered by other Boards and Commissions, audits, insurance, personnel relations, pay plans and policies, any duties assigned by the Council, the purchase of real property and personal property by the City, on matters involving the sale or conveyance of real property owned by the City, and on matters involving transportation issues.

- Public Safety Committee. The Public Safety Committee advises the Common Council on all matters dealing with streets, sidewalks, alleys, storm drains, drainage ways, sewers, traffic and parking matters, health and safety issues, nuisances, and any other duties assigned by the Council. Additionally, the Public Safety Committee serves in an oversight capacity with respect to matters concerning police and fire operations, except where such matters are the direct responsibility of the Police and Fire Commission. It is the duty of this committee, under the direction of the Council, to keep the streets, sidewalks, alleys, sewers, storm drains, and drainage ways, and related public works in repair.
- Administrative Committee. The Administrative Committee advises the Common Council on all matters dealing with the maintenance and upkeep of all City property, except property directly administered by other boards and commissions, the review of license applications, except those licenses administered by other Boards, Commissions and City staff, the review of proposed legislation not directly involving other Boards, Commissions or Committees, and advising City staff regarding response to legislative matters, relationships with other governmental entities and any duties assigned by the Council. This Committee reviews and advises the Common Council on matters involving the sale of City owned personal property. Except where specific jurisdiction and responsibility has been assigned in this section to another committee, this Committee shall serve as a liaison to the Library Board, Parks and Recreation Commission, Community Development Authority, Police & Fire Commission, Baraboo Ambulance District Commission, Airport Commission, U.W. Baraboo Campus Commission, City Attorney and City Assessor.

OTHER COMMITTEES, COMMISSIONS AND BOARDS

In addition to the standing committees, special committees may be appointed from time to time to deal with special matters of interest to the City. All such committees are appointed by the Mayor unless otherwise directed by the Council.

- Administrative Review Appeals Board. The Board consists of the Mayor, an Alderperson and one citizen member. The Alderperson member is appointed annually by the Mayor, subject to confirmation by the Council. The citizen member is appointed by the Mayor, subject to confirmation by the Council, for a three-year term. The powers and duties are pursuant to those outlined in Ch. 6 of the City Code.
- Baraboo Economic Development Committee. The purpose of the Commission is to develop data regarding the economic needs, advantages, and sites in the City of Baraboo; cooperate with other area economic development entities; acquaint prospective businesses with the advantages of location within the Baraboo area; and to study and make recommendations to the Mayor and City Council for the continuing improvement of the economic and business climate of Baraboo. The Baraboo Economic Development Commission consists of thirteen members. The Commission, as an advisory group, works on various projects consistent with approved plans and policies and as assigned by the Mayor and/or City Council for the improvement of the economic vitality of the Community. The Commission will, at least once a year on or before October 1st of each year, report to the Council concerning its activities and recommendations with regard to economic development matters.

- Baraboo-Wisconsin Dells Regional Airport Commission. The Commission consists of one representative and one alternate representative from each of the owner communities: the City of Baraboo and the Village of Lake Delton. The Commission oversees the operation and maintenance of the Airport and recommends capital improvements to the owners. The Commission has the powers and duties detailed in §114.14, Wis. Stat.
- Board of Ethics. The Board consists of three members and one alternate who may not serve on any other City Board, Committee or Commission. All members must be residents of the City. The Board adopts written Rules of Procedure and offers advisory opinions concerning ethical matters. The Board also hears complaints against City Officials or City employees and holds hearings to investigate ethical complaints.
- Board of Review. The Board consists of the Mayor, the City Clerk and three Alderpersons appointed annually by the Mayor. The City Assessor must attend all meetings of the Board. The Board has the powers and duties prescribed in §70.47, Wis. Stats.
- Board of Zoning Appeals. The Board consists of five members appointed by the Mayor for staggered terms of three years. Two alternate members are appointed by the Mayor for terms of three years and act only when a regular member is absent or refuses to vote because of interest. The Building Inspector will attend meetings, upon request, to provide technical assistance as requested by the Board of Zoning Appeals. The Board has the powers and duties prescribed in §62.23(7)(e), Wis. Stats.
- Plan Commission. The Plan Commission consists of seven members. One member is the Mayor, or the Mayor's designee, who is the Chairperson. One member will be a member of the Baraboo Parks and Recreation Commission, elected annually in April by the Commission to serve a one-year term. Two members will be Alderpersons elected annually in April of each year by a majority vote of the Council. The other three members are citizen members of recognized experience and qualifications appointed by the Mayor. The citizen members shall serve for staggered three-year terms. The terms of Plan Commission members who are appointed or elected shall commence on the first day of May. The Plan Commission shall have the powers and duties prescribed in §62.23, Wis. Stats., and such other powers and duties as shall be vested in the Commission from time to time by the Council.
- Community Development Authority. The Authority consists of eight members appointed for a term of four years. Two are members of the Council and five are citizens, and the eighth member is a resident of a housing unit managed by the Authority. The Authority and its Commissioners are under statutory duty to comply strictly with all provisions of §§ 66.1201 to 66.1211, Wis. Stat. The main purpose of the Authority is to provide safe and sanitary housing for the elderly and persons of low income, and at rentals they can afford. Another primary responsibility of the CDA is to manage the City's Economic Development Revolving Loan Funds.
- Baraboo District Ambulance Commission. The Commission consists of seven voting members plus a non-voting member from St. Clare Hospital. Four members are Alderpersons from the City of Baraboo, and three are from other member communities. The Commission has the powers and duties described in the by-laws for the Baraboo District Ambulance Service and Chapter 28 of the Municipal Code.
- Emergency Management Commission. The Commission consists of the Mayor, the Emergency Management Director, EMS Manager or designee, Police Chief or designee, Utility Superintendent or

designee, Street Superintendent or designee, City Engineer or designee, and one citizen member appointed by the Mayor. The City Administrator shall serve as an ex officio member of the Commission, except that if the Mayor is not in attendance, the City Administrator shall serve as a member on his behalf. The Mayor shall serve as Chairperson of the Commission and the Emergency Management Director shall serve as Secretary. Appointments for one-year terms shall be made by the Mayor at the annual organizational meeting, subject to confirmation by the Council. The Emergency Management Commission shall be an advisory and planning group and shall advise the Mayor, the Director and the Council in all matters pertaining to emergency management.

- Library Board. The Library Board consists of nine members who are appointed by the Mayor subject to confirmation by the Council. One member is the Baraboo School District Administrator or his/her representative. The remaining members are residents of the City of Baraboo, except that not more than 2 members may be residents of other municipalities. The members shall be appointed for staggered three-year terms. The Library Board shall have the powers and duties prescribed in §43.58, Wis. Stats. The Board shall consult with the Council for the purpose of coordinating library personnel policies with general City personnel policies.
- Parks and Recreation Commission. The Commission consists of seven members, including one Alderperson appointed annually by the Mayor and six citizen members appointed by the Mayor for staggered three-year terms. All appointments shall be subject to confirmation by the Council. The Commission shall have the general supervision of recreation in the City and shall operate and maintain all parks, the Civic Center, community recreation centers, playgrounds, or other areas that shall be assigned to it by the Council. It may make rules and regulations for the government and control of all such places of recreation, subject to approval by the Council. The Commission generally directs the activities of the Director of Parks and Recreation and recommends the hiring of employees it deems necessary to carry out its responsibilities. It is the intent of the Council that the Commission promotes recreation in its broadest aspects and toward this end cooperate with existing recreational programs under the auspices of schools or semipublic groups within the City. The Commission shall issue a written annual report to the Council. The Commission shall also govern the City's Forestry Program and shall have the powers and duties prescribed in §27.09, Wis. Stats.
- Police and Fire Commission. The Commission consists of five elected citizens. The Commission has the powers and duties prescribed in §62.13, Wis. Stats., except sub. (6) thereof. In addition, the Commission is authorized to interview, select and appoint persons hired to fill non-sworn support staff positions of the Police Department and Fire Department, provided, however, that the position has been authorized and approved by the Common Council and the Common Council reserves the power to establish the salary and benefits for each such position.
- UW-Baraboo/Sauk County Campus Commission. The Commission consists of seven members: the City Finance Director, the County Clerk, two alderpersons from Baraboo, two County Board Supervisors and one member appointed jointly. The City and County jointly own the Campus buildings and property. The Commission oversees the maintenance of the buildings and grounds and makes recommendations to the owners concerning capital improvements.

COUNCIL APPOINTMENTS MADE TO EXTERNAL BOARDS

- Al Ringling Theatre Friends
- BID
- Sauk County Development Corporation
- TIF Joint Review Board

- Baraboo Rapids Committee
- Chamber of Commerce
- Pink Lady Rail Commission
- Other Ad Hoc Committees as may be Created by the Mayor

COMMITTEE AGENDA AND MINUTES COORDINATION

Committee Chairpersons work with staff to develop their committee’s agendas, reports and minutes. A recommended format for all agendas attached in [Appendix B](#). Meetings are tape recorded and/or video recorded and later transcribed by City staff.

RESOLUTIONS

A resolution is a formal method of presenting a motion. Resolutions originate in the various City committees, commissions or boards. Resolutions have several elements including background, fiscal note, and the decision or ‘resolution’ by the Council. An example of the City’s resolution format is in [Appendix C](#). The following is the path that a resolution usually follows:

1. An Alderperson, the Mayor, Administrator or Department Head is made aware of problem from a citizen or other possible source.
2. The matter is referred to a Committee or staff for review at the Council meeting under the “Petitions and Correspondence” portion of the agenda.
3. The committee, board or commission discusses the issue and makes a recommendation to the Council in the form of a written resolution.
4. The Council can approve, deny, or refer back the resolution.
5. If referred back to the committee, board or commission by the Council, the resolution will go back to the committee, board or commission of jurisdiction.
6. The committee, board or commission can then reaffirm, reverse, or change their previous recommendation.
7. The resolution is returned to the Council for action.

SECTION IV: MEETING LAWS AND STANDARDS

As an Alderperson, you can count on attend meetings on a regular basis. Alderpersons are expected to conform to certain standards of conduct during meetings and also to comply with the Wisconsin Open Meetings Law.

OPEN MEETING LAW REQUIREMENTS

The Wisconsin Open Meetings applies to every "meeting" of a "governmental body." A “Governmental body” includes a state or local agency, board, commission, committee, Council, department, or public body corporate and politic created by constitution, statute, ordinance, rule, or order. A “meeting” is defined as the convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power, or duties delegated to or vested in the body. A meeting does not include any social or chance gathering or conference which is not intended to avoid the open meeting laws. The two most basic requirements of the open meetings law are that the governmental body:

- Give 24 hours advance notice of each of its meetings, and
- Conduct all of its business in open session, unless an exemption to the open session requirement applies.

An "open session" is defined in Wisconsin Statutes as "a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times." The provision requires that all City Council, board, committee and commissions hold their meetings in rooms that are reasonably calculated to be large enough to accommodate all citizens who wish to attend the meetings and in rooms that are accessible, without assistance, to persons with functional limitations.

WALKING QUORUMS, EMAIL AND TELEPHONE CALLS

The requirements of the open meetings law extends to walking quorums. A "walking quorum" is a gathering of a group of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum.

The widespread use of e-mail and other electronic message technologies creates special dangers for governmental officials trying to comply with the open meetings law. Although two members of a governmental body larger than four members may discuss the body's business without violating the open meetings law, features like "forward" and "reply all" deprive a sender of control over the number and identity of the recipients who eventually may have access to the sender's message. Because of the dangers posed by e-mail, the Wisconsin Attorney General strongly discourages the members of every governmental body from using email to communicate about issues within the body's realm or authority.

Phone calls among members of a governmental body also fit within the definition of a meeting subject to the open meetings law. To comply with the law, a governmental body conducting a meeting by telephone conference call must provide the public with an effective means to monitor the conference. This may be accomplished by broadcasting the conference through speakers located at one or more sites open to the public.

COMMON COUNCIL MEETINGS RULES

The Council has adopted standing rules for Common Council meetings. In the absence of a City ordinance or State statute, Council meetings shall be governed by Robert's Rules of Order, revised. All committees, commission and board meetings are also to be governed by Robert's Rules of Order unless otherwise specified. Below are commonly used standing rules and Robert's Rules of Order for Council meetings (see Chapter 2 of the Baraboo Municipal Code for additional details):

- Quorum.
 - Two-thirds of the members of the Council is a quorum. A lesser number than a quorum may compel the attendance of absent members. A majority of all the members is necessary for a confirmation on all questions.
 - In case of a tie the Mayor shall have a casting vote. When the Mayor does vote in case of a tie, his/her vote shall be counted in determining whether a sufficient number of the Council has voted favorably or unfavorably on any measure.
 - The Mayor shall not be counted in determining whether a quorum is present at a meeting.

- Discussion of Items on Agenda. Once an item on the agenda is read into the record, it is open for discussion. The Mayor may ask for a staff presentation on the item, or for any Council questions or comments. The Council may discuss such item prior to any motion being on the floor.
- Motions.
 - When a motion is made and seconded, it is deemed to be in the possession of the Council and shall be stated by the presiding officer, or if in writing shall be delivered to the clerk and read by him/her, before debate begins.
 - The rules of order pertaining to motions shall be according to Robert's Rules of Order, revised.
 - Unless otherwise provided, no ordinance or resolution, having once been defeated, may again be introduced in the same or in substantially similar form until the expiration of 30 days from the date when such ordinance or resolution was defeated.
- Debate.
 - No member shall address the Council until he/she has been recognized by the presiding officer. When a member wishes to speak to a question or make a motion, he/she shall respectfully address the presiding officer. When two or more members desire to address the presiding officer at the same time, the presiding officer will designate the member who has the right to speak first. The presiding officer's determination on who speaks first is final.
 - No member may speak more than a total of 10 minutes on any question unless the Council, by a majority vote, grants an extension of time for a member to speak.
 - When a question is under discussion, no action is in order except to adjourn, to lay on the table, to postpone to a certain day, to refer to a committee, to amend, or to postpone indefinitely. All such motions shall have precedence in the order listed.
 - Any member wishing to terminate debate on a question may move to put the question before the Council. The presiding officer shall then state that the previous question has been moved and a vote shall be taken on whether the question shall be put to a vote. If a majority of the members vote in the affirmative, debate shall be terminated and the presiding officer will clearly state the question before the Council. The Council will vote first upon pending amendments and then upon the main question.
- Voting.
 - A member has the right to change his/her vote up to the time the vote is finally announced. After that, he/she can make the change only by permission of the Council, which may be given by general consent; that is, by no member objecting when the presiding officer inquires if anyone objects. If objection is made, a motion may be made to grant the permission which motion shall be undebatable.
 - It is the duty of every member to express his/her opinion on a question by voting thereon; however, no member can be compelled to vote.
- Consent Agenda. The City Clerk, subject to approval of the Mayor, will place on the consent agenda items that in his/her judgment are routine and non-controversial. No separate discussion or debate on matters included in the consent agenda shall be permitted. A single motion, seconded and adopted by a majority vote of the members will be sufficient to approve, adopt, enact or otherwise favorably resolve any matter listed on the consent agenda without separate reading or discussion thereof. When the consent agenda is reached, any member may request removal of any item from the consent agenda and such item will be removed without debate or vote. Any item or part thereof removed from the consent agenda will be separately considered at the appropriate

time in the Council's regular order of business. Any member wishing to remove an item from the consent agenda must request such removal when the agenda is considered as an order of business.

- Mayoral Veto Power. The Mayor has the veto power as to all acts of the Council, except such as to which it is expressly or by necessary implication otherwise provided by Wisconsin law. All acts of the Council shall be submitted to the Mayor by the City Clerk and will be enforced upon approval evidenced by the Mayor's signature or upon failing to approve or disapprove within five days, which fact shall be certified thereon by the City Clerk. If the Mayor disapproves, the Mayor's objection must be filed with the City Clerk, who shall present them to the Council at the next meeting. A 2/3 vote of all the members of the Council will then be required to make the act effective notwithstanding the objections of the Mayor. If the last day for exercising a veto falls on a Sunday or a holiday, the Mayor may exercise a veto on the next succeeding secular day.
- Reconsideration. It is in order for any member who voted in the affirmative on any question which was adopted, or for any member who voted in the negative when the vote is evenly divided, or for any member who voted in the negative when the number of affirmative votes was insufficient for adoption, to move a reconsideration of such vote at the same or next succeeding regular meeting of the Council.
- Citizen's Right to Address Council. Any citizen has the right to speak on any item of business that is on the agenda for Council action if he/she is recognized by the presiding officer. Speakers may be limited in length of address by majority vote of the Council; otherwise, the presiding officer shall determine the length of time that a citizen may speak on a question. No citizen is permitted to speak on petitions, communications and reports when first introduced before the Council and which are scheduled to be referred to and reported back at a later meeting or which will be taken up at a later time in the regular meeting.
- Suspension of Rules. Except as otherwise provided by law or City code, 2/3rds of the members shall be required to suspend, alter or modify any Robert's Rules or standing rules of the Council. When a member moves a suspension of the rules, he/she shall be required to state the particular standing rule to which the motion is addressed. The presiding officer shall then put the question, "Is there any objection to the suspension of the rules in accordance with the motion?" An objection voiced to suspension of the rules by one member shall require a roll call on the motion for suspension. If no such objection is made, the Clerk will record a unanimous consent to the suspension and the presiding officer shall then proceed to state the principal questions.

CONCLUSION

This handbook should help to make your term of office go smoothly. It does not cover all aspects of the office nor will it solve every problem or answer every question that might arise. It is not designed to do so. This handbook should be used as a guide, not a crutch. You will be an effective alderperson if you work hard at the job. Read over all of the materials and seek out information from all available sources. Above all, enjoy your office. This is not just a job you do for a stipend, but it is an opportunity for you to serve your community. Your position will not doubt frustrate you during periods of your term, but can be one of the more exciting positions you will hold in your life because you are helping to shape our community's future.

APPENDIX A – RESOURCES

Besides the City Administrator, City Attorney and Department Heads, there are several resources available to Alderpersons:

- Each member of the Common Council is issued a key which allows entry from the front of the building to your mailbox. Your mailbox is located in the hallway near the front entrance. Agendas and other information is put here for your retrieval. You should make a habit of checking your mailbox frequently.
- City of Baraboo Website: <http://www.cityofbaraboo.com/>
- City of Baraboo Municipal Codebook: http://www.cityofbaraboo.com/index.asp?SEC=B55D3911-B63F-490B-8C70-9A48B705260F&Type=B_BASIC
- State of Wisconsin: www.wisconsin.gov
- Department of Justice Information on Wisconsin Open Meeting Laws: www.doj.state.wi.us
- Department of Justice Information on Wisconsin Public Records Law: www.doj.state.wi.us
- League of Municipalities Website: <http://www.lwm-info.org/>
- Wisconsin State Statutes and Administrative Code Website: docs.legis.wisconsin.gov
- Robert’s Rules of Order: www.rulesonline.com

For specific questions, please refer to the following:

Question/Concern	City Department/Employee	Phone
Address Changes – Utility Bills	Utilities	355-2740
Address Changes – Property Taxes	Finance	355-2700
Alternate Side Parking	Police	355-2720
Annexation	Administration	355-2715
Animals, Stray or Wild	Police	355-2720
Assessment For Street/Sidewalk Installation	Engineering	355-2730
Assessment Payment Arrangements	Finance	355-2700
Bicycle Registration	Police	355-2720
Boulevard Grass Killed by Winter Salt	DPW	355-2730
Brush Pickup	DPW	355-2735
Building Permit Problems	Inspection	355-2730
Building Too Close To Lot Line	Inspection	355-2730
Burning	Fire	355-2710
Business In Home/Garage	Zoning	355-2730
Cat Licenses	Finance	355-2700
Community Block Grants	CDA	356-4822
Court Dates and Fines	Clerk Of Courts-Sauk Co.	355-3287
Curb Cuts	Engineering	355-2730
Curb Damage	Engineering	355-2730
Damaged Sidewalks	Engineering	355-2730
Diseased Trees	Parks, Recreation and Forestry	355-2760
Dog Licenses	Treasurer	355-2700
Driver’s Licenses	Wisconsin DOT	356-3326
Dust from Ball Diamonds	Parks, Recreation and Forestry	355-2760
Dust from Street	DPW	355-2730
Election Procedures	City Clerk	355-2700
Farmer’s Market	BID	356-5606
Fence Problems	Inspection	355-2730
Fire Hydrant	Utilities	355-2740
Fire Inspection	Fire	355-2710

Fireworks	Fire	355-2710
Flooding	DPW	355-2730
Garage Sales, Over 3 Per Year	City Clerk	355-2700
Garbage In Yard	Police	355-2720
Garbage Not Picked Up	DPW	355-2730
Grass/Weeds Not Cut	Police	355-2720
Handicap Parking Plates Or Tag	Police	355-2720
Handicap Ramps	Inspection	355-2730
Hiring Procedures	City Administrator	355-2715
Housing	CDA	356-4822
Ice Rinks	Parks, Recreation and Forestry	355-2760
Industrial Land Available	City Administrator	355-2715
Junk In Yard	Police	355-2720
Leaf Burning	Fire	355-2710
Leaf Pickup	Public Works	355-2730
Liability Claims	Clerk	355-2700
Licenses	City Clerk	355-2700
Loans	CDA	356-4822
Lot Size	Assessor	355-2730
Lottery Credit	City Treasurer	355-2700
Maps	Engineering	355-2730
Meeting Agendas	City Clerk	355-2700
Neighborhood Watch	Police	355-2720
New Sidewalk	Engineering	355-2730
No Parking Signs	Public Works	355-2730
Parcel Numbers	City Treasurer	355-2700
Parking Lot Design	Engineering	355-2730
Parking Tickets	Police	355-2720
Pet Problems/Strays	Police	355-2720
Police Response Time	Police	355-2720
Property Assessment	Assessor	355-2730
Property Records	Assessor	355-2730
Railroad Crossing Problems	Engineering	355-2730
Rats and Other Pests (See City Code)	Police (Under Certain Circumstances)	355-2720
Recycling	Engineering	355-2730
RV, Boat, Trailer Parked In Yard	Police	355-2720
Sewer Back Up	Public Works	355-2730
Sidewalk Construction	Engineering	355-2730
Sidewalks Not Shoveled	Police	355-2720
Sirens	Fire	355-2710
Site Plan Review	City Administrator	355-2715
Smoke Detectors	Fire	355-2710
Snow Plowing/Ice On Streets	Public Works	355-2730
Speeding Problems	Police	355-2720
Spring Cleanup	Public Works	355-2730
Staffing Levels	City Administrator	355-2715
Standing Water	Engineering	355-2730
Street Construction	Public Works, Engineering	355-2730
Street Flooding	Engineering, Public Works	355-2730
Street Lighting	Public Works	355-2730
Street Not Swept	Public Works	355-2730
Street Potholes	Public Works	355-2730
Tax Amounts Due Before January 31	Treasurer	355-2700

Tax Amounts Due After January 31	Sauk County Treasurer	355-3275
Taxi Service	Baraboo Taxi Service	356-8300
Taxi Service Complaints	City Clerk	355-2700
Tennis Courts	Parks, Recreation and Forestry	355-2760
Trees	Parks, Recreation and Forestry	355-2760
Tours Of Fire Department	Fire	355-2710
Traffic Control Signs	DPW	355-2730
Variance	Zoning	355-2730
Voter Registration	City Clerk	355-2700
Ward Boundaries	City Clerk	355-2700
Water Bills Amounts Due	Utilities	355-2740
Water Drainage Problem	DPW	355-2730
Zoning Changes	City Engineer	355-2730

APPENDIX B – SAMPLE COMMITTEE MEETING AGENDA

NAME OF COMMITTEE MEETING AGENDA

Date

Time, Place/Address of Location

1. Call Meeting to Order
2. Roll Call of Membership
3. Compliance with the Open Meeting Law
4. Approval of Minutes from _____
5. Approval of the Agenda
6. Appearances/Presentations (Optional)
7. Action Items
 - a.
 - b.
8. Information Items
 - a.
 - b.
9. Adjournment

Agenda prepared by _____ & posted on _____

PLEASE TAKE NOTICE that any person who has a qualifying disability as defined by the Americans with Disabilities Act that requires the meeting or materials at the meeting to be in an accessible location or format, should contact the Municipal Clerk, 101 South Blvd., or phone (608) 355-2700, during regular business hours at least 48 hours before the meeting so that reasonable arrangements can be made to accommodate each request.

FOR INFORMATION ONLY, AND NOT A NOTICE TO PUBLISH

APPENDIX C – SAMPLE RESOLUTION

RESOLUTION NO. 2018- (Resolution Number)

Dated: (Council Meeting)

Background: (Department Heads or the City Administrator draft this section of the resolution which should provide a history and reasons leading to the requested action. This section is provided for the benefit of Council members who are not members of the Committee that the issue came through as well as the general public. Resolutions are permanent records of the community and the background listed here should be complete and should not say “refer to a memo” or some other document that will not be a permanent record. This section is not considered part of the action of the Council. The action of the Council is listed in the “Resolved” section.)

Fiscal Note: (check one) Not Required Budgeted Expenditure Not Budgeted
Comments: (The author of the resolution is required to state the fiscal impact on the City’s present budget. Budget transfers or amendments are often listed in this section.)

(The author may list “Whereas” paragraphs in the section if the issue is more complicated or detailed in nature.)

Resolved, by the Common Council of the City of Baraboo, Sauk County, Wisconsin:

(The final decision of the Council is listed here.)

Offered by: (Committee making recommendation)

Motion: (Maker of motion)

Second: (Second of motion)

Approved: _____

Attest: _____

Action Item 2.b. Attachments

Memo City Administrator



To: Administrative Committee
From: Ed Geick
Subject: Pool Security Code
Date: May 24, 2018
CC: Mayor, City Council, Tom Pinion, Attorney Truman

Alderman Zolper has requested the Administrative Committee consider changes in Chapter 14.13 re: Private Swimming Pool regulations for the purpose of allowing pool covers to be substituted in place of fencing for swimming pool security. It is my understanding this initiative is prompted by a citizen request. A copy of the Chap. 14.13 is in attachment #1.

In attachment #2 there is research done by City Attorney Truman on this topic and a related Minnesota case. Attachment #3 is an opinion letter from former City Attorney Alene Bolin when this same subject came up in 2016.

Attachment #4 is a sample of pool covers of various types that were found in a Google search.

A handwritten signature in blue ink that reads "Ed Geick".

Ed Geick

or rebuilt nor shall such building, when damages are less than 50% of its fair market value, be so repaired as to be raised higher than the highest part left standing after such damage shall have occurred or so as to occupy a greater space than before the damage thereto.

14.13 PRIVATE SWIMMING POOLS. No person shall construct, install or enlarge a residential swimming pool not enclosed in a permanent building in the City except in accordance with the following regulations:

(1) DEFINITION. "Swimming pool" means any depression in the ground, either temporary or permanent, or a container of water, either temporary or permanent and either above or below the ground, in which water more than 18 inches deep is contained and which is used primarily for the purpose of bathing or swimming.

(2) PERMIT.

(a) Required. No person shall construct, install, enlarge or alter any private swimming pool unless a permit therefore has first been obtained from the Building Inspector.

(b) Application. Application shall be on forms provided by the Building Inspector and shall be accompanied by plans drawn to scale showing the following:

1. Location of pool on lot, distance from lot lines and distance from structure.
2. Location of any septic tank, filter bed and sewer and water lines.
3. Pool dimensions and volume of water in gallons.
4. Location of proposed fence, and type, size gate location.
5. Existing overhead wiring relative to proposed pool.

(c) Fees. See §14.08(10) of this chapter.

(3) CONSTRUCTION REQUIREMENTS.

(a) No pool shall be located, erected, constructed or maintained closer to any side or rear lot line than allowed by Ch. 17 of this Code for permitted accessory building uses, and the waterline of any pool shall not be less than 10 feet from any lot line or building.

- (b) No connection shall be made to the sanitary sewer or septic system.
- (c) Where topography requires, a permanent wall of concrete, masonry or material approved by the Building Inspector shall be constructed to prevent ground and fill from spilling onto adjoining property.
- (d) Gaseous chlorination systems shall not be used for disinfecting pool waters.
- (e) No above-ground pool shall be less than 5 feet from any septic system.

(4) FENCES.

(a) All swimming pools not enclosed within a permanent building shall be completely enclosed by a fence of sufficient strength to prevent access to the pool, not less than 5 feet in height and so constructed as not to have voids, holes or openings larger than 4 inches in one dimension. Gates or doors shall be constructed so as to be capable of being locked, and shall be closed and secured so as to prevent unlatching by persons outside the pool at all times when the pool is not in actual use.

(b) Above-ground pools with self-provided fencing to prevent unguarded entry shall be permitted without separate additional fencing, provided the self-provided fence is of the minimum height and design as herein specified.

(c) Permanent access from grade to above-ground pools having stationary ladders, stairs or ramps shall have safeguard fencing and gates equivalent to those required herein, subject to all other applicable ordinances and subject to the following:

1. No fence shall be located, erected, constructed or maintained closer than 3 feet to a pool.
2. The wall of the house or building facing a pool may be incorporated as a portion of such fence.

(5) PORTABLE POOLS. Portable pools over one foot in depth must be fenced as provided in sub. (4) above, or be drained or covered after each day's use in such a manner as to provide public safety.

- (6) **ELECTRICAL REQUIREMENTS.**
- (a) To Comply With Electrical Codes. All electrical installations shall require separate permits and shall be governed by the City Electrical Code.
- (b) Pool Lights. If overhead flood or other artificial lights are used to illuminate the pool at night, such lights shall be shielded to direct light only on the pool.
- (7) **OPERATION OF POOL.** No pool shall be so operated as to create a nuisance, a hazard or an eyesore or otherwise to result in a substantial adverse effect on neighboring properties.

14.14 **CANOPIES AND MARQUEES.** Any permanent canopy or marquee erected hereafter on any building shall conform to the following provisions:

- (1) **LOCATION.** No canopy or marquee shall have less than 10 feet clear between the grade of the sidewalk at any point and the lowest point of any projection or appendage of any such canopy or marquee and no part of any such canopy or marquee shall extend further over the street than a point 3 feet back on the back edge of the curb. Any such canopy or marquee shall be suspended from the building with no supports resting upon the sidewalk or public highway.
- (2) **MATERIALS.** Canopies and marquees shall be constructed of incombustible materials throughout, shall slope and drain toward the building and shall be provided with conductors connected in such a manner that no water is discharged on any sidewalk.
- (3) **SIGNS.** Any sign or other appendage of a temporary or permanent nature shall be rigidly attached to the canopy or marquee in a manner approved by the Building Inspector and swinging signs or accessories of any nature are prohibited.

14.15 **RADIANT HEATING UNITS.**

- (1) **DEFINITION.** "Radiant heating unit" is a room heater, stove or free standing fireplace not intended for duct connections used to heat a room or rooms using the combustion of such solid fuels as wood or coal as a source of heat.
- (2) **PERMIT REQUIRED.** It shall be unlawful for any person to install or cause to be installed any radiant heating unit in

the City without first having obtained a permit from the Building Inspector.

- (3) **APPLICATION FOR PERMIT.** Application for a permit shall be made on a form provided by the Building Inspector. The following data should be submitted with the application:
- (a) The manufacturer's installation, maintenance and operations manual, and the manufacturer's approval number.
- (b) Type and size of chimney.
- (c) The proposed chimney flue or new chimney flue size.
- (d) The number and size of existing vent connections to the chimney flue.
- (e) The location of the heating unit and the fire resistant coverings to be used, all of which shall be in compliance with Comm. Table 23.04A.

(4) **ISSUANCE OF PERMIT.** Upon examination of the application and accompanying data by the Building Inspector, the Inspector shall determine whether or not the installation of the radiant heating unit complies with the requirements of this section and, if so, issue the permit; if not, the Building Inspector shall state, in writing, his reasons for not issuing the permit.

(5) **INSPECTION.** No person may operate or permit the operation of a radiant heating unit until the Building Inspector has inspected and approved the installation thereof.

14.16 **NEW METHODS AND MATERIALS.** All materials, methods of construction and devices designed for use in buildings or structures covered by this code and not specifically mentioned in or permitted by this code shall not be so used until approved in writing by the State Department of Commerce. Such materials, methods of construction and devices, when approved, must be installed or used in strict compliance with the manufacturer's specifications and any rules or conditions of use established by the State Department of Commerce. The date, tests and other evidence necessary to prove the merits of such material, method of construction or device shall be determined by the State Department of Commerce.

14.17 **RESERVED.**

14.18 **FENCES.**

Attachment 2

Geick, Edward

From: Truman, Emily
Sent: Tuesday, May 22, 2018 1:21 PM
To: Geick, Edward
Subject: FW: Pool Covers in Lieu of Fencing

Here's my opinion with some case law on the topic.

Thanks,
Emily

Emily Truman | City Attorney

City of Baraboo | 101 South Blvd. | Baraboo, WI 53913
Office: (608) 355-2715 | Fax: (608) 355-2719 | etruman@cityofbaraboo.com

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From: Truman, Emily
Sent: Thursday, November 09, 2017 11:41 AM
To: Pinion, Tom <tpinion@cityofbaraboo.com>
Subject: Pool Covers in Lieu of Fencing

Hi Tom-

I'm finding stuff all across the board in terms of how states/municipalities are handling fencing vs. automatic pool covers. A few states (Michigan, Illinois, etc.) have actually created state laws allowing a powered automatic pool cover in lieu of a fence so long as the pool is situated a certain way on the property; other states have gone the opposite direction and kept the fencing requirement. In Wisconsin a few municipalities (Town of Grafton, Town of Pittsburg) are allowing powered covers in lieu of fencing, but it's definitely not a universal trend. Given the temperature on the topic, I wouldn't advise making an exception at this time, even with an indemnification. That said, I don't see any problem with suspending enforcement with an indemnification at your discretion, and if the property owners really want to push the issue, if you think there's the potential for a viable discussion for changing the ordinance at this time.

Here's an interesting case on the issue:

Gregory Frandsen, et al. v. City of North Oaks
(Minnesota Court of Appeals, February 19, 2013)

The City of North Oaks enacted an ordinance (§§ 150.055-.062) in 1989 that requires permits to build swimming pools and that swimming pools be enclosed by safety fences. Michael Johnson, James Rechtiene, and Gregory Frandsen (the appellants) own swimming pools not enclosed by fences, despite their permits being contingent upon compliance with the fencing requirement. Instead all three have automatic locking pool covers. In April 2010, the City notified the appellants that they were in violation of the fencing requirement. The appellants asked the City to consider amending the ordinance so that it would allow automatic locking covers to serve as an alternative. The City agreed to suspend enforcement and research the alternative.

After forming subcommittees to research several alternatives, reviewing information from insurance companies, and hearing from citizens at public hearings the planning commission agreed to recommend to the city council that fences be required to enclose all pools built after 1989, that the back of a home could be used as one side of the enclosure, and that locking covers not be allowed as a substitute for the fencing requirement. At a December 2010 meeting, the city council voted in favor of the planning commission's recommendation. The amended ordinance became effective in July 2011. So in April 2011, the City notified the appellants that they had until July 1 to comply with the amended ordinance. Appellants responded by bringing this suit against the City, alleging that the amended ordinance violates their equal protection rights and that the amended ordinance is arbitrary and capricious. The district court denied their appeal, so the appellants appealed to the Minnesota Court of Appeals.

The Minnesota Court of Appeals' duty is to determine "whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." The district court referred to the ordinance as one that "promote[s] the health, safety and general welfare of [the city's] residents." The Minnesota Court of Appeals agreed that the ordinance is a general safety ordinance.

By exempting pre-1989 pools from the ordinance, the appellants argued that their equal protection rights were violated. They argued that there is no rational reason for this exclusion when the purpose of the ordinance is to keep children from harm: "[W]hatever danger to children exists with respect to pools built after the effective date of the ordinance also exists with respect to pools built before the effective date of the ordinance." Since the City's pool safety-fence ordinance became effective in May 1989, building permits of pools prior to May 1989 were not conditioned to comply with this ordinance. But the appellants' building permits were conditioned to comply with this ordinance because their pools were built after 1989. Therefore the appellants are not similarly situated to homeowners who built pools prior to 1989. In addition, "the practice of grandfathering non-conforming properties has been upheld in the face of equal-protection challenges since at least 1914." The appellants failed to explain why grand-fathering is rational with respect to zoning ordinances, but irrational with respect to a general welfare ordinance, so the Minnesota Court of Appeals ruled that it was not a violation of equal protection for the City to treat its residents differently with respect to the law effective when their pools were built.

The appellants also argued, without explanation, that the amended ordinance was arbitrary and capricious because it allowed a wall of a building to serve as one side of the enclosure, which they argued increased the risk of harm to children. The appellants cited a unidentified report from "US Public Safety Commission" that supported the conclusion that a house should never be considered part of the fence. But the court could not verify the existence of a "US Public Safety Commission." To the contrary, the U.S. Consumer Product Safety Commission report considered by the planning commission stated that "when a door opens directly onto the pool area, 'the wall of the house is an important part of the pool barrier.'" Amending an ordinance is a legislative power in which the municipality has discretion as long as there is a rational basis for its decision. The court held that the City's decision is rational because it is directly related to promoting prevention of trespassing children gaining access to pools. The City's decision is not arbitrary as long as one valid reason exists.

Finally, the appellants contested the City's decision to not allow pool covers as an alternative to the fence requirement. They pointed to evidence that showed that a pool cover is a safe and viable alternative to a fence. This evidence does not mandate that the City to allow pool covers as an alternative, however. The City researched the issue for more than six months and considered numerous resources before reaching a decision. The City expressed concern for pool covers' susceptibility to mechanical failures, human errors, and enforcement issues. The decision to require fences and not allow locking covers as substitutes is a rational decision.

The Minnesota Court of Appeals affirmed the district court's decision to deny the appellants' claims.

Thanks,
Emily

Geick, Edward

From: Kleczek Bolin, Alene
Sent: Friday, September 02, 2016 8:02 AM
To: Pinion, Tom
Subject: RE: Swimming Pool Regulation

An electric automatic pool cover would not take the place of a fence. First, there would be nothing to protect the pool when it is in use. Second, it would be too easy to remain uncovered. Third, it violates our code.

Alene

Confidentiality

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From: Pinion, Tom
Sent: Thursday, September 01, 2016 5:11 PM
To: jimbob1656@gmail.com
Cc: Kleczek Bolin, Alene
Subject: Swimming Pool Regulation

Mr. Bobeck,

Following is an excerpt from the City's Building Code regulating private swimming pools and the corresponding fencing requirements. As I understand the situation, you are proposing to install a electronic automatic pool cover in lieu of a fence that affords the same "level of protection". Your pool contractor has explained that this is the new industry standard and that the vast majority of new pools have electronic covers and no fences. As we discussed, I will consult the City Attorney on this matter and one of us will contact you within the next week.

14.13 PRIVATE SWIMMING POOLS. No person shall construct, install or enlarge a residential swimming pool not enclosed in a permanent building in the City except in accordance with the following regulations:

- (1) DEFINITION. "Swimming pool" means any depression in the ground, either temporary or permanent, or a container of water, either temporary or permanent and either above or below the ground, in which water more than 18 inches deep is contained and which is used primarily for the purpose of bathing or swimming.
- (2) PERMIT.
 - (a) Required. No person shall construct, install, enlarge or alter any private swimming pool unless a permit therefore has first been obtained from the Building Inspector.

(b) Application. Application shall be on forms provided by the Building Inspector and shall be accompanied by plans drawn to scale showing the following:

1. Location of pool on lot, distance from lot lines and distance from structure.
2. Location of any septic tank, filter bed and sewer and water lines.
3. Pool dimensions and volume of water in gallons.
4. Location of proposed fence, and type, size gate location.
5. Existing overhead wiring relative to proposed pool.

(c) Fees. See §14.08(10) of this chapter.

(3) CONSTRUCTION REQUIREMENTS.

- (a) No pool shall be located, erected, constructed or maintained closer to any side or rear lot line than allowed by Ch. 17 of this Code for permitted accessory building uses, and the waterline of any pool shall not be less than 10 feet from any lot line or building.
- (b) No connection shall be made to the sanitary sewer or septic system.
- (c) Where topography requires, a permanent wall of concrete, masonry or material approved by the Building Inspector shall be constructed to prevent ground and fill from spilling onto adjoining property.
- (d) Gaseous chlorination systems shall not be used for disinfecting pool waters.
- (e) No above-ground pool shall be less than 5 feet from any septic system.

(4) FENCES.

- (a) All swimming pools not enclosed within a permanent building shall be completely enclosed by a fence of sufficient strength to prevent access to the pool, not less than 5 feet in height and so constructed as not to have voids, holes or openings larger than 4 inches in one dimension. Gates or doors shall be constructed so as to be capable of being locked, and shall be closed and secured so as to prevent unlatching by persons outside the pool at all times when the pool is not in actual use.
- (b) Above-ground pools with self-provided fencing to prevent unguarded entry shall be permitted without separate additional fencing, provided the self-provided fence is of the minimum height and design as herein specified.
- (c) Permanent access from grade to above-ground pools having stationary ladders, stairs or ramps shall have safeguard fencing and gates equivalent to those required herein, subject to all other applicable ordinances and subject to the following:
 1. No fence shall be located, erected, constructed or maintained closer than 3 feet to a pool.
 2. The wall of the house or building facing a pool may be incorporated as a portion of such fence.

(5) PORTABLE POOLS. Portable pools over one foot in depth must be fenced as provided in sub. (4) above, or be drained or covered after each day's use in such a manner as to provide public safety.

(6) ELECTRICAL REQUIREMENTS.

- (a) To Comply With Electrical Codes. All electrical installations shall require separate permits and shall be governed by the City Electrical Code.
- (b) Pool Lights. If overhead flood or other artificial lights are used to illuminate the pool at night, such lights shall be shielded to direct light only on the pool.

(7) OPERATION OF POOL. No pool shall be so operated as to create a nuisance, a hazard or an eyesore or otherwise to result in a substantial adverse effect on neighboring properties.

Thanks.

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MEMO
City Attorney's Office



To: Administrative Committee
Mayor Mike Palm
City Administrator Ed Geick 
From: Emily Truman, City Attorney
Date: July 2, 2018
Re: Fencing Requirement around Private Pool

At the June 4, 2018, Administrative Committee meeting, I was asked whether the City could face liability should the City amend its current ordinance requiring a fence enclosure around a private outdoor swimming pool and instead allow a power safety cover. On June 7, 2018, I spoke to the City's liability representative at CVMIC, Tom Mann, regarding this question. Mr. Mann opined that the City would be immune from liability should the City amend its ordinance as is being considered. I agree with Mr. Mann.

The above notwithstanding, the City is under no legal requirement to amend its ordinance as the ordinance promotes the health, safety and general welfare of the City's residents and is not arbitrary or capricious. Should the Council choose to amend the ordinance, however, it is advised that certain safety standards still apply. The International Building Code, for example, requires fencing around a private outdoor swimming pool with the following exception: "A swimming pool with a power safety cover or a spa with a safety cover complying with ASTM F 1346-91." See attached.

For comparison purposes, a review of other municipality's ordinances regarding private pool safety resulted in the following:

- Appleton: Fence required unless it is an above ground pool with walls at least 48" high.
- Beaver Dam: Requires a pool cover "of such design and material that it can be securely fastened and, when in place, support a person weighing 150 pounds."
- La Crosse: Fence required.
- Madison: Fence required unless it is an above ground portable pool.
- Manitowoc: Fence required unless it is a "kiddie pool."
- Portage: Fence required or a "cover or other protective device over such swimming pool of such a design and material that the same can be securely fastened in place and when in place shall be capable of sustaining a person weighing 250 pounds. Such cover or protective device shall be securely fastened in place at all times when the swimming pool is not in actual use for swimming or bathing purposes."

- Reedsburg: Fence required.
- Rhineland: Fencing or other enclosure/screening required.
- Sauk City: Fence required or a “cover or other protective device over such swimming pool of such a design and material that the same can be securely fastened in place and when in place shall be capable of sustaining a person weighing 250 pounds. Such cover or protective device shall be securely fastened in place at all times when the swimming pool is not in actual use for swimming or bathing purposes.”
- Verona: Fence required.



Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas and Hot Tubs¹

This standard is issued under the fixed designation F 1346; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon (ϵ) indicates an editorial change since the last revision or reapproval.

1. Scope

1.1 This specification establishes requirements for safety covers for swimming pools, spas, hot tubs, and wading pools (hereinafter referred to as pools, unless otherwise specified). When correctly installed and used in accordance with the manufacturer's instructions, this specification is intended to reduce the risk of drowning by inhibiting the access of children under five years of age to the water.

1.2 This specification includes performance tests to demonstrate the compliance or noncompliance to requirements herein stated for safety covers. It also includes marking requirements for all covers.

1.3 The values stated in inch-pound units are to be regarded as the standard. The values in parentheses are given for information only.

1.4 The following safety hazards caveat pertains only to the test methods section, Section 9, of this specification: *This standard does not purport to address all of the safety concerns, if any, associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to use.*

2. Referenced Documents

2.1 NFPA Document:

National Electrical Code, Article 680-26²

3. Terminology

3.1 Definitions of Terms Specific to This Standard:

3.1.1 *appurtenances*—subordinate parts or adjunct accessory components to the cover such as hardware including buckles, straps, ties, springs, anchors, tracks, rollers, lifting arms, and the like.

3.1.2 *automatic cover*—a cover which can be placed over the water area and removed with a motorized mechanism actuated by a suitable control mechanism. See also *power safety cover (PSC)*, *other cover (OC)*.

3.1.3 *barrier*—something that restrains or obstructs access to the body of water.

3.1.4 *blanket*—a material used for thermal insulation. See also *solar energy blanket*.

3.1.5 *cover*—something that covers, protects or shelters, or a combination thereof, a swimming pool, spa, or hot tub.

3.1.6 *debris cover*—a cover with attendant appurtenances positioned over the pool area which permits the cover to prevent debris, such as foliage, dirt, windblown trash, and the like from entering the pool. It is intended to be completely removed before the entry of bathers. See also *other covers (OC)*.

3.1.7 *decks*—those areas abutting a pool, spa, or hot tub that are specifically constructed or installed (for example, of wood, concrete, brick, stone, and the like) for use by bathers for sitting, standing or walking and may also act as a base for supports for covers.

3.1.8 *dome*—a semipermanent enclosure supported by trusses, or positive air pressure erected over the pool area to provide temperature and atmospheric control over the pool environment.

3.1.9 *energy conservation*—the reduction of heat loss from pool water through air convection or evaporative cooling, or both.

3.1.10 *hot tub*—a spa constructed of wood with sides and bottoms formed separately; and the whole shape joined together by pressure from surrounding hoops, bands or rods; as distinct from spa units formed of plastic, concrete, metal, or other materials.

3.1.11 *inaccessible locations*—a location at least 5 ft (1.5 m) above the ground with no other access such as hand or footholds which would permit a child to reach the location.

3.1.12 *manual cover*—a cover which requires it to be placed over the water area by hand. See also *manual safety cover (MSC)*, and *other covers (OC)*.

¹ This specification is under the jurisdiction of ASTM Committee F15 on Consumer Products and is the direct responsibility of Subcommittee F15.28 on Covers for Pools, Spas, and Hot Tubs.

Current edition approved Feb. 10, 2003. Published May 2003. Originally approved in 1991. Last previous edition approved in 1996 as F 1346-91 (1996).

² Available from National Fire Protection Assoc., Batterymarch Park, Quincy, MA 02269.

3.1.13 *markings*—the application of numbers, letters, labels, tags, symbols or colors to provide identification and safety information and to expedite handling during shipment and storage.

3.1.14 *manual safety cover (MSC)*—a barrier which requires it to be placed over the water manually. Provides a high level of safety for children under the age of five by inhibiting their access to the water.

3.1.15 *other covers (OC)*—includes any cover type not incorporated in the other two classifications; PSC, MSC. They are not intended to serve as a barrier for children under the age of five.

3.1.16 *power safety cover (PSC)*—a barrier which can be placed over the water area and removed with a motorized mechanism actuated by a suitable control mechanism. Provides a high level of safety for children under the age of five by inhibiting their access to the water.

3.1.17 *safety cover*—a barrier (intended to be completely removed before entry of bathers), for swimming pools, spas, hot tubs or wading pools, attendant appurtenances and/or anchoring mechanisms which reduces—when properly labeled, installed, used and maintained in accordance with the manufacturers' published instructions—the risk of drowning of children under five years of age, by inhibiting their access to the contained body of water, and by providing for the removal of any substantially hazardous level of collected surface water. See also *power safety cover (PSC)*, and *manual safety cover (MSC)*.

3.1.18 *solar energy blankets*—a cover which is a floating translucent (not transparent) heat insulating sheet incorporating, for example, encapsulated air bubbles or similar low heat transfer (floating) sheet material whose purpose is to inhibit heat dissipation from the pool water surface through air convection or evaporative cooling. The sheet material, customarily translucent (not transparent) to permit the transfer of solar radiation energy directly to the pool water at all depths and intended for day and night use, is cut to the shape of the pool and is not affixed to the pool structure. It is intended to be completely removed before the entry of bathers.

3.1.19 *energy conservation blanket*—a cover which is a floating heat insulating sheet material incorporating, for example, a cellular foam or similar low-heat transfer material whose purpose is to inhibit heat loss from the covered water, through air convection or evaporative cooling, or both. Such materials are customarily cut to the shape of the pool and are intended for a night covering. The blanket is not affixed to the pool structure. It is intended to be completely removed before the entry of bathers.

3.1.20 *wading pool*—a shallow pool intended for wading, not swimming.

3.1.21 *waterline*—the waterline shall be defined in one of the following ways:

3.1.22 *skimmer system*—the water line shall be at the mid-point of the operating range of the skimmers.

3.1.23 *overflow system*—the waterline shall be at the top of the overflow outlet.

4. Cover Classifications and Minimum Qualification Criteria

4.1 *Power Safety Cover (PSC)*—Provides a high level of safety for children under the age of five by inhibiting their access to the water.

4.1.1 Must satisfy 5.1-5.3, 6.1-6.5, 7.1-7.4, 8.1, 8.2, 8.4-8.12, 9.1-9.4, 10.1-10.4, and all subsections.

4.2 *Manual Safety Cover (MSC)*—Provides a high level of safety for children under the age of five by inhibiting their access to the water. May require a longer period of time to be fully secured.

4.2.1 Must satisfy 5.1-5.3, 6.1-6.5, 7.1-7.4, 8.1, 8.2, 8.4-8.12, 9.1-9.4, and all subsections.

4.3 *Other Covers (OC)*—Includes any cover type not incorporated in the other two categories MSC, PSC. They are not intended to serve as a barrier for children under the age of five. Design characteristics may be hazardous when used in the presence of children under the age of five.

4.3.1 Shall satisfy 5.1-5.3, 8.1-8.3, 8.5-8.12, and all subsections.

5. Materials and Manufacture

5.1 Only materials not known to be harmful to health, within the intended application, shall be used.

5.2 All materials and components shall be durable and satisfactory for the intended purpose under the conditions normally prevailing at the site.

5.3 The cover shall be manufactured or fabricated, or both, in accordance with generally accepted, good manufacturing practices.

6. General Requirements for Safety Covers

6.1 *Installation/Use of safety covers*—Unless installed by the manufacturer, or responsible parties, or both, detailed instructions for installation shall be given in a form included in the packaging or a label, or both, attached to the cover.

6.2 Labels attached to the cover shall meet the general requirements described in 8.5.1 and 8.8-8.8.2.

6.3 *Markings for safety covers shall include:*

6.3.1 the manufacturer's name,

6.3.2 date manufactured or installed, and

6.3.3 instructions to consumers to inspect the cover for premature wear or deterioration.

6.3.4 Labels attached to covers shall meet the general requirements described in 8.4.1, 8.7-8.8.1, and 8.9.

6.4 *Fastening mechanisms or devices*—Ties, attachment points, anchors, anchorage, and controls for automatic covers or other means of fastening a cover shall include provisions such as keys, combination locks, special tools, devices, or inaccessible locations, and the like, to inhibit children under five years of age from removing or operating the cover. When subjected to the load and perimeter deflection tests described in 9.1 and 9.2, all fastening devices shall remain in their intended, secured or closed, or both, position. After the test, the intended performance of the device should not be impaired.

6.5 *Openings*—The cover shall be designed in such a way that, when it is tested by the test method described in 9.4, any opening in the major component or between the edge of the

cover and the deck surface or coping wall, or both, and the top surface of the spa or pool does not allow the test object to pass through. The test object shall not gain access to the water, or be subject to entrapment.

6.6 Seams, ties or welds in the cover shall show no signs of damage, which will impair intended performance of the device when the cover is tested by the methods described in 9.1-9.4.

7. Performance Requirements for Safety Covers

7.1 *Static Load*—In the case of a pool with a width or diameter greater than 8 ft (2.4 m) from the periphery, the cover shall be able to hold a weight of 485 lb (220.0 kg) (2 adults and 1 child) to permit a rescue operation.

7.1.1 In the case of a pool with a width or diameter not greater than 8 ft (2.4 m) the cover shall withstand the weight of 275 lb (125 kg) (weight of a child and an adult). Compliance shall be determined by the test method described in 9.1.

7.2 *Perimeter Deflection*—The cover shall be designed in such a way that, when it is tested by the test method described in 9.2, deflection of the cover does not allow the test object to pass between the cover and the side of the pool, or to gain access to the water.

7.3 *Surface Drainage*—The cover shall be so constructed, or incorporate a system, or have an auxiliary system provided, that when used in accordance with the manufacturer’s instructions, shall drain substantially all standing water from the cover within a period of 30 min after cessation of normal rainfall. Compliance shall be determined by the test in 9.3.

7.4 *Opening Tests*—The tests shall be conducted by the test method described in 9.4 to demonstrate that any opening in the major component or between the edge of the cover and the deck surface or coping wall, or both, and the top surface of the pool or the top surface of the spa is sufficiently small and strong to prevent the opening from being forced to a size that will allow the test object to pass through.

8. Minimum Label Requirements for All Covers for Swimming Pools, Spas, and Hot Tubs

8.1 *Product Label*—All covers shall be labeled/marked to identify manufacturers or other responsible parties (such as

private label distributors), or both. Labels attached to covers shall meet the general requirements described in 8.5.1 and 8.8-8.8.2.

8.2 *Warning Labels*—All covers shall be required to have attached the following warning label:

8.2.1 *Signal Word*—**WARNING**.

8.2.2 *Safety Alert Symbol*—Preceding the signal word there shall be triangle with an exclamation point inside the triangle.

8.2.2.1 *Word Message*—The standard word message shall be AVOID DROWNING RISK which shall be the first message to appear directly under the signal word.

8.2.2.2 *Additional Word Message Statement*—Covers with any of the outlined hazards in Fig. 1 shall list all applicable warning statements on the label.

8.3 *Color*—Non-safety cover warning label.

8.3.1 *Signal Word*—Black letters with orange background.

8.3.2 *Safety Alert Symbol*—Black triangle with orange exclamation point.

8.3.3 *Word Message*—Black lettering on white background or white letters on black background.

8.4 *Color*—Safety cover warning label.

8.4.1 Colors assigned to the signal word panel may also be used for the message word panel provided the panel colors contrast with the lettering of the label. This is applicable to covers conforming with the PSC and MSC classifications only.

8.5 *Warning Label*—Letter size.

8.5.1 Lettering shall be of a size that enables a person with normal vision, including corrected vision, to read the safety sign or label at a safe viewing distance from the hazard. Considerations should be given to environmental variables that will affect readability.

8.5.2 *Signal Word*—Letter height shall be at least 50 % greater than the selected height of the message panel wording.

8.5.3 *Safety Alert Symbol*—Safety alert symbol, when used with the signal word shall precede the signal word. The base of the safety alert symbol shall be on the same horizontal line as the base of the letters of the signal word. The height of the safety alert symbol shall equal or exceed the signal word letter height.

HAZARD/WARNING STATEMENT CHART	
If This Hazard Exists:	Add This Warning Statement:
*Will not support weight (as defined in this specification) Nonsecured or improperly secured covers	*Stay off cover—will not support weight.
*Concealment by slipping under cover	*Keep children away. Children or objects cannot be seen under cover.
*Drowning on top of cover in accumulated surface water (as defined in this specification)	*Remove Standing Water—child can drown on top of cover.
*Concealment, Entrapment—Drowning under cover	*Remove cover(s) completely before entry of bathers—entrapment possible.
*General requirement for all covers	*Non-secured or improperly secured covers are a hazard.
*Option to above for Safety Covers	*Failure to follow all instructions may result in injury or drowning.
*Cover does not meet all requirements of this specification for PSC, MSC.	*This is not a Safety Cover.

FIG. 1 Hazard/Warning Statement Chart

8.5.4 Word message letter height shall be as defined in Table 1.

8.6 Letter style:

8.6.1 Signal Word shall be in sans serif letters in upper case only.

8.6.2 Message Panel shall be in sans serif letters. Letters may be in upper case only.

8.6.3 Examples of acceptable lettering styles are: medium or bold helvetica, or news gothic bold.

8.7 Placement—Location shall be such that the message will:

8.7.1 Be readily visible to the intended viewer, taking into consideration all possible viewing angles, and

8.7.2 Alert the viewer to the potential hazard in time to take appropriate action.

8.7.3 Label must be located so as not to be removed in the fitting process.

8.8 Life Expectancy—The label shall have a reasonable expected life with good color stability and word message legibility when viewed as stated in 8.5.1. Reasonable expectancy shall be taken into consideration in accordance with the expected life of the product.

8.8.1 Protection—When possible, placement of label should provide protection from foreseeable damage, fading, or visual obstruction caused by abrasion, ultraviolet light or substances such as chemicals or dirt.

8.8.2 Attachment—The label shall be attached permanently to the product or so that it cannot be easily removed.

8.9 Replacement—Product/Warning labels should be replaced by the product user when they no longer meet legibility requirements for safe viewing distance described in 8.5.1 and 8.9.1. In cases where products have an extensive expected life or where exposed to extreme conditions, the product user should be able to obtain replacement labels from the manufacturer or responsible party.

8.10 Instruction/Use Label—Any product instructions or use label not attached to the product, intended to be viewed by the consumer/user shall contain in its contents the same applicable warning label as set forth in 8.2-8.6.3.

8.10.1 When special circumstances limit use of label colors to two colors, the colors assigned to the message word panel may also be used for the signal word panel provided that the panel colors contrast with background color of instruction/use label.

8.11 Packaging Label—If packaging is intended for product display to the consumer/user, applicable warning label as

described in 8.2-8.6.3 shall be placed on the printed side of the package intended for display and/or consumer information. The label shall be printed on or affixed to the package and not easily removable.

8.11.1 When special circumstances limit use of label colors to two colors, the colors assigned to the signal word panel may also be used for the message word panel provided that the panel colors contrast with background color of packaging.

8.12 Compliance Labeling—All labels shall note the specific cover classification.

9. Test Methods For Safety Covers

9.1 Static Load Test:

9.1.1 This test shall be conducted to demonstrate that the cover is capable of supporting a weight of (a) 485 lbs (composed of one 210-lb, one 225-lb or one 50-lb weight) for pools or spas within a width or diameter greater than 8 ft or (b) 275 lbs (composed of one 225-lb and one 50-lb weight) for a pool or a spa with a width or diameter equal to or less than 8 ft distributed over 1 ft² each, all of which are within a 3-ft radius without the test objects causing damage which would allow any of the test objects to pass through the cover. During this test there shall be no requirement for the absence of water appearing on the surface of the cover.

9.1.2 Procedure—The pool shall be filled to its waterline and the cover fitted in accordance with the cover manufacturer's instructions. The test objects shall be placed on the surface of the cover at the following critical points:

9.1.2.1 The center point of the cover.

9.1.2.2 Between attachment points and a distance of at least 4 ft (1.2 m) but not to exceed 6 ft from the side of the pool.

9.1.2.3 The test objects shall remain in each test position for a period of 5 min.

9.2 Perimeter Deflection Test:

9.2.1 This test shall be conducted to demonstrate the following: if a child under the age of five were to fall onto the cover neither that child nor another child could slip through any openings that may occur between the cover and the side of the pool.

9.2.2 Perimeter Deflection Test Object—Test object shall be 3.7 in. (0.09 m) by 5.7 in. (0.14 m) by a minimum 12 in. length and a weight of 36.6 lbs in an ellipsoidal shape. See Fig. 2.

9.2.3 Procedure—With 50 lbs (22.7 kg) on the cover at a distance of at least 4 ft, but not exceeding 6 ft from the side of the pool, the same cover shall not deflect to allow a perimeter test object to pass through, gain access to the water or be subject to entrapment between the cover and the side of the pool.

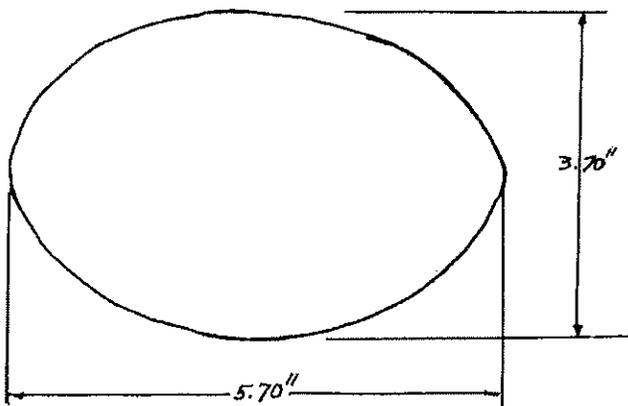
9.3 Surface Drainage Test:

9.3.1 Surface Drainage Test Object—Timmy³ or equivalent (32 in. length by 9 in. width by 5 in. deep by 36.6 lbs torso-shaped object) shall be placed on the pool cover in a supine position, faceup, within two to three feet of and parallel with the pool's edge. Three minutes later there shall not be an unsafe amount of water. An unsafe amount of water is defined

TABLE 1 Word Message Letter Height Sizes

Safe Viewing Distance	Minimum Letter Height for FAVORABLE Reading Conditions	Minimum Letter Height for UNFAVORABLE Reading Conditions
less than 24 in.	Height (in.) = $\frac{\text{View Distance}}{150}$	Height (in.) = $\frac{\text{View Dist.}}{75}$
24 to 96 in.	Height (in.) = $\frac{\text{View Distance}}{300}$	Height (in.) = $\frac{\text{View Dist.}}{150}$
greater than 96 in.	Height (in.) = $\frac{\text{View Distance}}{400}$	Height (in.) = $\frac{\text{View Dist.}}{300}$

³ "Timmy" is a CPR mannequin, three year old boy; available from Simulaid Inc., P.O. Box 807, Dixon Avenue, Woodstock, NY 12489.



NOTE 1—Area = 16.6 in.²
 NOTE 2—Perimeter = 15.0 in.

FIG. 2 Template for Swimming Pool Cover Standard

as any quantity of water which completely covers the torso of the surface drainage test object.

9.3.2 *Procedure*—Test the cover by spraying water evenly over the area at an application rate of 10 gal/min per 1000 ft² (9.29 m²) of pool area for a period of 30 min. During this test, all equipment shall operate in accordance with cover manufacturer's instructions. Thirty minutes after completion of this procedure, the cover shall pass the test method in 9.3. At all times during the procedure, maintain the pool level at the waterline.

9.4 *Openings Test:*

9.4.1 These tests shall be conducted to demonstrate that any openings remain small enough to prevent a small child's head from gaining access to the water.

9.4.2 *Openings test object*—A solid faced sphere test object with a maximum breadth of 4.5 in.

9.4.3 *Procedure*—The cover shall be fitted in accordance with the cover manufacturer's instructions. The test object shall be placed at or into any existing opening and apply a force of 40 lbs (plus or minus 1 pound) steadily to ensure the test object cannot pass through at the following critical openings:

9.4.3.1 Any opening between the edge of the cover and the deck surface and coping wall, or both, or the top surface of the spa or pool.

9.4.3.2 Any opening in the major component of the cover.

10. Operating Controls, Safety Covers

10.1 The open-close switch shall be spring-loaded or of the momentary contact type, so that when released, the cover stops operation immediately at any point in the open or closed cycle period.

10.2 The cover shall be reversible in direction from a full stop at any point in its travel without having to complete the full open or closed cycle.

10.3 Electrically operated control switches and motors shall be installed in accordance with the National Electrical Code Article 680-26.

10.4 The type of pool covering operating controls shall be such that:

10.4.1 Its fixed location is in the line of sight of the complete pool cover, or by its operating process. This ensures that the operator shall be in complete view of the cover at all times during the closing or pool covering process.

10.4.2 Switching devices shall be key-operated or locked away or able to be de-activated or otherwise located in an inaccessible location. An inaccessible location shall be at a height of at least five feet above the deck.

ANNEX

(Mandatory Information)

A1. RATIONALE

A1.1 Scope

A1.1.1 Although the majority of child-drowning and near-drowning which were reported did not involve safety covers, those who purport to provide a level of safety should be held to a higher level of reliability. Injury reports made available from CPSC indicate that male children, one and two years of age, living in a home with an in-ground pool are at the highest risk of being involved in a submersion incident that requires medical care.

A1.2 Referenced Documents

A1.2.1 Allows document reviewers the necessary information to validate the text of the standard.

A1.3 Terminology

A1.3.1 Consumers and new manufacturers may not be familiar with the technological language used within the text. This section also provides definitions for new terms created for this standard.

A1.4 Cover Classifications and Minimum Qualification Criteria

A1.4.1 By defining both the level of safety afforded and standard requirements to be satisfied, manufacturer and consumer will be able to define their needs and properly interpret

the standard. This section also allows manufacturers to research and develop new technology which when applied could change their designation.

A1.5 Materials and Manufacture

A1.5.1 Varying lead times for material availability restrict or delay immediate compliance with this standard.

A1.6 Performance Requirements For Safety Covers

A1.6.1 Specified load factors represent the 95th percentile for a child under the age of five as well as one male adult and one female adult.

A1.6.2 If one child should gain access to the surface of the cover, another child in the area of the pool should not face increased risk.

A1.6.3 Recognizing that some residual water will remain after the surface water is removed, the test has been devised to ensure that the level can be maintained below that deemed substantially hazardous to a child of three based on data received from the Consumer Product Safety Commission.

A1.6.4 Openings in the major component or horizontal openings between the cover and solid structure of the pool area should remain small enough to prevent the head of a small child from gaining entrance. The head breadth for a 5th percentile of a 7 month old is about 4.5 in. The smallest mobile child would be about 7 months old since at this age 50 % of children can creep on hands and knees.

A1.7 Minimum Label Requirements For All Covers For Swimming Pools, Spas, and Hot Tubs

A1.7.1 Labeling on the product allows for transfer of the information to second owners and temporary users.

A1.7.2 The combination of Signal Word, Safety Alert Symbol and Word Message provides a higher level of warning than any single effort.

A1.7.3 An effort is being made nationally to make consistent the colors used to alert consumers to potential hazards.

A1.7.4 Contrast of colors between letter colors and labels are necessary in order to attract users' attention to label and enable readability.

A1.7.5 Letter size is an important factor in warning legibility so the consumer can recognize and avoid the hazard.

A1.7.6 Style of lettering affects the readability of the warning message.

A1.7.7 Warning labels can be more effective if they allow for reaction time on the part of the consumer.

A1.7.8 Damaged labels would not provide as strong a message as necessary.

A1.7.9 Due to extended life expectancy of cover products, labels cannot be expected to maintain their original appearance.

A1.7.10 Labeling messages and format should be consistent from point of purchase to use and/or application of cover.

A1.7.11 Packaging is, at times, the consumers first exposure to product information. Information contained on the warning label is necessary for making informed choices.

A1.7.12 All labels shall note that the product meets the requirements described in Specification F 1346.

A1.8 General Requirements For Safety Covers

A1.8.1 Installation can be a key factor in the effectiveness of a safety cover whether it is manually or power installed.

A1.8.2 Manufacturer's markings are necessary to allow a continuity for second owners and consumer/manufacturer contact.

A1.8.3 The mechanisms which secure the cover are an integral component that help to defeat a child's entry to the water.

A1.8.4 Openings shall not be so large that the purpose of the cover is defeated.

A1.8.5 Structural integrity is necessary to provide safety.

A1.9 Test Methods For Safety Covers

A1.9.1 The rescue operation may require two adults and the cover shall support the total combined weight to avoid possible injury to those in the rescue attempt. The 95th percentile is represented by the 225-lb male, 210-lb female and 50-lb child.

A1.9.2 This test was devised to avoid an opening large enough for one child or another child to fall between the edge of the cover and the edge of the pool when one child of 50 lb is already on the cover.

A1.9.3 Recognizing that some residual water remains after the surface water is removed, this test is devised to ensure that the level is maintained below a level deemed substantially hazardous to a child under three years of age.

A1.9.4 No opening shall exist in the cover or at any point that the cover joins the surface of the pool structure or deck area (which would allow a small child's head to gain access to the water or become entrapped). The head breadth for a 5th percentile 7 month old is about 4.5 in.

A1.10 Operating Control, Safety Covers

A1.10.1 Operator controlled momentary contact type switches afford greater control in the event of an emergency.

A1.10.2 Should a child enter the water during the closure process, the cover shall be able to reverse without total closure.

A1.10.3 It is important in the case of an electrical installation to protect children and all swimmers from the possibility of electrocution, which is the purpose of Article 680-26 of the National Electrical Code.

A1.10.4 Operator observation of the pool during the closing process is necessary to ensure that another person does not enter the water during the process. Additionally, the location of the activating device or the ability to render it inactive is necessary to avoid unauthorized opening of the cover.



F 1346 – 91 (2003)

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This standard is subject to revision at any time by the responsible technical committee and must be reviewed every five years and if not revised, either reapproved or withdrawn. Your comments are invited either for revision of this standard or for additional standards and should be addressed to ASTM International Headquarters. Your comments will receive careful consideration at a meeting of the responsible technical committee, which you may attend. If you feel that your comments have not received a fair hearing you should make your views known to the ASTM Committee on Standards, at the address shown below.

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Action Item 2.c. Attachments

TAVERN OPERATOR LICENSE APPLICATION

Allow 15 days for processing.
Fees are non-refundable and non-transferrable.

Application # Operator 2018000063
100-10-44120 07/18/2018

JA

New License -- Not previously licensed, or applicant licensed by another Wisconsin municipality within the last 2 years

Provisional -- This license shall only be issued in order to allow the applicant time to complete a **Responsible Beverage Server Training Course**. **Provisional licenses are only sold in combination with a NEW Operator license.**

APPLICANT INFORMATION:

Last Name	First Name	Middle Initial	Date of Birth	Male/Female
KAUN	ERIC		[REDACTED]	Male
E-Mail	Telephone #		Place of Birth	Driver License #
[REDACTED]	[REDACTED]		toledo, ohio	[REDACTED]
Street Address		City, State		Zip
[REDACTED]		reedsburg, wi		53959

- Where will you be employed? Square Tavern
- Employer's Telephone #: 6083569816
- Where have you had previous experience as an Operator? Sprechers, Gino's pizzeria, Ravina Bay, B-Lux
- Have you lived in Wisconsin for at least 90 consecutive days? Yes No
(If answer to Q 4 is no, do not file your application until you have satisfied the residency requirement.)
- How long have you continuously resided in Wisconsin? 24 years In Sauk County? 24 years
- Have you reviewed the Bartender License Issuance Guidelines, which are attached to this application?
 Yes No
- Have you ever been convicted for a violation of any federal laws, state laws of Wisconsin or any other state, as well as any county or municipal violations? Yes No

If **Yes** to any portion of this question -- you are required to complete the box below. If more room is needed, attach a document listing the items. List everything in your past, even if you think it is not important. Your license can be denied if you provide incomplete or inaccurate information! See Attached Flowchart.

Date of Conviction	Location of Charge (City, County)	Type: Felony, Misdemeanor, Ordinance, Other	Penalty Imposed

8. Have you ever been convicted of operating a motor vehicle while under the influence? Yes No

If Yes, provide details requested below:

Date of Conviction	State	County

9. Are there any charges presently pending against you (other than traffic unrelated to alcohol beverages) for violation of any Federal laws, any Wisconsin laws, any laws of any other states or ordinances of any municipalities?

Yes No If Yes, indicate in writing, the law or ordinance allegedly violated, trial court, date of alleged offense, description and status of charges. If more room is needed, attach a document listing the items.

Offense Date	Location of Case (City, County)	Court Date	Violation	Description of Charges	Status

13. Have you ever used any other name(s) or alias (es)? Yes No

If yes, state full name(s) of alias (es). _____

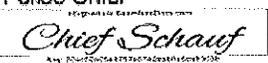
The undersigned, being first duly sworn on oath, deposes and says that he/she is the person named in the foregoing application; that the applicant has read and made a complete answer to each question, and that the answers in each instance are true and correct. The undersigned further understands that any license issued contrary to Chapter 125 of Wisconsin Statutes shall be void, and under penalty of state law, the applicant may be prosecuted for submitting false statements and affidavits in connection with this application.

I verify that I have read and accept the city of Baraboo Bartender License Issuance Guidelines. (See below)

Total Due \$ 87.00 I will pay: On Line by US Mail In Person

Applicant:  Date: 07/18/2018

Approvers:
 Police Record Check
 07/19/2018

Police Chief
 07/19/2018

Comments:
 12-13-10--POSSESS THC
 06-20-13--POSSESSION OF PARAPHERNALIA
 08-22-13--POSSESS THC

** Denied. 3 Convictions for drug charges in last 10 years, not placed into application.

Bartender License Issuance Guidelines

START HERE

Do you have a felony conviction or pending felony charge involving alcohol or drugs?

NO

Do you have a felony or Class A Misdemeanor conviction or pending charge involving bartending?

NO

Do you have 3 or more OWI convictions and at least one occurred in the last 10 years?

No

Do you have 3 or more convictions or pending charges (including municipal citations) involving drugs or alcohol (including OWI charges and underage drinking) within the past 5 years??

No

Do you have any of the following:

- 2-OWI convictions w/in 10 years
- 1-OWI conviction w/in 10 years and a pending OWI charge
- 2-Convictions or pending charges (including citations) involving drugs or alcohol (incl. OWI and underage drinking) w/in the past 5 years
- Any conviction or pending charge involving bartending
- 3+ convictions involving alcohol or drugs w/in the past 10 years

No

Are there any false or incomplete statements on the application?

No

If Applicant has no convictions or pending charges involving drugs, alcohol, or OWI, or if Applicant has only 1 OWI conviction or pending OWI charge the Application will be submitted for **APPROVAL**.

Yes

APPLICATION
AUTOMATICALLY
DENIED

Yes

Yes

Yes

Yes

Yes

APPLICATION
SUBJECT TO
CONDITIONAL
APPROVAL BY
ADMINISTRATIVE
COMMITTEE

Police Chief may refer applications to Administrative Committee if he believes there are issues that he cannot resolve.

Yes

APPLICATION SUBJECT TO
CONDITIONAL APPROVAL BY
CHIEF OF POLICE

Yes

Please note that this chart cannot anticipate all circumstances or combinations of offenses that may affect the disposition of your application, and the City retains the right to refer any application to the Administrative Committee for resolution.

Haggard, Cynthia

From: Geick, Edward
Sent: Tuesday, July 24, 2018 11:24 AM
To: Haggard, Cynthia
Subject: Admin Agenda - Denied Operator License

Importance: High

Please add this item to the Administrative Committee agenda. In accordance with our policies I am forwarding to the Committee the tavern operator license application of Eric Kaun along with a recommendation of denial of the application.

Ed

Edward A. Geick
City Administrator
City of Baraboo
101 South Blvd, Baraboo, WI 53913
Office: 608-355-2715
Cell: 608-963-4237

From: Schauf, Mark
Sent: Monday, July 23, 2018 4:20 PM
To: Geick, Edward <egeick@cityofbaraboo.com>
Cc: Truman, Emily <etruman@cityofbaraboo.com>
Subject: FW: Admin Agenda - Denied Operator License
Importance: High

Administrator Geick,

Upon review of the license application for operator, Eric Kaun the police department completed a check per City Ordinance. Utilizing the flow chart approved by City Council, I observed the applicant in this case did not disclose 3 prior arrests/convictions for drug related charges. Additionally, based on code, three drug violations require a denial at the department head level and referral to the Admin Committee. Attached is the application, along with the information learned by the Police Department which is the basis for denial.

Mark R. Schauf
Chief of Police
Baraboo Police Department
101 South Boulevard
Baraboo, WI 53913
608-355-2720
mschauf@cityofbaraboo.com

From: Zeman, Brenda
Sent: Monday, July 23, 2018 12:08 PM
To: Haggard, Cynthia <chaggard@cityofbaraboo.com>
Cc: Truman, Emily <etruman@cityofbaraboo.com>; Schauf, Mark <mschauf@cityofbaraboo.com>

Subject: Admin Agenda - Denied Operator License

Importance: High

Cynthia,

Please add Eric Kaun to your administrative agenda. His Operator's License was denied, a copy is attached, and he would like to take it to Admin

Thanks!

Brenda

Action Item 2.d. Attachments

FOR TREASURER'S USE ONLY
 Chicken 20180000010
 Receipt # _____
 Account # 100-10-44290
 07/12/2018
 BM

APPLICATION FOR KEEPING CHICKENS

License Applied For:

- New** \$25.00
- Renewal** \$10.00

(Fees are non-refundable and due upon filing)

The undersigned requests permission to keep chickens in the City of Baraboo.

Name: MELISSA BARNES Phone: 608-852-7691 Email: melba1211@hotmail.com

Address of applicant: 955 2ND ST., Baraboo, WI 53913

- Property Owner
- Tenant

Zoning District: Available on City Website at www.cityofbaraboo.com. R1-A
 (Permit is only allowed in R1 or R1A Zoning Districts)

Tax parcel number of site: 206-2947-00000

Lot Size: Width (50' minimum) _____

Number of Chickens to be kept: (Cannot exceed 6.) _____

Accurate description of coop (must be covered, predator proof, provide adequate shade from summer and warmth in winter. Floor to be covered with wood or cedar chips. Coop may be part of yard shed or garage but may not be on top of a building.) Can attach photo or drawing, if preferred.

Coop size: Length _____ Width _____
 (Must provide two to four square feet per chicken.)

Size of Run attached or surrounding the coop: _____

Distance of Coop/Run to Lot lines: _____ feet to closest side lot line, _____ feet to rear lot line. (May not be closer than 10 feet to any lot line. Coop may not be placed in the front yard.)

Distance of Coop/Run to Applicant's house: _____ feet
 (Must be closer to applicant's house than any other neighbor's house.)

Name, address, and tax parcel number of the owners of each parcel immediately touching your property line. (No application can be approved if 50% or more of the neighboring properties object.)

Name	Address	Parcel # 206-

Name, address, and tax parcel number of the owners of each parcel immediately touching the property that also touches your property. Check the Sauk County GIS Website to verify neighbors
<http://lrs.co.sauk.wi.us/AscentLandRecords/PropertyListing/RealEstateTaxParcel#/Search>

Put in your parcel number and click Find Now. Follow this to the next page where you will find a selection to view an Interactive Map. This should show you the Parcel Numbers of your surrounding neighbors and their information. If it is a rental property, please put the information of the Property OWNER NOT RENTER in the below space.

Name	Address	Parcel # 206-

WHEREFORE, the undersigned applicant hereby states that the foregoing information and all attachments to this application are true and correct.

Rules per Code 9.10(3):

1. Roosters and crowing cockerels shall not be kept.
2. Chickens shall not be allowed inside of a residence.
3. Chickens shall be kept in the covered coop or in the fenced run at all times.
4. The slaughtering of chickens in Residential Zoning Districts is prohibited.
5. A permit can be revoked for 3 violations within 12 months, or 5 violations within 36 months.

I will pay: On Line by US Mail In Person

Dated: 07/11/2018

eSigned via ScanlessDoc.com
Melissa Barnes
Key: 27609456760706010601044030

Applicant/Property Owner

APPROVERS:

eSigned via ScanlessDoc.com
Community Service Officer
Key: 72902b0ae3556c2012016190990c1

07/13/2018

eSigned via ScanlessDoc.com
Chief Schauf
Key: 0690d57013102094e2704826907810

07/13/2018



City Clerk's Office

101 South Blvd, Baraboo, WI 53913

7/23/2018

To: Cynthia Haggard, Finance Director & Administrative Committee

RE: Chicken Permit Application- Barnes, 955 2nd St

Letters to neighboring property owners of Barnes, 955 2nd St. were sent on 7/20/2018 to advise of the Chicken Permit application and their right to voice objections.

These letters were sent to:

Kaitlin Nye, 1003 2nd St.

William Kent, 1015 2nd St

Gary & Bonnie Meeker, 1018 3rd St.

Roberth Henry Kurz, 1016 3rd St.

Andrew Klock, 1010 3rd St.

Amber & Roger Conckle, 943 2nd St.

Andrew & Kristina Chalmers, 1006 3rd St.

Shaunna Burress, 933 2nd St.

Gary & Audry Sinner, 1000 3rd St.

A copy of the letter is attached to this memo.

Bonnie Meeker

Office Assistant/Accountant

City of Baraboo



City Clerk

101 South Boulevard

608-355-2700 • 608-356-9666 fax

July 20, 2018

Gene Sinner

Audrey Sinner

1000 3rd St.

Baraboo, WI 53913

RE: 955 2nd St., Baraboo, WI

Barnes- Application for Keeping Chickens

Dear Gene & Audrey Sinner,

Melissa Barnes, who resides at 955 2nd Street, has applied for keeping chickens at their residence. The purpose of this letter is to inform you of this application as an owner of property within two parcels of the applicant. Issuance of the license allows the applicant to maintain up to six chickens on their property. More information about keeping chickens in the City may be found in Chapter 12 of the City code of ordinances and is available on the city's website at www.cityofbaraboo.com.

If you object to this application, you may attend the Administrative Committee Meeting on August 6th at Baraboo City Hall, 101 South Boulevard and voice your objections or contact the City Clerk by mail to arrive no later than Friday, August 3rd, 2018. Your letter should explain your reason(s) for objecting to the keeping of chickens. If I receive no written response from you I will assume that you have no objections and the application for keeping chickens will be approved.

Please feel free to contact me with any questions or concerns you may have.

Sincerely,

Brenda Zeman

City Clerk

City of Baraboo