

**CITY OF BARABOO
ETHICS BOARD
AGENDA**

Date and Time: Tuesday, April 14, 2009, 9:00 a.m.
Location: Engineering Dept meeting room, 135 4th Street, Baraboo, WI 53913
Full Paper Notices to Members: Darlene Bach, Dallas Johnson, Jerome Mercer
Full Paper Notices to Others: Ald. Marquardt, Ald. Cone, Ald. Kivioja
Paper Notice w/o Closed: **Library for Posting**
Notice by E-Mail: Citizen Council/Committee group e-mail, Media-Committee e-mail group
Notice by Fax: Media-Committee Fax Group

1. Call to Order.
2. Compliance with Open Meeting Law.
3. Approve agenda.
4. Elect Chairperson.
5. Elect Vice Chairperson.
6. Review Ethics Code.
7. Accept Standard Rules of Procedure as found in Code 1.84.
8. Adjourn to closed session per §19.85(1) (f) considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies, which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations and (g) to confer with legal counsel who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved. (Ethics complaint)
9. Reconvene in open session per § 19.85(2).
10. Set date and time for next meeting.
11. Adjournment.

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

Agenda prepared by Cheryl Giese, 355-2700

Any person who has a qualifying disability as defined by the Americans with Disabilities Act who requires the meeting or materials at the meeting to be in an accessible location or format, should contact the Baraboo City Clerk at 135 4th Street or phone 355-2700 during regular business hours at least 48 hours before the meeting so reasonable arrangements can be made to accommodate each request.

It is possible that members of, and possibly a quorum of members of other governmental bodies of the City of Baraboo who are not members of the above committee, commission or board may be in attendance at the above stated meeting to gather information. However, no formal action will be taken by any governmental body at the above stated meeting, **other than the committee, commission or board identified in the caption of this notice.**

SUBCHAPTER V: CODE OF ETHICS (1929 02/24/98)

1.70 **DECLARATION OF POLICY.** To ensure that the public can have complete confidence in the integrity of the City of Baraboo, each elected and appointed official and each employee shall respect and adhere to the fundamental principals of ethical service. The proper operation of City government demands that:

- (1) City officials and employees be independent, impartial, and responsible to the people;
- (2) Decisions be made in the proper channels of the City governmental structure;
- (3) City offices should not be used for personal gain;
- (4) City business should be conducted in such a way so as to re-enforce the public's confidence in its integrity.

In recognition of these fundamental principles, there is hereby created a Code of Ethics.

1.71 **PURPOSE.** The purpose of this Code is to establish ethical standards of conduct for all City officials and employees by identifying those acts or actions that are not compatible with the best interest of the City. Because representatives of the City are drawn from society, they cannot and should not be without all personal and economic interest in the decisions and policies of government. Citizens who serve as City officials and employees retain their rights as citizens to personal and economic interests. Therefore, the standards of ethical conduct for City officials and employees must distinguish between minor and inconsequential conflicts which are unavoidable and those conflicts which are substantial and material.

The provisions of this Code, and such rules and regulations which may be established, are to be interpreted in the context of the above principles and are deemed to be in the best interest of the public.

1.72 **RESPONSIBILITY OF PUBLIC OFFICE.** City officials and employees 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.

1.73 **COVERAGE.** This Code governs all City officials, whether elected or appointed, paid or unpaid, including members of boards, committees, and commissions, public officers, department heads, and City employees.

1.74 **EXEMPTIONS.** Political contributions which are reported under Ch. 11, Wis. Stats., are exempt from the provisions of this Code.

1.75 **DEFINITIONS.**

- (1) **PERSON:** Any individual, corporation, partnership, joint venture, association, or organization.
- (2) **FINANCIAL INTEREST:** Any interest which yields, directly or indirectly, a monetary or other material benefit to the City official or employee or to any person employing or retaining services of the City official or employee.

- (3) **ANYTHING OF VALUE:** Any money or property, favor, service, advance forbearance, loan or promise of future employment, but does not include such things as compensation and expenses paid by the State or City, fees, honorariums and expenses, unsolicited advertising or promotional material such as pens, pencils, notepads, calendars, informational or educational materials of unexceptional value, plaques, other advertising giveaways or any other thing which is not likely to influence the judgment of individuals covered by this Code.
- (4) **PRIVILEGED INFORMATION:** Any written or oral material related to City government which has not become part of the body of public information and which is designated by statute, court decision, lawful orders, ordinances, resolution or custom as privileged.
- (5) **OFFICIAL:** All elected officials designated in §1.02 of this Code, all appointed officials designated under §1.03 of this Code, all members of any board, committee, and/or commission designated in Chapter 1 of this Code or created by order to the Mayor or by legislative act of the Common Council.
- (6) **EMPLOYEE:** All persons filling an allocated position of City employment.
- (7) **IMMEDIATE FAMILY:**
 - (a) An official's or employee's spouse; and
 - (b) An official's or employee's 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 employee or from whom the official or employee receives, directly or indirectly, more than one-half of his or her support.
- (8) **RELATIVE:** An official's or employee's spouse, child, step-child, parent, step-parent, grandparent, grandchild, brother, sister, parent-in-law, grandparent-in-law, brother-in-law, sister-in-law, uncle, aunt, niece, or nephew.

1.76 FAIR AND EQUAL TREATMENT

- (1) **USE OF PUBLIC PROPERTY:** An official or employee shall not use, or knowingly permit the use, of City services or City owned vehicles, equipment, materials for unauthorized non-governmental purposes or for unauthorized personal convenience or for profit, unless such services or use are available to the public generally or are consistent with authorized practices and policies of the City.
- (2) **OBLIGATIONS TO CITIZENS:** 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.

1.77 CONFLICTS OF INTEREST:

- (1) **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. See also §1.80.

- (2) **EXCEPTION:** It is not a conflict of interest for an official or employee to receive a gift or gratuity that is an unsolicited item of insignificant value or anything which is given to them independent of their position as an official or employee.
- (3) **BUSINESS INTEREST:** An official or employee shall not engage in any business or transaction or act in regard to any financial interest, direct or indirect, which:
 - (a) Is incompatible with the proper discharge of his or her official duties for the benefit of the public;
 - (b) Is contrary to the provisions of this code; or
 - (c) May impair his or her independence of judgment or action in the performance of his or her official duties.
- (4) **EMPLOYMENT:** An official or employee shall not engage in or accept any private employment or render any service for a private interest when such employment or service is incompatible with the proper discharge of his or her official duties or which may impair his or her independence of judgment or action in the performance of his or her official duties unless otherwise permitted by law or unless disclosure is made as hereinafter provided.
- (5) **CONTRACTING:** An official or employee or a business in which an official or employee holds a 10% or greater interest, may not enter into a contract with the City involving a payment or payments of more than \$1,000 amount within a twelve month period unless the official or employee has made a written disclosure of the nature and extent of such relationship or interest to the City Clerk and reported such interest to the Common Council. Further, pursuant to §946.13, Wis. Stats., an official or employee is prohibited from participating in the formation of a contract or contracts with the City of Baraboo involving the receipts or disbursements of more than \$15,000 in any year.
- (6) **MITIGATING CONFLICTING INTERESTS.** As a guideline for officials and employees for mitigating conflicting interests, the City hereby adopts by reference the most current guide prepared by the Wisconsin Ethics Board on the following subjects: (2080 04/16/2002) (A copy of these guidelines are set forth in the Appendix to Ch. I.)

Mitigating Conflicting Interests: Private Interest versus Public Responsibility:

- 1.78 FINANCIAL INTEREST IN LEGISLATION.** A member of the Common Council who has a financial interest in any proposed action before the Common Council shall disclose the nature and extent of such interest to the City Clerk and the Common Council prior to or during the initial discussion of such action and shall refrain from participating in the discussion of and/or voting on such action. A member of the Common Council shall request to be excused by the Common Council or Committee chairperson for the duration of any deliberations concerning such action in which the member has a financial interest.

A member of a City board, commission, or committee who has a financial interest in any proposed action before the board, commission, or committee on which said member serves shall disclose the nature and extent of such interest to the City Clerk and to the board, committee, or commission prior to or during the initial discussion of such action and shall refrain from participating in any discussions, deliberations, and/or voting on such action. The members shall request to be excused by the committee, commission, or board or its chairperson for the duration of any discussions, deliberations, or voting concerning the action in which the member has a financial interest.

Any other official or employee who has a financial interest in any proposed action before the Common Council, and who participates in discussion with or gives an official opinion or recommendation to the Common Council, shall first disclose the nature and extent of such interest to the Common Council.

1.79 **DISCLOSURE OF PRIVILEGED INFORMATION.** An official or employee shall not knowingly disclose or permit the disclosure of privileged information to any person not lawfully authorized to receive such privileged information. An official or employee shall not use privileged information to advance his or her personal financial interest or that of his or her immediate family.

1.80 **GIFTS AND FAVORS.** 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. As a guideline for officials and employees under this subsection, the City hereby adopts by reference the most current guide prepared by the Wisconsin Ethics Board on the following subjects:

- (1) Local Officials' Receipt of Food, Drink, Favors, Services, etc.
- (2) Restraints on Local Officials Receipt of Food, Drink, Favors, Services, etc.
- (3) Attendance at Conferences or Seminars on Behalf of the State or Local Government.

(A copy of these guidelines are set forth in the Appendix to Chapter I.)

1.81 **ANTI-NEPOTISM.** It shall be improper for a person to be hired by the City because he or she is a relative of a City official provided, however, it is acknowledged that a person, otherwise qualified, should not be denied employment with the City because he or she is related to a City official. A City official shall not use his or her office to bring about employment of a relative and an official shall neither

- (1) Hire or promote as an employee of the City, nor
- (2) Advocate the City's employment or promotion of, nor
- (3) Exercise jurisdiction, supervision, or direction over an official's relative. No person shall be employed, promoted or transferred to any City department when, as a result, he or she would be supervising or receiving supervision from a relative. Upon approval of the Finance/Personnel Committee, this subsection three shall not apply to the Baraboo Volunteer Fire Department, provided that the subordinate relative is a member of the Volunteer Fire Department and is not a full-time employee of the Department and is also a part-time paid-on-call firefighter of the Baraboo Volunteer Fire Department.
(2026 09/12/2000)

1.82 **STATE STATUTES INCORPORATED.**

- (1) **STATUTES INCORPORATED BY REFERENCE:** The following sections of the Wisconsin Statutes are hereby incorporated by reference and made a part of this Code of Ethics:

§19.01 (Oaths and Bonds)
§19.21 (Custody and Delivery of Official Property and Records)
§19.81 - §19.89 (Open Meetings of Governmental Bodies) §19.59 (Codes of Ethics for Local Government Officials, Employees, and Candidates).

- (2) VIOLATION OF INCORPORATED STATUTES: Officials shall comply with the sections of the Wisconsin Statutes incorporated in this Code and failure to do so shall constitute a violation of this Code of Ethics.

1.83 ADVISORY OPINIONS PROVIDED BY CITY ATTORNEY Any person covered by this Subchapter as provided in §1.73 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. The City Attorney shall review such a request for an advisory opinion and may advise the person making the request. Advisory opinions and requests, therefore, shall be in writing and shall state all material facts. It shall be prima facie evidence of intent to comply with this subchapter 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.

1.84 ETHICS BOARD

- (1) MEMBERSHIP: There is hereby created an Ethics Board consisting of three regular members and one alternate member. All members of the Board shall be residents of the City or owners of real property located in the City. The members shall not be elected officials, full-time appointed officials or City employees, nor shall a member be currently serving on any other City board, commission, or committee. Each member shall be appointed by the Mayor, subject to confirmation by the Common Council. The members shall serve staggered three year terms expiring on the first day of May of the third year following their appointment, except as otherwise provided in the implementation of this subchapter. The alternate member shall serve on the Board when one of the regular members is unavailable or unable to serve. The Board shall elect a chairperson and vice-chairperson. The City Attorney shall provide legal advice and assistance to the Board. The City Clerk shall serve as the secretary of the Board.
- (2) POWERS AND DUTIES:
 - (a) The Ethics Board shall adopt and develop written Rules of Procedure which shall be submitted to the Common Council for approval. A copy of the Rules of Procedure shall be filed with the City Clerk.
 - (b) As an alternative to obtaining an advisory opinion from the City Attorney as provided in §1.83, any person covered by this subchapter as provided in §1.73 may apply in writing to the Board for an advisory opinion regarding the propriety of any matter to which the person is or may become a party. The Board shall meet to review such a request for an advisory opinion and may advise the person making the request. Advisory opinions and requests, therefore, shall be in writing and shall state all material facts. It shall be prima facie evidence of intent to comply with this subchapter when a person refers a matter to the Board and abides by the advisory opinion of the Board if the material facts are as stated in the opinion request.

Meetings held by the Board for deliberation and action upon such application shall not be open to the public nor shall a Common Council member or the Mayor be authorized to attend any such meeting of the Board unless requested to do so by the Board. Advisory opinions rendered by the Board shall be in writing and shall state the material facts upon which the opinion is based. A record of the Board's opinions, opinion requests and investigations of violations shall be closed to public inspection as required by Chapter 19, Wis. Stats. Except as provided by §19.59(5)(b), Wis. Stats., the Board shall not make public the identity of any person requesting an advisory opinion or of persons or organizations mentioned in the opinion. If the Board determines that an advisory opinion rendered by the Board would be of significant value to other officials or employees, the Board may issue a summary of the opinion provided that the summary does not disclose the identity of the person originally requesting the advisory opinion. In all cases, the Board may request an advisory opinion from the City Attorney.

- (c) All complaints alleging that an official or employee committed a violation of this subchapter shall be addressed to the Ethics Board and shall be filed with the City Clerk. All such complaints shall be in writing and verified and shall state the name of the official or employee alleged to have committed a violation of this subchapter and shall further state the evidentiary facts supporting the charge.
- (d) Within 14 days after the filing of a properly verified complaint, with the City Clerk, the Board shall meet to review the complaint. Within three business days after its initial review of the complaint, the Board shall mail a copy of the Complaint to the respondent by certified mail.
- (e) Following its initial review of a verified complaint, the Board may make a preliminary investigation with respect to each alleged violation of this subchapter. No preliminary investigation of an alleged violation of this subchapter may be initiated until a copy of the Complaint and notice of the Board's intent to investigate the charge has been mailed by certified mail to the respondent. The preliminary investigation shall be completed within 30 days after the date that the Complaint and notice thereof is mailed to the respondent except the Board may extend the investigation period for us to an additional 60 days with notice to the respondent and to the complainant.
- (f) If, after its preliminary investigation, the Board finds that probable cause does not exist for believing that the respondent violated this subchapter, it shall dismiss the Complaint. The Board shall promptly notify the complainant and the respondent by certified mail of its decision dismissing the Complaint. The Board's decision to dismiss a complaint shall be final. The same complaint or a complaint which is substantially similar to the dismissed complaint shall not be reconsidered by the Board unless within 20 days of the Board's mailing of its Dismissal Order, the complainant files with the Board additional material facts which were not available to the complainant at the time the original Complaint was filed and which, if true, would probably change the Board's decision. The Board's decision to reconsider or not to reconsider a decision under this subsection shall be final. If the Board determines that a verified complaint was brought for harassment purposes, the Board shall so state in its decision.
- (g) If, after its preliminary investigation, the Board finds that probable cause does exist for believing the allegations of the Complaint, it shall conduct a hearing on the matter. The hearing shall be held not more than 60 days after the Board's finding of probable cause.

The Board shall give the respondent and complainant written notice of the hearing date by mailing a notice thereof to the respondent and to the complainant by first class mail at least 20 days prior to the hearing date thereof. The hearing shall be held in closed session except that the respondent shall have a right to demand that the hearing be held in open session and, upon such demand, the Board shall conduct the hearing in open session.

- (h) The chairperson of the Board shall preside over the proceedings and the City Attorney shall provide legal assistance to the Board as needed. The complainant and the respondent may be represented by an attorney and the respondent may also be represented by a union representative. Both parties may compel the attendance of witnesses by Subpoenas. Subpoenas may be issued by the Chairperson of the Board pursuant to §885.01, Wis. Stats. Each party shall be responsible for serving subpoenas on their respective witnesses and for paying any witness and mileage fees to the witness as required by the Wisconsin Statutes.
- (i) All testimony of witnesses at the proceedings shall be given under oath, administered by the Chairperson in the form and manner prescribed by the Wisconsin Statutes. A record of the testimony may be made by stenographic, electronic or other recording method, as the Board determines. The record produced at the direction of the Board shall be the official record of the proceeding. The proceedings may be adjourned or continued by the Board from day to day until completed.
- (j) The proceedings shall be conducted in the following order:
 1. Statement of the issues and rules by the Chairperson.
 2. Brief opinion statements, if any, by both sides.
 3. Presentation of testimony and the introduction of evidence by the complainant to substantiate the charge.
 4. Cross examination of witnesses by the respondent.
 5. One additional opportunity to question witnesses by the complainant.
 6. One additional opportunity to cross-examine witnesses by the respondent.
 7. Presentation of the base for the respondent.
 8. Repeat of steps (4), (5) and (6) regarding witnesses and evidence produced on behalf of the respondent.
 9. Opportunity for each side to present evidence in rebuttal of any evidence presented by the opposing side.
 10. Brief closing arguments, if any, by both sides.
- (k) The Board shall not be bound by common law or statutory rules of evidence and the Board shall hear all evidence having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony or evidence. Basic principles of relevancy, materiality and probative force shall govern this proceeding. Hearsay evidence will not be permitted where direct evidence is reasonably available. The Board will not base crucial or essential evidentiary findings on hear-say evidence. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record. All evidence, including records and documents, shall be duly offered and made part of the record. The Chairperson shall rule on any objections or procedural matters. Any member of the Board and the City Attorney may ask questions of the witnesses. No party or witness shall be permitted to ask questions of any Board member during the proceedings, unless expressly authorized by the Chairperson.

- (l) Within 10 working days of the conclusion of the hearing, the Board shall file its written Findings of Fact, Conclusions of Law and Recommendations signed by a majority of the participating members and concerning the propriety of the conduct of the respondent. Any member of the Board may indicate his/her dissent to the written Order. If the Board determines that no violation of the Code of Ethics has occurred, it shall dismiss the Complaint, and if requested to do so by the respondent, the Board shall issue a public statement in that regard. If the Board finds that clear, satisfactory and convincing evidence exists for believing the allegations of the Complaint, the Board shall refer its findings, conclusions and recommendation to the Common Council or to other property City Authority, and/or, in the case of an employee, to the City Administrator and/or the Mayor as deemed appropriate. In its recommendation, the Board may recommend that the Common Council order the official or employee to conform his or her conduct to the Ethics Code or recommend that the official or employee be cautioned, censured, suspended, removed from office, issued a private reprimand, public reprimand, and, in the case of an employee, may also recommend denial of a merit increase, suspension without pay, discharge, or other appropriate disciplinary action. In appropriate cases, the Board may recommend the referral of the matter to the District Attorney to commence enforcement proceedings pursuant to the procedures and remedies of §19.59, Wis. Stats.
- (m) Records obtained or prepared by the Board in connection with an investigation of a violation of this subchapter shall not be open for public inspection, except that the Board shall permit public inspection of records of a hearing conducted in open session pursuant to the requests of the respondent as provided in subsection (g) hereof. Whenever the Board refers an investigation and hearings record to a District Attorney, the District Attorney may make public such records in the course of a prosecution initiated thereon.
- (n) The time frames set forth in this subchapter specifying Board action are not jurisdictional and the Board may, where appropriate, extend any time period as necessary.
- (o) The Board may make recommendations to the Common Council with respect to amendments to this subchapter.

1.85 **SEVERABILITY**. If any provision of this subchapter is invalid or unconstitutional, or if the application of this subchapter to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or application of this subchapter which can be given effect without the invalid or unconstitutional provision or application.

1.86 - 1.89 Reserved