



Council Agenda Item

Meeting Date:	August 18, 2026
Agenda Item:	Ethics Boards and Surrounding Cities
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BACKGROUND

(Enter the who, what, when, where, why)

A request was made by Alderperson Neil Hicks to have a summary of different methods other Wisconsin Municipalities use for addressing ethics complaints under Wis. Stat. § 19.59. It should be noted that this is not the only method by which ethical violations may be addressed. Authority is granted to the District Attorney's office as well as the Attorney General to prosecute any local official or employee who engages in violations of Wisconsin Statutes regarding ethical requirements in public office. In addition, the City as an employer is able to remove or discipline individuals it finds to have violated its standards. Lastly Wis. Stat. § 17.12 provides for removal and suspension of City Officers.

DISCUSSION

In summarizing the methods municipalities utilize for addressing ethics complaints under Wis. Stat. § 19.59 there are two separate but very important topics that must be discussed. First the party that makes the decision at each step and second the specific procedures utilized to reach a determination.

1. The authority within local government to act on an ethics complaint under Wis. Stat. § 19.59 may be vested in an Ethics Board.

Wis. Stat. § 19.59 is silent on who must be on the Ethics Board or how many individuals must serve on it. Therefore the City has substantial discretion on how it creates the ethics board and determines who should sit on it. Wis. Stat. § 19.59 does note the City Attorney as being able to fulfill the role of the Ethics Board to advise others on ethical questions, if no Ethics Board is created. Many municipalities place residency requirements on the individuals serving on the Ethics Board, while others designate a mixture of residents and City Officials, such as the City Manager, City Attorney, or Police Chief. In addition to residency requirements many municipalities prohibit anyone from serving on the Ethics Board if they are currently serving as a public officer, official, or employee. Some Municipalities designate a single individual to conduct initial review and consideration prior to sending the matter to the Ethics Board. Some municipalities do not have an ethics ordinance or board, instead relying on the other options noted above.

Typically an Ethics Board should be comprised solely of residents who do not serve on any other boards committees and are not employees of the City. However, due to the City's difficulty in obtaining such individuals to serve reliably on committees, a reasonable alternative may be to have the city clerk compile a list of all currently serving members of any City of Whitewater board, committee, or commission. The City Clerk would then remove any member who has an apparent conflict of interest as they either serve with the respondent or are related to the respondent or complainant. From this list the Clerk should draw a number of names at random for purposes of this example up to 11 names. The 11 names would then be provided to the complainant and respondent and each would be required to strike 3 names. The striking would alternate with the complainant striking the first name, then the respondent striking the second and so on until the list is down to 5 individuals. These 5 individuals would then be required to sit as the ethics board and conduct the fact finding hearing, deliberation and report and recommendation as advised by the City Attorney or if a conflict exists by third party council hired for the purpose.

2. An Ethics Complaint typically contains 5 steps that require City's action.

After receiving an ethics complaint there are five steps that most municipalities complete to resolve an ethics complaint. The first step is to complete an initial Review. The second step is to complete an initial investigation and determination of probable cause. The third step is to complete a fact-finding hearing. The fourth step is to deliberate and render a decision. The fifth step is to then compile a formal report and recommendation.

A. Initial Review.

This step requires a review of the ethics complaint and determination of if the facts alleged in the complaint if true would be a violation of the City's Ethics Code. At this step every allegation contained in the complaint should be presumed to be true as well as any reasonable inference from the stated facts. If the complaint provides sufficient allegations that if true would result in a violation of the Ethics Code it should be moved forward to the next step. If not the complaint should be dismissed without further review.

Some communities have this step completed by a single individual, others have it completed by an ethics board or other relevant committee.

B. Initial investigation and Probable Cause Determination.

At this stage the respondent should be notified of the investigation, and a review of the alleged facts should be completed to see if it is likely that the violation did occur. Witnesses may be interviewed and the respondent should be given a chance to respond to the allegations. Some locations simply rely on the response from the respondent, while other communities interview witnesses, emails, or other documentation to see if anything makes it clear the allegations are without factual basis. This would not involve a complete review of every potential fact nor does it provide the respondent or complainant an opportunity to present any and all facts they wish to. If proven facts show that relevant facts alleged are false and therefore an integral element of the ethics complaint is missing, the matter should be dismissed. If the gathered information indicates that the facts are likely or may be as alleged in the complaint then the complaint should be permitted to go to fact-finding hearing.

Some communities have this step completed by a single individual, others have the determination made by an ethics board or other relevant committee. When a committee is responsible for this step the exact process is usually delegated to an individual to prepare and complete a report and recommendation based on the initial investigation, which is then presented to the committee for a recommendation on how to proceed.

C. Fact-finding Hearings.

At this stage a quasi-judicial hearing is held to determine what more likely than not occurred. This would be based on any witness testimony or other evidence either the complainant or respondent wishes to provide to the committee. It may also review reviewing emails, or other documentation to determine if the alleged facts are correct and if a violation of the ethics committee occurred. While due process does need to be maintained the standard is not that of a formal criminal trial. Therefore the rules of evidence can be relaxed and consistent with Wis. Stat. Sec. 227.45. Other municipalities require compliance with Wisconsin Rules of Criminal Evidence, which would more substantially limit what is admissible before the committee. Once all facts are obtained the committee should move forward to the next step. While a single person should conduct the hearing all members of the committee should be present and review all facts placed into evidence. The Board is able to request additional evidence if it believes something needs to be clarified; however, once this is done both sides should have an opportunity to respond to the additional information.

D. Deliberation and Decision

Once the fact finding hearing is completed and all evidence has been received, the ethics board may meet in closed session to discuss and deliberate whether the facts obtained during the hearing show that a violation of the Ethics code occurred. The Committee should consider the reliability of each witness as well as their personal experiences to determine what facts they believe occurred. For this type of hearing the traditional standard is more likely than not, meaning that if it is 50/50 that the violation occurred the matter should be dismissed. However if it is 50.01/49.99 that the violation occurred the decision should reflect that the violation occurred. Wisconsin typically utilizes one of three standards those being more likely than not; clear, satisfactory, and convincing; or beyond reasonable doubt. Beyond reasonable doubt does not mean that there is no doubt or that a person is absolutely certain something happened, but that there is no doubt for which a reason can be given, arising from a fair and rational consideration of the evidence or lack of evidence. The standard of clear, convincing, and satisfactory evidence lands somewhere between more likely than not and beyond reasonable doubt. It requires that evidence be provided which is clear convincing that the facts are true, and satisfies the person deliberating that what is alleged is correct. If the standard set by the ordinance is reached and the facts show that there was a violation of the ordinance code the committee should vote to find the person violated the ethics code. If they are not so satisfied or are unable to come to a consensus then the matter should be dismissed.

E. Report and Recommendation

Once the decision has been reached the ethics board will need to compile a report and make a recommendation for how to proceed. This could be anything from recommending charges be referred to the District Attorney or Attorney Generals offices, to a referral to the Whitewater Police Department, or a recommendation to the Common Council that a person be sanctioned or removed from office. Most municipalities direct the ethics board to provide a recommendation to the common council for further action.

FINANCIAL IMPACT

(If none, state N/A)

n/a

STAFF RECOMMENDATION

As City Attorney I do not have a strong preference on the method the community utilizes to ensure compliance with the City's Ethics Code. I will use and advise on the method the common council is most comfortable with as well as recommend alternative options for addressing inappropriate conduct while in public office. Therefore, my current recommendation would be to take no action as the Ethics Code currently in existence has served the municipality for about 35 years.

Should council wish to update the ethics board, I would suggest the council direct the City Attorney to draft amendments to the ethics board procedure addressing the following matters to make the Ethics Board more efficient.

1. Designate the City Attorney or other specified individual complete the initial two steps of the process would likely substantially speed up the process while not reducing the rights of any person.
 2. If there is a conflict due to the allegation being made against the City Attorney the first two steps be completed by the City Manager or their designee. If an ethics complaint is against the City Manager, the Council President or their designee should complete the first two steps.
 3. If an ethics complaint requires a fact-finding hearing, the fact-finding hearing be conducted by an ethics board.
 4. Determine the composition of the Ethics Board.
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5. Set the standard of evidence to administrative hearing under Wis. Stat. Sec. 227.45.
 6. Set the burden of proof to more probable than not.
 7. Have the Ethics Board submit a formal report to the Common Council on the recommendation or dismissal of any ethics complaint that reaches a fact finding hearing.
 8. Have the City Attorney submit a summary report on any ethics complaint that is dismissed after preliminary investigation.

ATTACHMENT(S) INCLUDED

(If none, state N/A)

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| 1. Summary of Local Ethics Boards Ordinances |
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