

Chapter 7.04 CODE OF ETHICS

Sections:

7.04.010 Declaration of policy.

The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, there is hereby established a code of ethics for all city officials and employees, whether elected or appointed, paid or unpaid, including members of boards, committees and commissions of the city. The purpose of this code is to establish guidelines for ethical standards of conduct for all such officials and employees by setting forth those acts or actions that are incompatible with the best interests of the city and by directing disclosure by such officials and employees of private financial or other interests in matters affecting the city. The provisions and purpose of this code and such rules and regulations as may be established are hereby declared to be in the best interests of the city.

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.020 Definitions.

As used in this chapter:

- (a) "Public ~~e~~mployee" means any person excluded from the definition of a public officer who is employed by the city.
- (b) "Financial interest" means any interest which shall yield, directly or indirectly, a monetary or other material benefit to the officer or employee or to any person employing or retaining the services of the officer or employee.
- (c) "Official" means all city officers as defined in Section 62.09 under Wisconsin Statutes and all members of boards and commissions and agencies established or appointed by the city manager or common council, whether paid or unpaid.
- (d) "Personal interest" means any interest arising from blood or marriage relationships or from close business or political associations, whether or not any financial interest is involved.
- (e) "Person" means any person, corporation, partnership or joint venture.

- (f) "Official required to file" means the following individuals:

~~i. All individuals listed in Wis. Stat. §19.42(10), inclusive of municipal judge~~

i. Council Members

ii. Municipal Judge

iii. Members of any Board, Committee, or Commission created by a City of Whitewater resolution or ordinance.

iv. City Manager

~~ii.v.~~ Chief of Staff

Commented [BS1]: Language borrowed from Wis. Stat. §19.42(10), with additional officials developed based on municipal need and intent of author.
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- ~~iii.vi.~~ All legal counsel employed directly by the city (non-contracted), including, but not limited to, City Lawyer, City Attorney or any Deputy or Assistant City Attorney Legal Assistant and Paralegal
 - ~~iv.vii.~~ Director of Community Development Director /Economic Development
 - ~~v.viii.~~ Economic Development Coordinator All other employees of the Community Development Department, and/or employees significantly involved with economic development activities, with an appointment of 50 percent or greater
 - ~~vi.ix.~~ Director of Finance and Administrative Services
 - x. Comptroller or Payroll/AP Technician
 - ~~vii.xi.~~ Clerk of Courts
 - ~~viii.xii.~~ Library Director and Assistant Director
 - xiii. Department of Public Works Director
 - xiv. IT Director
 - xv. Parks and Recreation Director
 - xvi. Fire Chief
 - xvii. Police Chief
 - xviii. Water Superintendent
 - xix. Streets, Parks & Forestry Superintendent
 - ~~ix.xx.~~ Wastewater Superintendent

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.030 Statutory standards of conduct.

There are certain provisions of the Wisconsin Statutes which should, while not set forth herein, be considered an integral part of any code of ethics. Accordingly, the provisions of the following sections of the Wisconsin Statutes, as from time to time amended, are adopted by reference and shall apply to public officials and employees whenever applicable to wit:

- (a) Sec. 946.10. Bribery of Public Officers and Employees.
- (b) Sec. 946.11. Special Privileges from Public Utilities.
- (c) Sec. 946.12. Misconduct in Public Office.
- (d) Sec. 946.13. Private Interest in Public Contract Prohibited.
- (e) Chapter 11. Campaign Financing.
- (f) Chapter 19. Subchapter IV Open Meetings of Governmental Bodies.

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.040 Responsibility of public office.

Public officials and employees hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of this state; to observe the highest standards of law in the exercise of the powers and duties of their office; to impartially carry out the laws of the nation, state and city; to

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(Supp. No. 8-25)

discharge faithfully the duties of their office regardless of personal considerations; and to recognize that the public interest must be their prime concern.

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.050 Dedicated service.

All officials and employees of the City of Whitewater should be loyal to the objectives expressed by the electorate and the programs developed to attain these objectives. Appointive officials and employees shall adhere to the rules of work and performance established as the standard for their positions by the appropriate authority.

Officials and employees should not exceed their authority or breach the law or ask others to do so, and they should work in full cooperation with other public officials and employees unless prohibited from so doing by law or by officially recognized confidentiality of their work.

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.060 Fair and equal treatment.

- (a) Use of Public Property. No official or employee shall request or permit the unauthorized use of city-owned vehicles, equipment, materials or property for personal convenience or profit.
- (b) Obligations to Citizens. No official or employee shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.070 Conflict of interest.

- (a) Financial and Personal Interest Prohibited. No official or employee, whether paid or unpaid, shall engage in any business or transaction or shall act in regard to financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of official duties in the public interest contrary to the provisions of this chapter or which would tend to impair independence of judgment or action in the performance of official duties.
- (b) Specific Conflicts Enumerated.
 - (1) ~~Incompatible~~ Employment. No official or employee shall engage in or accept private employment or render service for private interest when such employment or service is incompatible with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties, unless otherwise permitted by law and unless disclosure is made as hereinafter provided.
 - (2) **Contracting.** An official or employee of 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 ~~of or~~ payments of more than \$1,000.00 within a 12-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 Section 946.13, Wis. Stats., an official or employee is prohibited from participating in the formation of a contract or contracts with the City of Whitewater involving the receipts or disbursements of more than \$1,000.00 in any year.
 - (3) Gifts and Favors.

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- (A) No official or employee shall accept any gift whether in the form of service, loan, thing or promise, from any person which may tend to impair his independence of judgment or action in the performance of his duties or grant in the discharge of his duties any improper favor, service or thing of value. EXCEPTION: Advertising or promotional items having a value of ten dollars or less per gift shall be exempt.
- (B) No official or employee may solicit or accept, either directly or indirectly, from any person or organization, money or anything of value if it could reasonably be expected to influence the employee's official actions or judgments or be considered a reward for any action or inaction on the part of the official or employee.
- (C) An official or employee is not to accept hospitality if, after consideration of the surrounding circumstances, it could reasonably be concluded that such hospitality would not be extended were it not for the fact that the guest, or a member of the guest's immediate family, was a city official or employee. Participation in celebrations, grand openings, open houses, informational meetings and similar events are extended from this prohibition. This paragraph further shall not be construed to prevent candidates for elective office from accepting hospitality from citizens for the purpose of supporting the candidate's campaign.
- (D) Gifts received by an official or employee under unusual circumstances should be referred to the ethics board within ten days of receipt for recommended disposition.
- (4) Representing Private Interests Before City Agencies or Courts. No official or employee shall appear on behalf of any private person (other than him or herself, his or her spouse or minor children) before any city agency, board, commission or the common council if the official or employee or any board, commission or committee of which the official or employee is a member has any jurisdiction, discretion or control over the matter which is the subject of such representation. However, members of the common council may appear before city agencies on behalf of constituents in the course of their duties as representatives of the electorate or in the performance of public or civic obligations.
- (A) Ad Hoc Committee. EXCEPTION: No violation of this section shall exist, however, where an individual serves on an ad hoc committee charged with the responsibility of addressing an issue or topic in which that individual, or the employee or a client of that individual, has an interest so long as the individual discloses to the ad hoc committee that such interest exists.
- (c) Contracts with the City. No city officer or employee who, in his capacity as such officer or employee, participates in the making of a contract in which he has a private pecuniary interest, direct or indirect, or performs in regard to that contract with some function requiring the exercise of discretion of his part, shall enter into any contract with the city unless it falls within the confines of Sec. 946.13, Wis. Stats. "Private Interest in Public Contract Prohibited," or the following:
- (1) The contract is awarded through a process of public notice and competitive bidding or the common council waives the requirement of this section after determining that it is in the best interest of the city to do so.
- (2) The provisions of this section shall not apply to the designation of a public depository of public funds.
- (d) Disclosure of Interest in Legislation.
- (1) Any member of the common council who has a financial interest or personal interest in any proposed legislation before the common council, shall disclose on the records of the common council, the nature and extent of such interest **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.**

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- (2) 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 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.
- (3) Any other official or employee who has a financial interest or personal interest in any proposed legislative action of the common council or any board, commission or committee upon which the official or employee has any influence or input or of which the official or employee is a member that is to make a recommendation or decision upon any item which is the subject of the proposed legislative action shall disclose on the records of the common council or the appropriate board, commission or committee the nature and extent of such interest.

(Ord. 1529A §§ 1, 2, 2003; Ord. 1203(2/5/91) § 2(part), 1991).

(e) Disclosure of Financial and Economic Interests

- (1) For the purpose of this section, reporting may occur via Economic Disclosure forms (e.g. ETH-1, ETH-1A, ETH-2, & ETH-3) provided by the Wisconsin Ethics Commission.
- (2) Each individual who ~~in on~~ January 1 of any year is an official required to file, and who is an official required to file for at least 14 days of that year shall file with the Municipal Clerk, or their designee, no later than ~~March-January~~ 31 of that year a statement of economic interests meeting the requirements of Wis Stat. §19.44(1), §19.44(2), §19.44(3), and §19.44(4). The information shall be current as of December 31 of the preceding year.
- (3) An official required to file shall file with the Municipal Clerk, or their designee, a statement of economic interests meeting each of the requirements of Wis Stat. §19.44(1), §19.44(2), §19.44(3), and §19.44(4) no later than 30 days following the date he or she assumes office if the official has not previously filed a statement of economic interests with the clerk during that year. The information on the statement shall be current as the date he or she assumes office.
- (4) Each individual who is an official required to file shall file with the Municipal Clerk, or their designee, a statement of economic interests meeting each of the requirements of s. 19.44 (1) no later than 30 days following the date on which the individual's term of office ends or the individual leaves the office. The information contained on the statement shall be current as of the date on which the individual's term of office ends or the individual leaves the office. An individual who files a statement as provided under this subsection is not required to file another statement of economic interests until such time as the individual again becomes an official required to file.
- (5) An official required to file shall file with the Municipal Clerk, or their designee, a statement of economic interests meeting each of the requirements of §19.44(1), §19.44(2), §19.44(3), and §19.44(4) no later than 60 days following the adoption of 7.04.070(e), if the official has not previously filed a statement of economic interests with the clerk during that year. The information on the statement shall be current as the date he or she files the statement.
- (6) All annual disclosure reports shall be provided to council as an agenda item no later than May 31 of each year. Any such disclosures the result of 7.04.070(e)(3), 7.04.070(e)(4), or 7.04.070(e)(5) shall be included as an agenda item no later than 30 days after the Municipal Clerk, or their designee's, receipt of the disclosure.

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7.04.075 Disclosure of confidential information.

No official or employee shall without proper legal authorization, disclose confidential information concerning the property, government or affairs of the city.

(Ord. 1529A § 1(part), 2003).

7.04.076 Advisory Opinions Provided by City Attorney

Any person covered by this subchapter as provided in 7.04.020(c) may request of the City Attorney and 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, opinions requests and investigations of violations shall be closed to public inspection as required by Chapter 19, Wis. Stats. Except as provided by Section 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.

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7.04.080 Ethics board.

- (a) ~~At anytime an ethics complaint is received and a fact finding hearing is necessary. There is hereby created an~~ ethics board to consist of five members and one alternate, all residents of the city ~~shall be empaneled.~~ Elected officials or employees will not be eligible for appointment ~~on the ethics board.~~ The city manager shall provide necessary staff assistance to the board. The city attorney shall routinely furnish the board whatever legal assistance is necessary to carry out its functions. However, if a possible, apparent, or actual conflict of interest involving the city attorney should occur, legal counsel shall be furnished the board through the city manager's appointment of other legal counsel after consultation with the chair of the ethics board.
- (b) The members of the ethics board shall be ~~appointed~~ selected by the City Clerk randomly drawing 11 names from all individuals who serve on any committee, board, or commission of the City removing any person related to the complainant or respondent or who serves on a committee with the parties or any other known conflicts. The 11 names will then be provided to the complainant and respondent who shall each strike 2 names so that seven are empaneled. The first five names drawn that remain after the strikes are completed shall comprise the board, and the remaining two individuals shall be alternates should any of the five be conflicted out for unknown reasons or unavailable during the fact finding hearing. by the city manager subject to confirmation by the common council. Terms of office shall be ~~until the matter is resolved. three years except that when the initial appointments are made, one member shall be appointed for one year, two for two years, and two for three years. The term of the alternate shall be for three years, except that the initial appointment shall coincide with the ending of the terms of the member appointed for one year.~~
- (c) The ethics board shall elect its own chair, vice-chair and secretary ~~and shall develop written rules of procedure which shall be filed with the city clerk.~~
- ~~(d) The ethics board may make recommendations to the common council with respect to amendments to the code of ethics ordinance.~~

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.090 ~~Duties of the ethics board.~~ Ethics Complaints

- (a) Upon receipt at the city clerk's office of a notarized complaint in writing, which shall state the name of the elected or appointed official or employee alleged to have committed a violation of this chapter and which shall set forth the particulars thereof, the city clerk or designee shall distribute a copy of the complaint along with a copy of the code of ethics ordinance to the respondent within ten working days (i.e., Monday through Friday, excluding holidays). The city clerk or designee also shall send a copy of the complaint to ~~each member of the ethics board~~ the City Attorney. The information contained in the verified complaint shall be kept confidential until a proper disposition of the case occurs.
- (b) ~~Within 5 business days of receiving the Complaint, the board shall meet in closed session and the City Attorney shall~~ determine whether the complaint, if true, may constitute a violation of the chapter. ~~If four or more of the members of the board vote to dismiss the verified complaint, a formal dismissal action adopted in open session the allegations in the complaint do not allege a violations, the City Attorney shall draft a letter dismissing the complaint within 15 days of receiving the complaint, shall be filed with the city clerk and a copy sent to the complainant and the respondent. If four or more members do not vote to the matter is not dismissed, the action shall proceed as provided in subsection (c) of this section.~~
- (c) If the action is not dismissed under subsection (b) of this section, the ~~board~~ City Attorney shall make preliminary investigations with respect to the alleged violation of the ethics chapter. ~~The Preliminary Investigation shall include an opportunity for the respondent to file a written response to the allegations.~~ No preliminary investigation of the activities of any elected or appointed official or employee may be initiated unless such official or employee is notified in writing. The notice shall state the nature and purpose of this preliminary investigation. Information gathered during the preliminary investigation shall be kept confidential until a ~~finding is made by the board~~ proper disposition of the case occurs.
- (d) If, after the preliminary investigation, the ~~City Attorney determines that no probable cause exists that the alleged violation occurred the City Attorney shall prepare a report outlining the investigation that occurred and the reason for dismissing the complaint. ree or more of the members of the board vote in open session that no probable cause exists, the board shall issue a formal finding to that effect and dismiss the case.~~ A copy of the formal finding shall be filed with the city clerk and a copy distributed to the complainant and the respondent.
- (e) ~~If the board is unable to come to a conclusion on the subject of probable cause, due to abstentions or the voting of "present," the board shall have further discussion and vote again. If the stalemate continues, the board shall treat it as a dismissal and proceed as in subsection (d) of this section.~~
- (f) If, after the preliminary investigation, ~~three or more of the members of the board vote the City Attorney determines that there that there is~~ probable cause that a violation took place, ~~the City Attorney the board shall file formal findings to that effect with the city City clerk Clerk and request the City Clerk empanel an Ethics Board to proceed toward the conduct of a fact-finding hearing. The vote shall be taken in open session.~~
- (g) In the case of a probable cause finding, the ~~board~~ City Clerk shall send a notice of due process rights and a notice of hearing on the matter to the respondent. The complainant shall also be notified of the hearing.
- (h) The ~~Ethics board Board~~ shall then conduct a hearing on the verified complaint, which hearing shall be held not more than thirty days after such finding of probable cause. The board shall give the respondent at least twenty days notice of the hearing date. Such hearings shall be at open session unless the respondent petitions for a hearing closed to the public. The rules of ~~criminal~~ evidence under Wis. Stat. Sec. 227.45 shall apply to such hearings. All evidence considered by the board, including certified copies of records and documents, shall be fully offered and made part of the record. Every party shall be afforded adequate opportunity to rebut or offer countervailing evidence.

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- (i) During all stages of the proceeding conducted under this section, the elected or appointed official or employee whose activities are under investigation shall be entitled to be represented by counsel of his or her own choosing.
 - (j) The respondent or ~~his/her~~their attorney shall have an opportunity to examine all documents and records to be used at the hearing under subsection (g) of this section at a reasonable time before the date of the hearing; as well as during the hearing, to bring witnesses, to establish all pertinent facts and circumstances, and to question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses.
 - (k) The board shall have the power to compel the attendance of witnesses and to issue subpoenas granted other boards and commissioners under Section 885.01(3) of the Wisconsin Statutes.
 - (l) Determination. Upon conclusion of the hearing the board shall make a decision agreed to by at least four members. It shall file the decision in writing within ten working days after the vote, signed by at least four participating board members stating findings of fact, conclusions of law concerning the propriety of the conduct of the elected or appointed official or employee, and if appropriate, referring the matter to the city council or other proper authority with a recommendation for censure or other disciplinary action. A member of council censured may be subject to recall pursuant to Section 9.10, Wisconsin Statutes, or any other legal process authorized by law. If four or more members are not able to reach an agreement, the complaint shall be dismissed.
 - (j) Should the Complaint allege violations of this chapter by the City Attorney, the City Manager shall fulfill the responsibilities of the City Attorney under this Section. Should the Complaint allege violations of this chapter by the City Manager, the Council President shall fulfill the responsibilities of the City Attorney under this Section.

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.100 Applicability of code.

This code shall be operative in all instances covered by its provisions except when superseded by an applicable statutory provision and statutory action is mandatory, or when the application of a statutory provision is discretionary, but determined by the ethics board to be more appropriate or desirable.

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.110 Distribution of the code.

The city clerk shall provide copies of this code to elected and appointed officials covered by this chapter and shall keep at least one copy permanently on file for the use of the public.

(Ord. 1203(2/5/91) § 2(part), 1991).

7.04.120 Severability.

- (a) If any provision of this chapter is invalid or unconstitutional, or if the application of this chapter to any person or circumstances is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this chapter which can be given effect without the invalid or unconstitutional provision or application.
- (b) This ordinance shall be in full force and effect from and after its passage and publication.

(Ord. 1203 (2/5/91) § 2(part), 1991).

7.04.130 Penalty for violations.

In addition to any other provisions relating to disciplinary action or censure, any person who violates any of the provisions of this chapter may forfeit and pay a penalty of not less than twenty-five dollars nor more than two hundred fifty dollars for the first offense, together with the costs of prosecution; and for the second and subsequent offenses, not less than fifty dollars nor more than two hundred fifty dollars, together with the costs of prosecution. If respondent fails to pay the penalty and costs within sixty days of imposition of the penalty, the city may collect the penalty by obtaining a judgment in the circuit court and collecting said judgment as provided by law.

(Ord. 1203(2/5/91) § 2(part), 1991).