

Ord. 6-10

To repeal and recreate Chapter 2, Article VII., Code of Ethics, of the Municipal Code of the City of Racine, Wisconsin relating to Administration.

The Common Council of the City of Racine do ordain as follows:

Part 1:

Chapter 2, Article VII. Of the Municipal Code of the City of Racine is hereby repealed and recreated to read as follows:

“2-576. Purpose.

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 the best interest of the people, the community and the government and in the proper channels of governmental structure; that public offices and employment not be used for personal gain, and that the public have confidence in the integrity of its government. To assist in attaining these goals, there is established a code of ethics for all City of Racine (“City”) officials, including members of boards, committees, commissions, the mayor and employees, whether elected or appointed, paid or unpaid.

2-577. Policy.

(a) The purpose of this code is to establish guidelines for ethical standards of conduct for all City officials and employees by setting forth those acts or actions which are incompatible with the best interests of the city and by requiring such officials and employees to disclose personal interests, financial or otherwise, in matters affecting the City.

(b) Nothing contained in this code is intended to deny to any individual the rights granted by the United States Constitution, the constitution of this state, the laws of this state or labor agreements between the City and its bargaining units.

2-578. Definitions.

The following definitions shall be applicable in this code.

Anything of value: Any money or property, favor, gift, service, payment, advance, forbearance, loan or promise of future employment, including but not limited to remuneration, tickets, passes, lodging, travel, recreational expenses and admission offered and provided by persons doing business or interested in doing business with the City. “Anything of value” does not include compensation and expenses paid by the state, fees and expenses which are permitted and reported under Wis. Stat. § 19.56, political contributions which are reported under chapter 11 of the State Statutes, or hospitality extended for a purpose unrelated to state business by a person other than an organization.

Associated (when used with reference to an organization) includes any organization in which an individual or a member of their immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding

equity or of which an individual or member of their immediate family is an authorized representative or agent.

Board: The Board of Ethics created by this code of ethics ordinance.

Business: Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual or any other legal entity which engages in profit-making activities.

Candidate for Elective Office: Any person who files nomination papers and a declaration under Wis. Stat. § 8.10 for the purpose of appearing on the ballot for election to an office in the City of Racine or any person nominated for a City office in an election through the write-in process and who files a declaration pursuant to Wis. Stat. § 8.10.

Confidential Information: Written material or oral information related to City government which is not otherwise subject to the public records law and which is designated by statute, ordinance, court decision, lawful order, or custom as confidential.

Conflict of Interest: A public official's act or failure to act in the discharge of his/her official duties which could reasonably be expected to produce or assist in producing a substantial economic or personal benefit for such official, his/her family or an organization with which he/she is associated.

Economic Interest: Any interest that will yield directly or indirectly a monetary or other material benefit to the public official or to any person employing or retaining the services of the public official, or any member of the family of said public official, except as permitted by Wis. Stat. § 946.13.

Financial Interest: Any interest which would yield, directly or indirectly, a monetary or other material benefit to the public official or his/her spouse or to any person employing or retaining the services of the public official or his/her spouse.

Gift: The payment or receipt of anything of value without valuable consideration.

Immediate Family: Any individual related to a public official as spouse or legal dependent for federal income tax purposes.

Income: The meaning given under the federal internal revenue code.

Incompatibility: A conflict between one's official responsibilities and personal or economic interest which would prevent the public official from the complete and proper discharge of his/her official duties.

Organization: Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual, body politic or charitable entity.

Person: Any natural person, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, joint venture, trust, or other legal entity recognized as such by the laws of the State.

Privileged information: Information obtained under government authority which has not become a part of the body of public information

Public Official: Any person holding an elected city office and candidates for elected city office, or any person holding an appointed city office, including all city department heads, administrative managers, all city employees, and all citizens appointed by the mayor or common council to advisory boards, or commissions, and elected officials, and appointed members of committees and panels who are not elected.

Statement of Economic Interest: The factual statement filed pursuant to the provision of this chapter which contains the information set forth in subsection 2-579.

Valuable and Sufficient Consideration: Payment or compensation of an amount equivalent to the actual value of any item received. If the actual value cannot be determined, payment or compensation of a reasonable value is acceptable.

2-579. Financial disclosure and certification.

(a) *Statement of economic interests and certification.* Except as otherwise provided herein, all city officers (except the municipal judge), candidates for city elective office, the city administrator, administrative managers, the finance director, the assistant commissioner(s) of public works, the deputy city clerk/treasurer, the deputy city attorney and the chief of operations of the water/wastewater utilities shall file a statement of economic interests, which shall contain the type of information required in Wis. Stats. § 19.44(1), and shall be provided subject to the conditions contained in Wis. Stats. § 19.44(2), (3), and (4). A city officer who serves without salary upon appointment by the mayor or common council shall not be required to file a statement of economic interests but shall file a signed certification that he or she has received a copy of the laws and ordinances relating to conduct prohibited in the state and city code of ethics, that he or she has read such provisions and agrees to abide by the applicable standards of conduct.

(b) *Filing statement.* Individuals required to file a statement of economic interests shall file the statement with the board within the time specified in Wis. Stats. § 19.43(1) or (2), as applicable, or, if a candidate for elective city office, Wis. Stats. § 19.43(4).

(c) *Form to be provided.* The city clerk shall, by March 1 of each year, provide the statement of economic interests form to all persons required to file the statement, excepting candidates for elective city office, along with a notice to complete and return the form by March 31 of that year. The city clerk shall provide the form to candidates for elective city office at the time the candidate files his campaign registration form. The city clerk shall provide the certification form, along with a copy of the applicable state laws and city ordinances, to those persons required to file the certification specified above upon the initial appointment of such persons to the board, commission or committee. The city clerk shall also provide the certification form to those board, commission and committee members not required to file the statement of economic interests but who are serving as an appointed member on February 1st of the given calendar year.

(d) *Preservation of records.* The city clerk shall preserve the statements of economic interests for a period of six years from the date of receipt, except that:

(1) Upon the expiration of three years after an individual ceases to be a city public official the clerk shall, unless the former official otherwise requests, destroy any statement of economic interests filed by him and any copies thereof in the city clerk's possession.

(2) Upon the expiration of three years after any election at which a candidate for elective city office was not elected, the city clerk shall destroy any statements of economic interests filed by him as a candidate and any copies thereof in the city clerk's possession, unless the individual continues to hold another position for which he is required to file a statement, or unless the individual otherwise requests.

(e) *Disclosure.* The city clerk shall make statements of economic interests available to the public under the conditions for public inspection contained in Wis. Stats. § 19.55.

Sec. 2-580. Penalties for failure to disclose economic interests.

(a) *Candidates.* The city clerk is directed to omit the name of any candidate for elective city office from an election ballot who has not timely filed his statement of economic interests with the city clerk in accordance with this chapter.

(b) *Officers and employees.* The city clerk shall advise the finance director of any officer or employee who is required to file a statement of economic interests and fails to do so in accordance with the requirements of this chapter. The city treasurer is directed to withhold the salary and compensation of all kind from any such person until the officer or employee complies with this requirement. If the statement of economic interests or the certification of an officer who serves without salary is not received by the city clerk within the time required, the city clerk will provide written notice of such delinquency to the officer. If the statement or certification is not filed with the city clerk within 30 days after the date the notice is served or mailed by the city clerk, then the appointment of the officer shall be terminated by the appointing authority.

2-581. Prohibited conduct.

(a) Violation of work rules.

Appointed officials and employees shall adhere to the rules of work and performance standards established for their positions. Officials and employees shall not exceed their authority or breach the law or ask others to do so. They shall cooperate with public officials and employees from other governmental bodies, agencies, or jurisdictions unless prohibited by law from doing so. They shall not disclose confidential information or privileged information gained in the course of, or by reason of his/her official position or official activities.

(b) Use of office for private gain.

No public official may use their public position or office to obtain financial gain or anything of substantial value for the private benefit of themselves or their immediate family, or for an organization with which they are associated. This includes the acceptance of free or discounted admissions to athletic or other entertainment events.

A local public official is not prohibited from using the title or prestige of their office to obtain campaign contributions that are permitted and reported as required by Chapter 11 of the Wisconsin State Statutes.

(c) Offering or receiving anything of value.

No person may offer or give to a public official, directly or indirectly, and no public official may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the public official's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the official.

A candidate for office or a public official may not utilize their vote to influence or promise to take or refrain from taking official action on matters under consideration or upon condition that any person make or refrain from making a political contribution or provide or refrain from providing any service or other thing of value, to or for the benefit of a candidate, a political party, any person who is subject to a registration requirement under Wis. Stat. §11.05, or any person making a communication that contains a reference to a clearly identified public official or candidate for public office.

(d) Taking action affecting a matter in which an official has financial interest.

A public official may not take any official action that substantially affects a matter in which the official, a member of their immediate family, or an organization with which the official is associated has a substantial financial interest. Nor, may the official's office be used in a way that directly or indirectly produces or assists in the production of a substantial benefit for the official, or one or more members of the official's immediate family, or an organization that the official is associated with.

However, a public official is not prohibited from taking any action concerning the lawful payment of salaries, employee benefits or reimbursement of actual and necessary expenses. Nor is the official prohibited from taking official action to any proposed modification of a City ordinance.

(e) Bribery.

Public officials and employees are prohibited from accepting any money, property or other personal advantage they are not authorized to receive by anyone who promises this with the intention of influencing the public official or employee's conduct regarding any matter in which law is pending.

(f) Misconduct in office.

Public officials and employees are prohibited from:

- (1) Intentionally failing or refusing to perform a known mandatory, nondiscretionary, ministerial duty of their office or employment within the time or in the manner required by law.
- (2) Performing an act knowingly in excess of their lawful authority or one in which they know they are forbidden by law to do in their official capacity.
- (3) Whether by act of commission or omission, exercising a discretionary power in a manner inconsistent with the duties of their office or employment or the rights of others and with intention to obtain a dishonest advantage for themselves or another.
- (3) Intentionally falsifying an account, record book, return, certificate, report or statement in the officer or employee's official capacity.

(4) Intentionally soliciting or accepting anything of value, known by the officer or employee to be greater or less than is fixed by law, for the performance of any service or duty.

(5) Using City property in a manner that is prohibited by policy, or that causes unnecessary costs, congestion, disruption or damage to City property, or other inappropriate uses which include but are not limited to:

A. Intentionally or unintentionally permitting the use of City property, equipment or vehicles by unauthorized persons;

B. Using City logos or titles to misrepresent materials as official or misrepresenting, either implicitly or explicitly, personal views or comments as an official City policy or position;

C. Using property owned by the City or services paid for with City funds for personal gain or to maintain or support a private business.

D. Violating any portion of the City's "Computer Hardware and Software Policy."

(g) Nepotism.

Public officials and employees are prohibited from:

(1) Using their public office to obtain employment for the official's spouse or a dependent relative. However, if the official is not involved in the hiring, promotion or conditions of employment, a qualified spouse or dependent may be hired or promoted.

(2) Advocating for or hiring or promoting, or exercising jurisdiction, supervision or direction over someone the official is related to as a parent, grandparent, child, grandchild, sibling, parent-in-law, grandparent-in-law, brother-in-law, sister-in-law, uncle, aunt, niece, nephew or spouse.

(h) Incompatibility of offices.

No official or employee shall engage in or accept private employment or render service, for private interest, when such employment or service conflicts with the proper discharge of his or her official duties or would tend to impair such official's or employee's independence or judgment or action in the performance of such duties, unless otherwise permitted by law and unless disclosure is made as herein provided.

(i) Conduct prohibited by state law.

Except as specifically provided in this chapter, the provisions of all applicable Wisconsin Statutes, including but not limited to Wis. Stat. §§ 19.41 - 19.59, 66.0501, 125.51, 946.10, 946.12 and 946.13, are adopted and by reference made a part of this code and shall apply to public officials whenever applicable. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this Code.

Sec. 2-582. Action upon conflict of interest.

(a) If any city officer or employee who, in the discharge of official duties, is required to take an action that is prohibited by this chapter, and which would result in a conflict of interest, such city officer or employee:

(1) Shall not take such action.

(2) Shall prepare a written statement describing the matter requiring action or decision, and the nature of the possible conflict of interest with respect to such action or decision.

(3) Shall deliver copies of such statement to the ethics board and to his immediate superior, if any.

(4) In the case of an alderman, may deliver a copy of such statement to the mayor and common council. The city clerk shall cause such statement to be printed in the official proceedings and, upon request, such alderman shall be excused from voting, deliberating and taking other actions on the matter on which a possible conflict exists.

(b) If the city officer or employee is not an alderman, his superior, if any, shall assign the matter to another employee who does not have a possible conflict of interest. If the city officer or employee has no immediate superior, he may seek advice from the ethics board to remove himself from influence over actions and decisions on the matter on which the possible conflict exists.

(c) The board shall review the statement describing the matter requiring an action or decision and the nature of the possible conflict of interest, and may advise the city officer or employee. Any person subject to this article may request of the board written advice regarding the propriety of any matter to which he is or may become a party. Written advice issued under this subsection shall be confidential except that it may be subpoenaed by any court of record or the common council or committee thereof. No person, except the person who initially requested preparation of the statement, may make the contents of any written advice or other records of the board public. It shall be prima facie evidence of intent to comply with this article when a person refers a matter to the board and abides by its written advice.

(d) A city officer or employee may request the board to obtain an advisory opinion from an impartial attorney on the application of this article to a given set of circumstances, real or hypothetical, or the board may request such an opinion on its own motion.

(e) Nothing in this section prohibits an alderman from making decisions concerning reimbursement of expenses, salaries or salary-related benefits of aldermen.

2-583. Board of ethics.

(a) There is hereby created a board of ethics, consisting of six residents of the city, one of whom shall be an attorney licensed to practice law in the state, to be appointed by the mayor and confirmed by the common council. Appointments shall be for a term of six years, expiring on May 1 of the final year of service.

(b) The board shall be authorized to hire, within its budget limitations, such part-time personnel as may from time to time be necessary in the administration of this chapter. Such personnel may include, without limitation due to enumeration, a court reporter, an investigator, and secretarial help.

(c) Any action by the board shall require an affirmative vote of four members.

(d) No later than May 15 of each year, the board shall report to the mayor and the common council concerning its actions in the preceding calendar year, including a summary of its determinations and the current and complete text of all guidelines issued by the board.

Sec. 2-584. Duties of ethics board; hearings.

(a) The board shall adopt guidelines and procedures necessary to carry out the provisions of this chapter and shall promptly advise the affected officers and employees thereof.

(b) The board shall accept from any person a verified complaint, in writing, relating to the code of ethics as it applies to officers and employees of the city. Such verified complaint shall specify the activities of such officer or employee which are alleged to be in violation of the code of ethics.

(c) Within ten days after receipt of a verified, written complaint the board of ethics shall notify the officer or employee accused in such complaint of the existence of the complaint. The board shall thereafter, at a regular or special meeting, determine whether, based on the complaint, probable cause exists to believe that the code of ethics has been violated.

If the board determines that no probable cause exists, it shall dismiss the complaint and notify the accused officer or employee, the complainant and such other persons as the board determines to have an interest.

If the board finds probable cause to believe a violation exists, it shall then proceed to hold a hearing using the following procedures:

(1) Notice of the finding of probable cause and notice of hearing and a copy of the complaint shall be sent to the accused officer or employee by certified mail at his last known post office address.

(2) Such hearing shall be held more than 20 days but less than 40 days from the postmarked date of the notice of hearing.

(3) The hearing shall be held before the board or four members thereof, presided over by the chairman or his designated representative. If requested by the board, the city attorney shall act as counsel to the board; otherwise, one member of the board shall act as counsel. The accused may be represented by counsel.

(4) Counsel for the board and the accused or his/her counsel may present evidence, call and examine witnesses and cross-examine witnesses of the other party. Such witnesses shall be sworn by the person presiding over the hearing. The chairman of the board is empowered to issue subpoenas to compel attendance of witnesses at such hearing. Statutory due process procedures and admissibility of evidence will be subject to the guidelines of Wis. Stats. Sec. 227-45(1).

(5) The hearing shall be conducted in accordance with the Wisconsin Rules of Criminal Evidence, and the person conducting the hearing shall take notes of testimony and shall mark and preserve all exhibits.

(6) The hearing shall be conducted in closed session unless the accused officer or employee requests, in writing, that it be open to the public.

(7) Within 20 days of the completion of the hearing and the filing of briefs, if any, the board shall make a written determination as to the existence of a violation of the code of ethics by the accused officer or employee. It shall also make a written recommendation as to what action, if any, should be taken to discipline such officer or employee, or what action should be taken to correct the violation. Such determination and recommendation shall be mailed by certified mail to such officer or employee within the 20-day period. Copies shall also be delivered to the common council in the same manner as a report of a standing committee for such action as the common council may deem proper.

(8) Where the board has determined there is probable cause that the code of ethics has been violated by any police officer or firefighter or the chief of either the police or fire department, said determination and recommendation shall be sent to the board of police and fire commissioners, with a request that proceedings be commenced in accordance with provisions of Wis. Stat. § 62.13.

(9) The board may compromise or settle any potential action or violation of this chapter. Whenever the board enters into a settlement agreement with an individual who is accused of a violation of this chapter, the board shall reduce the agreement to writing, together with a statement of the board's findings and reasons for entering into the agreement and shall retain the statement and agreement in its records for inspection.

(10) If the board determines that a violation of this article has occurred, its findings of fact and conclusions may contain one or more of the following orders or recommendations:

A. An order requiring the accused to forfeit not more than \$5,000.00 for each violation of section 2-581.

B. If the board determines that the accused has realized economic gain as a result of the violation, an order requiring the accused to forfeit the amount gained as a result of the violation.

2-585 Ethics advisory opinions.

(a) Any individual (personally or on behalf of an organization or governmental body) or appointing officer (with the consent of a prospective appointee) may request of the Board, or in the absence of an ethics board, the City Attorney, an advisory opinion regarding the propriety of any matter to which the person is or may become a party.

(b) Advisory opinions and requests shall be in writing. Any individual requesting an advisory opinion or any individuals or organizations mentioned in the opinion shall not be made public, unless the individual, organization or governmental body consents to it and alterations are made to the summary of the opinion, which prevents disclosure of the identities of individuals involved in the opinion."

Part 2:

This ordinance shall take effect upon passage and the day after publication.

Passed by the Common Council:

Approved: _____

Mayor

Attest:

City Clerk