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Sponsors: ALD. HAMILTON

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9/4/2019	0	COMMON COUNCIL	ASSIGNED TO		
1/10/2020	0	JUDICIARY & LEGISLATION COMMITTEE	HEARING NOTICES SENT		
1/13/2020	0	JUDICIARY & LEGISLATION COMMITTEE	RECOMMENDED FOR PASSAGE	Pass	5:0
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2/6/2020	0	CITY CLERK	PUBLISHED		

190832
ORIGINAL

ALD. HAMILTON
An ordinance relating to provisions of the code of ethics.

- 303-5-1 am
- 303-5-2 am
- 303-5-3 am
- 303-5-4 am
- 303-5-5 am
- 303-5-6 am
- 303-5-7 am
- 303-5-8 am
- 303-5-9 am
- 303-5-10 am
- 303-5-11 cr
- 303-5-12 cr
- 303-5-13 cr
- 303-7 rp
- 303-11-2-d rc
- 303-11-2-e cr
- 303-15-1 am

303-15-2 am
303-15-4 am
303-19-1 am
303-19-2-a am
303-23-1-0 am
303-23-1-b am
303-23-2 am
303-25-1 am
303-25-4 am
303-27-0 am
303-27-3 am

This ordinance makes the following changes to the city's code of ethics:

1. Changes the penalty for failure to file a statement of economic interest.
2. Updates the names of various organizations.
3. Removes the residency requirement for staff members.
4. Provides for a simple majority vote for an action by the board of ethics.
5. Clarifies certain language.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 303-5-1 through 10 of the code is amended to read:

303-5. Standards of Conduct.

1. >>OUTSIDE EMPLOYMENT.<< The common council reaffirms that an official or other city employee holds his or her position as a public trust, and any effort to realize substantial personal gain through official conduct is a violation of that trust. This chapter does not prevent any official or other city employee from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her duties to this city. The common council further recognizes that officials and other city employees are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government; that officials and other city employees retain their rights as citizens to interests of a personal or economic nature; that standards of ethical conduct for officials and other city employees need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are substantial and material and that officials and other city employees may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, or may need to maintain investments, which activities or investments do not conflict with the provisions of this chapter.

2. >>FINANCIAL GAIN.<< No official or other city employee may use his or her public position or office to obtain financial gain or anything of ~~[[substantial]]~~ value for the official's or other city employee's private benefit or that of his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit an elected official from using the title or prestige of his or her office to obtain contributions permitted and reported under ch. 11., Wis. Stats.

3. >>OFFER, SOLICIATION, OR ACCEPTANCE OF ANYTHING OF VALUE.<< No person may offer or give to an official or other city employee, directly or indirectly, and no official or other city employee may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the official's vote, the official's or other city employee's official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part

of the official or other city employee. This subsection does not prohibit an official or other city employee from engaging in outside employment.

4. >>MISUSE OF INFORMATION.<< No official or other city employee may intentionally use or disclose information gained in the course of or by reason of his or her official position or activities in any way that could result in the receipt of anything of value for himself or herself, for his or her immediate family, or for any other person, if the information has not been communicated to the public or is not public information. This provision shall not be interpreted to prevent such official or other city employee from reporting violations of this chapter or other illegal acts to the proper authorities.

5. >>MISUSE OF POSITION.<< No official or other city employee may use or attempt to use his or her position to influence or gain unlawful benefits, advantages or privileges for himself or herself or others.

6. >>CONTRACTS AND LEASES.<< No official or other city employee, member of an official's or other city employee's immediate family, nor any organization with which the official or other city employee or a member of the official's or other city employee's immediate family owns or controls at least 10% of the outstanding equity, voting rights, or outstanding indebtedness may enter into any contract or lease involving a payment or payments of more than \$3,000 within a 12-month period, in whole or in part derived from city funds, unless the official or other city employee has first made written disclosure of the nature and extent of such relationship or interest to the board and to the department involved in regard to the contract or lease. Any contract or lease entered into in violation of this subsection may be voided by the city in an action commenced within 3 years of the date on which the ethics board, or the department or officer acting for the city in regard to the allocation of funds from which such payment is derived, knew or should have known that a violation of this subsection had occurred. This subsection does not affect the application of s. 946.13, Wis. Stats.

7. >>REPRESENTATION FOR COMPENSATION.<< a. No official or other city employee may represent a person for compensation before a department or any employee thereof, except:

- a-1. In a contested case which involves a party other than the city with interests adverse to those represented by the official or other city employee; or
- a-2. At an open hearing at which a stenographic or other record is maintained; or
- a-3. In a matter that involves only ministerial action by the department.

b. This subsection does not apply to representation by an official acting in his or her official capacity.

8. >>RESTRICTIONS FOR FORMER CITY OFFICIALS AND EMPLOYEES.<< No former official or other city employee:

a. For 12 months following the date on which he or she ceases to be an official or employee, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of a department with which he or she was associated as an official or employee, within 12 months prior to the date on which he or she ceased to be an official or employee.

b. May for compensation act on behalf of any party other than the city in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding in which the former official or other city employee participated personally and substantially as an official or other city employee.

9. >>PRIVATE PRACTICE OF LAW PROHIBITED FOR CITY ATTORNEY.<< The city attorney may not engage in the private practice of law for compensation during the period in which he or she holds office.

10. >>ACTIONS TAKEN FOR NO COMPENSATION.<< This section does not prohibit an elected official from making inquiries for information on behalf of a person or organization or from representing a person or organization before a department if he or she receives no compensation therefor beyond the salary and other compensation or reimbursement to which the elected official is entitled by law.

Part 2. Section 303-5-11 to 13 of the code is created to read:

- 11. CONFLICTS OF INTEREST PROHIBITED.** Except in accordance with the board's advice under sub. 12 and except as otherwise provided in sub. 13, no official or other city employee may:
- a. Take any official action substantially affecting a matter in which the official or employee, a member of his or her immediate family, or an organization with which the official or employee is associated has a substantial financial interest.
 - b. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official or employee, one or more members of the official's or employee's immediate family either separately or together, or an organization with which the official or employee is associated.
- 12. ADVISORY OPINIONS.**
- a. Any individual, including former officials and other city employees, either personally, or on behalf of an organization or governmental body, may make a written request of the board for an advisory opinion relating to the propriety of any matter or matters to which the person, organization or governmental body is or may become a party.
 - b. Any appointing officer, with the consent of a prospective appointee, may make a written request of the board for an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party.
 - c. The board shall review a written request for an advisory opinion and may advise the person making the request. Advisory opinions shall be in writing. The board's deliberations and actions upon requests shall be in meetings not open to the public.
 - d. If the material facts contained in a written request for an advisory opinion are correct, then it is prima facie evidence of intent to comply with this chapter when an individual making the request abides by the board's advisory opinion.
 - e. No member of the board or its staff may make public the identity of an individual requesting an advisory opinion or of individuals or organizations mentioned in the opinion.
 - f. Requests for confidential advisory opinions, records obtained or filed in connection with requests for confidential advisory opinions and confidential advisory opinions rendered shall be closed in whole to public inspection. This shall not be interpreted to preclude the board from compiling or publishing summaries of opinions rendered under this subsection if identification is not made, either directly or indirectly, of the requestor or of any organization identified in the opinion.
- 13. SALARIES, BENEFITS, REIMBURSEMENTS, AND PROPOSALS TO MODIFY LAW.** This section does not prohibit an official or other city employee from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or prohibit an official from taking official action with respect to any proposal to modify law.

Part 3. Section 303-7 of the code is repealed.

Part 4. Section 303-11-2-d of the code is repealed and recreated to read:

303-11. Financial Disclosure.

2. FAILURE TO FILE.

- d. Violation and Penalty. If after 45 days from the date required for filing of a statement of economic interests, a public official who is not a member of a city of Milwaukee board, committee, or commission subject to filing requirements, or an employee who is not a member of a city of Milwaukee board, committee, or commission subject to filing requirements under this section has failed to file a complete statement, the chair of the ethics board or designated staff member may cause an affidavit to be prepared and delivered to the city attorney stating upon knowledge and belief

that an individual is in violation of the reporting requirements of this section, identifying the individual by name and position, declaring that the notice to be provided the individual in accord with par. c. was sent, and identifying the date the notice was sent and the address to which it was mailed. Upon receipt of the affidavit, the city attorney may file charges with the municipal court for violation of this section. Any person convicted of a violation of this section for failure to file a required and complete statement of economic interests within 45 days of the required date, shall be subject to a forfeiture of not less than \$250 nor more than \$1,000, and shall upon failure to pay the forfeiture be imprisoned in the county jail or house of correction for not less than 10 days nor more than 40 days.

Part 5. Section 303-11-2-e of the code is created to read:

e. Violation and Penalty for Members of City of Milwaukee Boards, Committees, and Commissions. If after 45 days from the date required for filing of a statement of economic interests, a member of a city of Milwaukee board, committee, or commission subject to filing requirements under this section has failed to file a complete statement, the chair of the ethics board or designated staff member shall file a complaint with the common council, using the procedures set forth in s. 303-29, recommending that the member be removed from his or her respective board, committee, or commission in accordance with the provisions of s. 17.12, Wis. Stats., and s. 4-28 of the city charter. In lieu of removal, the common council may direct the city attorney to file a municipal citation, as set forth in s. 303-11-2-d.

Part 6. Section 303-15-1, 2, and 4 of the code is amended to read:

303-15. Organization, Composition and Operation of the Board of Ethics.

1. There is created an ethics board of 7 members who are residents of the city and shall serve without compensation unless the common council otherwise provides. Members of the board of ethics shall not be elected officials, persons appointed to elective office, full-time appointed officials whether exempt or nonexempt, or city employees, nor shall they be currently serving on any other city board or commission. Board members shall be selected in the following manner and shall be submitted by the mayor to the common council for confirmation. The mayor shall request one nominee for the board from each of the following organizations: the Metropolitan Milwaukee Association of Commerce, Milwaukee ~~[[County]]~~ >>Area<< Labor Council, Interfaith Conference of Greater Milwaukee, League of Women Voters of Milwaukee County, Milwaukee branch-National Association for the Advancement of Colored People, ~~[[Public]]~~ >>Wisconsin<< Policy Forum and the Milwaukee Bar Association. Terms of office shall be 3 years. The members of the board shall select their own chairperson.

2. The board may employ its own staff ~~[[who shall maintain residency within the city of Milwaukee]].~~ The city attorney shall furnish the board whatever legal assistance is necessary to carry out its functions and the city clerk shall furnish the board with whatever assistance it requires.

4. Any action by the board, except an action relating to procedure of the board, requires the affirmative vote of ~~[[4-]]~~ >>a simple majority<< of its >>then serving<< members.

Part 7. Section 303-19-1 and 2-a of the code is amended to read:

303-19. Complaints.

1. The board shall accept from any individual, either personally or on behalf of an organization or governmental body, a verified complaint in writing which states the name of any person alleged to have committed a violation of this chapter and which sets forth the particulars thereof. The board shall forward to the accused >>public official or other city employee<< within 10 days a copy of the complaint and a general statement of the applicable provisions with respect to such verified

complaint. If the board determines that the verified complaint does not allege facts sufficient to constitute a violation of this chapter, it shall dismiss the complaint and notify the complainant and the accused >>public official or other city employee<<. If the board determines that the verified complaint alleges facts sufficient to constitute a violation of this chapter, it may make an investigation with respect to any alleged violation. If the board determines that the verified complaint was brought for harassment purposes, the board shall so state.

2.

a. If no verified complaint has been filed, make upon its own motion a verified complaint, which shall be in writing, shall state the name of the person who is alleged to have committed a violation of this chapter and shall set forth the particulars thereof. The board shall forward to the accused >>public official or other city employee<< within 10 days a copy of the complaint, a general statement of the applicable provisions with respect to such verified complaint and a specific statement enumerating the source or sources of information upon which the complaint is based.

Part 8. Section 303-23-1-0, b, and 2 of the code is amended to read:

303-23. Probable Cause of Violation.

1. At the conclusion of its investigation, the board shall, in preliminary written findings of fact and conclusions based thereon, make a determination of whether or not probable cause exists to believe that a violation of this chapter has occurred. If the board determines that no probable cause exists, it shall immediately send written notice of such determination to the accused >>public official or other city employee<< and to the party who made the complaint. If the board determines that there is probable cause for believing that a violation of this chapter has been committed, its preliminary findings of fact and conclusions may contain:

b. An order setting a date for hearing to determine whether a violation of this chapter has occurred. The board shall serve the order upon the accused >>public official or other city employee<<. A hearing ordered under this subsection shall be commenced within 30 days after the date it is ordered unless the accused >>public official or other city employee<< petitions for and the board consents to a later date. Prior to any hearing ordered under this subsection, the accused is entitled to full discovery rights, including adverse examination of witnesses who will testify at the hearing at a reasonable time before the date of the hearing.

2. The board shall inform the accused >>public official or other city employee<< or his or her counsel of exculpatory evidence in its possession.

Part 9. Section 303-25-1 and 4 of the code is amended to read:

303-25. Hearing Procedure.

1. During any investigation and during any hearing which is conducted to determine whether a violation of this chapter has occurred, the person under investigation or the accused >>public official or other city employee<< may be represented by counsel of his or her own choosing, and the accused >>public official or other city employee<< or his or her representative, if any, shall have an opportunity to challenge the sufficiency of any complaint which has been filed against him or her, to examine all documents and records obtained or prepared by the board in connection with the matter heard, to bring witnesses, to establish all pertinent facts and circumstances, to question or refute testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses, and shall otherwise be able to exercise fully any pretrial discovery procedure usually available in civil actions. During any hearing conducted by the board to determine whether a violation of this chapter

has occurred, all evidence including certified copies of records which the board considers shall be fully offered and made a part of the record in the proceedings. The accused >>public official or other city employee<< or any other person under investigation shall be afforded adequate opportunity to rebut or offer countervailing evidence. Upon request of the accused >>public official or other city employee<<, the board shall issue subpoenas to compel the attendance of necessary witnesses.

4. After the conclusion of the hearing the board shall as soon as practicable begin deliberations on the evidence presented at such hearing and shall then proceed to determine whether the accused >>public official or other city employee<< has violated this chapter.

Part 10. Section 303-27-0 and 3 of the code is amended to read:

303-27. Determinations; Board Actions. If the board determines that no violation of this chapter has occurred, it shall immediately send written notice of such determination to the accused >>public official or other city employee<< and to the party who made the complaint. If the board determines that a violation of this chapter has occurred, its findings of fact and conclusions may contain one or more of the following orders or recommendations:

3. An order requiring the accused >>public official or other city employee<< to conform his or her conduct to this chapter.

APPROVED AS TO FORM

Legislative Reference Bureau
Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney
Date: _____

LRB 173737
Tea Norfolk
8/19/2019