



Agenda posted Monday October 23rd, 2023 @ 2:30 PM

AGENDA PACKET FOR CITY OF MARINETTE COMMON COUNCIL SPECIAL MEETING AT MARINETTE CITY HALL COMMON COUNCIL CHAMBERS, 1905 HALL AVENUE FOR TUESDAY OCTOBER 24TH, 2023.

4:15PM – SPECIAL COMMON COUNCIL MEETING AGENDA

- 1. *CALL MEETING TO ORDER.***
- 2. *PLEDGE OF ALLEGIANCE.***
- 3. *ROLL CALL.***

ORDINANCES

- 4. *DISCUSSION AND POSSIBLE ACTION REGARDING ORDINANCE NO. 2518-AMENDING MMC 2.0500 PERTAINING TO ETHICAL STANDARD (see attached).***
- 5. *ADJOURNMENT.***

Steve Genisot, Mayor

Note: Requests from individuals with disabilities who need special accommodations to participate in this meeting or hearing should be made to the City Clerk's office at 1-715-732-5140 with as much advance notice as possible.

CITY OF MARINETTE, WISCONSIN

AN ORDINANCE
Amending MMC 2.0500 pertaining to
to Ethical Standards

PRESENTED CC
REFERRED
REREFERRED
REPORTED BACK
ADOPTED
PUBLIC HEARING
PUBLISHED

Drafted by: Robert Gagan
City Attorney
Date: 10-20-23

ORDINANCE NUMBER 2518

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

Section 1. Marinette Municipal Code Chapter 2 is amended as follows:

2.0500 ETHICAL STANDARDS

2.0501 ETHICAL STANDARDS OF PUBLIC OFFICIALS

- A. The proper operation of democratic government requires that public elected officials ~~and employees~~ be independent, impartial, and responsible to the people. The purpose of this chapter is to establish ethical standards of conduct for all such officials and to direct disclosure by such officials of private financial or other interests in matters affecting the City.
- B. The elected municipal officials ~~and employees~~ of the City, ~~whether elected or appointed~~, are "public officials ~~and employees~~" within the meaning and intent of this chapter.

2.0502 RESPONSIBILITIES OF PUBLIC OFFICE

- A. PublicElected officials ~~and employees~~ are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their primary concern. Their conduct in both their official and private affairs shall be above reproach.
- B. PublicElected officials are bound to uphold the Constitution of the United States and the Constitution of the State and to carry out impartially the law of the nation, state, and municipality.

2.0503 DEDICATED SERVICE

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

2.0504 USE OF PUBLIC PROPERTY; OBLIGATIONS OF CITIZENS

- A. Use of Public Property
No public elected official ~~or employee~~ shall request, use, or permit the use

of City-owned vehicles, equipment, materials, or property for personal convenience or profit, except when such services are available to the public generally or are provided as municipal policy for the use of such official ~~or employee~~ in the conduct of official business.

B. Obligation of Citizen

No ~~public elected~~ official ~~or employee~~ shall grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.

2.0505 CONFLICT OF INTEREST

No ~~Alderperson or other public elected~~ official ~~or employee~~, whether paid or unpaid, shall engage in any business or transaction or shall have a financial interest, direct or indirect, which is incompatible with the proper discharge of ~~his~~ ~~their~~ official duties in the public judgment or will tend to impair ~~his~~ ~~their~~ independence or judgment or action in the performance of ~~his~~ ~~their~~ official duties.

2.0506 SPECIFIC CONFLICTS OF INTEREST

Specific conflicts of interest are enumerated below for the guidance of officials. The following list is illustrative merely and not exclusive:

A. Incompatible Employment

No ~~Alderman or other public elected~~ official ~~or employee~~ shall engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper discharge of ~~his~~ ~~their~~ official duties or tends to impair ~~his~~ ~~their~~ independence of judgment or action in the performance of ~~his~~ ~~their~~ official duties. In the event an ~~Alderperson, elected~~ official, ~~or employee~~ possesses a financial or personal interest in any business or transaction, any presumption of conflict of interest with ~~his~~ ~~their~~ public duties shall be removed by ~~his~~ ~~their~~ disclosure of the nature and extent of such investment to the Common Council for the records of that authority.

B. Disclosure of Confidential Information

No ~~Alderperson, other public elected~~ official ~~or employee~~, shall, without proper legal authorization, disclose confidential information concerning the property, government, or affairs of the City, nor shall ~~he~~ ~~they~~ use such information to advance the financial or other private interest of ~~him~~ ~~themselves~~ or others.

C. Gifts or Gratuities

1. It shall be unlawful for any ~~public employee or public elected~~ official to receive or offer to receive, either directly or indirectly, any gift, gratuity, or anything of value which ~~they are he is~~ not authorized to receive from any person, if such person:

- (a) ~~H~~ ~~h~~as or is seeking to obtain contractual or other business or financial relationships with ~~such public employee's employer~~ ~~or the governmental body of the public elected~~ official; or
- (b) ~~C~~ ~~c~~onducts operations or activities which are regulated by such ~~public employee's employer or the~~ governmental body of an

public elected official; or

- (c) ~~He~~ has interests which may be substantially affected by such ~~public employee's employer or the~~ governmental body of the public elected official.

2. The receipt of any gift, gratuity, or anything of value as denoted above is contrary to the public policy of the City of Marinette.

D. Representing Private Interests before City Agencies or Courts

No ~~Alderman or other~~ public elected official ~~or employee~~ whose salary is paid in whole or in part by the City shall represent private interests before any agency of the City. ~~He~~They shall not represent private interests in any action or proceeding against the interest of the City in any litigation to which the City is a party.

E. Contracts with the City

Any ~~Alderman or other~~ public elected official ~~or employee~~ who has substantial financial interest in any business entity, entering into or proposing to enter into, any transaction or contract with the City for the sale of real estate, material supplies or services to the City shall disclose such interest to the Common Council to be reported in the minutes of the appropriate Council meeting. And in the case of an Alderman ~~man~~person, ~~he~~they shall refrain from voting upon or otherwise participating (except in the performance of a ministerial act) in the transaction or the making of such contract or sale.

F. Disclosure of Interest in Legislation

1. An Alderman who has a financial or other private interest in any legislation shall disclose on the records of the Council the nature and extent of such interest. This provision shall not apply if the Alderman ~~man~~person disqualified ~~them~~himself from voting.
2. Any other public elected official ~~or employee~~ who has a financial or other private interest, and who participates in discussion with or gives an official opinion to the Council shall disclose on the record of the Council the nature and extent of such interest.

2.0507 WALKING QUORUM

A. A walking quorum is a series of gatherings among separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a quorum.

B. A walking quorum may produce a predetermined outcome and thus render a publicly held meeting a mere formality.

C. The Wisconsin Supreme Court has commented that any attempt to avoid the appearance of a meeting by using a walking quorum is subject to prosecution under the open meetings law.

D. Furthermore, the requirements of the open meeting law cannot be circumvented

by using an agent or surrogate to poll the members of governmental bodies through a series of individual contacts.

- E. The series of gatherings need not be face-to-face. For example, phone calls, e-mail exchanges, and other electronic messaging may suffice.
- F. The essential feature of a “walking quorum” is the element of agreement among members of a body to act uniformly in sufficient numbers to reach a quorum.
- G. Where there is no such tacit or express agreement, exchanges among separate groups of members may take place without violating the open meetings law.
- H. Thus, the signing, by members of a body, of a document asking that a subject be placed on the agenda of an upcoming meeting likely does not constitute a “walking quorum” where the signers have not engaged in substantive discussion or agreed on a uniform course of action regarding the proposed subject. In contrast, where a majority of members of a body sign a document that expressly commits them to a future course of action, a court could find a walking quorum violation.
- I. A meeting does not include any social or chance gathering or conference that is not intended to avoid the requirements of the open meetings law. (Wisconsin Department of Justice)
- J. If a majority of the members of a governmental body are gathered, the law presumes that the members conducted a meeting subject to the requirements of the open meetings law. The body members may overcome the presumption by proving that they did not discuss any subject within the realm of the body’s authority. (Wisconsin Department of Justice)

2.05078 — SANCTIONS

~~_____ A. Violation of any provision of this section should raise conscientious
_____ questions for the public official or employee concerned as to whether
_____ voluntary resignation or other action is indicated to promote the best
_____ interest of the city. Violation may constitute a cause for suspension,
_____ removal from office or employment, or other disciplinary action.
Any person who violates any provisions of this section shall upon conviction be subject to the
general penalty provisions of Section 1.0107 of this Municipal Code.~~

2.05089 ETHICS BOARD

- A. The Ethics Board shall consist of five voting members: one citizens and four alderperson. There shall also be two alternates: one citizen and one alderperson.
- B. Alternates shall substitute for their corresponding board member if the member cannot participate due to, but not limited to, a conflict of interest, time conflict, or if the member is part of the inquiry.
- C. The City Attorney shall serve on the Ethics Board as a non-voting member.
- D. Each member and alternate shall be appointed by the mayor and subject to confirmation by the Common Council. The citizen members and alternate shall be

- chosen from the private sector and shall not be affiliated with City government in any capacity, including, but not limited to, employment (including employment for which the salary is in any way funded by or through the City), appointment, or election.
- E. Terms of office for all members of the Ethics Board shall be one year.
 - F. The Ethics Board shall elect its own chairperson and vice-chairperson, and the City Attorney shall furnish the board whatever legal assistance it deems is necessary to carry out its functions. If any member of the Ethics Board petitions the board for a hearing and advice regarding their own conduct, such member shall not be eligible to sit in their own case, and the alternate shall substitute for that board member. The jurisdiction of the Ethics Board is limited to acting within the scope of Section 2.0500 Ethical Standards ordinance and Wisconsin Statutes, conducting hearings regarding complaints filed in conformance with the Ethical Standards ordinance as adopted by the Common Council and as amended from time to time. The Ethics Board does not have jurisdiction over the Municipal Court Judge.
 - G. The Ethics Board may recommend amendments of the Ethical Standards ordinance to the Common Council.
 - H. Upon the written complaint of any person alleging facts which, if true, would constitute a violation of this section, the Ethics Board shall conduct a due process public hearing, unless a private hearing is requested by the person accused, and, in written findings of fact and conclusions based thereon, make a decision concerning the complaint. If the Ethics Board finds there is probable cause a person has violated a provision of the ordinance or Wisconsin Statutes, it shall refer the matter to the District Attorney or Common Council for appropriate action. In making such referral, the Ethics Board shall attach the findings and conclusions as well as such documents as it decides are germane to the issue. A 2/3 vote of the members of the Ethics Board shall be required to make a finding of probable cause.

2.05910 ENFORCEMENT OF THE ETHICAL STANDARDS ORDINANCE FOR ELECTED OFFICIALS

- A. Filing of Complaints
 - 1. Any person who believes an elected official, in their official capacity, has violated a requirement, prohibition, or guideline set out herein may file a written complaint with the City Clerk identifying (1) the complainant's name, address and contact information; (2) the name and position of the elected official who is the subject of the complaint; (3) the nature of the alleged violation, including the specific provision of the Code allegedly violated, and (4) a statement of facts constituting the alleged violation and the dates on which, or period of time during which, the alleged violation occurred.
 - 2. Attached to the complaint, the person making the complaint shall provide all documents or other materials in the complainant's possession that are relevant to the allegation.
 - 3. The complaint shall include an affidavit at the end of the complaint stating that the "information contained in the complaint is true and correct, or that the complainant has good reason to believe and does believe that the facts alleged are true and correct and that they constitute a violation of the Ethical Standards Ordinance." If the complaint is based on information and belief, the complaint shall identify the basis of the information and belief, including all sources, contact information for those sources, and how and when the information and/or belief was conveyed to the complainant by those sources. The complainant shall

swear to the facts by oath before a notary public, or before the City Clerk. The notary public or City Clerk shall verify the signature. When a written complaint is filed, it does not become part of the public record unless the accused requests to have the matter made public or at the conclusion of the hearing if the Ethics Board finds a violation.

4. If a complaint filing is determined to be complete by the City Clerk, the City Clerk shall forward the matter to the Ethics Board. If the complaint filing is determined incomplete, the City Clerk shall notify the complainant of the deficiency.

B. Time for Filing

A complaint under the Code must be filed no later than one year from the date of discovery of the alleged violation. However, anyone having information on which a complaint is based is encouraged to file the complaint as soon as the information is obtained so that the Ethics Board may take immediate action.

C. Complaint Procedure

1. Hearing on Complaint. If the City Clerk determines that the complaint is complete, the Clerk shall forward it to the Ethics Board. ~~to set a hearing to investigate the allegations within 60 days after filing of the complaint.~~ The Ethics Board shall hold a jurisdictional hearing to determine if the allegations of the complaint merit a hearing on the substance of the allegations. The Ethics Board shall assume that the allegations in the complaint are true unless contradicted by public documents of which the Ethics Board may take notice. The Ethics Board shall determine if the complaint alleges sufficient provable facts to have an evidentiary hearing. No evidentiary testimony shall be taken at a jurisdictional hearing. If the Ethics Board finds the complaint was brought in bad faith, with no reasonable basis in fact or law, or with an intent to harass the respondent, the Ethics Board may recommend censure by the Common Council pursuant to Section 2.0510 (A)(1).

- ~~1.2.~~ If the Ethics Board determines that the complaint contains sufficient provable facts, ~~t~~The Ethics Board shall issue a Notice to Appear signed by the City Clerk, commanding the individual so complained of to appear before the Ethics Board on a day and at a place named in such Notice and show cause as to why the individual should not be subject to penalties and sanctions. Such Notice shall be served at least fourteen days before the time in which such person is notified to appear and shall include the complaint and any supporting documentation. A Notice to Appear shall also be issued to the complainant.

- ~~2.3.~~ Failure to Respond to Notice to Appear. If the individual charged does not appear as required by the summons, the Ethics Board may consider such failure to appear in its recommendation to Common Council. The Council may subsequently consider such failure to appear in its decision to issue penalties or sanctions.

- ~~3.4.~~ Parties Counsel. If the person charged appears as required by the Notice and denies the complaint, both the complainant and the person charged may produce witnesses, cross-examine witnesses, and be represented by counsel.

- ~~4.5.~~ Recommendations. At the conclusion of the hearing, the Ethics Board, following deliberation, shall submit a report to the Council and a recommendation as to what action, if any, the Council should consider with respect to the individual

charged. The Ethics Board shall provide the complainant and the individual charged with a copy of the report. Either the complainant or the person charged may file an objection to the report and shall have the opportunity to present arguments supporting the objection to the Council.

5-6. Common Council Action. The Council shall consider and act on the recommendation of the Ethics Board within 60 days after the Ethics Board adjourns the hearing. Upon review of the report and following discussion, if the Council, by motion, concludes that there is a violation of the Ethical Standards ordinance, the Council may impose a sanction or penalty. The Council may adopt, reject, or modify the recommendation made by the Ethics Board. In resolving the complaint, the totality of the circumstances shall be taken into consideration, including the intent of the person accused of the wrongdoing.

6-7. Penalties and Sanctions Policy. It is the intent of the Common Council to educate, and when necessary, discipline alderpersons who violate the Ethical Standards ordinance. In all instances, the totality of the circumstances shall be considered in resolving the matter, including the intent of the one accused of wrongdoing.

2.05101 SANCTIONS FOR ELECTED OFFICIALS

A. Violation of any provision of this section should raise conscientious questions for the elected official concerned as to whether voluntary resignation or other action is indicated to promote the best interest of the City. Violations may result in sanctions that may include:

1. Censure by the Common Council, which would only occur as part of a motion at a public meeting.
2. Referral to a League of Wisconsin Municipalities seminar or training at the person's expense.
3. Imposition of a dollar fine of up to \$500.00. [Wis. Stat. 62.11(3)(a) & (c)].
4. Any other sanction or penalty available by law.

B. The imposition of any of these sanctions will require an affirmative vote of 2/3 of the Common Council members in attendance.

Section 2. The provisions of this ordinance are declared to be severable. If any section, sentence, clause, phrase, or application of this ordinance is held to be invalid or unconstitutional for any reason, such decision shall not affect the validity of the remaining sections, sentences, clauses, phrases, or applications of this ordinance, which shall remain in effect. It is the legislative intent that this ordinance shall remain in effect notwithstanding the invalidity of any part or application of this ordinance.

Section 3. This ordinance shall take effect upon passage and publication as provided by law.

Motion for adoption by Alderperson

Seconded by Alderperson

On roll call adopted

Steve Genisot, Mayor

Attest:

Lana Bero, Clerk