

## **RULES OF PROCEDURE**

### **ETHICS BOARD**

#### **CITY OF NEW BERLIN**

1.01 **ETHICS BOARD**. The Ethics Board is created by Section 1.15 of the Municipal Code of the City of New Berlin and has the authority to administer the Code of Ethics for officials, employees, and others as described in Section 1.15 of the City Code. It consists of three (3) appointed members and an alternate member serving when one of the members of the Board is unavailable.

1.02 **OFFICERS**. At the initial meeting, and thereafter the annual meeting in the month of May each year, the Board shall elect, by majority vote of its members, a Chairman and Secretary. The Chairman shall be a member of the Board and the Secretary need not be a member. They shall hold office until the next annual meeting.

1.03 **REGULAR MEETINGS**. The regular meetings of the Ethics Board shall be held when the need arises in City Hall in the room designated in the Agenda. The meetings may be held on the call of the Chairman or any two (2) Board members. Notice shall be given at least twenty-four (24) hours in advance of each meeting. The notice shall set forth the time, date, place and subject matter of the meeting, including that intended for consideration at any contemplated closed session, in such form as is reasonably likely to apprise members of the public and the news media thereof.

1.04 **AGENDA**. The Agenda of the items of business for each meeting shall be prepared by the Chairman and notice published by the Secretary.

1.05 **QUORUM**. Three (3) members of the Board shall constitute a quorum. The alternate member of the Ethics Board shall be considered in making a determination whether the Board has a quorum.

1.06 **VOTING**. A majority vote of the Board shall be necessary to pass any motion with the exception that Findings of Fact and

Conclusions of Law made by the Board at a hearing conducted under Section 1.15(7)(f) and (j) of the Municipal Code shall require the unanimous vote of the Board. The Secretary shall record all votes.

1.07 MINUTES. The secretary shall keep minutes of all meetings. The Board shall direct the obtaining of a Court Reporter for any hearing conducted under Section 1.15(f) and (j) of the Code.

1.08 RECORDS. The Secretary shall be the custodian of the records of meetings of the Board. Financial and all other records shall be kept in a locked file cabinet in the office of the City Clerk, with access limited to members of the Ethics Board.

1.09 ACCESS TO RECORDS.

(a) Advisory Opinions. Records of the Board's Opinions, opinion requests, and investigations of violations shall be closed to public inspection. The Board, however, may make such records public with the consent of the individual requesting the advisory opinion. If an individual who has received a written opinion from the Ethics Board publishes any portion of the opinion, he or she shall have waived all confidentiality regarding the request, opinion, deliberations and all actions taken by the Board and shall be deemed to have given the Board's consent to release otherwise confidential records. Upon issuing the advisory opinion, the Board shall inform the individual in writing of the waiver of confidentiality regarding the above records.

(b) Records of Hearings. Certified copies, records and documents of a closed hearing conducted by the Board shall not be available to the public unless the accused requests release to the public.

2.01 INVESTIGATION.

(a) If the Board receives a verified complaint, directs a formal investigation or makes a formal complaint on its own motion, the Board will conduct a preliminary investigation. The Board shall have access to the Police Department, Office of the City Attorney, and other investigative gathering services in order to conduct its investigations. Such investigative gathering service shall file a written report with the Board, a copy of which shall be provided to the public official or employee upon request.

(b) The investigation shall proceed only after written notice is given to the public official or employee or other person subject to the Ethics Code within ten (10) days of the Board formally accepting the verified complaint, the Board making a formal

complaint on its own motion, or the Board directing a formal investigation. The notice shall contain the exact nature and purpose of the investigation, the individual's specific actions or activities to be investigated, a statement of such person's due process rights and a copy of the verified Complaint to the officer or employee or other person subject to the Ethics Code shall be forwarded to such person.

(c) If, following the investigation, the Board determines there is not probable cause to believe a violation of the Ethics Code has occurred, the Board will dismiss the complaint. A copy of the determination shall be delivered to the public official or employee or other person subject to the Ethics Code upon the Board filing its determination.

(d) If after such investigation, the Board finds that probable cause exists that a violation of the Ethics Code has occurred, the Board shall then conduct a hearing on the matter which shall be held not more than thirty (30) days after such finding. The Board shall give the public official or employee or other person subject to the Ethics Code at least twenty (20) days notice of the hearing date.

2.02 HEARING. Upon determination by the Board to hold a hearing, it shall set the day, time and place of the hearing and direct the Secretary to give written notice to the public official or employee or other person subject to the Ethics Code. Within ten (10) days of receipt of notice, the public official or employee or other person subject to the Ethics Code may obtain a continuation to a later hearing date but not more than thirty (30) days after the initial date set for hearing on the notice.

### 2.03 CONDUCT OF HEARING.

(a) The hearing shall be open to the public unless the accused petitions for a hearing closed to the public, at which time the Board shall consider the factors contained in the open meetings laws, making its determination whether or not to close the hearing to the public. The Chairman of the Board shall preside at the hearing and all appearances noted.

(b) A transcript of the hearing shall be taken and prepared by a court reporter. The original transcript shall be paid for by the City. Any additional copies shall be paid by the party requesting the same.

(c) The Chairman shall read the verified complaint unless waived and the complainant shall be entitled to representation by counsel.

(d) The City Attorney shall be available to furnish the Board with whatever legal assistance is necessary in carrying out its functions. If the Board determines that counsel is needed to present the complaint, it shall arrange for counsel other than that of the City Attorney, the expense of which shall be borne by the City.

(e) Opening and closing statements may be made by the parties or their attorney.

(f) As the burden shall be upon the City to prove a violation of the Code, the City shall present its case to the Board first.

#### 2.04 WITNESSES.

(a) The testimony of all witnesses shall be under oath.

(b) The appearance of witnesses may be compelled by subpoenas issued by the Chairman of the Ethics Board.

(c) Witnesses subpoenaed by the Board shall be entitled to payment of witness fees and mileage by the City.

(d) Each party shall have the right to cross-examine and impeach witnesses.

(e) The Board shall have the right to examine any witness called to testify before the Board.

#### 2.05 RULES OF EVIDENCE.

(a) The Chairman may make all rulings on procedures and evidence. A ruling challenged by a Board member shall be finally determined by majority vote of the Board.

(b) In making its determination, the Board shall consider only such evidence as is admissible under the evidentiary statutes of the State of Wisconsin.

#### 2.06 DETERMINATION.

Upon conclusion of the hearing and the Board's deliberation, the Board shall file its decision within five (5) days in writing signed by all participating Board members with Findings of Fact, Conclusions of Law and a Final Determination concerning the propriety of the conduct of the officer or employee or other person subject to the Ethics Code, and if appropriate, refer the matter to the Common Council or other proper authority with a

recommendation for suspension, removal from office or employment or other disciplinary action.

### 3.01 ADVISORY OPINION.

(a) Upon the written request of a public official, employee, or other person subject to the Ethics Code, the Board will furnish an advisory opinion in writing regarding the application of the Code of Ethics to that public official, employee, or other person subject to the Ethics Code.

(b) The request shall contain a full statement of the pertinent facts and may contain the application of the Code of Ethics understood by the public official, employee, or other person subject to the Ethics Code.

(c) The request shall be filed with the Chairman or Secretary and placed on the next Board agenda. The Board shall decide whether to prepare an opinion or request additional information in writing.

(d) The Board's deliberations and actions on advisory opinions shall be in meetings not open to the public.

(e) The Board shall direct the preparation of the advisory opinion by a member of the Board, the City Attorney, or Secretary, and the final opinion shall be approved by the Board. Prior to the Board rendering an advisory opinion, the person who applies to the Ethics Board for an advisory opinion may, within twenty (20) days of submitting said application, request an opportunity to present his or her interpretation of the facts at issue and of the applicability of the provisions of the Code. The Board reserves the right to request the presence of the applicant to answer questions.

(f) A Board member may dissent in writing from a Board advisory opinion.

(g) Advisory opinions, opinion requests, and records of investigations of alleged violations shall be closed to public inspection, except when requested by the individual involved.

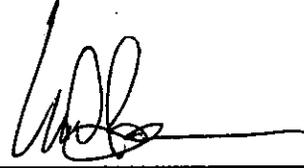
(h) If an advisory opinion is given to a public official and that public official is later determined by the Board after a hearing to have violated the Code of Ethics in respect to this subject matter of the advisory opinion, the Board will then consider the advisory opinion in making its recommendation to the Common Council or other proper authority.

4.01 AMENDMENT OF RULES. These rules shall not be changed, amended or repealed unless the amendment is introduced in writing at a regular meeting and the same laid over for consideration at the next regular meeting subsequently scheduled.

4.02 ROBERTS' RULES OF ORDER. The Rules of parliamentary rules of order shall govern the proceedings of the Board in all cases to which they are applicable, if not inconsistent with any special rule adopted for the government of the Board or contrary to the laws of the State of Wisconsin.

Adopted by the Board of Ethics of the City of New Berlin on the 5<sup>th</sup> day of June, 1990.

  
Chairman

ATTEST:   
Secretary

The foregoing Rules were adopted by motion of the Common Council of the City of New Berlin on the \_\_\_\_\_ day of \_\_\_\_\_, 1990.

\_\_\_\_\_  
Mayor

ATTEST:  
\_\_\_\_\_  
City Clerk

Redrafted May 16, 1990  
6:O/R:EBRULES