

**CITY OF AMERY  
CITY COUNCIL  
POLK COUNTY, WISCONSIN**

**ORDINANCE NO. 04-2023**

**AN ORDINANCE TO REPEAL SECTION 47-12 AND AMEND SECTION 47-13 OF THE  
MUNICIPAL CODE FOR THE  
CITY OF AMERY, POLK COUNTY, WISCONSIN**

The City Council of the City of Amery, Wisconsin, does hereby repeal § 47-12 in its entirety and amend § 47-13 of the Municipal Code for the City of Amery to read as follows:

**§ 47-13 Ethics Board.**

**A. Organization, Composition, and Operation.**

- (1) The Ethics Board shall consist of three citizen members with two members present constituting a quorum. The members of the Ethics Board shall be appointed by the Mayor, subject to confirmation by the City Council.
- (2) The members of the Ethics Board shall serve without compensation unless the City Council provides otherwise.
- (3) Ethics Board members cannot be City employees, elected or appointed officials, or members of other boards, committees, or commissions within the City.
- (4) The Ethics Board shall elect its own Chairperson, Vice Chairperson and Secretary.
- (5) The City Administrator may request or provide staff assistance to the Ethics Board, and the City Attorney shall provide legal assistance and advice to the Ethics Board as needed to carry out its functions.
- (6) A majority vote of the Ethics Board shall be necessary to pass any motion or take any action under this Ordinance with the exception that findings of fact and conclusions of law made by the Ethics Board under Sections F(4) and F(6) of this Ordinance shall require the unanimous vote of the Ethics Board.

**B. Terms of Office.** The term of the Ethics Board members shall be three years, with appointments to be staggered so that no more than one member is appointed each year.

**C. Responsibilities and Duties.** The Ethics Board shall:

- (1) Administer and enforce the provisions of this Chapter 47 (the “Ethics Code”) and the applicable provisions of Wis. Stat. §§ 17.12, 17.16, and 62.13(6m).

- (2) Accept and file any reports, information, or materials required by this Ordinance and any information or materials related to the purposes of this Ordinance that are voluntarily supplied by any person. The Secretary of the Ethics Board shall be the legal custodian of such reports, information, and materials. Such records shall be kept in a locked file cabinet at City Hall with access limited to members of the Ethics Board.
- (3) Issue written advisory opinions in accordance with Section E of this Ordinance.
- (4) Pursuant to Section F of this Ordinance, review, investigate, and make a determination on any complaint filed pursuant to Section F of this Ordinance.
- (5) No later than February 15<sup>th</sup> of each year, the Ethics Board shall submit a report to the City Council concerning its actions in the preceding year. The report shall contain a summary of its determinations and advisory opinions. The Ethics Board shall make sufficient alterations in the summaries to prevent disclosing the identities of individuals or organizations involved in the decision or opinions. The Ethics Board shall make any additional reports on matters within its jurisdiction and recommendations for changing or additional regulations as it deems desirable.

**D. Optional Powers.** In addition to the powers and duties outlined in this Ordinance, the Ethics Board may:

- (1) Prepare and publish special reports and technical studies to further the purposes of this Ordinance.
- (2) Adopt written rules, which shall be submitted to City Council for approval, as may be necessary to carry out this Ordinance. A copy of the rules shall be filed with the City Clerk. The Ethics Board shall give prompt notice of the contents of its rules to officials who will be affected thereby.
- (3) Retain outside counsel and other experts as needed after solicitation of recommendations from the City Attorney and approval by the City Council of a contract for services.
- (4) Develop and make recommendations to the City Council with respect to amendments to the Ethics Code.

**E. Advisory Opinions.**

- (1) Requests.
  - (i) Any individual, specifically including City officials and employees, either personally or on behalf of an organization or governmental body, may request the Ethics Board issue an advisory opinion regarding the propriety of any matter or matters to which the person is or may become a party.

- (ii) Any appointing officer may, with the consent of the prospective appointee, request the Ethics Board issue an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party.
  - (iii) The request shall contain a full statement of the pertinent facts and may contain the application of the Ethics Code understood by the individual submitting the request.
  - (iv) The request shall be submitted to the City Clerk, who shall then forward the request to the Ethics Board.
- (2) The Ethics Board shall review a request for an advisory opinion and may advise the person making the request in writing. The Ethics Board shall decide whether to prepare an opinion, and the Ethics Board may request additional information from the requestor. The Ethics Board's deliberations and actions upon any requests for an advisory opinion shall be in meetings not open to the public.
- (3) The Ethics Board shall direct the preparation of the advisory opinion by a member of the Ethics Board, and the final opinion shall be approved by the Ethics Board as a whole.
- (4) If a request is made by the individual requesting the advisory opinion within twenty (20) calendar days of submitting their advisory opinion request, the requestor shall be afforded an opportunity to appear before the Ethics Board and present facts at issue in the interpretation and administration of the Ethics Code before an advisory opinion is issued. The Ethics Board may also request the presence of the individual submitting the request to provide additional information to the Ethics Board.
- (5) An Ethics Board member may dissent in writing to an Ethics Board advisory opinion.
- (6) It is prima facie evidence of intent to comply with this Ordinance when a person refers a matter to the Ethics Board and abides by the advisory opinion, provided the material facts are as stated in the advisory opinion request.
- (7) 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 paragraph shall not be interpreted to preclude the Ethics Board from doing any of the following:
  - (i) Compiling or publishing summaries of advisory opinions rendered if no identification of the requester or any organization identified in the opinion is made.

- (ii) Making an advisory opinion public with the written consent of the individual requesting the advisory opinion or the organization or governmental body on whose behalf it is requested. A person who makes or purports to make public the substance of any portion of an advisory opinion requested by or on behalf of the person is deemed to have waived the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the Ethics Board in connection with the request for an advisory opinion.

## **F. Complaints and Investigations.**

- (1) This Section F does not apply to those individuals for which the processes outlined in Wis. Stats. §§ 17.12, 17.16 and 62.13 (6m) are required.

- (2) *Complaints and Preliminary Assessment.*

- (i) The Ethics Board shall accept from any individual, either personally or on behalf of an organization or governmental body, a signed complaint in writing that states the name of any person alleged to have committed a violation of the Ethics Code and that specifically describes the alleged violation. The Ethics Board shall forward to the accused, within 10 calendar days of receipt, a copy of the complaint and a general statement of the applicable Ethics Code provisions with respect to the complaint.
  - (a) If the Ethics Board determines that the complaint does not allege a reasonable basis for the belief that a violation of the Ethics Code has been committed, it shall dismiss the complaint and notify the complainant and the accused in writing. If the Ethics Board determines that the complaint was brought for harassment purposes, the Ethics Board shall note that purpose in its determination.
  - (b) If the Ethics Board determines that the complaint does allege a reasonable basis for the belief that a violation of the Ethics Code has been committed or that an investigation of a possible violation of the Ethics Code is otherwise warranted, it may make an investigation with respect to any alleged violation as set forth in this Ordinance.
- (ii) If no complaint has been filed but, based on information received by the Ethics Board, the Ethics Board finds a reasonable basis to believe that a violation of the Ethics Code has occurred, the Ethics Board may, on its own motion, make a signed complaint, which shall be in writing and state the name of the person who is alleged to have committed a violation of the Ethics Code. The complaint must also specifically describe the alleged violation. The Ethics Board shall forward to the accused, within 10 calendar days of filing its complaint, a copy of the complaint, a general statement of the applicable Ethics Code provisions with respect to the complaint, and a



specific statement enumerating the source or sources of information upon which the complaint is based.

- (iii) If a complaint has been filed and the Ethics Board finds a reasonable basis to believe that a violation of the Ethics Code other than the one contained in the complaint has occurred, it may amend the complaint, upon its own motion, to include those other violations. If the complaint is so amended by the Ethics Board, a copy of the amendment shall be sent to the accused within 48 hours.
  - (iv) Prior to invoking any investigative power, the Ethics Board shall authorize an investigation by a motion that shall state the nature and purpose of the investigation and the actions or activities to be investigated. Upon adoption of a motion authorizing an investigation, the Ethics Board shall provide notice of the investigation to the accused by mailing a copy of the motion to the accused together with a notice informing the accused that he/she is the subject of the investigation authorized by the motion and a general statement of the applicable Ethics Code provisions with respect to the investigation.
  - (v) No action may be taken on any complaint that is filed later than 3 years after a violation of the Ethics Code is alleged to have occurred.
- (3) *Investigation.* During any investigation, the accused may be represented by counsel of his or her own choosing. When conducting any investigation under this Ordinance, the Ethics Board has the power to do any of the following:
- (i) Require any City official or employee to submit in writing reports and answers to questions relevant to the Ethics Code, the alleged violations, and proceedings conducted under this Ordinance within the period of time prescribed by the Ethics Board.
  - (ii) Administer oaths to witnesses.
  - (iii) Issue subpoenas to compel the attendance and testimony of witnesses and the production of any documentary evidence relating to the investigation being conducted.
  - (iv) Pay witnesses the same fees and mileage as are paid in like circumstances by the courts of Wisconsin.
  - (v) Retain outside counsel and other experts as needed after solicitation of recommendations from the City Attorney and approval by the City Attorney of a contract for services.

(4) *Probable Cause Determination.* At the conclusion of its investigation, the Ethics Board shall, in preliminary written findings of fact and conclusions of law based on its investigation, make a determination of whether probable cause exists to believe that a violation of the Ethics Code has occurred.

- (i) If the Ethics Board determines that no probable cause exists, it shall immediately send written notice of the determination to the accused and to the complainant.
- (ii) If the Ethics Board determines that there is probable cause for believing that a violation of the Ethics Code has been committed, its preliminary findings of fact and conclusions of law must contain an order setting a date for a hearing to determine whether a violation of the Ethics Code has occurred.
  - (a) The Ethics Board shall provide notice of the hearing to the accused by serving the order on the accused by registered mail. The Ethics Board must provide at least 20 calendar days' notice to the accused, and a hearing ordered under this paragraph shall be commenced within 30 calendar days after the date it is ordered unless the accused petitions for and the Ethics Board consents to a later date.
  - (b) If appropriate, the Ethics Board's preliminary findings of facts and conclusions of law may contain a referral to the district attorney's office recommending further investigation and possible prosecution.
- (iii) The Ethics Board shall inform the accused, or his or her counsel, of exculpatory evidence in its possession.

(5) *Hearing Procedure.*

- (i) Prior to the hearing, the accused shall have an opportunity to examine all documents and records to be used by the Ethics Board at the hearing.
- (ii) Hearings shall be transcribed and/or recorded. The original transcript or recording shall be paid for by the City. Any additional copies shall be paid by the party requesting such copies.
- (iii) The hearing shall commence with the Chairman reading the verified complaint, unless such reading is waived by the accused.
- (iv) Opening and closing statements may be made by the parties or their attorneys.
- (v) The testimony of all witnesses shall be under oath. The Ethics Board must administer oaths to witnesses and may pay witnesses the same fees and mileage as are paid in like circumstances by the courts of Wisconsin.

- (vi) The appearance of witnesses may be compelled by subpoena issued by the Ethics Board.
- (vii) The Ethics Board may retain outside counsel and other experts as needed for assistance with conducting hearings under this Ordinance. The selection of outside counsel and other experts shall be made after solicitation of recommendations from the City Attorney and approval by the City Attorney of a contract for services.
- (viii) During any hearing conducted to determine whether a violation of the Ethics Code has occurred, the accused may be represented by counsel of his or her own choosing, and the accused, or his or her counsel, shall have an opportunity to do all of the following:
  - (a) Challenge the sufficiency of any complaint that has been filed against him or her.
  - (b) Bring witnesses to establish all pertinent facts and circumstances.
  - (c) Question or refute testimony or evidence, including confronting and cross-examining adverse witnesses.
- (ix) The Ethics Board shall have the right to examine any witness called to testify before the Ethics Board.
- (x) The Chairperson of the Ethics Board shall make all rulings on procedures and evidence. A ruling challenged by an Ethics Board member shall be finally determined by majority vote of the Ethics Board. In making its determinations, the Ethics Board shall consider only such evidence as is admissible under the Wisconsin rules of evidence.
- (xi) During any hearing conducted by the Ethics Board to determine whether a violation of the Ethics Code has occurred, all evidence, including certified copies of records that the Ethics Board considers, shall be fully offered and made a part of the record in the proceedings. The accused or any other person under investigation shall be afforded adequate opportunity to rebut or offer countervailing evidence. Upon request of the accused, the Ethics Board may issue subpoenas to compel the attendance and testimony of witnesses.
- (xii) Any person identified during a hearing conducted by the Ethics Board who, in the opinion of the Ethics Board, may be adversely affected by the results of the hearing, may, upon the request of the person, a representative of the person, or any member of the Ethics Board, appear personally or by a

representative to testify, and the Ethics Board may permit any other person to appear and testify at a hearing.

- (xiii) After the conclusion of the hearing, the Ethics Board shall, as soon as practicable, begin deliberations on the evidence presented at the hearing and proceed to determine whether the accused has violated the Ethics Code.

(6) *Determination and Action.*

- (i) The Ethics Board shall make a final written determination on the alleged violations of the Ethics Code within ten (10) days of the hearing. The final determination must be signed by all participating Ethics Board members and include findings of fact, conclusions of law, and a final determination on the matter.
- (ii) If the Ethics Board determines that no violation of the Ethics Code has occurred, it shall immediately send written notice of the final determination to the accused and to the complainant.
- (iii) If the Ethics Board determines that a violation of the Ethics Code has occurred, its final determinations may contain one or more of the following orders or recommendations:
  - (a) In the case of an elected or appointed official of the City, a recommendation to the City Council that the City official be censured, suspended, or removed from office or employment, subject to Wis. Stat. §§ 9.10 and 17.12.
  - (b) In the case of a City employee, a recommendation to the City Council that the City employee be reprimanded, disciplined, or discharged.
  - (c) An order requiring the accused to conform his or her conduct to the Ethics Code.

- (7) *Closed Meetings.* The Ethics Board's review of the complaint, investigations, hearings, deliberations, and any other actions under this Section F shall be in meetings not open to the public, unless the accused petitions for a hearing to be open to the public, at which time the Ethics Board shall consider the factors contained in the open meetings law in determining whether or not to close the hearing to the public.

(8) *Settlements.*

- (i) The Ethics Board may compromise and settle any action or potential action for a violation of the Ethics Code that the Ethics Board is authorized to take

under this Ordinance. An action may be settled for such sum or terms as may be agreed upon between the Ethics Board and the accused.

- (ii) Whenever the Ethics Board enters into a settlement agreement with an individual who is accused of a violation of the Ethics Code, such agreement must be in writing, together with a statement of the Ethics Board's findings and reasons for entering into the settlement agreement. The original agreement shall be retained at City Hall.

(9) Actions by City Council.

- (i) If recommendations relative to a City official or employee are filed by the Ethics Board with the City Council under Section F(6)(iii) above, the matter shall be considered and decided upon by the City Council.
- (ii) City Council may hold a hearing on the recommendation from the Ethics Board. Any hearing by the City Council shall be conducted in accordance with the following provisions:
  - (a) The accused City official or City employee shall be given at least 20 calendar days' written notice of the hearing date.
  - (b) The Wisconsin rules of evidence shall apply to the hearing. All evidence, including certified copies of records and documents that the City Council considers, shall be fully offered and made part of the record in the case. Each party shall be afforded adequate opportunity to rebut or offer countervailing evidence.
  - (c) During the hearing, the accused City official or employee shall be entitled to be represented by counsel of his or her choosing. City Council shall immediately disclose and forward to the accused, or his or her counsel, any exculpatory evidence in its possession.
  - (d) The accused City official or employee, or his or her counsel, shall have an adequate opportunity to examine all documents and records to be used at the hearing 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 the opportunity to confront and cross-examine adverse witnesses. Upon the request of the accused, the City Council may subpoena named individuals to appear as witnesses at the hearing, if such action is necessary to compel their attendance.

- (e) The City Council has the power to compel the attendance of witnesses and to issue subpoenas for books, records, documents, or papers under Wis. Stat. § 885.01(3)
- (iii) The City Council must make a determination in regard to the recommendation of the Ethics Board. After consideration of the Ethics Board's recommendation, by a majority vote of City Council members present at a meeting, the City Council may take any of the following actions:
  - (a) Dismiss the charges against the City employee or official.
  - (b) For City employees, reprimand, discipline, or discharge the employee.
  - (c) For City officials, censure, suspend, or remove the official, subject to Wis. Stat. §§ 9.10 and 17.12.

The final determination of the City Council shall be in writing and shall be mailed to the City employee or official who is the subject of the hearing within thirty (30) calendar days of such determination.

- (iv) Any penalties imposed by the City Council pursuant to Section F(9)(iii), that may affect employees covered under a labor agreement will be consistent with the terms and conditions set forth in the labor agreement.
  - (v) Any person aggrieved by the City Council's decision shall have thirty (30) calendar days from receipt of the written determination to appeal such determination pursuant to Wis. Stat. § 68.13.
- G. Records closed. Records of the Ethics Board's opinions, opinion requests, complaints, and investigations of alleged violations shall be closed in whole or in part to public inspection.
  - H. Severability. Should any section, clause, provision, or portion of this section be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a court of competent jurisdiction, including all applicable appeals, the remainder of this section shall remain in full force and effect.
  - I. Effective date. Upon passage and publication, this section shall take effect and be in force as provided by law.

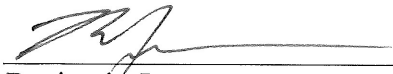
Adopted by the City Council on 9 / 6 /2023.

CITY OF AMERY

By:

  
Eric Elkin  
Acting Mayor

Attest:

  
Benjamin Jansen  
City Clerk-Treasurer

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