

SUB. 2 TO ORD. AMDT. 36, 08-09

**AMENDING CHAPTER 9 OF THE DANE COUNTY CODE OF ORDINANCES,
UPDATING THE DANE COUNTY ETHICS CODE**

The County Board of Supervisors of the County of Dane does ordain as follows:

ARTICLE 1. Unless otherwise expressly stated herein, all references to section and chapter numbers are to those of the Dane County Code of Ordinances.

ARTICLE 2. Section 9.05 is amended to read as follows:

9.05 ADMINISTRATION. The Dane County Ethics Board ("board") shall be the administrative body with respect to the enforcement of the provisions of this ordinance. The board shall adjudicate all complaints involving alleged violations of the Ethics Code and, upon request, shall issue opinions interpreting code provisions. The board may call upon the department of administration for staff assistance as the need arises. The corporation counsel shall provide such legal assistance as the board requires.

ARTICLE 3. Section 9.22 is renumbered as section 9.39. No changes have been made to the content of the section.

ARTICLE 4. Section 9.23 is renumbered as section 9.40. No changes have been made to the content of the section.

ARTICLE 5. Section 9.26 is amended to read as follows:

9.26 CONDUCT REGULATED; USE OF INFORMATION GAINED IN COURSE OF OFFICIAL DUTIES. No county official or employee may intentionally use or disclose information gained in the course of or by reason of her or his official position or activities in any way that could result in the receipt of anything of value for herself or himself, for a member of her or his immediate family, or for any other person or legal entity if the information has not been previously communicated to the public or is not a public record.

ARTICLE 6. Section 9.27 is amended to read as follows:

9.27 IMPERMISSIBLE USE OF PUBLIC OFFICE. No county official or county employee shall use or attempt to use his or her public office or employment to influence or gain unlawful: benefits, advantages or privileges, personally or for others. The use of county equipment and property including, but not limited to, county owned vehicles, cameras, projectors, audio systems, copy machines, fax machines, telephones and uniforms is prohibited for use for both partisan and non-partisan political activity. Use of county property which is available and accessible to the general public is not considered a violation of this ordinance.

ARTICLE 7. Section 9.30 is amended to read as follows:

9.30 CONDUCT REGULATED; ROLE OF SUPERVISORS IN LEGISLATIVE AND ADMINISTRATIVE MATTERS. (1) *Permitted conduct.* Any supervisor may, at any time, on any matter, regardless of whether the supervisor serves on a committee with oversight on the matter, move to separate, postpone, personally inspect, seek more information, voice an opinion, vote for or against, or request of another supervisor that any of the above be performed, whether in person or through any form of public information media, on any subject that lawfully may come to the full county board or any standing committee thereof. Such actions lie within the normal and responsible political review process of a county board supervisor, whether at the behest of his or her constituents or at his or her own discretion, absent a showing of violation of s. 9.21.

(2) *Prohibited voting practices.* (a) It shall be a violation of these rules for any member of the county board to give, offer or promise to give his or her vote or influence in favor of or against any resolution or ordinance amendment pending or proposed to be introduced before the county board in consideration or upon condition that any other person elected to the same county board will give or will promise or agree to give his or her vote or influence in favor of or against any other resolution or ordinance amendment pending or proposed to be introduced to such county board.

(b) It shall be a violation of these rules for any member of the county board to give, offer or promise to give his or her vote or influence for or against any resolution or ordinance amendment on condition that any other member will give his or her vote or influence in favor of any change in any other resolution or ordinance amendment pending or proposed to be introduced to the county board.

(c) It shall be a violation of these rules for any member of the county board to give, offer or promise to give his or her vote or influence in favor of or against any resolution or ordinance amendment pending or proposed to be introduced before the county board, or that has already been passed by the county board, in consideration of or on condition that the county executive approve, disapprove, veto or sign, or agree to approve, disapprove, veto or sign, any other resolution or ordinance amendment pending or proposed to be introduced to the county board or that has already been passed by the county board, or in consideration or upon condition that the county executive nominate for appointment or appoint or remove any person to or from any office or position.

(d) The provision of sub. (2) shall not apply to any single ordinance or resolution, to resolutions or ordinances that are germane to one another.

ARTICLE 8. Section 9.32 is amended to read as follows:

9.32 CONDUCT REGULATED; RECEIPT OF FEES AND EXPENSES. (1) County officials, employees, citizen members and their immediate family members shall not receive and retain anything of value unless the activity or occasion is unrelated to the use of the county's time, information, facilities, equipment, services or supplies not generally available to all residents of the county. He or she shall show by clear and convincing evidence that the receipt of the thing of value did not arise from the recipient's holding or having held her or his position and was given or paid for a purpose unrelated to legislation, policies or issues being considered by or affecting the county.

(2) Such persons may accept and retain from persons or entities other than the county the cost of reimbursement of actual and reasonable expenses related to speaking engagements whether or not the same arise from their county roles or positions.

(3) County officials, employees and citizen members may accept and retain anything of value which consists of transportation, lodging, meals, food or beverage, registration fees, honoraria, or reimbursement therefore, if the official, employee or citizen member can show by clear and convincing evidence that the same was incurred or received primarily for the benefit of the county and not primarily for his or her private benefit or that of any other person. It is *prima facie* evidence that the acceptance of anything of value consisting of the enumerated items or services is primarily for the benefit of the county (a) when received by an official, employee or citizen member in connection with a speech or other presentation being given by the county official, employee or citizen member; (b) when received by an official, employee or citizen member attending a government-related function where the same or similar items or services are provided free of direct charge to all attendees; or (c) when received by an official, employee or citizen member in a situation where the county would have to assume the costs of the item or service if not otherwise provided. This section does not prohibit a person from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary allowable expenses.

ARTICLE 9. Section 9.36 is amended to read as follows:

9.36 CONDUCT REGULATED; DEPOSIT AND REPORT OF CERTAIN RECEIPTS. (1) If, in the course of his or her official duties, a county official or employee receives anything of value which she or he is not otherwise prohibited by statute from accepting, she or he shall either return the item to the payor or giver or, in the alternative, shall deposit with the county treasurer a sum of money equivalent to the fair market value of the item or service.

(2) Whenever a county official or employee receives anything of value, from which she or he is not otherwise prohibited by statute from accepting, or has any fee or expense waived or reduced by a person or entity other than the county in connection with his or her official duties, he or she shall, within ten (10) business days of the occurrence file a report with the county clerk, on forms provided by the clerk, showing:

(a) The name, address and telephone number of the payor or giver;

(b) A summary of the activity or service provided giving rise to the receipt and a close approximation of the time spent in the activity or service;

- (c) The date of the activity or service and the date of the receipt of the thing of value; and
- (d) An accounting of the amounts received, waived or reduced, the purposes of the amounts, the disposition thereof, whether retained, deposited or returned and the date of the disposition.

ARTICLE 10. Section 9.38 is amended to read as follows:

9.38 CONDUCT REGULATED; DISCLOSURE BY COUNTY OFFICIALS. A county official or employee who has a substantial financial interest in a matter pending before the body of which he or she is a member shall disclose the nature of the interest. The disclosure shall be made on the record before the body or, if there is no formal record, in writing to the body. The official or employee shall not participate in any vote in which he or she or an immediate family member has a substantial financial interest.

ARTICLE 11. Section 9.64 is amended to read as follows:

9.64 PENALTY FOR FAILURE TO TIMELY FILE. (1) The county treasurer shall withhold the payment of salaries and expenses from any employee who fails to disclose his or her economic interests in accordance with the requirements of this ordinance. Salaries and expenses so withheld shall be paid over to the affected employee upon compliance with this ordinance.

(2) County officials or candidates who fail to timely file statements of economic interests shall forfeit not less than \$10 nor more than \$1,000 for each violation.

(3) Each calendar month or part thereof during which a required filing is not made shall constitute a separate violation.

(4) Any official or employee subject to a penalty under subsection (1) or (2) of this section shall first be given a notice by the county clerk that the required filing has not been made. Such notice shall be sent by certified mail, return receipt requested, to the incumbent's last known address and shall allow the official or employee, within the thirty (30) day period from date of receipt, an opportunity to meet the requirements of this ordinance without penalty. Within such thirty day time period the official or employee may, in lieu of filing a statement, request a hearing before the board to determine whether a statement is required from him or her. In addition to notification, any violations of subsections (1) or (2) shall be referred to the board for action by it in accordance with this chapter.

(5) The clerk shall provide to the board a list of all persons who have not filed the statement as required. This list shall be provided no later than fifteen (15) business days after the time identified in sub. (4) herein has elapsed.

(6) The board shall schedule a meeting to determine the penalties under sub. (2), herein.

ARTICLE 12. Section 9.70 is amended to read as follows:

9.70 COMPLAINTS. (1) All complaints regarding violations of this ordinance shall be made in writing and submitted to the county clerk who shall deliver them to the chairperson of the ethics board.

(2) The complaint shall include all of the following:

(a) the name, address, telephone number and position within the county, if applicable of the complainant;

(b) the name, address and position within the county of the individual who is the subject named in the complaint;

(c) the specific provision(s) of the Dane County Ethics Code and/or Wisconsin Statutes section(s) alleged to have been violated; and

(d) factual details supporting the alleged ethics violations.

ARTICLE 13. Section 9.71 is amended to read as follows:

9.71 PROCEDURE BEFORE THE BOARD. Upon receipt of a complaint, the board shall:

(1) Cause notice to be given to the respondent by regular mail within ten (10) business days of receipt of the complaint by the chairperson. Such a notice shall contain a specification of the charges against the respondent as well as a notice that the respondent may file a written statement of his or her position with the board. The respondent shall receive a copy of the complaint. Both complainant and respondent shall receive a copy of the Dane County Ethics Board Policy and Procedure Manual.

(2) Schedule and hold hearings on the complaint between 15 and 30 calendar days of receipt of the complaint by the chairperson.

- (3) Hear the respondent's position and the testimony of witnesses, if any. All hearings shall be conducted under oath or affirmation.
- (4) The board may issue subpoenas and administer oaths. Persons requesting the board to issue a subpoena shall be responsible for all associated costs.
- (5) Permit the respondent and the complainant to call such witnesses as either desires and to cross-examine the witnesses of the other. Any party may choose to be represented by counsel or other representative at their own expense.
- (6) Consider the evidence presented and make findings thereon.
- (7) By its chairperson or his or her designee, make rulings on motions and objections made by any party in such a manner as to assure due process protection to the parties.
- (8) Conduct deliberations and issue an oral decision.
- (9) Issue a written decision consisting of its findings and conclusions which shall be reviewed, codified and served upon all parties by regular mail within thirty (30) days of the oral decision.
- (10) Based upon the evidence presented to it, determine whether or not to seek imposition of a forfeiture pursuant to the penalty provisions of this ordinance. If a forfeiture is deemed advisable, the board may direct the corporation counsel to start an action in the name of the county against the violator.
- (11) When deciding to seek the imposition of a forfeiture the board shall, at the time of notifying the corporation counsel, serve notice by mail upon the respondent to the effect that a forfeiture will be sought against the respondent, specifying the amount and that court action may be avoided if the amount specified is paid within 30 days of the date of the notice. The notice shall also inform the complainant and the respondent of the right to a review under s. 9.716.
- (12) If a person against whom the board decides to seek imposition of a forfeiture fails to pay the amount specified by the board within 30 days of the date of the notice, the corporation counsel shall initiate an action for the collection of the forfeiture in the circuit court for the County of Dane. If a review is initiated under s. 9.716, the time for payment is extended to a date 30 days after the review is completed.

ARTICLE 14. Section 9.715 is amended to read as follows:

9.715 BURDEN OF PROOF. The burden of proof in any proceeding brought under this chapter shall rest with the complainant. The burden of proof shall be a preponderance of the evidence.

ARTICLE 15. Section 9.716 is amended to read as follows:

9.716 REVIEW OF BOARD DECISION. (1) Any party appearing before the ethics board who is dissatisfied with the decision of the ethics board may request a review under this section.

(2) The review under this section is initiated by a written request to the chief judge of the fifth judicial district, or to the presiding judge of Dane County if the chief judge for the fifth judicial district is not a Dane County judge.

(a) In this section, the date of the board's written decision shall be defined as the date on which the written decision is postmarked.

(b) The review request shall be accompanied by a copy of the decision of the ethics board.

(c) The review request shall be filed with the chief judge or presiding judge within 25 days of the board's written decision. Failure to timely file the review request shall bar any review under this section.

(d) The request for review shall be served upon all parties, including the Ethics Board Chairperson, via the County Clerk's Office. Service shall be by certified mail and must be postmarked within 25 days of the board's decision.

(3) Upon receipt of a review request under this section, the chief judge or presiding judge may appoint a reserve judge, court commissioner or attorney to review the decision of the ethics board.

(4) The reviewer appointed under sub. (3) may request position papers from the parties or any of them, may decide the matter upon the record or conduct a hearing, and issue his or her decision on the matter.

(5) It is the intent of the County of Dane that the review decision made under sub. (4) is final and is not reviewable in the courts of this state.

(6) The appellant shall pay no more than \$125 per half day with a maximum of \$500 per review without regard to the number of days involved. Dane County shall be responsible for the payment of the reviewer's fees as well as any reasonable and necessary expenses relating to the review.

ARTICLE 16. Section 9.72 is repealed in its entirety.

ARTICLE 17. Section 9.73 is amended to read as follows:

9.73 ADVISORY OPINIONS. (1) Any person subject to the provisions of this chapter, either personally or on behalf of an organization or governmental body, may at any time request, in writing, an advisory opinion from the board regarding the propriety of any matter to which the person is or may become a party. Any appointing officer, with the consent of a prospective appointee, may request, in writing, an advisory opinion from the board regarding the propriety of any matter to which the prospective appointee is or may become a party. The ethics board shall review a request for an advisory opinion and may advise the person making the request in writing. The ethics board may authorize the corporation counsel to act in its stead in instances where delay is of substantial inconvenience or detriment to the requesting party. Except as provided in sub. (3), neither the corporation counsel nor a member or agent of the ethics board may make public the identity of an individual requesting an advisory opinion or of individuals or organizations mentioned in the opinion. The board shall annually publish a synopsis of any advisory opinions it has issued, after first reviewing such material with the corporation counsel to ensure that all individual identifying material has been deleted.

(2) It is *prima facie* evidence of intent to comply with this section or any ordinance enacted under this section when a person refers a matter to the ethics board and abides by the advisory opinion, if the material facts are as stated in the opinion request.

(3) The ethics board may make an advisory opinion public with the written consent of the individual requesting the opinion or the organization or governmental body on whose behalf it is requested and may make public a summary of an advisory opinion issued under this section after making sufficient alterations in the summary to prevent disclosing the identities of individuals involved in the opinion. A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of the person waives the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the ethics board or corporation counsel in connection with the request for an advisory opinion.

(4) The board is expressly authorized to issue advisory opinions interpreting those provisions of chapter 19 of the Wisconsin Statutes which are expressly incorporated in this chapter.

ARTICLE 18. Section 9.74 is amended to read as follows:

9.74 OPEN RECORDS. All records of the board shall be open to public inspection at any time except as provided in sec. 9.73.