

AGENDA
COMMITTEE OF THE WHOLE MEETING
CITY OF BERLIN
TUESDAY, MAY 1, 2018, 7:00 PM
CITY HALL COUNCIL CHAMBERS

1. Roll Call.
2. General Public Comments. Registration card required (located at podium in Council Chamber).
3. 130 W. Berlin Street. RECOMMENDATION: Listen to update and direct staff appropriately.
4. Motion to convene into closed session pursuant to Sec 19.85(1)(e), of the WI Statutes, to deliberate or negotiate the purchase of public property, investment of public funds or conduct other specified public business, whenever competitive or bargaining reasons require a closed session. *(1) Union and non-union health plan renewal/post-retirement health insurance benefits, (2) ETZA contract agreement with Town of Berlin and Town of Aurora and (3) Update on EMS contract with Thedacare-CHN and pursuant to Sec. 19.85(1)(g) to confer with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved (107 W. Huron Street possible litigation status update)*
5. Reconvene into open session and take appropriate action as a result of closed session discussion.
6. Review of Draft Ordinance Repealing All Exercise of the City's Extraterritorial Zoning Authority. RECOMMENDATION: Discuss and action as appropriate.
7. City Attorney Informational Presentation on Ethics. RECOMMENDATION: Listen to presentation. No action required
8. Adjourn.

In adherence to the City of Berlin Public Meeting Participation Policy, public participation will be allowed under each agenda item at the discretion of the presiding officer, with the exception of the Consent Agenda. Attendees must register their intention to participate on either a general comments section or a specific agenda item prior to the meeting by filling out a Registration Card, which can be obtained from the Internet, City Clerk's office or in the City Hall Council Chambers at the podium. Registration Cards should be turned in prior to the meeting to either the presiding officer or City Clerk.

DATE: April 26th, 2018

TO: Mayor and Common Council

FROM: Lindsey Kemnitz

RE: 130 W. Berlin Street Raze Order

BACKGROUND:

Council postponed any action until the mortgage holder (Fortifi Bank) had time to investigate the situation. Below is the email received from Fortifi Bank. Overall Fortifi Bank will not take any action on the property because the mortgage is not delinquent. The property owners are still unresponsive to the bank and City.

Recommendation: Direct staff to move forward with the raze order at 130 W. Berlin Street.

Good Morning Lindsey –

First off, thank you for allowing me to attend the meeting a few weeks ago. As we discussed, this is definitely a strange situation and one we don't encounter very often. I appreciate the opportunity giving us some time to explore some things involved with this problem property.

Due to the dynamics that are involved with our loan on the property with the owners, at this point there is no further action that will be taken by Fortifi Bank. We have no direct ownership in the property and at this point leave the condition of the property and how it is handled up to the owners. We understand that the City of Berlin may be taking further action to remedy things on the property as needed.

Please make the City/Common Council aware of this and thank them for their cooperation.

Please don't hesitate to reach out to me with any questions.

Tim DeMaster

Retail Lending Manager

NMLS #423420

855.876.1500 | 920.354.4093 | Cell: 920.570.3709

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AN ORDINANCE REPEALING ALL EXERCISE OF THE
CITY'S EXTRATERRITORIAL ZONING AUTHORITY

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

All exercise of the City's extraterritorial zoning authority pursuant to Wis. Stats. 62.23(7a) is hereby repealed. Accordingly, the Code of Ordinances shall be amended as follows:

Sec. 82-3 of the Code of Ordinances shall be amended as follows:

Sec. 82-3. - Purpose.

The purpose of this chapter is to promote the comfort, health, safety, morals, prosperity, aesthetics and general welfare of the people of the city. ~~When the term "City of Berlin" is used in this chapter, it shall apply to the extraterritorial zoning area (ETZA) as defined in section 82-4.~~

Sec. 82-4 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-4A of the Code of Ordinances shall be amended as follows:

Sec. 82-4A. - Definitions ~~APPLICABLE IN CITY OF BERLIN AND TOWN OF BERLIN ONLY.~~

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words used in the present tense include the future; the singular number includes the plural number; and the plural number includes the singular number. The word "shall" is mandatory and not permissive.

...

~~*Extraterritorial zoning area (ETZA)* means the area of the Towns of Berlin and Aurora which have been included in the City of Berlin Extraterritorial Zoning Area pursuant to the adoption of ordinances and resolutions under Wis. Stats. § 62.23(7a).~~

...

~~*Parties in interest* means and includes all abutting property owners, all property owners within 200 feet and all property owners of opposite frontages, including all property owners in the extraterritorial zoning area (ETZA) which may be within the area of notice as provided in this definition.~~

...

Sec. 82-10 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-11 of the Code of Ordinances shall be amended as follows:

Sec. 82-11. - Jurisdiction.

The jurisdiction of this chapter shall apply to all structures, lands, water, and air within the corporate limits of the city ~~and the extraterritorial zoning area (ETZA)~~. The provisions of this chapter shall apply to both the city ~~and the ETZA~~, except where there are specific provisions as to the ETZA only, and in that case, those provisions shall govern for the ETZA.

Sec. 82-16 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-17 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-18 of the Code of Ordinances shall be repealed in its entirety.

Subsection 82-19(6) of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-21 of the Code of Ordinances shall be amended as follows:

Sec. 82-21. - Site regulations.

(b) *Principal structures.* All principal structures shall be located on a lot. ~~In the city limits only, and not in the extraterritorial zoning area (ETZA), a~~ structure used for farming purposes may not be a principal structure on a lot under five acres in size in A-1 or A-2 districts. Except as otherwise provided hereafter, only one principal structure shall be located, erected or moved onto a lot. ~~In A-1 or A-2 districts in the ETZA, and o~~On lots of five acres or more in A-1 or A-2 districts ~~in the city limits~~, there may be more than one principal structure on a lot so long as all the structures are consistent with permitted uses for the district. Also, as a conditional use, the plan commission may permit more than one principal structure per lot in any district where more than one such structure is needed for the orderly development of the parcel. Where additional principal structures are permitted, the plan commission may impose additional yard, landscaping or parking requirements, or require a minimum separation distance between principal structures.

Sec. 82-25 of the Code of Ordinances shall be amended as follows:

Sec. 82-25. - River frontage restrictions.

On any lot or parcel of land which includes river frontage in any district ~~in the city or the extraterritorial zoning area (ETZA)~~, no building or land shall be used, and no building dock, accessory building or structure shall be erected or structurally altered within 40 feet of the river bank, and no fill, refuse, pilings or retaining walls shall be erected or structurally altered, except under the following conditions:

...

Sec. 82-26 of the Code of Ordinances shall be amended as follows:

Sec. 82-26. - Hunting with bow or crossbow permitted in all districts subject to restrictions; ~~hunting and target shooting permitted in all districts of ETZA.~~

Hunting with a bow or crossbow, subject to all requirements of section 46-31, shall be a permitted use in all zoning districts. ~~Hunting and target shooting, including the discharge of weapons consistent with such uses, shall be permitted uses in all zoning districts outside of the city limits and within the city's extraterritorial zoning area.~~

Sec. 82-62 of the Code of Ordinances shall be amended as follows:

Sec. 82-62. - Violations; penalties.

...

(b) If an order of the zoning administrator has not been complied with within 30 days after written notice has been mailed to the owner of such property in violation of this chapter, the resident agent or occupant of the premises, the common council, ~~the affected town in the ETZA,~~ the zoning administrator or the city attorney may institute appropriate legal action or proceedings.

...

Sec. 82-68 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-69 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-92 of the Code of Ordinances shall be amended as follows:

Sec. 82-92. - Role of specific city officials in zoning administration.

...

(b) *Common council.*

...

~~(2) The authority of the common council to make changes in this chapter in regard to the extraterritorial zoning area (ETZA) or rights granted to the Towns of Berlin and Aurora under this chapter shall be subject to the provisions of section 82-17.~~

...

~~(d) *ETZA provision.* Any amendment or modification to this chapter which affects the ETZA, or the rights granted to the Towns of Berlin and Aurora under other provisions of this chapter, shall not be effective without compliance with the provisions of section 82-17.~~

Sec. 82-122 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-123 of the Code of Ordinances shall be amended as follows:

Sec. 82-123. - Applications for hearings.

...

(f) *Fee.* All appeals and applications filed with the zoning administrator shall be accompanied by payment of the required fee as set forth in the applicable fee schedule adopted by the common council ~~(and ETZA joint plan commission for ETZA applications)~~ on file in the clerk-treasurer's office. If the appellant or applicant elects the contested case method, he shall also pay the amount determined by the board of appeals to cover the additional administrative costs involved.

...

Sec. 82-153 of the Code of Ordinances shall be amended as follows:

Sec. 82-153. - Zoning map.

(a) The city ~~and the extraterritorial zoning area (ETZA)~~ isare divided into zoning districts as shown upon a map designated as the Official Zoning Map of the City of Berlin, and made a part of this chapter. The official zoning map, and all the notations, references and other

information shown on such map, are a part of this chapter, and shall have the same force and effect as if the matters and information set forth by such map were fully described in this section. The official zoning map shall be properly attested and kept on file in the clerk-treasurer's office, along with the text of the official zoning regulations.

...

Sec. 82-177 of the Code of Ordinances shall be amended as follows:

Sec. 82-177. - Conditional uses.

In the C-1 conservancy district, conditional uses shall be as follows:

...

~~(2) — Airports in the ETZA district only.~~

Sec. 82-204 of the Code of Ordinances shall be repealed in its entirety.

Subsections 82-227(2) and (3) of the Code of Ordinances shall be repealed in their entirety, and the subsequent subsections in Section 82-227 shall be renumbered accordingly.

Sec. 82-286 of the Code of Ordinances shall be amended as follows:

Sec. 82-286. - Use regulations.

The R-1 residential district is intended to provide for single-family residential development and to protect such areas from the encroachment of incompatible uses. The following uses shall be permitted in the R-1 district:

...

(8) In the city limits ~~(expressly excluding any properties in the ETZA)~~ and with a license granted under section 10-7(d), keeping of up to six chickens per lot. For purposes of this subsection, "chickens" shall have the meaning set forth in section 10-2.

...

Sec. 82-290 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-315 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-340 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-361 of the Code of Ordinances shall be amended as follows:

Sec. 82-361. - Conditional uses.

In the B-1 district, conditional uses shall be as follows:

- (1) Churches ~~only in the city and not in the extraterritorial zoning area districts.~~
 - (2) ~~A bed and breakfast establishment in the ETZA district only.~~
-

Sec. 82-364 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-390 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-416 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-441 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-466 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-517 of the Code of Ordinances shall be amended as follows:

Sec. 82-517. - Criteria for approval.

As a basis for determining the acceptability of a planned unit development district application to the plan commission, ~~the appropriate ETZA special committee under section 82-518(e)(1), and the city council, and the appropriate town board if applicable under section 82-518(e)(2),~~ the following criteria shall be applied to the application for such district with specific consideration as to whether or not it is consistent with the spirit and intent of this chapter, is consistent with the policies of the city development plan and any county ~~or town~~ development plans as applicable, has been prepared with professional advice and guidance and produces significant benefits in terms of environmental design:

...

(2) *Economic feasibility and impact.* The proponents of a planned unit development district application shall provide evidence satisfactory to the plan commission, ~~the appropriate ETZA special committee under section 82-518(e)(1), and~~ the city council, ~~and the appropriate town board if applicable under section 82-518(e)(2),~~ of its economic feasibility, of available adequate financing, and that it would not adversely affect the economic prosperity of the city or the values of surrounding properties.

(3) *Engineering design standards.* The width of street rights-of-way, width of paving, width and location of street or other paving, outdoor lighting, location of sewer and water lines, provision for stormwater drainage or other similar environmental engineering considerations shall be based on standards necessary to implement the specific function in the specific situation; provided, however, in no case shall standards be less than those necessary to ensure the public safety and welfare as determined by the city-designated engineer ~~and/or town engineer as applicable in the ETZA.~~

...

(6) *Parking areas landscaped.* Parking areas shall be screened from adjacent structures, roads and traffic arteries, with hedges, dense plantings, earth berms, changes in grade, or walls, at levels determined adequate by the common council ~~and appropriate town board if applicable under section 82-518(e)(2),~~ upon recommendation of the plan commission or ~~appropriate ETZA special committee under section 82-518(e)(1).~~ In addition, all parking lots shall be designed to accommodate tree and shrub plantings along internal islands, at levels determined adequate by the common council ~~and appropriate town board if applicable under section 82-518(e)(2),~~ upon recommendation of the plan commission ~~or appropriate ETZA special committee under section 82-518(e)(1).~~

(7) *Preservation and maintenance of open space.* In a planned unit development district, adequate provisions shall be made for the permanent preservation and maintenance of open space or landscaped green area, either by private reservation or dedication to the public, at the city's discretion, ~~or the applicable township's discretion if in the ETZA.~~ A minimum of ten percent of the district shall be open space or landscaped green area.

a. In the case of private reservation, the open area to be reserved shall be protected against building development by conveying to the city, ~~or applicable township if in the ETZA,~~ as part of the conditions for project approval an open space easement over such open areas restricting the area against any future building or use except as consistent with that of providing landscaped open space for the aesthetic and recreational satisfaction of the surrounding residences. Buildings or uses for noncommercial, recreational or cultural purposes compatible with the open space objective may be permitted only where specifically authorized as part of the development plan or, subsequently, with the express approval of the city council ~~and appropriate town board if applicable under section 82-518(e)(1)~~ following approval of building, site and operational plans by the plan commission, ~~or appropriate ETZA special committee if applicable under section 82-518(e)(1).~~

b. The care and maintenance of such open space reservations shall be ensured

by establishment of an appropriate management organization for the project. The manner of ensuring maintenance and assessing such cost to individual properties shall be included in any contractual agreement with the city, ~~or applicable township if in the ETZA,~~ and shall be included in the title to each property.

c. Ownership and tax liability of private open space reservations shall be established in a manner acceptable to the city, ~~or applicable township if in the ETZA,~~ and made a part of the conditions of the plan approval.

(8) *Park dedication.* ~~If a proposed planned unit development district is in the city only, and not in the ETZA,~~ The applicant shall comply with all park dedication, or fees in lieu of dedication, requirements of chapter 62, article IV, as though the proposed district was a subdivision, unless compliance with those sections is waived for the district by the common council, upon recommendation of the plan commission.

(9) *Implementation schedule.* The applicant for a proposed planned unit development district shall submit a reasonable schedule for the implementation of the development to the satisfaction of the city council ~~and appropriate town board if applicable under section 82-518(e)(2),~~ including suitable provisions for assurance that each phase could be brought to completion in a manner which would not result in an adverse effect upon the community as a result of termination at that point.

Sec. 82-518 of the Code of Ordinances shall be amended as follows:

Sec. 82-518. - Procedural requirements.

(a) *Prepetition conference.* Prior to the official submission of the petition for the approval of a planned unit development district, the petitioner should meet with the plan commission, ~~or the appropriate ETZA special committee described under subsection (c)(1) of this section if applicable,~~ to discuss the scope and proposed nature of the contemplated development.

(b) *Petition for approval.* Following the prepetition conference, the petitioner may file a petition with the zoning administrator for approval of a planned unit development district. Such petition shall be accompanied by a review fee as set forth on the fee schedule on file in the clerk-treasurer's office. Such fee shall be in addition to any other zoning change application fee required elsewhere in this chapter. The petitioner shall further be required to pay all applicable legal, engineering or other consultant fees incurred on behalf of the city, ~~ETZA special committee or applicable individual townships as applicable,~~ in its/their review of the development plan and proposed zoning change. The procedure for rezoning to a planned unit development district shall be as required for any other zoning district change under this chapter, except that, in addition thereto, the following information shall be filed by the applicant with the zoning administrator with the petition for rezoning:

(1) *Informational statement.* A statement which sets forth the relationship of the proposed PUD to the city's adopted master plan (comprehensive land use and thoroughfare plan), neighborhood plan, or any adopted component thereof, ~~any applicable~~

county or township development plan if in the ETZA, and the general character of and the uses to be included in the proposed PUD, including the following information:

...

d. Any proposed departures from the standards of development as set forth in the city zoning regulations in this chapter, city land subdivision requirements in chapter 62, other city regulations or administrative rules, county and township land subdivision requirements and other regulations or administration rules as applicable to the ETZA, or other universal guidelines.

e. Any other data or information required by the plan commission, the appropriate ETZA special committee described under subsection (e)(1) of this section if applicable, or common council, or appropriate town board if applicable under subsection (e)(2) of this section.

(2) Development plan. A development plan including:

...

1. Any other plans, documents or schedules required by the plan commission, the appropriate ETZA special committee if applicable under subsection (e)(1) of this section, or city council, or appropriate town board if applicable under subsection (e)(2) of this section.

...

(e) ~~ETZA PUDs.~~

(1) ~~Special committee.~~ At any time a petition for a proposed planned unit development district in the ETZA is presented to the city plan commission, a special committee, acting as the plan commission, shall be formed for the purpose of the public hearing and action on the proposal. The special committee shall consist of six members, with three appointed by the city plan commission and three members appointed by the town board of the town in which the proposed site is located. The special committee as so composed shall vote by majority vote of four of its members to recommend approval or disapproval of the proposed district. The final action on the proposed district shall be taken by the city common council, subject to approval by the applicable town board as provided in subsection (e)(2) of this section.

(2) ~~Town board approval required.~~ Any PUD district which is proposed in the ETZA, in the city but which adjoins the ETZA or is within 100 feet of the ETZA shall be subject to the approval of the town board of the township which adjoins or is within 100 feet of the proposed PUD district, in addition to the approval of the city common council.

Sec. 82-519 of the Code of Ordinances shall be amended as follows:

Sec. 82-519. - Basis for approval of the petition.

(a) *Requirements.* The plan commission, ~~or appropriate ETZA special committee if applicable under section 82-518(e)(1),~~ in making recommendations for approval, and the city council, ~~and appropriate town board if applicable under section 82-518(e)(2),~~ in making a determination approving a petition for planned unit development, shall find as follows:

...

(b) *Proposed construction schedule.* The plan commission, ~~ETZA special committee if applicable under section 82-518(e)(1),~~ and city council, ~~and appropriate town board if applicable under section 82-518(e)(2),~~ in making their respective recommendation and determination, shall consider the reasonableness of the proposed construction schedule and any staging plan for the physical development of the proposed PUD, commencement of the physical development within one year of approval being deemed reasonable.

(c) *Residential PUD considerations.* The plan commission, ~~ETZA special committee if applicable under section 82-518(e)(1),~~ and city council, ~~and appropriate town board if applicable under section 82-518(e)(2),~~ in making their respective recommendation and determination as to a proposed residential planned unit development, shall further consider whether:

...

(2) The total net residential density within the planned unit development will be compatible with the city master plan (comprehensive land use and thoroughfare plan), neighborhood plan, or components thereof, ~~any applicable county or township development plans if in the ETZA,~~ and shall be compatible with the density of the district wherein located.

...

(d) *Commercial/business PUD considerations.* The plan commission, ~~ETZA special committee if applicable under section 82-518(e)(1),~~ and city council, ~~and appropriate town board if applicable under section 82-518(e)(2),~~ in making their respective recommendation and determination as to a proposed commercial/business planned unit development, shall further consider whether:

...

(e) *Industrial PUD considerations.* The plan commission, ~~ETZA special committee if applicable under section 82-518(e)(1),~~ and city council, ~~and appropriate town board if applicable under section 82-518(e)(2),~~ in making their respective recommendations and determination as to a proposed industrial planned unit development, shall further consider whether:

...

(f) *Mixed use PUD considerations.* The plan commission, ~~ETZA special committee if applicable under subsection 82-518(e)(1), and~~ city council, ~~and appropriate town board if applicable under subsection 82-518(e)(2),~~ in making their respective recommendation and determination as to a proposed mixed use planned unit development, shall further consider whether:

...

Sec. 82-520 of the Code of Ordinances shall be amended as follows:

Sec. 82-520. - Recording and development contract.

(a) *Recording.* Upon final approval of the application and adoption of a zoning change to the planned unit development district by the city council, ~~and appropriate town board if applicable under subsection 82-518(e),~~ the building, site and operational plans for the development, as approved, as well as all other commitments and contractual agreements with the city, ~~ETZA special committee or applicable townships,~~ offered or required with regard to components, project value, character and other factors pertinent to an assurance that the proposed development will be carried out basically as presented in the official submittal plans shall be recorded by the developer within ten days in the applicable county register of deeds' office. Unless and until all of the plans and documents have been recorded, no building permit shall be issued for any construction within the planned unit development district. Detailed construction and engineering plans need not necessarily be completed at the time the zoning is approved, but the approval and recording of the plans may be conditioned upon the subsequent submittal and approval of more specific and detailed plans as the development progresses.

(b) *Development contract.* Before any building permit shall be issued, the applicant and the owner shall enter into an appropriate contract with the city, ~~or applicable townships if in the ETZA,~~ to guarantee the implementation of the landscaping and public improvement portions of the development, such as streets, sewer and water, curb and gutter, lift stations, street lighting, etc., according to the terms and conditions established as a part of the development plan. The installation of all public improvements shall be the responsibility of the developer, unless otherwise provided for in this Code. The city, ~~or applicable townships if in the ETZA,~~ shall have the right, if deemed appropriate, to require the inclusion of a performance bond or letter of credit satisfactory to the city attorney ~~or applicable township attorneys if in the ETZA.~~ Such contract shall be recorded by the developer in the county register of deeds' office within ten days after its execution.

Sec. 82-521 of the Code of Ordinances shall be amended as follows:

Sec. 82-521. - Alterations and lapse of development plan.

Any subsequent change of use of any lot or parcel of land or addition or modification of the plans shall first be submitted for approval to the plan commission, ~~or ETZA special committee if applicable under subsection 82-518(e)(1),~~ and if, in the opinion of the plan commission, ~~or ETZA~~

~~special committee if applicable under subsection 82-518(e)(1), such change or modification constitutes a substantial alteration of the original plans, the procedure provided in sections 82-518 and 82-519 and in this section shall be required before the use is changed or the plans modified. If, in the opinion of the plan commission, or ETZA special committee if applicable under subsection 82-518(e)(1), such change or modification does not constitute a substantial alteration of the original plans and if such change or modification is recommended by the plan commission, or ETZA special committee if applicable under subsection 82-518(e)(1), the change or modification may be made without the approval of the common council. Development plan approval lapses one year after its effective date if substantial development progress has not occurred. The plan commission, or ETZA special committee if applicable under subsection 82-518(e)(1), may grant extensions for good cause.~~

Sec. 82-551 of the Code of Ordinances shall be amended as follows:

Sec. 82-551. - Building permit required; application.

Within the city or extraterritorial zoning area (ETZA), no owner shall build, construct, use or place any accessory building, including prefabricated accessory buildings, until a building permit shall have first been obtained from the building inspector. Application for an accessory building permit shall be made in writing to the building inspector. With such application, there shall be submitted a fee pursuant to chapter 14 of this Code, and a complete set of plans and specifications, including a plot plan or drawing which shall accurately show the location of the proposed accessory building with respect to adjoining alleys, lot lines and buildings. If such application meets all requirements of this article, the application shall be approved.

Sec. 82-552 of the Code of Ordinances shall be amended as follows:

Sec. 82-552. - Principal use to be present.

Except as otherwise provided hereafter, an accessory use or structure in any zoning district shall not be established prior to the principal use or structure being present or under construction. ~~In A-1 or A-2 districts in the ETZA, and on~~ On lots of five acres or more in A-1 or A-2 districts ~~in the city limits~~, accessory structures may be constructed prior to the principal structure, so long as the accessory structure is consistent with a permitted use for that district. Any accessory use or structure shall conform to the applicable regulations of the district in which it is located, except as specifically otherwise provided in this chapter.

Sec. 82-553 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-553A of the Code of Ordinances shall be amended as follows:

Sec. 82-553A. - Residential district placement restrictions—APPLICABLE IN CITY OF BERLIN AND TOWN OF BERLIN ONLY.

An accessory use or structure in a residential district within the city may be established subject to the following restrictions:

...

(4) ~~Exceptions for detached garages and accessory buildings in ETZA district.~~ The following exceptions shall apply in the extraterritorial zoning authority district only:

a. ~~Maximum square foot restriction.~~ The 900 square foot maximum size allowance upon detached garages may be exceeded under certain circumstances, up to a maximum of 1,400 square feet, only with a conditional use permit, and subject to the following restrictions:

1. ~~No conditional use permit increasing the established maximum square foot allowance for detached garages shall be granted for detached garages on lots which are 8,910 square feet or smaller.~~

2. ~~A conditional use permit may be granted increasing the maximum square foot allowance for one detached garage on a lot as follows:~~

i. ~~If the detached garage is on a lot greater than 8,910 square feet up to and including one acre, such maximum square foot restriction for one detached garage may be increased to 1,000 square feet.~~

ii. ~~If the detached garage is on a lot greater than one acre up to and including two acres, such maximum square foot restriction for one detached garage may be increased to 1,100 square feet.~~

iii. ~~If the detached garage is on a lot greater than two acres up to and including three acres, such maximum square foot restriction for one detached garage may be increased to 1,200 square feet.~~

iv. ~~If the detached garage is on a lot greater than three acres up to and including four acres, such maximum square foot restriction for one detached garage may be increased to 1,300 square feet.~~

v. ~~If the detached garage is on a lot greater than four acres up to and including five acres, such maximum square foot restriction for one detached garage may be increased to 1,400 square feet.~~

3. ~~Any conditional use permit granted for detached garages hereunder shall be subject to the mandatory condition that if the parcel upon which such detached garage is placed is subdivided, causing the remaining parcel to be less than the required minimum acres for the size of the detached garage permitted, the conditional use permit shall terminate. Further, the permit applicant must consent to a memorandum of such condition being recorded upon the title to the parcel at~~

~~the applicable county register of deeds office on a form approved by the city attorney.~~

~~b. — *Maximum height restriction.* In addition to the exception to the 15-foot maximum height restriction upon detached garages and accessory buildings provided in section 82-553A(3)(a), such 15-foot restriction may also be exceeded under the following circumstances, without meeting the conditions set forth in section 82-553A(3)(a) 1. and 2. Detached garages and accessory buildings may be up to a maximum of 20 feet in height, only with a conditional use permit, and subject to the following mandatory conditions being imposed upon the permit holder:~~

~~1. — For each one-foot increase in the maximum height allowance, the affected accessory structure must be set back the greater of the following:~~

~~i. — An additional ten feet from the front of the principal structure; or~~

~~ii. — An additional ten feet above the regular front yard setback.~~

~~2. — For each one-foot increase in the maximum height allowance, the required side yard setback for the affected structure shall be increased by five feet.~~

~~3. — For each one-foot increase in the maximum height allowance, the required rear yard setback for the affected structure shall be increased by ten feet.~~

Sec. 82-561 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-561A of the Code of Ordinances shall be amended as follows:

Sec. 82-561A. - Lawn accessories—APPLICABLE IN CITY OF BERLIN AND TOWN OF BERLIN ONLY.

Walks, drives, paved terraces and decorative garden accessories such as decorative pools (not designed for swimming), fountains, statuary, sundials, flag poles, etc., shall be permitted in setback areas within the city, but shall not be located closer than three feet to an abutting property line, other than a street line.

Sec. 82-563 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-563A of the Code of Ordinances shall be amended as follows:

Sec. 82-563A. - Children's play structures—APPLICABLE IN CITY OF BERLIN AND TOWN OF BERLIN ONLY.

Play structures shall be considered accessory structures, and shall comply with the requirements of this article accordingly. Play structures shall not be used for storage or be constructed out of materials that would constitute a nuisance.

Sec. 82-569 of the Code of Ordinances shall be amended as follows:

Sec. 82-569. - Metal buildings.

In the R-1 and R-2 districts within the city, no metal buildings exceeding 100 square feet shall be permitted, ~~except:~~

(1) ~~— All metal buildings in the extraterritorial zoning area (ETZA) as of the date of the adoption of the ETZA ordinance shall be legal conforming uses.~~

(2) ~~— All metal buildings in the ETZA built before the adoption of the ETZA ordinance, and located on parcels of less than five acres, may be increased by an additional 25 square feet in size for each 1,000 square feet of lot size which is over and above the 8,000 square feet minimum city lot size.~~

(3) ~~— Any metal buildings in the ETZA built after the adoption of the ETZA ordinance on parcels of five acres or more may be of any size except as otherwise limited in this chapter.~~

Sec. 82-601 of the Code of Ordinances shall be amended as follows:

Sec. 82-601. - Continuation of existing nonconforming uses and structures.

...

(b) If no structural alterations are made, a nonconforming use of a building may be changed to any use permitted in the same use district as that in which the use existing is permitted according to the provisions of this chapter, provided, when a use district is changed unilaterally by the city ~~(or city and town(s) if in the ETZA)~~ without application by the landowner, an existing nonconforming use in such changed district may be continued or changed to a use permitted in the same use district as that in which the existing use is permitted, provided, all other regulations governing the new use are complied with. If a use district is changed upon application of a landowner, the use of that landowner's property located within the changed use district shall comply with the use requirements of the new district.

...

Sec. 82-644 of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-716 of the Code of Ordinances shall be amended as follows:

Sec. 82-716. - Satellite earth stations.

...

(b) *Permit required; exemptions.* No owner within the city or extraterritorial zoning area (ETZA) shall build, construct, use or place any type of satellite earth station upon his premises until a permit shall have first been obtained from the zoning administrator. Small satellite dish antennas which are 24 inches or less in diameter are exempt from the regulations of this article, except that they shall still not be installed or extend in any public right-of-way, and shall be limited to no more than one unit per recorded lot, except additional units may be permitted upon application for a special exception permit in nonresidential districts.

...

Sec. 82-1016(c) of the Code of Ordinances shall be repealed in its entirety.

Sec. 82-1023 of the Code of Ordinances shall be amended as follows:

Sec. 82-1023. - Hydrologic and hydraulic computations.

All computations of runoff volumes and peak flow rates used in the development of erosion control and stormwater management plans in accordance with this chapter shall be based on the principles of Technical Release 55 (TR-55) "Urban Hydrology for Small Watersheds," published by the Natural Resources Conservation Service (NRCS), United States Department of Agriculture, latest edition. The design storms for the City of Berlin and ETZA District that are needed to determine compliance with this chapter are as follows:

...

This ordinance shall take effect the day after publication.

The numeric section numbers and headings shall be subject to modification in the discretion of the codifier, and the approval of the City Attorney, during codification into the City's current Code of Ordinances.

Passed, approved and adopted this ____ day of _____, 20__.

ROLL CALL VOTE:

CITY OF BERLIN

____ AYES
____ NAYS
____ ABSENT

BY: _____
Richard D. Schramer, Mayor

APPROVED AS TO FORM:

ATTEST: _____
Jodie Olson, City Clerk

Matthew G. Chier, City Attorney

DRAFT 4-20-2018



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Ethics & Conflicts of Interest—FAQs (frequently asked questions)

*Prepared by James H. Schneider, J.D.
Local Government Center
April 2008*

This paper is directed particularly at local governing body members because they are the primary decision-makers in a local governmental unit and therefore the ones most subject to conflicts. (A “local governmental unit” includes a county, city, village or town, special purpose district or subunit of any of the foregoing. Sec. 19.42(7u), *Wis. Stats.*) Nevertheless, other local officials and employees may face such questions when they make decisions on matters in which they have a personal interest or a close connection with a person or organization with an interest in the matter. The paper is divided into the following headings:

- ◆ Background & General Matters (##1-5)
- ◆ Making Fair Decisions: Developing Policy; Applying the Law (##6-8)
- ◆ Code of Ethics for Local Officials (##9-11)
- ◆ Gifts, Food & Drink, Conferences, Political Contributions, etc. (##12-17)
- ◆ Contracts (##18-20)
- ◆ Compatibility Issues: Conflicts in Holding More than One Local Office or Position & in Job Creation & Selection (##21-24)
- ◆ Other provisions (#25)

Background & General Matters

1. What is the purpose of ethics and conflicts of interest laws? The purpose of these laws is to prevent self-dealing, undue influence and bias, and to preserve public confidence in local government by avoiding the appearance of impropriety. In general, these laws, with the open meetings and public records laws, while occasionally cumbersome, provide an important part of the foundation for our democratic government.

2. Where can I find the laws that apply to ethics and conflicts of interest? These laws are found in various locations. First, check your local unit’s ordinances and rules to see what provisions may apply to you. Perhaps the most basic source of ethics is the local official’s oath of office in which he or she swears to “faithfully discharge the duties” of the office; these official duties include the “performance to the best of his or her ability” and the nonperformance of

forbidden acts. Sec. 19.01(1) and (3). The Code of Ethics for Local Government Officials (also referred to as the "Code of Ethics" in this paper) is found in ch. 19, *Wis. Stats.* See statutory sections 19.42 (definitions), 19.58 (criminal penalties) and 19.59 (prohibitions, procedures and civil penalties). Another important statute is sec. 946.13, which prohibits certain private interests of public officers and employees in public contracts. At a more general level, concepts of fairness and due process are covered by court decisions interpreting the Wisconsin and Federal constitutions (see #6). Finally, the "common law" developed by the courts is another source of law (see #7).

3. *The existence of so many laws is confusing. How can I find answers to my questions?* As a local official, you should familiarize yourself with any local ordinances or rules you may have and with the statutory Code of Ethics for Local Government Officials. A good place to find information is on the Wisconsin Government Accountability Board (GAB) Ethics Division website <http://ethics.state.wi.us/>. (Note: The GAB now includes the former Elections Board and Ethics Board as divisions; the provisions of the laws affecting local officials remain the same.) Two Ethics Division publications, available on the website, are particularly useful: Eth 219 (Local officials' receipt of food, drink, favors, services, etc.) and 240 (Mitigating Conflicting Interests: Private Interest vs. Public Responsibility); see also Eth 235 (Disposition and reporting of gifts). The website has a link to the statutory Code of Ethics for Local Government Officials. In addition, the publications of the Wisconsin local government associations include explanatory materials on these topics. Also, the Local Government Center offers a yearly WisLine program on this topic. At the LGC website, <http://lgc.uwex.edu/>, click on the WisLine link for the "Open Government" series. To find any statute on-line, from the LGC website, click on "Web Links," next on "Internet Resources" and finally on the "Wisconsin Statutes" link to access any statute.

In addition to checking existing information, a local official may wish to obtain advice from an attorney or ethics board. Under the Code of Ethics for Local Officials, an individual may request a confidential advisory ethics opinion from the unit's ethics board, or if there is none, from the unit's attorney. Sec. 19.59(5). Following this advice provides the local official with a legal defense if later prosecuted for a violation. The unit's attorney or local government association may request an advisory opinion from the state GAB's Ethics Division. Sec. 19.59(6).

4. *How should ethics and conflicts of interest questions be approached?* Carefully and ahead of time. It's a good idea to learn to spot potential conflict situations. You can ask yourself these questions:

--*What is the nature of the decision?* If the decision involves applying the law to specific fact situations affecting individuals, such as an application for or revocation of a permit before a body, or disciplinary actions before a body, more stringent laws apply. See #7, below.

--*Does the matter involve a public contract in which I have a direct or indirect financial interest?* These questions demand careful consideration. See ##18-20.

--*Does the action affect myself, a member of my family, or an organization with which my family member or I are associated?*

--*How would I like to read about my actions on this matter in the newspaper?*

--*Would taking part in an official capacity seem fishy?*

If the answer to any of the last 4 questions is "yes," you should look into the matter further.

5. ***What should I do if I decide to abstain?*** It should be understood that abstention goes beyond merely not voting on the matter. You must remove yourself from the decision-making body's table and refrain from involving yourself in any way in discussions or other information exchanges in your *official* capacity. Your abstention or absence should be noted in the record. Also, abstentions should be used only when warranted, rather than to avoid taking part in difficult or controversial matters. However, it should be noted that a member of a local legislative body has a First amendment right to abstain, *Wrzeski v. City of Madison, Wisconsin*, 558 F. Supp. 664 (1983).

Making Fair Decisions: Developing Policy; Applying Policy

6. ***The statutes have gaps in their coverage. Are there other limits on my ability to vote on policy or administrative matters?*** Yes. The *common law* (i.e., the law developed by the courts) may prohibit a vote by a member of a body, such as a local governing body or board or commission member, even if statutory law does not, on matters such as adopting or amending ordinances, entering into contracts, hiring employees and deciding whether to litigate. The Wisconsin Ethics Board (now GAB Ethics Division) has noted in recent opinions that common law principles may disqualify a member of a body from voting on a matter where the member has a direct pecuniary interest not shared by others similarly situated. See, e.g., *Wis Eth Bd* opinions 2003-09 and 2003-17 (citing *Board of Supervisors of Oconto County v. Hall*, 47 Wis. 208 (1879) and 36 *Op. Att'y Gen.* 45, 46 (1947)). The Ethics Division interprets the Code of Ethics for Local Officials in a similar fashion when local officials who make policy decisions that affect themselves, "immediate family" members or "organizations" with which they are "associated" (as these terms are statutorily defined). In such cases, the official may vote or take action if the interest affects a class of similarly-situated interests, and the impact of the action on the official, family member or organization is not significantly different from the impact on the others affected. See the Ethics Division guidelines in "Eth 240."

In addition, the common law restriction is similarly stated in *Robert's Rules of Order Newly Revised (10th Edition)*, sec. 45, which states that, "No member should vote on a question in which he has a direct personal or pecuniary interest not common to other members of the organization." Many communities have adopted *Robert's* to apply in situations not covered by their ordinances or the statutes. See, e.g., *Ballenger v. Door County*, 131 Wis.2d 422, 431 (fn. 6) (Ct. App. 1986).

7. ***What limitations apply to my actions when applying the law?*** You act in a "quasi-judicial" capacity when you apply the general law (i.e., statutes and ordinances) to specific fact situations. Examples include granting a zoning variance or conditional use permit or revoking an alcohol beverage license. In such cases constitutional law and the common law apply in addition to the statutory ethics and conflicts laws. In quasi-judicial proceedings, you must provide due process (a constitutional concept) and be fair and unbiased. This means that you will have to abstain in more situations than you would have to when making policy, such as voting on an ordinance, or when acting in an administrative capacity, such as in hiring or awarding a contract.

In quasi-judicial proceedings you should consider whether you could be seen as biased regarding either the person or the issue involved, although having opinions on local matters is not improper. For example, while it would be permissible to publicly hold the view that an

ordinance should be amended, it would be improper to disparage the ordinance at a proceeding on an application. Similarly, it is improper to show bias regarding the applicant. In one case, the chair of a zoning board of appeals (BOA) called the applicable standard for a permit a loophole in need of closing and made critical personal comments about the applicant. Not surprisingly, an appeal to court resulted in the matter being returned to the BOA for a new hearing without the participation of the BOA chair. *Marris v. City of Cedarburg*, 176 Wis. 2d 14 (1993). Similarly, in a recent case, the court ruled that a conditional use permit application had to be reheard because of the improper participation on the decision-making body of a member whose letter in support of the applicant was a part of the record. *Keen v. Dane County*, 269 Wis. 2d 488 (Ct. App. 2003). Officials in these proceedings must be careful to base their decisions on the arguments and evidence presented in the record, including the hearing, and should avoid outside sources and contacts, such as discussions with the parties or neighbors outside of the meeting or hearing room.

Violations of these principles of due process and fairness, if challenged in court, may result in having the matter sent back to the body to do over again properly. Enforcement typically does not involve damages or other penalties, although it could in certain egregious situations, involving, for example, deliberate wrongdoing and civil rights violations.

8. *How does the above reasoning apply when I, as a governing body member, am faced with a vote on a rezoning of property?* Rezoning is in a grey area of the law. In some states they are treated as quasi-judicial, but in Wisconsin they are viewed as legislative. How you proceed depends upon the nature of the rezoning. Applying the concept (#6 above) of whether you are a member of a class of similarly-affected persons is helpful. So if it's your next-door neighbor who's asking for the rezoning, you should abstain from any official involvement. But if the rezoning is for a major project that affects, for example, the entire area where you live, and you are not affected more than others, it seems legitimate for you to take part in the vote. Close situations like this should be investigated prior to becoming involved in an official capacity.

Code of Ethics for Local Officials

9. *Briefly, what is prohibited by the Code of Ethics for Local Officials?* The Code generally prohibits a "local public official" from using his/her office or position to obtain gain for the private benefit of himself/herself, an "immediate family" member or for an "organization" with which the official is "associated" (as these terms are defined in the law; item #10, following). Secs. 19.42 & 19.59, *Wis. Stats.* In addition, a recent provision prohibits a local public official from engaging in "pay to play" political agreements. See #17 below.

The language of sec. 19.59(1) contains the specific, lengthy wording of the prohibitions, which may be categorized as prohibitions on private gain, illegal influence or rewards, and involvement when the local official, a member of the official's immediate family, or an organization with which the official is associated has a substantial interest in the matter (see the following definitions).

10. *Who is covered by the Code of Ethics for Local Officials?* The local ethics code applies to local public officials who hold "local public office." Sec. 19.42(7w) and (7x), *Wis. Stats.* "**Local public office**" includes: elected officers of a local governmental unit; a county administrator or coordinator, or city or village manager; appointed local officers and employees

who serve for a specified term; and officers and employees appointed by the local governing body or executive or administrative head, who serve at the pleasure of the appointing authority.

"Local public office" *does not* include: independent contractors; persons who perform only ministerial (i.e., non-discretionary) tasks, such as clerical workers; or persons appointed for indefinite terms, who are removable for cause. Finally, the term "local public office" does not include a municipal judge; this office is considered a state office. Sec. 19.42(13)(h).

Note: Persons who are appointed for indefinite terms and are removable for cause, such as police officers and firefighters, as well as their chiefs, are omitted from coverage because the definition of "local public office" covers only those appointed officials who serve for a specified term or who serve at the pleasure of the local governing body or executive or administrative head (above). The reason for this omission is not clear. A town, village, city or county, may, however, use a local ethics ordinance to fill gaps in the statute's coverage.

Other key terms in the Code of Ethics for Local Officials are: "immediate family," "organization" and "associated." Sec. 19.42(2), (7) and (11). The "**immediate family**" of a local public official means the official's spouse, and a "relative by marriage, lineal descent or adoption" who receives from the official or provides to the official more than one-half of his or her support. Note that, with the exception of a spouse, the coverage of the term is based on a support test. An official's parent or child, for example, is not covered unless the support test is met.

"**Organization**" is broadly defined to cover "any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic." Note that nonprofits are included and governmental units are excluded. Finally, "**associated**," in reference to an organization, refers to the situation in which the public official or a member of his or her immediate family is a director, officer, trustee, authorized representative or agent of the organization; or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity of the organization. Note that employees as such are not covered.

11. *Must a local governmental unit adopt an ethics ordinance and establish its own ethics board? How are ethics laws enforced?* Having a local ethics ordinance and establishing a local ethics board are optional. A local unit might wish to have its own ordinance to fill in some gaps in the law and have local enforcement. Sec. 19.59(1m)-(3). (If an ordinance is established, the ordinance is enforced by the unit's attorney rather than by the district attorney.) Similarly, a unit might wish to establish an ethics board to provide guidance on ethics matters. Sec. 19.59(3)(d). Neither is required. However, the Code of Ethics for Local Government Officials, in subch. III of ch. 19, *Wis. Stats.*, applies to all "local public officials" (as defined). Enforcement of this state law is by the district attorney, as is enforcement of the law concerning private interests in public contracts (##18-20, below). Civil remedies, including forfeitures and injunctions, and criminal penalties may apply. Secs. 19.58 and 19.59(7)-(8).

Gifts, Food & Drink, Conferences, Political Contributions, etc.

12. *May I accept gifts? What limits exist regarding the acceptance of gifts?* You may not accept a gift given to you because you are a public official, unless it is of insubstantial value. This means that you may, of course, receive gifts from friends and relatives who make the gifts for personal reasons, unrelated to seeking your favor as a public official. As a public official, it is best to politely refuse gifts and explain the policy in not accepting them. If the item cannot be returned to the donor the Wisconsin Ethics Division suggests turning the item over to the governmental unit, another public institution, or a charitable organization (other than one with which you or an immediate family member are associated). See Eth 235 (Disposition and reporting of gifts.) Gifts with an insubstantial value may be accepted, although it is always safest not to. So a small desk calendar or inexpensive pen with a logo, for example, may be accepted. The statutes do not define the terms “insubstantial value” or “substantial value.” Your local unit may do so by ordinance.

13. *What about accepting a meal from a contractor who does business with our local unit?* You should not accept such free meals. If the meal is for public business, you should pay for it yourself and seek reimbursement from your local governmental unit, preferably subject to pre-established guidelines on expense reimbursement.

14. *How about accepting refreshments and entertainment at a conference?* If you are attending the conference in your capacity as a local government official, you may accept such items if they are part of the conference and approved by the conference sponsor. So if you attend, say, the annual conference given by your statewide local government association you may certainly accept free refreshments supplied by vendors at the conference and attend entertainment provided at the conference. However, it is not proper to accept refreshments or entertainment or gifts at hospitality suites that are offered to you as a local official but are not an approved part of the conference.

15. *Are there limits on accepting transportation and services?* Yes, the Code of Ethics prohibits receiving services, of more than nominal value, that are offered to you because of your public office. Also, you may not, under a felony statute, accept free or discounted transportation, traveling accommodation or communication services for which the supplier would normally charge. Sec. 946.11, *Wis. Stats.*

16. *Do considerations of public benefit outweigh those of private benefit in some cases?* Perhaps, but be careful. When you get reimbursement for a meal during which you were on public business, you obviously received a private benefit, but your local governmental unit has decided that it is a legitimate expense—that the public benefit predominates. However, if the expense were paid by a third party, such as a potential contractor, for something which provided a private benefit, then the question would arise of whether the benefit was intended to influence your judgment. For this reason, it's better for local officials to pay their own way and seek reimbursement from their local unit.

There may be some cases, though, where the cost is high and is incurred primarily for a public benefit. For example, if an official travels to see an expensive piece of equipment or a facility and incurs airplane, lodging, meal and entertainment costs, it seems that the local unit

might legitimately accept payment from the prospective vendor for the travel and lodging expenses. While this may be justified in some cases, it nevertheless seems better for the local unit to cover its officials' reasonable costs and seek savings from the vendor instead in the cost of the equipment being sold. Regarding the meal and entertainment expenses incurred in such a trip, the safest course is for these expenses to be paid by the official, subject to reimbursement under the local unit's guidelines.

17. What is the recent "pay-to-play" prohibition in the Code of Ethics for Local Officials?

No "local public official" or "candidate for local public office" may, directly or by an agent, use his/her office or influence regarding a proposed or pending matter in exchange for another person providing or refraining from providing a political contribution or providing or refraining from providing any service or other thing of value for the benefit of a "candidate," a political party, any other person who must register under the campaign finance law, or to any person who makes a "communication" that refers to a "clearly identified" local public official holding an elective office or to a candidate for such office. Sec. 19.59(1)(br, *Wis. Stats.* (The terms in quotes are defined in sec. 19.42.) The pay-to-play prohibitions are enforced by a district attorney (or the attorney general) and violators are subject to forfeitures, court orders and criminal penalties. Secs. 19.58 and 19.59(7)-(8). However, a complaint alleging a violation of the law may not be brought within a specified period prior to the election for the local office.

Note that it is not a violation of the provision prohibiting a local official from using his/her office to obtain private gain, sec. 19.59(1)(a), when the official uses "the title or prestige of his or her office to obtain campaign contributions that are permitted and reported" under the campaign finance law. Sec. 19.59(1)(a).

Contracts

18. May I contract with my local unit to sell goods or equipment or land? Yes, subject to limits. Of course, you may not, under the Code of Ethics, vote to award yourself the contract or act in any official capacity regarding the contract, such as performing inspections or authorizing payments. This same prohibition on *official* action in regard to a contract is also found in a felony statute, sec. 946.13(1)(b), *Wis. Stats.* In general, as long as you abstain from all official involvement, you do not violate the law, except as follows.

You must keep in mind that the felony statute, sec. 946.13(1)(a), prohibits a public officer or employee from acting in a *private* capacity to negotiate, bid or enter into a contract where the officer is *authorized* or required by law to participate in an official capacity in making the contract or exercising discretion under the contract, unless an exception applies. This means that it is possible to abstain and still violate the law—you may have to choose between doing business with your unit and keeping your public office or job. The most commonly used exception is the one that allows a public officer or employee to avoid violating the law by abstaining completely from official action when he or she has a direct or indirect financial interest in contracts with the local unit as long as the total receipts or disbursements under the contracts in which the individual has an interest do not exceed \$15,000 in a calendar year. (*Note:* Your salary as a public official is not counted in figuring the \$15,000 limit.) If the contracts in which you have an interest exceed (or would exceed) that amount in a year, you may have committed a felony, even if you abstained, by, in your private capacity, negotiating, bidding or entering into the contract. Furthermore, you can violate the felony statute merely by bidding on

the contract, even if you do not receive it. Finally, note that it is the annual total of the payments under the contracts that is subject to the \$15,000 ceiling and triggers a violation, rather than your personal financial interest (e.g., a commission), which may be less than \$15,000.

Note: Violation of sec. 946.13 is a serious matter, a Class I felony, which means that it is punishable by a fine not to exceed \$10,000, 3 ½ years in prison, or both. Violations are prosecuted by the district attorney, and the law provides that a contract entered into in violation of the statute is void.

19. *May I provide services on contract with my local unit?* Yes, the above considerations apply when you are an independent contractor. An independent contractor is one who provides his/her own tools and equipment in performing the job and exercises responsibility over how the work is done. This is in contrast to a part-time employee (see ##22 & 23 below). If you are an independent contractor, you must abstain from any involvement in your official capacity in approving or administering the contract. By abstaining, you are protected unless the contracts in which you have an interest exceed the \$15,000 amount for the receipts and disbursements in a year (see #18, above).

20. *What about contracts involving my immediate family, an organization that I am associated with or my employer?* As with the above examples concerning contracts in which you have a personal interest (##18 and 19), the Code of Ethics prohibits you from voting or acting in an official capacity in a contract involving your immediate family or an organization with which you are associated, subject to the definitions in that Code. However, because the definitions do not cover many situations, the Code may not apply. For example, you could vote to award a contract to your brother, because he would not be an “immediate family” member as that term is defined. (See item #10). This illustrates that even though a matter may not be prohibited by the Code of Ethics, other statutes or your ordinance, *you may nevertheless decide to abstain based on appearances*. Exercise great caution, however, regarding the \$15,000 ceiling on total annual contract payments if you may be deemed to have a direct or indirect personal financial interest in the contracts (see ##18, above).

In addition, under the definitions in the Code of Ethics, although you are not “associated” with your employer merely by being an employee, because of your personal interest in employment, you must abstain from voting on contracts involving your employer.

Compatibility Issues: Conflicts in Holding More Than One Local Office or Position & in Job Creation & Selection

21. *As a local official, may I serve in other local offices?* The general rule is that the same person cannot hold two public offices, or an office and a position (see ##22 & 23, below), where one post is superior to another, or where, from a public policy perspective, it is improper for the same person to hold both. *Otradovec v. City of Green Bay*, 118 Wis.2d 293 (Ct. App. 1984). Therefore, a local governing body member cannot hold two local offices within the same unit of government, unless there is specific authorization. (A county officer is specifically prohibited from being on the county board by sec. 59.10(4), as mentioned in the following item.) For example, town, village, city and county governing body members may generally serve on local boards and commissions. Secs. 59.10(4)(counties) & 66.0501(2)(cities, villages & towns), *Wis. Stats.* Also, specific statutes allow governing body members to serve on various boards and

commissions, as is the case with town, village and city governing body members serving on the board of review and the plan commission. Secs. 70.46(1) & 62.23(1).

With regard to serving in offices for two different units, it is necessary to look at the particular offices involved to see if there is a conflict. Specific statutes may apply. For example, a county board supervisor may also serve as a town, village or city governing body member. Sec. 59.10(4). Also, the office of county board supervisor may be consolidated under a village or city charter ordinance with the office of village president or alderperson, if the boundaries of the county supervisory district are the same as those of the village or the aldermanic district. Sec. 66.0503.

What about officers other than governing body members? Again, it's necessary to look at specific situations. Generally, there are fewer conflicts when non-governing body officers are involved. Also, the statutes may cover various situations. For example, town officers are generally prohibited from receiving payment for acting in more than one town office at the same time. Sec. 60.323. However, certain local offices may be combined: e.g., the offices of town clerk-treasurer and town clerk-assessor are allowed. Sec. 60.305. Similarly, city and village offices, other than governing body offices, may generally be combined by charter ordinance. Secs. 61.195 & 62.09(3)(c).

22. As a governing body member, may I work as an employee for the local unit? No, not unless there is specific statutory authorization, such as the one recently created for town officers (see #23, below). In general, as mentioned above, under the case law on compatibility of offices and positions, a governing body member cannot also be an employee of his/her local unit. The case establishing this prohibition, *Otradovec* (above at #21), ruled that an appraiser in the city assessor's office could not also serve on the city common council.

A specific compatibility provision for counties provides that no county officer or employee may be a county board supervisor. Sec. 59.10(4), *Wis. Stats.* However, an elected or appointed county official may serve as the administrative coordinator in a county without a county executive or county administrator. Sec. 59.19.

For cities, villages and towns, the statutory law creates an exception to the general compatibility doctrine. It allows a city, village or town elected official to serve as a **volunteer fire fighter, emergency medical technician or first responder** for his or her local unit, as long as the annual compensation, including fringe benefits, does not exceed \$15,000 for the public safety position. (The limit was raised by the 2001 budget act, 2001 Wisconsin Act 16, from \$2,500 to \$15,000.) Sec. 66.0501.

A recent enactment addresses the question of the eligibility of county, city, village and town employees to run for elective office. Sec. 66.0501(5), created by 2003 Wisconsin Act 79. These employees may generally run for elective public office, and they may not be required to take a leave of absence during their candidacy, although the new provision does not affect the authority of a public employer to regulate the conduct of a public employee while acting in an official capacity. Public employees who wish to run for elective office should determine whether an incompatibility would exist if they were elected. It should be noted, however, as explained in the Wisconsin Legislative Council Act Memo on Act 79, that the new law does not apply to an individual if the federal Hatch Act applies. That federal act generally prohibits federally funded state and local officers from running for elective office unless they take a leave of absence.

23. As an elected town officer, may I do part-time work such as keeping roadways clear and plowing snow? Yes, subject to limits. The 2001 budget act created an exception to the compatibility doctrine for elected town officers, in addition to the above exception (#22) for the specified public safety positions. Sec. 66.0501(4), *Wis. Stats.*

This recent language provides that it is compatible for an elected town officer to receive wages for work he or she performs for the town as a part-time employee. Sec. 66.0501(4). An elected town officer who also serves as a part-time town employee may receive an hourly wage not exceeding a total of \$5,000 per year. Sec. 60.37(4). (For elected town officers who are a clerk, treasurer or clerk-treasurer this \$5,000 figure was raised to \$15,000 by 2007 Wisconsin Act 20). These wages are *in addition* to the amounts that may be received in the above public safety positions (#22) and for the person's elected office. However, the \$5,000 maximum *includes* amounts paid to a town board supervisor acting as superintendent of highways under sec. 82.03(1).

The town meeting of electors sets the hourly wage for an elected town officer serving as a town employee. Sec. 60.10(1)(g). The town meeting may delegate to the town board the authority to set this wage, except that the town meeting cannot delegate the authority to set the wage for a town board supervisor serving as a town employee. Sec. 60.10(2)(L).

Note: Even though a town officer may receive wages as a town employee, the town officer, under the Code of Ethics for Local Officials (#9, above), may not use his/her official capacity for his/her own financial gain, and would therefore have to abstain from official involvement as a town officer in this hiring decision and should likewise abstain from approving payment to himself or herself for such work. Also, remember that being a part-time employee is different from being an independent contractor; for the latter abstention and the \$15,000 limit on contracts apply, as discussed in ##18-20, above.

24. As a governing body member, may I take another office or a job with my local unit? What if I resign from the governing body? The answer depends upon the circumstances. First, as discussed in items ##21-23, the law of compatibility prohibits a governing body member from holding another office or position with the unit, unless a statutory exception applies. A specific statute addresses the eligibility of governing body members for election or appointment to offices and positions. Sec. 66.0501(2), *Wis. Stats.* This statute provides generally that no member of a city council or of a town, village or county board may, during the term for which the member is elected, be eligible for an office or position created during the term by the governing body or for an existing office or position where the selection is vested in the governing body.

This general prohibition, however, is subject to exceptions. It does not apply to being eligible for an elected office, or if a statute provides an exception. Also, the statute provides that the prohibition on a governing body member taking an *existing* office or job, where selection is vested in the governing body, does not apply if the member *resigns* prior to appointment. If the job or office was created during your term on the governing body, you may not resign and take the office or position during your current term of office, unless there is specific statutory authorization to do so. Sec. 66.0501(2). Of course, you could be elected to office. For example, you may as a governing body member run for and be elected to the newly created or existing office of municipal judge. However, taking the office of municipal judge would, under the compatibility of offices doctrine, #21 above, create a vacancy in your office on the governing body.

If the job or office is new and appointed, you would have to wait until after your current term has expired, and you are no longer on the governing body, to take the job or office (unless a statutory exception applies). The position of administrator serves as a good example. If you serve on a city, village or town governing body and that body creates the position of administrator, you could not resign and be appointed to fill that new post during your current term. However, if the position of administrator was in existence prior to your term of office, you could resign from the governing body and then be appointed to the position.

In contrast to the prohibition on appointment as administrator of a sitting city, village or town governing body member, it appears that a sitting county board member may be eligible for appointment as county administrator. The law provides that, "If any member of the (county) board is appointed as county administrator, his or her status as a board member is thereby terminated," except in the case of filling a vacancy in the position of administrator for up to 15 days. Sec. 59.18(1). If this situation arises, it is advisable to seek the opinion of corporate counsel on the interplay of the prohibitions in sec. 66.0501(2) and the applicability of the apparent exception in sec. 59.18(1).

The question may also arise as to whether the general prohibition in sec. 66.0501(2) prevents a governing body member from serving in one of the designated part-time public safety positions (#22, above) or prevents a town board supervisor from working on a part-time town job (#23, above) if the position was created during the governing body member's current term of office, or the selection is vested with the governing body. It appears that these provisions allowing elected officials to hold certain part-time positions (##22 & 23) are intended as exceptions to the general prohibition on governing body members taking jobs created during their current term of office or where selection is vested in the governing body.

Finally, it should be emphasized that you, as a governing body member, must not use the power of your office to obtain a new position, or to obtain financial gain for yourself. This could violate the Code of Ethics for Local Officials (sec. 19.59, #9 above) and could constitute misconduct in office (sec. 946.12)(#25j below). In addition, the felony statute prohibiting private interests in public contracts (##18-20) could also be involved if you, as a governing body member, submitted a job application for a job with a yearly payment over \$15,000 (unless a statutory exception applies).

Other Provisions

25. *What other ethics provisions are in the Wisconsin Statutes?* This FAQs paper has primarily covered the Code of Ethics for Local Officials, found in subch. III of ch. 19, *Wis. Stats.*, and the related criminal provision on public interests in private contracts, sec. 946.13. These are the most commonly-referenced Wisconsin statutory provisions. However, there are a number of other provisions relating to ethics and conflicts of interest in the law. Some of them, such as the prohibition on certain sales to local employees, are very narrow. Following is a listing of Wisconsin ethics and conflicts-of-interest provisions, including the statutes covered in this paper (which are indicated by an asterisk). (For information on how to access the statutes, see #3 above.)

a. Bribery. Secs. 12.11 and 946.10. The scope of prohibitions covered by sec. 12.11 includes promising an official appointment or anything of value to secure votes. Section 946.10 prohibits public officials from taking bribes.

b. Discounts at certain stadiums. Sec. 19.451. Local officials may not accept discounts on prices charged to the general public for parking and seating at the stadiums of professional teams that are exempt from the property tax under sec. 70.11(36).

*c. *Code of Ethics for Local Officials (## 9-11).* Secs. 19.42, 19.58 and 19.59. These statutes provide ethical standards for local officials, and authorize a local ethics ordinance and establishment of a local ethics board.

*d. *Eligibility for office (##21-24).* Sec. 66.0501. This provision addresses limits on a local officer holding or taking another local office or position.

e. Compensation of governing body members. Sec. 66.0505 (formerly sec. 66.196). County, city, village and town governing body members may not give themselves mid-term salary increases. A new sub. (3), created by 2007 Wisconsin Act 49, creates a procedure for an elected official to refuse his or her salary. Salary and benefit changes are also covered by various specific provisions in the county, city, village, town and municipal law chapters of the statutes.

f. Fraud by board of review member. Sec. 70.502. Such member may not intentionally violate the law or fail to perform duties.

g. Sales to liquor (and wine) licensees or applicants. Sec. 125.51(1)(b). A member of a municipal governing body may not sell or offer to sell a bond, material or product to be used in the licensee's business.

h. Sales to local employees. Sec. 175.10. Local units of government, governing body members and purchasing agents in general may not sell things to their own employees. The prohibition does not cover meals, public services and items required for the safety or health of employees. The prohibition also does not apply to recreational, health, welfare, relief, safety or educational activities furnished by the governmental unit.

*i. *Special privilege (travel, transportation, utilities)(#15).* Sec. 946.11; Art. 13, sec. 11, *Wis. Const.* Public officers may not be given, or receive, free or discounted traveling accommodation, transportation for persons or property, or transmission of messages or communications not available to the general public.

j. Misconduct in office. Sec. 946.12. A public official or employee may not intentionally: fail to do a mandatory, nondiscretionary, ministerial duty; act in excess of his or her authority; abuse his or her discretion with the intent to obtain a dishonest advantage for the officer, employee or another; falsify records; or under- or over-value any duty or service whose cost is fixed by law.

*k. *Private interests in public contracts (##18-20).* Sec. 946.13. This statute places limits or prohibits local officials and employees with authority over contracts from bidding or entering into such contracts (subject to exceptions).

l. Purchasing claims at less than full value. Sec. 946.14. Public officers and employees may not, in their private capacity, intentionally purchase for less than full value any claim against the state or a political subdivision of the state.

m. Public construction contracts at less than full value. Sec. 946.15. Compensation due to persons employed under these contracts may not be given up, waived, returned or reduced.

Ethics & Conflicts of Interest

County Officials Workshops
May 2008

*presented by James H. Schneider, J. D.
Local Government Center, UW-Extension, Madison*

What's Covered

- **A-Introductory** (purpose, laws, answers, approach to questions)
- **B-Making Fair Decisions** (abstaining, developing policy, applying the law)
- **C-Code of Ethics** for Local Officials
- **D-Contracts**
- **E-Compatibility** of Offices/Positions
- **F-New Office or Job**
- **G-Other Provisions**

A-Introductory Matters Purpose (#1)

- Limit self-dealing
- Limit undue influence & bias
- Preserve public confidence by avoiding appearance of impropriety

- In general, ethics laws, with the open meetings and public records laws, are designed to help ensure that local government is conducted in an open manner for the benefit of the public and the local governmental unit, rather than for the private benefit of local officials.

Applicable Laws (#2)

- Local ordinances & rules
- Oath of office (sec. 19.01)
- Code of Ethics for Local Officials (ch. 19)
- Criminal statutes, especially sec. 946.13 (private interests in public contracts); also misconduct, etc.
- Constitutional law (due process)
- Common law (fairness)

How to Find Answers (#3)

- Get to know local ordinances & rules
- Review materials (FAQs, association materials)
- WI GAB Ethics Division website (see FAQ #3)
 - Publications Eth 219, 235 & 240 are helpful
 - Has link to statutes

- Local Government Center offers a yearly WisLine program on this topic. At the LGC website, click on the WisLine link for “Open Government Laws.”

- Consult
 - local attorney/DA or local ethics board (if you have one) for (confidential) advice
 - local government association

- Government Accountability Board (GAB) Ethics Division (formerly Ethics Board)
 - Local attorney or local government association may seek advice
 - Other local officials should *not* contact state Board for advice
- Protection
 - Local officials have a legal defense if they follow advice of their attorneys or ethics boards

How to Approach Ethics Questions (#4)

- Carefully & ahead of time
- Ask yourself
 - What is nature of decision?
 - If a contract is involved, do I have a direct or indirect interest?
 - Does action affect me, family member, or associated organization?
 - How would it look if I took part?

B-Making Fair Decisions

- Abstentions
- Developing policy
- Applying the law (quasi-judicial decisions)

Abstentions (#5)

- Decide if warranted
- If abstain
 - It's more than just not voting
 - Also means not acting in *official* capacity by
 - providing information
 - discussing the matter
 - sitting at board's table
- Minutes must reflect absence or abstention

Developing Policy (#6)

- Developing & amending
 - Plans
 - Ordinances
 - Other policies
- Should be rational, objective, informed & made with public involvement

- Code of ethics for local officials & other statutes may not apply or applicability may be unclear (e.g., ordinance amendment not covered by sec. 19.59(1)(d) of that code)
- Common law may prohibit official involvement by a body member on a policy matter if
 - the member has a personal interest not shared by others similarly situated, or if
 - the effect of the action is significantly different for the member than on others affected (see Eth 240)

• Rezoning example (#8)

- Rezoning is in a grey area
- Governing body member would not vote on next door neighbor's rezoning
- But if rezoning is for a major project, and governing body member is a member of a similarly-affected class, voting is o.k.

Applying the Law (permits & approvals)(#7)

- Known as "quasi-judicial"
 - When general law is applied to specific fact situations by a body
- Examples
 - Alcohol beverage license revocation
 - Conditional use permits
 - Land divisions
 - BOA variances, administrative appeals
 - (Rezoning viewed as legislative, but...)

• Enforcement

- As with the quasi-judicial actions (below), alleged violations may be tested in court
- If a statute is involved, penalties may apply

- Ethics & contracts laws (below) provide a threshold

- Due process & fairness also apply—stricter standards

- Abstain if you have a conflict based on
 - Personal interest
 - Interest of a family member
 - Interest of a business or organization you're associated with

- Abstain if you are not impartial with regard to the applicant or the issue, although it is permissible to have an opinion on a matter

- *Note: Zoning BOA alternates (2005 WI Act 34)*

- Recent law *requires* municipal and county BOA's to have 2 alternates

- Have alternate lined up if member will abstain

- In a recent case a planning body member's letter in the record in support of a CUP applicant showed "an impermissibly high risk of bias." *Keen v. Dane County Bd. of Supervisors*, 269 WI 2d 488 (Ct. App. 2004). But an unrelated prior business transaction with the applicant did not disqualify another member.

- Remedy is to send the matter back to the body to be reheard without the biased member's participation.

- Examples

- In one case the BOA chair called the standard a loophole in need of closing and disparaged the applicant. *Marris v. City of Cedarburg*, 176 Wis. 2d 14 (1993).

- Make decisions based on applicable legal standards & evidence in the record

- Avoid trying to “get” someone

- Avoid comments showing bias

- Avoid *ex parte* contacts

- Note: there are lots of grey areas. Therefore, anticipate these issues and prepare in advance.

Ex Parte (outside) Contacts (in quasi-judicial decisions)

- Personal contact: politely
 - explain problem
 - ask to submit for record
 - ask to appear at public hearing
- Receipt of information
 - place in the record
 - decide if need to abstain

“Enforcement”/Appeals of Quasi-Judicial Decisions

- Due process and fairness violations by decision-making body may be reviewed in court
- Enforcement of such violations is typically limited to re-doing the proceeding properly
- But if a statute is violated, penalties may apply

C-Code of Ethics for Local Officials (Secs. 19.42, 19.58-19.59)

Prohibition (#9)

- In general, a “local public official” can’t use office to obtain private gain for...
 - his/her own benefit,
 - benefit of “immediate family” member, or
 - benefit of an “organization” with which he/she or such family member is “associated.”

Prohibitions on local public official's actions specifically involve...

- Private gain. Sec. 19.59(1)(a).
 - Can't use position or office to obtain financial gain or anything of substantial value for private benefit of self, member of immediate family, or organization with which official is associated
- Illegal influence or reward. Sec. 19.59(1)(b).
 - Can't solicit or accept anything of value if it could reasonably be expected to influence official actions or judgment, or could reasonably be considered a reward for official action or inaction

- Substantial interests. Sec. 19.59(1)(c).
 - Can't take official action substantially affecting a matter in which official or member of immediate family or an organization with which associated has a substantial financial interest
 - Can't use office or position to produce or help produce a substantial benefit for official, member of immediate family, or organization with which associated
- "Pay to play" (see below). Sec. 19.59(1)(br).

Definitions (#10)

- "Local public official" includes
 - elected local officers
 - county administrator or coordinator
 - city or village manager
 - appointed local officers and employees who serve for a definite term
 - officers and employees appointed by governing body, or executive or administrative head, serving at pleasure

- "Local public official" does not include
 - independent contractors, or those officers ...
 - appointed to indefinite terms, removable for cause

- “Immediate family” means

- spouse
- relative by marriage, lineal descent or adoption who receives more than 1/2 support from official or who contributes 1/2 or more of official’s support

- “Organization” is broadly defined

- includes non-profits
- does not include governmental units

- “Associated” means that individual or immediate family member is

- director, officer, trustee, authorized rep or agent of the organization; or
- owns or controls 10% or more of equity.
- Note that employees are not covered, unless they fall under another category.

Enforcement

- The code of ethics for local officials is enforced by the district attorney; if the DA does not prosecute, complainant may request AG to do so
- Violation subject to a (civil) forfeiture of up to \$1000. Intentional violation is a misdemeanor (a crime), punishable by a fine of \$100-\$5,000, jail not exceeding a year, or both. (Additional provisions apply to “pay-to-play” violations.)
- The DA may also seek court orders, e.g. an injunction, to enforce the law

Ethics Ordinance/Board (#11)

- Local ethics ordinance—optional
 - may fill gaps in statutes
 - enforcement is by local attorney
- Local ethics board—optional

Accepting Gifts (#12)

- Can't accept gifts given to you because you're a public official, unless of insubstantial value
- Can receive gifts unrelated to public office
- Best to politely refuse & explain. Can turn over to unit, if useful, or donate to charity with which official and family member are not associated. (See "Disposition and reporting of gifts." WI GAB Ethics Division guideline "Eth 235.")
- "Insubstantial" value not defined in statutes

Business Meals (#13)

- Should not accept free meals from contractors or others offered because of your public office
- If it's for the unit's business, you can pay & seek reimbursement from the unit under its guidelines

Conferences (#14)

- If attending a conference as a local official, you may accept refreshment and entertainment approved by sponsor
- It's not proper to accept refreshments and entertainment in hospitality suites not part of the conference

Transportation & Services (#15)

- Code of ethics prohibits receiving, if of more than nominal value
- It's a felony to accept free or discounted
 - transportation,
 - traveling accommodation,
 - or communication services,
 - for which the supplier would normally charge

Public Benefit vs. Private Benefit (#16)

- Public & private benefit may be mixed, as with a business meal. When local unit reimburses, it recognizes predominance of public benefit.
- Officials should not accept personal benefits (e.g., meals) from businesses

- But in some cases (e.g., distant travel to view unique equipment or facility), business payment of transportation & lodging may be justified

Recent Prohibition—"Pay to Play" (#17)

- Local official/candidate may not directly or by agent use office regarding a matter in exchange for another person providing or refraining from providing
 - a political contribution,
 - any service
 - or other thing of value

- for the benefit of
 - a candidate,
 - a political party,
 - any person who must register under campaign finance law, or
 - for any person who makes a "communication" that refers to a "clearly defined" local elected official or candidate for such office

D-Contracts (##18-20)

(Under Local Code of Ethics & Sec. 946.13)

- Selling goods, equipment, land, services to the local unit ...
 - is permissible
 - but must abstain (no official involvement)
 - & beware of \$15,000 limit
- \$15,000 limit is from felony statute (sec. 946.13)
 - You may have a private interest in public contracts, if you abstain &
 - total annual receipts & disbursements under all contracts don't exceed \$15,000

Sec. 946.13--Private Interests in Public Contracts

- May be violated even if you abstain!
- By having official authority re contract, private action to bid or enter into contract will violate statute
- Unless an exception applies--e.g., \$15,000 annual limit on total contract amounts

Providing Services to Local Unit

- You may be an independent contractor with your local unit--supply own tools, equipment & exercise responsibility over work
- Must abstain from official involvement
- Beware \$15,000 limit

- Enforcement of sec. 946.13 is by the district attorney

- A violation of sec. 946.13 is a Class I felony punishable by a fine not to exceed \$10,000, 3 ½ years in prison, or both

- Also, a contract entered into in violation of sec. 946.13 is void

Contracts Involving Family, Associated Organizations & Employer

- Can't vote or act officially on contracts involving your immediate family & organization with which you are associated
- Lots of cracks due to definitions
- Abstain from voting on contract with your employer
- May abstain based on appearances
- Beware \$15,000 limit if you have any interest

E-Compatibility Issues (##21-24)

- Generally, same person can't hold 2 public offices, or office and position, where 1 is superior to other, or where improper from a policy perspective to hold both
- So governing body member can't be officer or employee of local unit under case law, unless an exception applies. For counties, this is covered by sec. 59.10(4).

Recent Exception for Towns (#23)

- Elected town officer may receive wages for work as part-time town employee (e.g.: snowplowing, pothole filling, brush clearing jobs)
- Wages received by elected town officer in part-time employment capacity
 - may not exceed \$5,000* per year, in addition to the \$15,000 that may be received as part-time firefighter, EMT, first responder (*a recent change made this amount \$15,000 for an elected clerk, treasurer or clerk-treasurer)
 - \$5,000 limit *includes* work by town supervisor as superintendent of highways

- Statutory exceptions for ...
 - serving on boards & commissions
 - county board member serving on governing body of his/her town, village, city
 - town, village, city volunteer firefighters, EMTs & first responders, who may hold elective office in their unit if total annual compensation, including fringes, not over \$15,000 (formerly \$2,500) for the public safety position
 - elected town officers working as part-time employees

- Town meeting of electors

- sets hourly wage

- may delegate setting wage to town board, but town meeting cannot delegate authority to set wage for a town board supervisor serving as an employee

- Town board supervisor must abstain from official involvement in hiring or paying self

- Remember that being part-time employee is different from being an independent contractor; for the latter abstention and the \$15,000 limit on contracts apply

F-New Office or Job (#24)

- During your term on governing body, you are not eligible for another office or job with your local unit...
 - if the job or office was created during your term
 - or selection is vested in the governing body,
 - unless the office is elective
 - or a statutory exception applies

- Remember, compatibility doctrine prohibits holding 2 local offices of the same unit or a governing body office & position, unless an exception applies. So if you're elected to a new office, you vacate the first.

- But if the appointed office or job existed prior to your term, you may resign from the governing body and then be appointed. *Note* that for an appointed office or job created during your term, you may not resign and then take the post (unless a statutory exception applies).

- Administrator example
- Recent amendment allows local public employees to run for elective office without taking leave of absence (#22, para. 3)

G-Other Provisions (#25)

- See list of various statutes in FAQs paper
- E.g., the misconduct law