

CITY OF STURGEON BAY
COMMUNITY PROTECTION & SERVICES COMMITTEE
Monday, August 5, 2019
4:30 p.m.
Council Chambers, City Hall – 421 Michigan Street

1. Roll Call
2. Adoption of Agenda
3. Public Comment on Agenda and Non-Agenda Items
4. Discussion of: Café Permitting Process
5. Consideration of: Ordinance Regarding Vaping (Proposed Chapter 10.35)
6. Consideration of: Review of Noise Ordinance and Current Exemptions
7. Consideration of: Ordinance 25.04 for Possession of Marijuana
8. Consideration of: Chapter 36 – Code of Ethics to Allow for Alternate to the Ethics Board
9. Consideration of: Methods of Communicating with Residents Regarding Ordinance Violations
10. Adjourn

NOTE: DEVIATION FROM THE AGENDA ORDER SHOWN MAY OCCUR

Notice is hereby given that a majority of the Common Council may be present at this meeting to gather information about a subject over which they have decision-making responsibility. If a quorum of the Common Council does attend, this may constitute a meeting of the Common Council and is noticed as such, although the Common Council will not take any formal action at this meeting.

Posted:
Date: 08/01/19
Time: 11:30 a.m.
By: SSO

Committee: Community Protection & Services
Dan Williams, Chr.
Kirsten Reeths
Seth Wiederanders

An ordinance to Create Chapter 10.35
Of the City of Sturgeon Bay
Code of Ordinance.

Upon the recommendation of the Community Protection and Services Committee, the Common Council of the City of Sturgeon Bay, Door County, Wisconsin, do ordain as follows:

SECTION 1.: Chapter 10.35 of the Sturgeon Bay Code of Ordinances is hereby created to read as follows:

10.35 – Possession of Tobacco and Vapor Products By Minors.

(1) *Statement of Purpose.*

- (a) The purpose of this ordinance is to protect the public health, safety and welfare of the property and persons in the city by prohibiting persons under eighteen (18) years of age from possessing tobacco products and vapor products, and prohibiting the sale of tobacco products and vapor products to persons under eighteen (18) years of age.
- (b) Persons under age eighteen (18) years of age are prohibited by law from purchasing or possessing cigarettes and other tobacco products, and retailers are prohibited from selling them to minors. There are new tobacco-less products, however, commonly referred to as “electronic smoking devices,” “electronic cigarettes,” “e-cigarettes,” “e-cigars,” “e-cigarillos,” “e-pipes,” “e-hookahs,” or “electronic nicotine delivery systems,” which allow the user to simulate cigarette smoking. These products may be currently purchased by minors, are marketed without age restrictions or health warnings, and come in flavors that appeal to young people.
- (c) Electronic smoking devices are a relatively new nicotine delivery system. While devices vary in their appearance and specific method of operation, they have a few basic elements in common. A solution of water, dissolved nicotine, and other ingredients (usually flavoring) are heated with a heating element (usually battery-powered). This vaporizes the nicotine solution, which passes into a mouthpiece and is inhaled in a manner similar to cigarette smoking. Often, glycerol or propylene glycol is added to the solution to give the appearance of smoke when the solution is vaporized. The concentration of nicotine contained in the solution can be customized by the retailer to the buyer’s specifications. Many manufacturers also make nicotine-free solutions.
- (d) The production and distribution of electronic smoking devices is not currently regulated by federal or state authorities, and the U.S. Food and Drug Administration (FDA) has not completed testing of these products. Initial studies by the FDA have

determined that electronic smoking devices can increase nicotine addiction among young people and contain chemical ingredients known to be harmful, which may expose users and the public to potential health risks.

- (e) The use of electronic smoking devices has increased significantly in recent years.
- (f) Existing studies on electronic smoking devices' vapor emissions and cartridge contents have found a number of dangerous substances including:
 - (i) Chemicals known to cause cancer such as formaldehyde, acetaldehyde, lead, nickel and chromium;
 - (ii) PM, acrolein, tin, toluene, and aluminum, which are associated with a range of negative health effects such as skin, eye, and respiratory irritation, neurological effects, damage to reproductive systems, and even premature death from heart attacks and stroke.
- (g) Some cartridges used by electronic smoking devices can be refilled with a liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine.
- (h) Clinical studies about the safety and efficacy of these products have not been submitted to the FDA for the over four hundred (400) brands of electronic smoking devices that are on the market and for this reason, consumers have no way of knowing whether electronic smoking devices are safe, what types of potentially harmful chemicals the products contain, and what dose of nicotine the products deliver.
- (i) Electronic smoking devices often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products.
- (j) The use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing smoke-free environments in public places and places of employment.
- (k) It is the intent of the Common Council, in enacting the ordinance codified in this section, to provide for the public health, safety and welfare of its citizens by facilitating uniform and consistent enforcement of smoke-free air laws; by reducing the potential for re-normalizing smoking in public places and places of employment; by reducing the potential for children to associate the use of electronic

smoking devices with a normative or healthy lifestyle; and by prohibiting the sale or distribution of electronic smoking devices to minors.

- (l) Therefore, the City of Sturgeon Bay Common Council determines that prohibiting the sale, giving, or furnishing of electronic smoking devices to minors and prohibiting the purchase, possession, or use of electronic smoking devices by minors is in the City's best interest and will promote public health, safety, and welfare.
- (2) *Definitions.* For purposes of construction and application of this section, the following definitions shall apply:
- (a) *Minor* means an individual who is less than eighteen (18) years of age.
 - (b) *Person who sells tobacco products at retail* means a person whose ordinary course of business consists, in whole or in part, of the retail sale of tobacco products subject to the state sales tax.
 - (c) *Person who sells vapor products at retail* means a person whose ordinary course of business consists, in whole or in part, of the retail sale of vapor products.
 - (d) *Possession of a tobacco product* shall mean either actual physical control of the tobacco product without necessarily owning that product, or the right to control the tobacco product even though it is in a different room or place than where the person is physically located.
 - (e) *Public place* means a public street, sidewalk, or park or any area open to the general public in a publically owned or operated building or premises, or in a public place of business or school.
 - (f) *Tobacco product* means a product that contains tobacco and is intended for human consumption, including but not limited to, cigarettes, non-cigarette smoking tobacco, or smokeless tobacco, (as those terms are defined in Section 2 of the Tobacco Products Tax Act), and cigars. Tobacco product does not include a vapor product or a product regulated as a drug or device by the United States Food and Drug Administration.
 - (g) *Use of a tobacco product or vapor product* means to smoke, chew, suck, inhale, or otherwise consume a tobacco product or vapor product.
 - (h) *Vapor product* means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device shall include any component part of such a product whether or not sold separately. Electronic

delivery device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.

(3) *Prohibited Conduct.*

- (a) Consistent with Wis. Stat. § 254.92, a minor shall not do any of the following:
 - (i) Purchase or attempt to purchase a tobacco product or vapor product.
 - (ii) Possess or attempt to possess a tobacco product or vapor product.
 - (iii) Use a tobacco product or vapor product in a public place.
 - (iv) Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his or her own proof of age for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a tobacco product or vapor product.
- (b) No individual, regardless of age, who is enrolled in secondary school may possess or attempt to possess a tobacco product or vapor product while on school property.
- (c) An individual who violates subsection (a) shall be subject to the penalties listed in the juvenile bond schedule.
- (d) An individual who violates subsection (b) shall be subject to the following penalties:
 - (i) For the first violation, the person is responsible for a civil infraction punishable by a civil fine of fifty dollars (\$50.00).
 - (ii) For a second and subsequent violation, the person is responsible for a civil infraction punishable by a civil fine of seventy-five dollars (\$75.00).
- (e) Subsection (a) does not apply to a minor participating in any of the following:
 - (i) An undercover operation in which the minor purchases or receives a tobacco product or vapor product under the direction of the minor's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.
 - (ii) An undercover operation in which the minor purchases or receives a tobacco product or vapor product under the direction of the state police or a local

police agency as part of an enforcement action, unless the initial or contemporaneous purchase or receipt of the tobacco product or vapor product by the minor was not under the direction of the state police or the local police agency and was not part of the undercover operation.

- (iii) Compliance checks in which the minor attempts to purchase tobacco products for the purpose of satisfying federal substance abuse block grant youth tobacco access requirements, if the compliance checks are conducted with the prior approval of the state police or a local police agency.
 - (f) Subsection (a) does not apply to the handling or transportation of a tobacco product or vapor product by a minor under the terms of that minor's employment.
 - (g) This section does not prohibit an individual from being charged with, convicted of or found responsible for, or sentenced for any other violation of law that arises out of the violation of subsection (a).
- (4) *Furnishing to Minors.* The following is consistent with Wis. Stat. § 134.66.
- (a) A person shall not sell, give or furnish any vapor product to a minor, including, but not limited to, through a vending machine. A person who violates this subsection of this section is subject to a fine of not more than one hundred dollars (\$100.00) for each violation.
 - (b) Subsection (a) of this section does not apply to the handling or transportation of a tobacco product or vapor product by a minor under the terms of the minor's employment.
 - (c) Before selling, offering for sale, giving, or furnishing a vapor product to an individual, a person shall verify that the individual is at least eighteen (18) years of age by doing one (1) of the following:
 - (i) Examining a government-issued photographic identification that establishes that the individual is at least eighteen (18) years of age.
 - (ii) For sales made by the internet or other remote sales method, performing an age verification through an independent, third-party age verification service that compares information available from a commercially available database, or aggregate of databases, that are regularly used by government agencies and businesses for the purpose of age and identity verification to the personal information entered by the individual during the ordering process that establishes that the individual is eighteen (18) years of age or older.

Section 2.

All ordinances or resolutions in conflict with this ordinance are hereby revoked.

Section 3.

This Ordinance shall take effect upon passage by majority vote of the membership of the Common Council and publishing as provided by law.

PASSED AND ADOPTED by the Common Council of the City of Sturgeon Bay, Wisconsin this ____ day of July, 2019.

10.09 - Unreasonable, excessive and unnecessary noise prohibited.**(1) Definitions.****(a) Sound level meters:**

American National Standard Institute (ANSI)

Specifications for Sound Level Meter (ANSI S1.1-1971)

Properly calibrated and operated on the "A" Weighting Scale

(b) Unreasonable, excessive and unnecessary noise: Noise measured with a sound level meter, in excess of 55 dBA between 10:00 p.m. and 6:30 a.m., when measured at any property within the city, which is designated as a residential area. Noise measured, with a sound level meter, in excess of 90 dBA at all other times, when measured at any property within the city, which is designated as a residential area.

(c) Decibel: dBA.

(d) Residential area: All zoned areas within the City of Sturgeon Bay with the designation of R-1, R-2, R-3, R-4, or R-M.

(e) Exception permit. Person(s) requesting exceptions through the common council must complete an application form for the requested exception, and submit it to the city clerk's office, with a permit fee in an amount set by the common council. Applications must be submitted at least 30 days prior to the date or dates of the requested exception. Exceptions may include time limitations, sound levels or a combination of both. (Approval of exception requests is at the discretion of the common council who reserves the right to deny any exception requests).

(2) Prohibited. No person individually or as a member of a group, and no firm, company or other entity shall make, cause, or contribute to making any unreasonable, excessive, and unnecessary sounds or noises within the City of Sturgeon Bay. An unreasonable, excessive and unnecessary noise is defined at subsection (1)(b) above.



(3) Exceptions. The provisions of this section shall not apply to noise resulting from:

(a) The use of an authorized emergency vehicle.

(b) Public works projects which are authorized by the city.

(c) Fireworks displays which are authorized by the city.

- (d) Parades which are authorized by the city.
 - (e) Public and private snow removal operations.
 - (f) The operation of agricultural equipment.
 - (g) The operation of aircraft or other activities, which are pre-empted by federal law, with respect to noise control.
 - (h) Sponsored athletic events and related public address systems between 7:00 a.m. and 10:30 p.m.
 - (i) Authorized school activities occurring between 7:00 a.m. and 10:30 p.m.
 - (j) Ship horns.
 - (k) Motor vehicle horns when used in an emergency situation.
 - (l) Emergency signaling devices when used in emergency situations.
 - (m) Home, business and vehicle intrusion alarms.
 - (n) Machinery or equipment used during the construction or erection of buildings where required building permits have been issued by the proper authority.
 - (o) Construction work made necessary to restore property to a safe condition following a public calamity or work required for the immediate protection of persons or property from imminent danger.
 - (p) Yard/lawn care maintenance equipment and machinery, between 7:00 a.m. and sunset.
 - (q) The common council may grant additional exceptions, after a permit request is submitted to, and approved by, the common council, for an exception.
 - (r) Business operating in Zoning District I-2 and whose property abuts the waters of the bay of Sturgeon Bay.
 - (s) Authorized use of the John Miles County Park unless at any time the County of Door would change its decibel reading requirement to above that of the city's 90 dBa.
- (4) *Compression brakes prohibited.* No person shall use motor vehicle brakes, which are in any way activated or operated by the compression of the engine of such motor vehicle or any unit or part thereof.
- (a)

Defense. It shall be an affirmative defense to prosecution under this subsection that compression brakes [were] applied in an emergency and were necessary for the protection of persons or property.

- (b) *Emergency vehicles.* Emergency vehicles shall be exempt from this subsection.

(Code 1992, § 10.09; Ord. No. 1025-1099, § 1, 10-5-99; Ord. No. 1041-0600, § 1, 6-6-00; Ord. No. 1215-0908, § 1, 9-2-08; Ord. No. 1270-0112, § 9, 1-3-12)

25.04 - Penalty provisions.

- (1) *General penalty.* Whenever so provided in this Code, any person who shall violate any of the provisions of this Code shall, upon conviction of such violation, be subject to a penalty, which shall be as follows:
- (a) *First offense.* Any person who shall violate any provision of this Code, other than subparagraph (c) below or except as otherwise provided in this Code, shall, upon conviction thereof, forfeit not less than \$1.00 nor more than \$200.00, together with the costs of prosecution, and in default of payment of such forfeiture and costs of prosecution shall be imprisoned in the county jail until such forfeiture and costs are paid, but not exceeding 90 days.
 - (b) *Second offense.* Any person found guilty of violating any provision of this Code, other than subparagraph (c) below or except as otherwise provided in this Code, who has previously been convicted of a violation of the same provision shall, upon conviction thereof, forfeit not less than \$10.00 nor more than \$200.00 for each such offense, together with the costs of prosecution, and in default of payment of such forfeiture and costs of prosecution shall be imprisoned in the county jail until such forfeiture and costs are paid, but not exceeding six months.
 - (c) *Violations of chapters 15, 16, 17, 20 and 27.*
 - 1. *First offense.* Any person who shall violate any provision of chapter 15 (Building Regulations), chapter 16 (Plumbing Code), chapter 17 (Electrical Code), chapter 20 (Zoning Code) or chapter 27 (Sign Code) of this Code, except as otherwise provided in those chapters, shall, upon conviction thereof, forfeit not less than \$50.00 nor more than \$500.00 for each such offense, together with the costs of prosecution, and in default of payment of such forfeiture and costs of prosecution shall be imprisoned in the county jail until such forfeiture and costs are paid, but not exceeding 90 days.
 - 2. *Second offense.* Any person who shall violate any provision of chapter 15 (Building Regulations), chapter 16 (Plumbing Code), chapter 17 (Electrical Code), chapter 20 (Zoning Code) or chapter 27 (Sign Code) of this Code, except as otherwise provided in those Chapters, who has previously been convicted of a violation of the same provision shall, upon conviction thereof, forfeit not less than \$100.00 nor more than

\$1,000.00 for each such offense, together with the costs of prosecution, and in default of payment of such forfeiture and costs of prosecution shall be imprisoned in the county jail until such forfeiture and costs are paid, but not exceeding six months.

- (2) *Continued violations.* Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Code shall preclude the city from maintaining any appropriate action to prevent or remove a violation of this Code.
- (3) *Execution against defendant's property.* Whenever any person fails to pay any forfeiture and/or costs of prosecution upon the order of the court for violation of any ordinance of the city, the court may, in lieu of ordering imprisonment of the defendant, or after the defendant has been released from custody, issue an execution against the property of the defendant for such forfeiture and costs.
- (4) *Citation method of enforcement.*
 - (a) *Statutory authorization.* In accordance with the authority provision in § 66.119, Wis. Stats., all authorized police officers may employ the use of a citation form to be issued for violations of ordinances of this Municipal Code, except for violations of those ordinances enumerated below:
 1. Nonmoving (parking) violations of chapter 7 of this Municipal Code.
 2. Moving traffic violations of chapter 7 of this Municipal Code.
 3. Violations of ordinances in conformity with ch. 350, Wis. Stats. (pertaining to snowmobiles), when committed on the highway.
 - (b) *Issuance of citations by building inspectors.*
 1. Pursuant to § 66.119(2)(a), Wis. Stats., the chief building inspector of the city and all other City of Sturgeon Bay building inspectors are authorized to employ the use of a citation form to be issued for violations of provisions of this Municipal Code which are directly related to the official responsibilities of those building inspectors, including, but not limited to, violations of provisions of chapters 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 27, 28 and 29 of this Municipal Code.
 - 2.

Prior to the issuance of citations as provided under subparagraph 1 above, the chief building inspector of the city and all other City of Sturgeon Bay building inspectors may issue cease and desist orders to violators of provisions of the chapters listed in subparagraph 1 above.

(c) *Issuance of citations by fire chief/fire inspectors.*

1. Pursuant to § 66.119(2)(a), Wis. Stats., the fire chief of the city and all other City of Sturgeon Bay fire inspectors are authorized to employ the use of a citation form to be issued for violations of provisions of this Municipal Code which are directly related to the official responsibilities of those fire inspectors including violations of provisions of chapter 6 of this Municipal Code.
2. Prior to the issuance of citations as provided under subparagraph 1 above, the fire chief of the city and all other City of Sturgeon Bay fire inspectors may issue cease and desist orders to violators of provisions of the chapter listed in subparagraph 1 above.

(d) *Contents of citation.* The citation form used shall be the Wisconsin Uniform Municipal Court Citation and shall provide for the following:

1. Name and address of the alleged violator.
2. Factual allegations describing the alleged violation.
3. Time and place of the offense.
4. Number and section of the ordinance violated.
5. A designation of the offense in such a manner as can readily be understood by a person making a reasonable effort to do so.
6. Time and date at which the alleged violator may appear in court.
7. A statement which in essence informs the alleged violator:
 - a. That the alleged violator may make a cash deposit of a specified amount to be mailed to a specified official within a specified time.
 - b. That, if the alleged violator makes such a deposit, he or she need not appear in court unless subsequently summoned.
 - c. That, if the alleged violator makes a cash deposit and does not appear in court, either he or she will be deemed to have tendered a plea of no contest and submitted to a forfeiture and a penalty assessment imposed by § 165.87, Wis. Stats., a jail assessment

imposed by § 302.46(1), Wis. Stats., and any applicable domestic abuse assessment imposed by § 973.055(1), Wis. Stats., not to exceed the amount of the deposit or will be summoned into court to answer the complaint if the court does not accept the plea of no contest.

- d. That, if the alleged violator does not make a cash deposit and does not appear in court at the time specified, the court may issue a summons or a warrant for the defendant's arrest or consider the nonappearance to be a plea of no contest and enter judgment under § 66.119(3)(d), Wis. Stats., or the municipality may commence an action against the alleged violator to collect the forfeiture, the penalty assessment imposed by § 165.87, Wis. Stats., the jail assessment imposed by § 302.46(1), Wis. Stats., and any applicable domestic abuse assessment imposed by § 973.055(1), Wis. Stats.
- e. That, if the court finds that the violation involves an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both, and that the violation resulted in damage to the property of or physical injury to a person other than the alleged violator, the court may summon the alleged violator into court to determine if restitution shall be ordered under § 800.093, Wis. Stats.
- f. A direction that, if the alleged violator elects to make a cash deposit, the alleged violator shall sign an appropriate statement which accompanies the citation to indicate that he or she read the required statement and shall send the signed statement with the cash deposit.

(5) *Schedule of deposits.*

- (a) *Generally.* Cash deposits for violations of ordinances of this Municipal Code are to be made to the Door County Clerk of Court. Receipts for cash deposits shall be provided to the person making the deposit. Cash deposits for violations of ordinances of this Municipal Code shall be as set forth below:

Section	Description	Deposit
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<u>8.04</u> (2)	Depositing snow or ice from private property upon city right-of-way, etc.		
		First offense	\$ 30.00
		Second and subsequent offenses	60.00
<u>8.095</u> (4)	Bringing intoxicating liquor or fermented malt beverages into city parks.		
		First offense	50.00
		Second and subsequent offenses	100.00
<u>9.02</u>	Engaging in direct sales in the city without registering.		
		First offense	30.00
		Second and subsequent offenses	60.00
<u>9.06</u> (12)	Operating a taxicab without a taxi driver's license.		
		First offense	30.00
		Second and subsequent offenses	60.00

<u>9.075(2)</u>	Occupying or parking for the purpose of occupying a travel trailer, etc., on a public or private street or land within the city.		
		First offense	30.00
		Second and subsequent offenses	60.00
<u>9.08(2)</u>	Unlicensed dog or cat.		
		First offense	30.00
		Second and subsequent offenses	60.00
<u>9.08(4)</u>	Dog or cat running or wasting at large.		
		First offense	30.00
		Second and subsequent offenses	60.00
<u>9.08(8)</u>	Annoying dog or cat.		
		First offense	30.00
		Second and subsequent offenses	60.00
<u>10.01</u>	Possessing or discharging any firearm, rifle, spring or air gun within the city.		
		First offense	50.00

		Second and subsequent offenses	100.00
<u>10.015</u>	Hunting within the city.		
		First offense	50.00
		Second and subsequent offenses	100.00
<u>10.02</u>	Carrying a concealed weapon.		
		First offense	50.00
		Second and subsequent offenses	100.00
<u>10.03</u>	Throwing or shooting arrows, stones or other missile or projectile.		
		First offense	30.00
		Second and subsequent offenses	60.00
<u>10.04</u>	Selling or discharging of fireworks.		
		First offense	30.00
		Second and subsequent offenses	60.00

<u>10.05</u>	Preventing or obstructing the free passage of pedestrian or vehicular traffic on any public street, sidewalk, bridge or public ground.		
		First offense	30.00
		Second and subsequent offenses	60.00
<u>10.06</u>	Disorderly conduct.		
		First offense	100.00
		Second and subsequent offenses	200.00
<u>10.09(1)</u>	Making or causing any loud, disturbing or unnecessary sound or noise which tends to annoy or disturb another.		
		First offense	50.00
		Second and subsequent offenses	100.00
<u>10.09(2)</u>	Operating a vehicle in an unnecessary manner.		
		First offense	50.00
		Second and subsequent offenses	100.00

<u>10.10</u>	Giving, sending or causing to be sent a false fire alarm.		
		First offense	50.00
		Second and subsequent offenses	100.00
<u>10.11</u>	Resisting or interfering with any officer of the city during the performance of an official act.		
		First offense	100.00
		Second and subsequent offenses	200.00
<u>10.175</u>	Possessing or drinking open intoxicants in public.		
		First offense	50.00
		Second and subsequent offenses	100.00
<u>10.18</u>	Littering on public or private property.		
		First offense	50.00
		Second and subsequent offenses	100.00
<u>10.20</u>	Possession of less than one ounce of marijuana.		
		First offense	100.00

		Second and subsequent offenses	200.00
<u>10.24</u>	Issuance of worthless checks		
		First offense	50.00
		Second and subsequent offenses	100.00
<u>10.26</u>	Theft of moveable property of another, the value of which does not exceed \$200.00, without consent and with the intent to permanently deprive the owner of possession or the full purchase price of such property.		
		First offense	100.00
		Second and subsequent offenses	200.00
<u>10.32(a)</u>	Purchase or possession of tobacco products by persons under 18 years of age.		
		First and each subsequent offense	50.00
<u>10.33</u>	Sale or gift of cigarettes or tobacco products to persons under 18 years of age.		
		First offense	200.00

		Second and each subsequent offense	300.00
		Also subject to court suspension of license or permit as provided in § 134.66(4)(a)3., Wis. Stats.	
<u>12.015(3)(i)</u>	Depositing garbage which was not generated in the city.		
		First offense	30.00
		Second and subsequent offenses	60.00
<u>15.01—</u> <u>15.07</u>	Building regulations violations.		
		First offense	200.00
		Second and subsequent offenses	300.00
<u>16.01—</u> <u>16.08</u>	Plumbing code violations.		
		First offense	200.00
		Second and subsequent offenses	300.00
<u>17.01—</u> <u>17.12</u>	Electrical code violations.		

		First offense	200.00
		Second and subsequent offenses	300.00
<u>20.01—</u> <u>20.33</u>	Zoning code violations.		
		First offense	200.00
		Second and subsequent offenses	300.00
<u>27.01—</u> <u>27.13</u>	Sign code violations.		
		First offense	200.00
		Second and subsequent offenses	300.00

(b) *Other.*

1. Except as enumerated in subsection 2 below, cash deposits for ordinance violations which are not specified in subsection (a) shall be 20 percent of the maximum penalty specified in subsection (1) for the first offense and 40 percent of the maximum penalty for the second and subsequent offenses.
2. Penalties for violations of provisions of chapter 7 of this Municipal Code are specified in section 7.20. Deposits for violations of state traffic laws, state snowmobile laws and state speed limits which have been adopted by reference shall be the amounts specified in the current Revised Uniform State Traffic Deposit Schedule.

(c) *Assessments, costs and surcharges.*

1. The deposits set forth herein do not include penalty assessments imposed by § 165.87, Wis. Stats., court costs imposed by § 814.63, Wis. Stats., jail assessments imposed by § 302.46(1), Wis. Stats., driver improvement surcharges imposed by § 346.655, Wis. Stats., or any applicable domestic abuse assessment imposed by § 973.055(1), Wis. Stats. Where applicable, those assessments, costs and surcharges shall be added to the required deposit.
2. Penalty assessments, jail assessments, driver improvement surcharges, and domestic abuse assessments are not applicable to nonmoving violations of areas and spaces reserved for the handicapped.
3. Penalty assessments, jail assessments, driver improvement surcharges, and domestic abuse assessments are not applicable to other nonmoving violations of chapter 7 of this Municipal Code.

(Code 1992, § 25.04; Ord. No. 963-1295, § 1, 12-5-95; Ord. No. 965-196, § 1, 1-16-96; Ord. No. 981-1196, § 3, 11-5-96; Ord. No. 1001-0598, §§ 1, 2, 5-5-98; Ord. No. 1017-699, § 2, 6-1-99)

Chapter 36 - CODE OF ETHICS**36.01 - Introduction.**

The city adopts and incorporates § 19.59, Wis. Stats. The city exercises its right to adopt the following additional policies in accordance with § 19.59 Wis. Stats. and, creating the city ethics code as follows:

(Ord. No. 1360-0519, § 2, 5-21-19)

Editor's note— Ord. No. 1360-0519, § 2, adopted May 21, 2019, added this unnumbered section to ch. 36 of the Code. Therefore, at the discretion of the editor, this section has been designated as § 36.01 and all subsequent sections are renumbered, as set out herein.

36.02 - Purpose.

(1) *Declaration of policy.*

- (a) High moral and ethical standards are essential to the operation of free government. A code of ethics is established for all city officials, whether elected or appointed, paid or unpaid, all city employees and agents of the city, all members of city boards and committees and persons furnishing contracted services to the city and its boards and committees. This code establishes guidelines for ethical standards of conduct for all such officials, employees, agents, committee and board members and persons furnishing contracted services. It directs disclosure by officials, board and committee members, employees, agents and candidates for city office of private financial or other interests in matters affecting the city.
- (b) This code of ethics does not prohibit city officials from having other employment and financial interests. City officials, however, need to distinguish between inconsequential conflicts which are unavoidable and those conflicts which are substantial. The purpose of this code is to help city officials in avoiding serious conflicts of interest and promote confidence in our local government.

(Ord. No. 1360-0519, § 2, 5-21-19)

36.03 - Definitions.

For the purpose of this chapter the following terms, phrases and words and their derivations shall have the meaning specified herein. When not inconsistent with context, words used in the present tense include the future and words and the singular number include words in the plural number.

- (1) *Agent*. Any representative, including only those city employees specifically designated by the board, whose function is to bring about, modify, affect, accept performance of or terminate contractual obligations between the city and third persons. All other non-designated full or part-time city employees are specifically excluded from this definition.
- (2) *Confidential information*. Confidential information means written material or oral information related to city government, which is not otherwise subject to release under the public records law and which is expressly designated or marked as confidential.
- (3) *Financial interest*. Any interest which shall yield directly a monetary or other material benefit to the official, employee or agent or to any person employing or retaining the services of the official, employee or agent.
- (4) *Immediate family*. The official's or employee's spouse and any relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his support from the official or employee.
- (5) *Improper conduct*. Any violations of this section.
- (6) *Person*. Any natural person, corporation, partnership or joint venture.
- (7) *Personal interest* is an interest in either the subject matter or a relationship with the parties coming before the body that may have, or appear to have the potential to influence or compromise professional judgment and objectivity of the official or employee.
- (8) *Relative*. A person related by blood as a first cousin or closer in kinship; a person related by blood to one's spouse as a first cousin or closer in kinship; or a person who through adoption is related to one's self or one's spouse as a first cousin or closer in kinship.
- (9) *Documentation of membership*: An alderperson who has been a voting member, officer, shareholder, etc. of an organization making formal presentations to the city council should identify the affiliation prior to active participation in the discussion or casting votes.

(Ord. No. 1360-0519, § 2, 5-21-19)

36.04 - Standards of conduct.

(1) *Responsibility of public officials and standards of conduct.*

- (a) Elected and appointed officials, committee, commission, and board members and employees of the city should work for the benefit of the public and are bound to uphold the Constitution of the United States and the Constitution of the State of Wisconsin and to carry out independently and impartially the laws of the nation, state and city; observe in their official acts the highest standards of morality; and to discharge faithfully the duties of their office/position regardless of personal consideration, recognizing that public interests must be their prime concern. The conduct of city officials, board and committee members, employees, agents and those furnishing contracted services to the city should foster respect for government.
- (b) The provisions of the following sections of the Wisconsin Statutes are made part of this section and shall apply to elected and appointed officials whenever applicable, namely:
 - 1. §§ 19.81—19.98, Wis. Stats. Open Meetings of Government Bodies;
 - 2. § 946.10, Wis. Stats. Bribery of Public Officers and Employees;
 - 3. § 946.11, Wis. Stats. Special Privileges from Public Utilities;
 - 4. § 946.12, Wis. Stats. Misconduct in Public Office;
 - 5. § 946.13, Wis. Stats. Private Interest in Public Contract Prohibited;

(2) *Dedicated service.*

- (a) A city official, board, commission, or committee member or employee should not use his or her position or office to obtain financial gain or anything of substantial value for his or her own personal benefit other than salary and benefits which he or she is due. These individuals should avoid promoting the special interests of any persons or group other than the best interests of the city.
- (b) A city official, board, commission or committee member, employee, agent or person furnishing contracted services should not exceed his or her authority and should work in full cooperation with public officials, board, commission, and committee members and city employees. Employees, agents and those

furnishing contracted services should adhere to the rules of work and performance established as the standard for their positions by the appropriate authority.

- (3) *Fair and equal treatment.* Obligation to citizens. No official, employee or agent shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.

(Ord. No. 1360-0519, § 2, 5-21-19)

36.05 - Conflicts of interest.

- (1) *Financial or personal interests prohibited.* No official, employee or agent, whether paid or unpaid, shall engage in any business or transaction or shall act in regard to financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of his or her official duties in the public interest contrary to the provisions of this section or would be reasonably expected to impair his independence of judgment or action in the performance of his official duties.
- (2) *Specific conflicts enumerated.*
 - (a) *Incompatible employment.* No official, employee or agent shall engage in or accept private employment or render service for private interest when such employment or service is incompatible with the proper discharge of his or her official duties or would tend to impair such official's, employee's or agent's independence, judgment or action in the performance of his or her official duties, unless otherwise permitted by law and unless disclosure is made herein provided.
 - (b) *Disclosure of confidential information.* No official, employee, board or committee member or agent shall, without proper legal authorization, disclose confidential information concerning the property, government or affairs of the city, nor shall such official, employee or agent use such information to advance the financial or other private interest of [themselves] or others.
 - (c) *Closed sessions.* Closed sessions are to be held in the strictest confidence. Failure to uphold the confidentiality of statements, actions, declarations, etc. to others outside of the closed session will be considered a violation of this code of ethics.

(d) *Gifts and favors.*

1. No elected or appointed official, employee or agent of the city shall accept anything of value, whether in the form of a gift, service, loan, thing or promise, from any person which may be reasonably expected to impair his or her independence of judgment or action in the performance of his or her duties. No elected or appointed official or agent shall grant in the discharge of his or her duties any improper favor, service or thing of value. Any elected or appointed official or agent who receives, directly or indirectly, any gift or gifts having an aggregate value of more than \$50.00 within any calendar year from any person who is known by such official to be interested directly or indirectly in any manner whatever in business dealings with the city upon which the official or agent has any influence or input or over which the official or agent has any jurisdiction, discretion or control, shall disclose the nature and value of such gifts to the ethics board within 60 days in which the gift or gifts are received. A gift or favor made or granted to a member of any official's or agent's immediate family shall be deemed made or granted to the official.
2. No elected or appointed official, employee or agent of the city may solicit or accept, either directly or indirectly, from any person or organization money or anything of value if it could reasonably be expected to influence the official's actions or judgments or be considered a reward for any action or inaction on the part of the official. Campaign contributions are an exception and should be carefully documented and handled in accordance with the provisions of the Wisconsin Statutes.
3. An elected or appointed official, employee or agent is not to accept hospitality if after consideration of the surrounding circumstances it could reasonably be concluded that such hospitality would not be extended were it not for the fact that the guest or a member of the guest's immediate family was a city official. Participation in celebrations, grand openings, open houses, informational meetings and similar events are excluded from this prohibition. This paragraph further shall

not be construed to prevent candidates for elective office from accepting hospitality from citizens for the purpose of supporting the candidate's campaign.

4. Gifts received by an elected or appointed official, employee or agent under unusual circumstances must be referred to the ethics board within ten days of receipt for recommended disposition.
- (d) *Contracts with the city.* Except to the extent allowed by § 946.13, Wis. Stats., no official, employee or agent of the city who, in his or her capacity as such official, in which such official, employee or agent has a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on the part of such official, employee or agent shall enter into any contract with the city.
- (e) *Employment of relatives.* No official, employee or agent, except as designated by the board, shall participate in a discussion or proceeding which is held for the purpose of interviewing and/or hiring a job applicant; setting the salary, duties and/or conditions of employment of a job applicant or any employee; or firing of an employee, who is a relative of such official. No official shall head a department which employs a relative. No employee shall work in a department which is headed by a relative. Unless supervised by another individual within the department. The overseeing individual shall report directly to the human resources director on matters involving the specified individual.
- (3) *Disclosure of interest in matters before the common council.*
 - (a) To the extent known, all elected and appointed officials of the city, members of its boards, commissions and committees or employees of the city who have a financial or documented member of personal interest in any proposed action shall disclose on the records of the city promptly the nature and extent of such interest. To the extent known, all persons furnishing contracted services to the city, its boards or committees who have a financial interest in any proposed action shall, to the extent the proposed action relates to the contracted services provided or to be provided, disclose on a form supplied by the city clerk promptly the nature and extent of such interest.
 - (b)

Any other official, employee or agent who has a financial or documented member of personal interest in any proposed action and who participates in discussion with or gives an official opinion or recommendation to the board or any board or committee shall disclose on a form supplied by the city clerk promptly the nature and extent of such interest.

(Ord. No. 1360-0519, § 2, 5-21-19)

36.06 - Campaign contributions.

Campaign contributions shall be reported by all candidates for official and employee positions in the city in strict conformity with the provisions of the Wisconsin Statutes.

(Ord. No. 1360-0519, § 2, 5-21-19)

36.07 - Ethics board structure.

- (1) *Membership.* The members of the ethics board shall be appointed by the mayor and confirmed by the council. Terms of office shall be three years, except that when initial appointments are made, one shall be appointed for one year, two for two years and two for three years. Three of the members appointed to the ethics board should be in good standing and include current or former legal professionals, clergy, human resources professionals or other current or former members of an occupation that demands adherence to an ethical standard or have formal training in the study of ethics and philosophy. No member of the ethics board may be a current or former member of the common council of the City of Sturgeon Bay. Two members appointed to the ethics board may be residents at large. All members of the ethics board must be residents of the City of Sturgeon Bay. If any member of the ethics board petitions the board for an advisory opinion regarding his or her conduct, such member shall be mandatorily excluded from sitting in his or her own case.
- (2) *Leadership and procedures.* The ethics board shall elect its own chairperson and vice-chairperson and may develop written rules of procedure which shall be submitted to the board for approval.
- (3) *Amendment to code of ethics.* The ethics board may make recommendations to the common council with respect to amendments to this section.

(Ord. No. 1360-0519, § 2, 5-21-19)

36.08 - Ethics board complaints.

- (1) *Filing of a verified complaint.* For purposes of this section the term code shall apply to the code of conduct for elected officials (chapter 35 of this Code) and the ethics code.
 - (a) *Initiating action.* Any city resident may initiate a review before the ethics board of the conduct of any official to be in violation of the city ethics code by filing a verified complaint, with the city clerk together with a processing fee in the amount of \$100.00. Such verified complaint shall specify the activities of such officer or employee which are alleged to be in violation of the code. The clerk shall provide a form, created by the ethics board that may be used for such complaint that shall at a minimum require (1) the complainant's name, address and contact information; (2) the name and position of the city official who is the subject of the complaint; (3) the nature of the alleged violation, including the specific provision of this code allegedly violated, and (4) a statement of facts constituting the alleged violation and the dates on which, or period of time during which, the alleged violation occurred.
 - (b) *Content of complaint.* The complaint shall include a verification affidavit at the end of the complaint stating that the "information contained in the complaint is true and correct and constitute a violation of the code provisions cited in the complaint, or that the complainant has good reason to believe and believes in good faith that the facts alleged are true and correct and that they constitute a violation of the code provisions cited in the complaint." The complainant shall swear to the facts by oath before a notary public, or before the city clerk. The notary public or city clerk shall verify the signature.
 - (c) *Limitation.* A complaint under the code must be filed no later than one year from the date of discovery of the alleged violation.
- (2) *Delivery of the complaint and answer.* The city attorney or in the event of conflict, a special counsel appointed by the ethics board, shall act as counsel to the ethics board. Upon receipt the clerk shall forward such complaint to the chair of the ethics board who will see to it that the officer or employee accused in the complaint is notified of fact that a complaint has been filed and served (in person

or by certified mail) a copy of the complaint within 20 days of its filing. The accused party may file an answer to the complaint with the city clerk at the accused's option.

(3) *Determination of probable cause.* The chair also shall convene the ethics board within 30 days of the date of filing of the complaint with the clerk for the purpose of determining whether, when the employee or officer has acted in violation of the code. Such review shall be in closed session. The ethics board shall give the complaining party and the officer or employee named in the complaint notice of the meeting and may request clarification of the complaint or answer from either party.

- (a) If the ethics board determines that no probable cause exists, it shall dismiss the complaint and notify the accused officer or employee, the complainant and such other persons as the board determines to have an interest.
- (b) If the ethics board finds probable cause to believe a violation exists, it shall then proceed to hold a hearing as provided by this code.
- (c) The ethics board may also, upon agreement of the complaining party and the officer or employee named in the complaint proceed to issue an advisory opinion on the facts alleged in the complaint in lieu of a hearing.
- (d) The ethics board may direct the city attorney or special counsel to further investigate the facts stated in the verified complaint and report back to the board.
- (e) The complaining party may withdraw the complaint prior to a finding of probable cause. If probable cause is found by the ethics board, the complaint may not be withdrawn without the consent of the ethics board which may, at its complete discretion, require the matter to continue to hearing with or without the consent of either party.
- (f) The ethics board may compromise or settle any potential action for violation of the code. Whenever the board enters into a settlement agreement with an individual who is accused of a violation of the code, the board shall reduce the agreement to writing, together with a statement of the board's findings and reasons for entering into the agreement and shall retain the statement and agreement in its records for inspection.

(4) *Hearing process.*

- (a) Notice of the finding of probable cause, notice of hearing and a copy of the complaint shall be sent to the accused officer or employee by certified mail at his last known post office address within ten days of the determination of probable cause.
- (b) The evidentiary hearing shall be scheduled more than 20 days but less than 45 days from the postmarked date of the notice of hearing. The hearing may however be adjourned at the request of either party for good cause shown or the ethics board.
- (c) Prior to the hearing date, the chair and the city attorney or designated counsel shall contact the parties for the purpose of a pre-hearing conference. At the pre-hearing conference, the parties shall disclose the witnesses they intend to call and any documentary evidence they intend to introduce. The parties request any subpoenas and discuss any other evidentiary or procedural issues related to the hearing.
- (d) The hearing shall be held before a quorum of the ethics board, presided over by the chair or designated counsel. At the hearing each party may be represented by counsel at their own expense, the parties may present evidence, call and examine witnesses and cross-examine witnesses of the other party. Witnesses shall be sworn by the person presiding over the hearing. Each party shall have the opportunity to argue their position to the board.
- (e) The secretary of the ethics board or designee shall take notes of testimony and shall mark and preserve all exhibits. The proceedings shall be transcribed or videotaped.
- (f) The hearing shall be noticed to be and conducted in closed session unless the accused officer requests, in writing, that it be open to the public. In all cases the ethics board may deliberate in closed session.
- (g) The burden shall be on the complaining party to show to by clear, satisfactory and convincing evidence a code violation occurred by the officer accused.
- (h) If the accused fails to appear at the evidentiary hearing, the ethics board shall consider all allegations of the complaint to be true and shall determine what, if any sanctions are appropriate.
- (i)

At the conclusion of the evidentiary hearing, the ethics board may require the parties to brief their positions, require supplementary arguments or take any other action deemed necessary to the board to create a complete record sufficient to make their decision. Upon completing deliberations, the ethics board shall, within 30 days of making their determination, submit a report to the council, including findings of fact, conclusions of law, and a recommendation as to what action, if any, the council should take with respect to the individual charged. The ethics board shall provide the complainant and the individual charged with a copy of the report in person or by certified mail. Either the complainant or the person charged may file an objection to the report and shall have the opportunity to present arguments supporting the objection to the council.

- (j) Recommendations made to the common council that include disciplinary action must be approved by a super majority (majority plus one) of the entire ethics board.

(5) *Council action.*

- (a) Review of ethics board report. Upon the receipt of the ethics board report the council shall take up the report at its next available, regular council meeting the council may adopt, reject, or modify the recommendation made by the ethics board. In making its decision the council may require additional oral or written argument from the parties. After such review and is deemed necessary by the council if the council, concludes that there is a violation of the code, the council may impose a sanction or penalty.
- (b) *Penalties and sanctions policy.* It is the intent of the council to educate and, when necessary, discipline officials who violate the code. Discipline shall be progressive, from the least punitive to the most punitive measures, unless the council believes that the progressive discipline does not provide the appropriate sanction because of the gravity of the offense, or because the council does not believe the sanction would deter future misconduct. In all instances, the totality of the circumstances shall be taken into consideration in resolving the matter, including the intent of the one accused of wrongdoing.
- (c) *Possible penalties and sanctions.*
 - 1. An informal censure by the council, which would only be made as part of

a motion in a public meeting.

2. A formal censure by the council, which would be made by motion in a public meeting and then published in the city newspaper.
3. Mandatory community service. [§ 62.11(3)(e), Wis. Stats.]
4. Attendance at counseling or mediation sessions. [§ 62.11(3)(e), Wis. Stats.]
5. Imposition of a dollar fine of up to \$500.00. [§§ 62.11(3)(a) and (c), Wis. Stats.]
6. Any other sanction available by law.

- (d) *Penalties.* The imposition of any of these penalties or sanctions will require an affirmative vote of three-fourths of the council, other than an informal or formal censure which shall only require a majority vote of the council. A violation of the penalties imposed by council may constitute grounds for removal from office under § 17.12(1)(a), Wis. Stats.
- (e) *Notice.* The municipal clerk shall give notice of the council's decision to the person charged.

(6) *Applicability.*

- (a) *Incumbency.* This code shall apply to officials currently in office. If an official is removed from office in any manner, including the loss of an election or voluntary resignation while a complaint issued under this chapter is pending, the board does not have jurisdiction to proceed and the complaint shall be dismissed.
- (b) *Employees.* Complaints under the code shall be limited to elected or appointed city officials but [do] not include officials who are also employees. If employees violate the ethics code, they may be subject to disciplinary action, but not the procedures and sanctions of this chapter. Violation of this chapter are grounds for discipline up to and including termination.

- (7) *False or frivolous complaints.* A person who knowingly makes a false, misleading, or unsubstantiated statement in a complaint is subject to criminal prosecution for perjury and possible civil liability. It is possible that after reviewing a complaint, it is determined that a sworn complaint is groundless and appears to have been filed in bad faith or for the purpose of harassment, or that intentionally false or malicious information has been provided under penalty of perjury. Instances of possible

perjury will be referred to the district attorney after consultation with the city attorney. A city official who seeks to take civil action regarding any such complaint shall do so at his or her expense.

(Ord. No. 1360-0519, § 2, 5-21-19)

36.09 - Advisory opinions.

- (1) *Request for advisory opinion.* Any individual, either personally or on behalf of an organization or governmental body, may, in writing, request the ethics board, to issue an advisory opinion regarding the propriety of any matter to which the person is or may become a party. It is prima facie evidence of intent to comply with the ethics code when a person requests an advisory opinion abides by the advisory opinion, if the material facts are as stated in the opinion request. The ethics board may authorize the city attorney to act in its stead in instances where delay is of substantial inconvenience or detriment to the requesting party.
- (2) *Confidentiality.* Except as provided in subsection (3), neither the city attorney, a member of the ethics board, nor anyone else who becomes privy to the request or opinion may make public the identity of an individual requesting an advisory opinion or of individuals or organizations mentioned in the opinion.
- (3) *Exception to confidentiality.* The ethics board or city attorney replying to a request for an advisory opinion may make the opinion public with the consent of the individual requesting the advisory opinion or the organization or governmental body on whose behalf it is requested and may make public a summary of an advisory opinion issued under this subsection after making sufficient alterations in the summary to prevent disclosing the identities of individuals involved in the opinion. A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of the person waives the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the ethics board or the city attorney for the local governmental unit in connection with the request for an advisory opinion.

(Ord. No. 1360-0519, § 2, 5-21-19)

36.10 - Distribution of the code.

The clerk shall provide copies of this section annually to elected and appointed officials, and shall keep at least one copy permanently on file for the use of the public. All employees shall receive a copy when they are hired.

(Ord. No. 1360-0519, § 2, 5-21-19)