

CHAPTER 1

GOVERNMENT & ADMINISTRATION

1-1 Cooperation With Other Municipalities.

The Common Council, on behalf of the City, may join with other villages, towns, or cities or other governmental entities in a cooperative arrangement for executing any power or duty in order to attain greater economy or efficiency, including joint employment of appointive officers and employees and joint purchasing programs. (Code 1993, § 2-2-7)

1-2 Internal Powers of the Council

The Common Council has the power to preserve order at its meetings, compel attendance of Aldermen and punish nonattendance. The Common Council shall be judge of the election and qualification of its members. (Code 1993, § 2-2-8)

1-3 Order of Business

(a) Agenda.

(1) The City Clerk shall publish an agenda for all meetings of the Common Council and shall mail the same to the Mayor, all Aldermen, and all other persons in interest not later than forty-eight (48) hours in advance of the commencement of such meeting, subject, however, to the provisions of Wis. Stats. § 19.84 and 62.11(2), with regard to emergency special meetings thereof.

(2) No ordinance, resolution, committee report, petition or communication shall be considered or transacted unless the ordinance, resolution, committee report, petition or communication is filed with the City Clerk on or before 9:00 a.m. the Wednesday prior to the regular Council meeting. However, an untimely filed item of business shall be considered or transacted at the Council meeting upon the unanimous consent of all members of the Council present.

(b) Meetings--Order of Business. The business of the Council shall be conducted in the following order:

(1) Call to order by the Mayor or presiding officer;

(2) Invocation;

(3) Pledge of Allegiance;

(4) Roll call;

- (5) Any other business allowed by law and/or public comment;
- (6) Reading of the minutes of the preceding meeting and approving the same if correct and rectifying the mistakes, if any;
- (7) Presentation of accounts and other claims against the City;
- (8) Hearings;
- (9) Communications and/or special and extraordinary business;
- (10) Reports of committees;
- (11) Ordinances and resolutions;
- (12) Communications and miscellaneous business from the City Clerk or Treasurer;
- (13) New business;
- (14) Communications and recommendations from the Mayor;
- (15) Adjournment.

(Ord. No. 2015-03)

(c) Order to be Followed; Citizen Comments. No business shall be taken up out of order unless by three-fourths (3/4) consent of all Aldermen and in the absence of any debate whatsoever. The Mayor or presiding officer shall impose a time limit on the length of time citizens may address the Council.

(d) Roll Call; Procedure When Quorum Lacking. As soon as the Council shall be called to order, the City Clerk shall proceed to call consecutively by aldermanic districts the names of the members, noting who are present and who are absent and record the same in the proceedings of the Council. If it shall appear that there is not a quorum present, the fact shall be entered on the journal and the Council shall adjourn.

(Prior Code § 2.24.070; Prior Code, § 2.24.250; Code 1993, § 2-2-15; Ord. No. 96-04; Ord. No. 98-11; Ord. No. 02-03)

1-4 Introduction of Business, Resolutions and Ordinances; Disposition of Communications.

(a) Ordinances to be in Writing.

(1) All ordinances submitted to the Council shall be in writing and shall begin with a brief statement of the subject matter and a title. Any written material introduced may be referred to the appropriate committee pursuant to Section 2-2-5.

(2) Any member of the Council may require the reading in full of any ordinance or resolution at any time it is before the Council.

(3) All ordinances shall have three (3) separate readings.

(4) All ordinances shall be filed with the City Clerk the Wednesday prior to the regular Council meeting.

(b) Subject and Numbering of Ordinances. Each ordinance shall be related to no more than one (1) subject. Amendment or repeal of ordinances shall only be accomplished if the amending or repealing ordinance contains the number and title of the ordinance to be amended or repealed, and title of amending and repealing ordinances shall reflect their purpose to amend or repeal.

(c) Notice. The Common Council may take action on an ordinance only if it appears on the agenda for the meeting at which action is requested pursuant to Section 2-2-15(a).

(d) Disposition of Petitions, Communication, Etc. Every petition or other writing of any kind, addressed to the Council, the City Clerk or other City officer for reference to the Common Council, shall be delivered by the City Clerk or such other City officer to the Mayor or to the presiding officer of the Council as soon as convenient after receipt of same and, in any event, prior to or at the opening of the next meeting of the Council following receipt of same. Every such petition or other writing and every paper, communication or other proceeding which shall come before the Council for action may be referred by the Mayor or presiding officer, unless objected to by a member of the Council.

(e) Resolutions. All resolutions shall be filed with the City Clerk the Wednesday prior to the regular Council meeting. Unless immediate consideration be moved, all resolutions shall be referred to the proper committee by the Mayor or the presiding officer for further study. Upon a motion for immediate consideration, the Mayor or presiding officer shall put the question, "Is there any objection to an immediate consideration of the resolution?" An objection voiced by one member shall require a roll call vote upon the motion for immediate consideration. If no objection is voiced the City Clerk shall record a unanimous consent to the motion for immediate consideration, and the Mayor or presiding officer shall proceed to state the principal question.

(f) Availability of Pending Actions to Public. At the time and place when the same are available to the Council members, copies of proposed or pending ordinances, resolutions and committee reports shall be made available to the local media.

(Prior Code, § 2.24.210; Prior Code, § 2.24.220; Prior Code, § 2.24.240; Code 1993, § 2-2-16; Ord. No. 96-04)

1-5 Conduct of Deliberations.

Except as provided below, the Common Council shall, in all other respects, determine the rules of its procedure, which shall be governed by Robert's Rules of Order, (Revised), which is hereby incorporated by reference, unless otherwise provided by ordinance or Statute, except when otherwise limited or modified by this Code of Ordinances:

(a) Presiding Officer. The Mayor or the presiding officer shall preserve order and decorum, decide all questions of order and shall inform the Council when necessary on any point of order or practice. He may speak to points of order in preference to others. If any member transgresses the rules of the Council, the Mayor or the presiding officer shall, or any member may, call such offending member to order, in which case the member called to order shall immediately sit down and be silent, unless permitted to explain, and the Council, if appealed to, shall decide the matter. The City Attorney shall act as parliamentarian.

(b) Recognition and Speaking. When a member is about to speak on a question or make a motion, he shall raise a hand and respectfully address the Mayor or the presiding officer, and the Mayor or the presiding officer shall pronounce the name of the member entitled to the floor, and the member shall confine himself to the question under consideration. When two (2) or more members simultaneously seek recognition, the Mayor or the presiding officer shall name the member who is to speak first.

(c) Speaking on Question. No member shall speak more than three (3) times on any question, except to answer a direct question, without the permission of three-fourths (3/4) of the members present, expressed by a roll call vote.

(d) Motions. No motion shall be discussed or acted upon unless and until it has been seconded. No motion shall be withdrawn or amended without the consent of the person making the same and the person seconding it.

(e) Mayor's Vote. The Mayor shall not vote except in the case of a tie. When the Mayor does vote in case of a tie, his vote shall be counted in determining whether a sufficient number of the Council has voted favorably or unfavorably on any measure. When a quorum is present, a majority vote of the members of the Council present in favor of any proposed ordinance, resolution or appointment shall be necessary for passage or approval, unless a larger number is required by State Statute. Except as otherwise provided, a majority vote of those present shall prevail in other cases.

(f) Action on Questions. When a question is under discussion, no action shall be in order except:

- (1) To adjourn.
- (2) To lay on the table.
- (3) The previous question.

- (4) To postpone to a certain day.
- (5) To refer to a committee.
- (6) To amend.
- (7) To postpone indefinitely.

These motions shall have precedence in the order listed.

(g) Voting. The "ayes" and "noes" may be requested by any member. On confirmation and on the adoption of any measure assessing or levying taxes, appropriating or disbursing money, or creating any liability or charge against the City or any fund thereof, the vote shall be by "ayes" and "noes." Whenever a roll call is required by law or called for by a member, the City Clerk shall call the roll, except that the City Clerk shall rotate the order.

(h) Nondebatable Motions. A motion to adjourn shall always be in order. A motion to adjourn, lay on the table and a call for the previous question shall be decided without debate.

(i) Floor Privileges at Council Meetings.

(1) Members of the public may be given floor privileges and may address the Council upon a motion and second from members of the Council and passage of the motion by majority vote of the members present.

(2) Any of the City officials and department heads mentioned in Section 2-2-14(c) shall have floor privileges without vote of the Council, but subject to these rules.

(3) Any City employee present in the Council chambers may answer a question put to him by a Council member or any department head or official listed in Section 2-2-14(c) without being granted floor privileges by the Council but subject to these rules.

(Prior Code, § 2.24.080; Prior Code, § 2.24.100; Prior Code, § 2.24.110; Prior Code, § 2.24.200; Code 1993, § 2-2-18; Ord. No. 96-04)

1-6 Reconsideration of Questions

It shall be in order for any member who voted in the affirmative on any question which was adopted, or for any member who voted in the negative when the number of affirmative votes was insufficient for adoption, to move a reconsideration of such vote at the same or next succeeding regular meeting of the Council. A motion to reconsider having been lost shall not be again in order. A motion to reconsider shall not be in order when the same result can be obtained by another motion. A majority vote is needed to reconsider a question.

(Prior Code, § 2.24.160; Code 1993, § 2-2-19)

1-7 Call for the Previous Question

Any member desirous of terminating the debate may call the previous question when the question announced by the Mayor shall be "call the main question." If a majority of the members present vote in the affirmative, the main question shall be put to a vote without further debate, and its effect shall be to put an end to all debate and bring the Council to a direct vote, first upon the pending amendment and then upon the main question.
(Code 1993, § 2-2-20)

1-8 Amendment of Rules

The rules of this Chapter shall not be rescinded or amended unless the proposed amendment or motion to rescind has laid over from a regular meeting, and then it shall require a vote of two-thirds (2/3) of all the members of the Council.
(Code 1993, § 2-2-21)

1-9 Suspension of Rules

(a) Voting Standard. Any of the provisions of Sections 2-2-17 through 2-2-21, inclusive, of this Code may be suspended temporarily by a recorded vote of two-thirds (2/3) of the Council members present at any meeting.

(b) Motion Procedure. When a member moves a suspension of the rules, he shall be required to state the particular standing rule to which his motion is addressed. The Mayor or the presiding officer shall then put the question, "Is there any objection to the suspension of the rules in accordance with the motion?" An objection voiced to suspension of the rules by any member shall require roll call on the motion for suspension. If no objection is made, the City Clerk and the Mayor or the presiding officer shall then proceed to state the principal question.
(Prior Code, § 2.24.180; Code 1993, § 2-2-22; Ord. No. 96-04)

1-10 General Provisions.

(a) General Powers. Officers of the City of Merrill shall have generally the powers and duties prescribed for like officers of cities, towns and villages, except as otherwise provided, and such powers and duties as are prescribed by law and except as to the Mayor, shall perform such duties as shall be required of him/her by the Council. Officers whose powers and duties are not enumerated in Wis. Stats., ch. 62, shall have such powers and duties as are prescribed by law for like officers or as are directed by the Council.

(b) Rules. All officers and departments may make the necessary rules for the conduct of their duties and incidental proceedings.

(c) Applicability of Ethics Statutes. The general laws for the punishment of bribery, misdemeanors and corruption in office shall apply to City officers.

(d) Legal Representation. Whenever any City official in his/her official capacity proceeded against or obliged to proceed before any civil court, board, committee or commission, to defend or maintain his/her official position, or because of some act arising out of the performance of his/her official duties, and he/she has prevailed in such proceedings, or the Council has ordered the proceedings discontinued, the Council may provide for payment to such official such sum as it sees fit, to reimburse him/her for the expenses reasonably incurred for costs and attorney's fees.

(Code 1993, § 2-3-1)

1-11 Equal Employment Opportunities

(a) General Policy. It shall be the policy of the City of Merrill to recruit and select the most qualified persons for positions in the City government, including full-time, part-time and limited term appointments. Recruitment and selection shall be conducted in an affirmative manner to insure open competition, provide equal opportunity, and prohibit discrimination because of race, color, religion, creed, sex, sexual preference, national origin, ancestry, political belief, physical or mental handicap disability, or marital status. Goals of this policy are that persons of disadvantaged groups be fairly represented by the City of Merrill's work force and that promotional opportunities are provided for qualified employees.

(b) Discrimination Prohibited. The Common Council, as the duly elected legislative authority of the City of Merrill, reaffirms, endorses, supports and is committed to the concept of equal opportunity employment as defined and/or implied under Title VII of the Civil Rights Act of 1964, Equal Employment Opportunity Act of 1972, and the Americans With Disabilities Act (20 U.S.C. 706, 42 U.S.C. 12101, 47 U.S.C. 152). Equal employment opportunity will be assured in the municipal personnel systems and affirmative action provided in their administration. Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, separation, discipline, or any other aspect of personnel administration because of race, color, religion, creed, age, sex, sexual preference, national origin, ancestry, political belief, physical or mental handicap disability, or marital status is prohibited.

(c) Equal Employment Opportunities. It is the policy of the City of Merrill not to discriminate against any employee or applicant for employment because of race, color, religion, creed, age, sex, sexual preference, national origin, ancestry, political belief, physical or mental handicap disability, or marital status. This policy not to discriminate in employment includes, but is not limited to the following:

(1) The City will employ those applicants who possess necessary skills, education and experience, without regard to race, color, religion, creed, age, sex, sexual preference, national origin, ancestry, political belief, physical or mental handicap disability, or marital status.

(2) The City will promote, upgrade, transfer or demote, recruit, advertise or solicit for employment without regard to race, color, religion, creed, age sex, sexual preference, national origin, ancestry, political belief, physical or mental handicap disability, or marital status.

(3) The City will train during employment and select for training and apprenticeship programs without regard to race, color, religion, creed, age, sex, sexual preference, national origin, ancestry, political belief, physical or mental handicap disability, or marital status.

(4) No employee shall aid, abet, compel, coerce or conspire to discharge or cause another employee to resign because of race, color, religion, creed, age, sex, sexual preference, national origin, ancestry, political belief, physical or mental handicap disability, or marital status.

(5) The City will establish rates of pay and terms, conditions or privileges of employment without regard to race, color, religion, creed, age, sex, sexual preference, national origin, ancestry, political belief, physical or mental handicap disability, or marital status.

(6) The City will use for job referral purposes, only those employment agencies which do not discriminate on the basis of race, color, religion, creed, age, sex, sexual preference, national origin, ancestry, political belief, physical or mental handicap disability, or marital status.

(Code 1993, § 2-6-1)

1-12 Definitions – Classification of Employment

(a) Full-time Employees. Persons employed full-time [forty (40) or more hours per week] as established by the Common Council action and defined in City ordinances. These persons receive full fringe benefits as specified in the Personnel Policies – Employee Handbook. Benefits will be pro-rated for employees working 30-39 hours per week.

(b) Part-time Employees.

(1) Persons employed less than full-time, in positions established by Common Council action. Those persons shall receive either pro-rata or no fringe benefits as specified in the Personnel Policies.

(c) Limited Term Employees.

(1) Limited Term Employees are defined as employees occupying positions not established by Common Council action. Limited Term Employees are seasonal and temporary employees that have a clear start and end date.

(2) Limited Term Employees are not eligible for any fringe benefits unless required by federal or state law. No such employee may be employed in violation of the City's nepotism policy. (10-10-17 Ord No. 2017-11)

1-13 Citizenship.

United States citizenship will not be considered to be a requisite for City employment. However, aliens must be in full compliance with prescribed federal law, in particular the Immigration Act of 1986, and they must move with the utmost dispatch to become naturalized citizens within the minimum period prescribed by federal law. Proof of an alien employee's action, in this respect, may be required by the City at any time. If at any time during employment with the City, the alien employee is not in compliance with the federal law, then he/she shall be subject to dismissal by the City.
(Code 1993, § 2-6-3)

1-14 Licenses and Certifications.

(a) The employee, in order to operate a City vehicle or equipment, must possess an appropriate and valid operator's license complying with State of Wisconsin requirements for that occupation and submit that license as proof.

(b) Various other certifications may be requested by the City as proof of the employee's completed education at a recognized institution or university. The City reserves the right to obtain necessary information regarding academic achievement transcripts, educational files, health records, or prior employment records of any applicant.
(Code 1993, § 2-6-4)

1-15 Probationary Period.

(a) Probationary Period Required.

(1) All full-time and part-time employees are required to serve a six (6) month probationary period commencing on his/her date of employment or promotion, except that new department heads, (by transfer, promotion or newly hired), and law enforcement and fire personnel shall serve a twelve (12) month probationary period. The employee shall have employment-at-will status during the probationary period.

(2) These probationary periods may be extended up to an additional six (6) months by the Personnel and Finance Committee or the City Administrator by written notice to the employee.

(b) Reduction of Probationary Period. At any time during the probationary period, the Personnel and Finance Committee or City Administrator may reduce the probationary period.

(c) Dismissal During Probationary Period. During the Probationary Period, the employee has the obligation to demonstrate proper attitudes and abilities for the position for which employed. The employee may be dismissed by the City Administrator without prior notice, hearing, or cause during the Probationary Period. The Personnel and Finance Committee shall be informed of any such dismissal. (10-10-17 Ord No. 2017-11)

1-16 Transfer of Benefits.

Persons transferring into a City of Merrill department from another City department shall be given credit for length of employment in the other department as it relates to all benefits except as length of services applies to seniority.
(Code 1993, § 2-6-6)

1-17 New Employees – Physical Examinations.

New full-time and part-time employees are required to undergo a pre-employment physical and drug testing at City expense after the position is offered, but before the employee begins work, as a condition of employment. (10-10-17 Ord No. 2017-11)

1-18 Residency

- (a) Residency requirements apply to all law enforcement personnel, fire personnel and the Water Utility Operations Manager hired after July 1, 2013. Such personnel shall reside within 15 miles of the jurisdictional boundaries of the City of Merrill no later than the end of their probationary period.
- (b) Any change in residence for any law enforcement personnel, fire personnel and the Water Utility Operations Manager shall be in conformity with the above residency requirements. (10-10-17 Ord No. 2017-11)

1-19 Personnel Policies.

The provisions of the City of Merrill Personnel Policies are adopted and incorporated herein by reference.
(Code 1993, § 2-6-9)

CHAPTER 2

FINANCE AND PUBLIC RECORD

2-1 *Definitions.*

(a) Authority. Any of the following City of Merrill entities having custody of a City record: an office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order; or a formally constituted subunit of the foregoing.

(b) Custodian. That officer, department head, division head, or employee of the City designated under Section 3-3-3 or otherwise responsible by law to keep and preserve any City records or file, deposit or keep such records in his or her office, or is lawfully in possession or entitled to possession of such public records and who is required by this Section to respond to requests for access to such records.

(c) Record. Any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. "Record" includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), and computer printouts. "Record" does not include drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.

(d) Direct Cost. The actual cost of personnel plus all expenses for paper, copier time, depreciation and supplies.

(e) Actual Cost. The total cost of personnel including wages, fringe benefits and all other benefits and overhead related to the time spent in search of records.

(Code 1993, § 3-3-1)

2-2 *Duty to Maintain Records*

(a) Except as provided under Section 3-3-7, each officer and employee of the City shall safely keep and preserve all records received from his or her predecessor or other persons and required by law to be filed, deposited or kept in his or her office or which are in the lawful possession or control of the officer or employee or his or her deputies, or to the possession or control of which he or she or they may be lawfully entitled as such officers or employees.

(b) Upon the expiration of an officer's term of office or an employee's term of employment, or whenever the office or position of employment becomes vacant, each such officer or employee shall deliver to his or her successor all records then in his or her custody and the successor shall provide receipt therefor to the officer or employee, who shall file said receipt with the City Clerk. If a vacancy occurs before a successor is selected or qualifies, such records shall be delivered to and receipted for by the City Clerk, on behalf of the successor, to be delivered to such successor upon the latter's receipt.

(Code 1993, § 3-3-2; Ord. No. 96-04)

2-3 *Access Procedures*

(a) A request to inspect or copy a record shall be made to the legal custodian. A request shall be deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request. A request may be made orally, but a request must be in writing before an action to enforce the request is commenced under Wis. Stats. § 19.37. Except as provided below, no request may be refused because the person making the request is unwilling to be identified or to state the purpose of the request. No request may be refused because the request is received by mail, unless prepayment of a fee is required under Section 3-3-4(f)(6). A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.

(b) Each custodian, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor. If the legal custodian, after conferring with the City Attorney, determines that a written request is so general as to be unduly time consuming, the party making the request may first be required to itemize his or her request in a manner which would permit reasonable compliance.

(c) A request for a record may be denied as provided in Section 3-3-6. If a request is made orally, the request may be denied orally unless a demand for a written statement of the reasons denying the request is made by the requester within five business days of the oral denial. If a written request is denied in whole or in part, the requester shall receive a written statement of the reasons for denying the request. Every written denial of a request shall inform the requester that, if the request for the record was made in writing, then the determination is subject to review upon petition for a writ of mandamus under Wis. Stats. § 19.37(1), or upon application to the attorney general or a district attorney.

(Code 1993, § 3-3-5)

2-4 *Limitations on Right to Access*

(a) As provided in Wis. Stats. § 19.36, the following records are exempt from inspection under this Chapter.

- (1) Records specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law;
- (2) Any record relating to investigative information obtained for law enforcement purposes if federal law or regulations require exemption from disclosure or if exemption from disclosure is a condition to receipt of aids by the state;
- (3) Computer programs and files, although the material used as input for a computer program/file or the material produced as a product of the computer program is subject to inspection; and
- (4) Pursuant to Wis. Stats. § 905.08, a record or any portion of a record containing information qualifying as a common law trade secret. "Trade secrets" are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes which are used for making, preparing, compounding, treating or processing articles, materials or information which are obtained from a person and which are generally recognized as confidential; and
- (5) A computer program, as defined in Wis. Stats. § 16.971 (4) (c), is not subject to examination or copying under Wis. Stats. § 19.35 (1), but the material used as input for a computer program or the material produced as a product of the computer program is subject to the right of examination and copying, except as otherwise provided in Wis. Stats. §§ 19.35 or 19.36.
- (6) Audio, Video, Data Transmissions & Communications – Although audio, video, data and radio transmissions and communications may be processed through city computers, the City does not routinely copy the data nor maintain records of such communications. Whenever the City copies, records or maintains copies or recordings of such communications or transmissions, those copies may constitute public records that are subject to records requests and which must be maintained according to the appropriate records retention schedule. The Lincoln County 9-1-1 center is the custodian for police and fire radio communications.
(Ord. 06-10-2014)
- (7) Rewritable Recording Systems – Those systems where the recordings are routinely overwritten by newer recordings, such as in continuous loop videotape or digital video written to a camera's hard drive or memory. Such data does not constitute a record unless it is further downloaded, printed or separately preserved to memorialize some event or proceeding. Until such time as these recordings are downloaded, printed or separately preserved, these recordings do not have to be preserved and, as the recording equipment programs/protocols may dictate, can be overwritten, erased or otherwise destroyed. However, if such data is downloaded, printed, or separately preserved it shall be treated as a record and shall be retained in accordance with the retention schedules.
(Ord. 06-10-2014)

(b) As provided by Wis. Stats. § 43.30, public library circulation records are exempt from inspection under this Section.

(c) In responding to a request for inspection or copying of a record which is not specifically exempt from disclosure, the legal custodian, after conferring with the City Attorney, may deny the request, in whole or in part, only if he or she determines that the harm to the public interest resulting from disclosure would outweigh the public interest in full access to the requested record. Examples of matters for which disclosure may be refused include, but are not limited to, the following:

- (1) Records obtained under official pledges of confidentiality which were necessary and given in order to obtain the information contained in them.
- (2) Pursuant to Wis. Stats. § 19.85(1)(a), records of current deliberations after a quasi-judicial hearing.
- (3) Pursuant to Wis. Stats. § 19.85(1)(b) and (c), records of current deliberations concerning employment, dismissal, promotion, demotion, compensation, performance, or discipline of any City officer or employee, or the investigation of charges against a City officer or employee, unless such officer or employee consents to such disclosure.
- (4) Pursuant to Wis. Stats. § 19.85(1)(d), records concerning current strategy for crime detection or prevention.
- (5) Pursuant to Wis. Stats. § 19.85(1)(e), records of current deliberations or negotiations on the purchase of City property, investing of City funds, or other City business whenever competitive or bargaining reasons require nondisclosure.
- (6) Pursuant to Wis. Stats. § 19.85(1)(ee), records of deliberations on unemployment insurance in a meeting at which all employer members of the council or all employee members of the council are excluded.
- (7) Pursuant to Wis. Stats. § 19.85(1)(eg), records of deliberations on worker's compensation in a meeting at which all employer members of the council or all employee members of the council are excluded.
- (8) Pursuant to Wis. Stats. § 19.85(1)(em), records of deliberations under Wis. Stats. § 157.70 if the location of a burial site, as defined in Wis. Stats. § 157.70 (1) (b), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.
- (9) Pursuant to Wis. Stats. § 19.85(1)(f), financial, medical, social or personal histories or disciplinary data of specific persons which, if disclosed, would be

likely to have a substantial adverse effect upon the reputation of any person referred to in such history or data.

(10) Pursuant to Wis. Stats. § 19.85(1)(g), communications between legal counsel for the City and any officer, agent or employee of the City, when advice is being rendered concerning strategy with respect to current litigation in which the City or any of its officers, agents or employees is or is likely to become involved, or communications which are privileged under Wis. Stats. § 905.03.

(11) Pursuant to Wis. Stats. § 19.85(1)(h), requests for confidential written advice from an ethics board, and records of advice given by such ethics board on such requests.

(d) If a record contains information that may be made public and information that may not be made public, the custodian of the record shall provide the information that may be made public and delete the information that may not be made public from the record before release. The custodian shall confer with the City Attorney prior to releasing any such record and shall follow the guidance of the City Attorney when separating out the exempt material. If, in the judgment of the custodian and the City Attorney, there is no feasible way to separate the exempt material from the nonexempt material without unreasonably jeopardizing nondisclosure of the exempt material, the entire record shall be withheld from disclosure.

(Code 1993, § 3-3-6)

2-5 *Destruction of Records.*

(a) City officers may destroy the following nonutility financial records of which they are the legal custodians and which are considered obsolete, after completion of any required audit by the bureau of municipal audit or an auditor licensed under Wis. Stats., ch. 442, but not less than seven (7) years after payment or receipt of any sum involved in the particular transaction, unless a shorter period has been fixed by the State Public Records Board pursuant to Wis. Stats. § 16.61(3)(e), and then after such shorter period:

(1) Bank statements, deposit books, slips and stubs.

(2) Bonds and coupons after maturity.

(3) Canceled checks, duplicates and check stubs.

(4) License and permit applications, stubs and duplicates.

(5) Payrolls and other time and employment records of personnel included under the Wisconsin Retirement Fund.

(6) Receipt forms.

(7) Special assessment records.

(8) Vouchers, requisitions, purchase orders and all other supporting documents pertaining thereto.

(b) City officers may destroy the following utility records of which they are the legal custodians and which are considered obsolete after completion of any required audit by the bureau of municipal audit or an auditor licensed under Wis. Stats., ch. 442, subject to State Public Service Commission regulations, but not less than seven (7) years after the record was effective unless a shorter period has been fixed by the State Public Records Board pursuant to Wis. Stats. § 16.61(3)(e), and then after such a shorter period, except that water stubs, receipts of current billings and customers' ledgers may be destroyed not less than two (2) years after payment or receipt of the sum involved or the effective date of said record.

(1) Contracts and papers relating thereto.

(2) Excavation permits.

(3) Inspection records.

(c) City officers may destroy the following records of which they are the legal custodian and which are considered obsolete, but not less than seven (7) years after the record was effective unless another period has been set by statute, and then after such a period, or unless a shorter period has been fixed by the State Public Records Board pursuant to Wis. Stats. § 16.61(3)(e), and then after such a shorter period.

(1) Contracts and papers relating thereto.

(2) Correspondence and communications.

(3) Financial reports other than annual financial reports.

(4) Justice dockets.

(5) Oaths of office.

(6) Reports of boards, commissions, committees and officials duplicated in the Common Council proceedings.

(7) Election notices and proofs of publication.

(8) Canceled voter registration cards.

(9) Official bonds.

(10) Police records other than investigative records.

(11) Resolutions and petitions, providing the text of the same appears in the official City minutes.

(12) Applications for employment from unsuccessful applicants for City positions.

(d) Notwithstanding the above provisions appearing in this Section, it is intended hereby that election materials may be destroyed according to lesser time schedules as made and provided in Wis. Stats. § 7.23.

(e) Unless notice is waived by the State Historical Society, at least sixty (60) days' notice shall be given the State Historical Society prior to the destruction of any record as provided by Wis. Stats. § 19.21(4)(a).

(f) Any tape recordings of a governmental meeting of the City may be destroyed, erased or reused no sooner than ninety (90) days after the minutes of the meeting have been approved and published, if the purpose of the recording was to make minutes of the meeting.

(Code 1993, § 3-3-7)

2-6 Preservation Through Microfilm

Any City officer or the director of any department or division of City government may, subject to the approval of the City Clerk, keep and preserve public records in his or her possession by means of microfilm or other photographic reproduction method. Such records shall meet the standards for photographic reproduction set forth in Wis. Stats. § 16.61(7)(a) and (b), and shall be considered original records for all purposes. Such records shall be preserved along with other files of the department or division and shall be open to public inspection and copying according to the provisions of state law and of Sections 3-3-4 through 3-3-6 of this Chapter.

(Code 1993, § 3-3-8; Ord. No. 96-04)

CHAPTER 3

REVIEW OF ADMINISTRATIVE DETERMINATIONS

3-1 *Review of Administrative Determinations.*

Any person aggrieved by an administrative determination of the Common Council or a board, commission, committee, agency, officer or employee of the City of Merrill or agent acting on its behalf may have such determination reviewed as provided in this Chapter. The remedies under this Chapter shall not be exclusive, but an election to proceed hereunder shall be an election of remedies.

(Code 1993, § 4-1-1)

3-2 *Determinations Reviewable.*

The following determinations are reviewable under this Chapter:

(a) The grant or denial in whole or in part after application of an initial permit, license, right, privilege or authority, except a fermented malt an alcohol beverage or intoxicating liquor license.

(b) The suspension, revocation or nonrenewal of an existing permit, license right, privilege or authority, except as provided in Section 4-1-3(d).

(c) The denial of a grant of money or other thing of value under a statute or ordinance prescribing conditions of eligibility for such grant.

(d) The imposition of a penalty or sanction upon any person except a municipal employee or officer, other than by a court.

(e) The suspension or removal of a City officer except as provided in Sections 4-1-3(b) and (g).

(Code 1993, § 4-1-2)

3-3 *Determinations Not Subject to Review.*

The following determinations are not reviewable under this Chapter:

(a) A legislative enactment. A legislative enactment is an ordinance, resolution or adopted motion of the Common Council.

(b) Any action subject to administrative or judicial review procedures under state statute or other provisions of this Code.

(c) The denial of a tort or contract claim for money required to be filed with the City under Wis. Stats. § 62.25.

- (d) The grant, denial, suspension or revocation of an alcohol beverage or intoxicating liquor license under Wis. Stats., ch. 125.
- (e) Judgments and orders of a court.
- (f) Determinations made during municipal labor negotiations.
- (g) Determinations subject to grievance, arbitration or other procedures provided in collective bargaining agreements or the City's personnel rules and regulations. Any action which is subject to administrative review procedures under an ordinance providing such procedures as defined in Wis. Stats. § 68.18.
- (h) The suspension, removal or or nonrenewal of a contract of a municipal employee or officer.
- (i) Notwithstanding any other provision of this chapter, any action or determination of a municipal authority which does not involve the constitutionally protected right of a specific person or persons to due process in connection with the action or determination. (Code 1993, § 4-1-3)

3-4 *Municipal Authority Defined.*

"Municipal authority" includes the Common Council, commission, committee, agency, office, employee, or agent of the City making a determination under Section 4-1-1 and every person, committee, or agency of the City to make an independent review under Section 4-1-8(b).
(Code 1993, § 4-1-4)

3-5 *Persons Aggrieved.*

A person aggrieved includes any individual, partnership, corporation, association, public or private organization; officer, department, board, commission or agency of the City whose rights, duties or privileges are adversely affected by a determination of a municipal authority. No department, board, commission, agency, officer or employee of the City who is aggrieved may initiate review under this Chapter of a determination of any other department, board, commission, agency, officer or employee of the City but may respond or intervene in a review proceeding under this Chapter initiated by another.
(Code 1993, § 4-1-5)

3-6 *Reducing Determination to Writing*

If a determination subject to this Chapter is made orally or, if in writing, does not state the reasons therefor, the municipal authority making such determination shall, upon written request of any person aggrieved by such determination made within ten (10) days of notice of such determination, reduce the determination and the reasons therefor to

writing and mail or deliver such determination and reasons to the person making the request. The determination shall be dated and shall advise such person of his right to have such determination reviewed, that such review may be obtained within thirty (30) days, and the office or person to whom a request for review shall be addressed.
(Code 1993, § 4-1-6)

3-7 Request for Review of Determination.

Any person aggrieved may have a written or oral determination reviewed by written request mailed or delivered to the municipal authority which made such determination within thirty (30) days of notice to such person of such determination. The request for review shall state the grounds upon which the person aggrieved contends that the determination should be modified or reversed. A request for review shall be made to the officer, employee, agent, agency, committee, board, commission or body who made the determination, but failure to make such request to the proper party shall not preclude the person aggrieved from review unless such failure has caused prejudice to the municipal authority.

(Code 1993, § 4-1-7)

3-8 Review of Determination.

(a) Initial Determination. If a request for review is made under Section 4-1-7, the determination to be reviewed shall be termed an initial determination.

(b) Who Shall Make Review. A review under this Section may be made by the officer, employee, agent, agency, committee, board, commission or body who made the initial determination. However, an independent review of such determination by another person, committee or agency of the City, appointed by the Mayor without confirmation, shall be provided if practicable.

(c) When to Make Review. The municipal authority shall review the initial determination within fifteen (15) days of receipt of a request for review. The time for review may be extended by agreement with the person aggrieved.

(d) Right to Present Evidence and Argument. The person aggrieved may file with his request for review, or within the time agreed with the municipal authority, written evidence and argument in support of his position with respect to the initial determination.

(e) Decision on Review. The municipal authority may affirm, reverse or modify the initial determination and shall mail or deliver to the person aggrieved a copy of the municipal authority's decision on review which shall state the reasons for such decision. The decision shall advise the person aggrieved of his right to appeal the decision, that appeal may be taken within thirty (30) days, and the office or person with whom notice of appeal shall be filed.

(Code 1993, § 4-1-8)

3-9 Administration Appeal.

(a) From Initial Determination or Decision on Review.

(1) If the person aggrieved had a hearing substantially in compliance with Section 4-1-10 when the initial determination was made, he may elect to follow Sections 4-1-6 through 4-1-8, but is not entitled to a further hearing under Section 4-1-9 unless granted by the municipal authority. He may, however, seek judicial review under Section 4-1-12.

(2) If the person aggrieved did not have a hearing substantially in compliance with Section 4-1-10 when the initial determination was made, he shall follow Sections 4-1-6 through 4-1-8 and may appeal under this Section from the decision made under Section 4-1-8 the person may appeal under this section from the decision on review and shall follow the procedures set forth in Section 4-1-6 through 4-1-8.

(b) Time Within Which Appeal May be Taken Under This Section. Appeal from a decision on review under Section 4-1-8 may be taken within thirty (30) days of notice of such decision.

(c) How Appeal May Be Taken. An appeal under this Section may be taken by filing with or mailing to the office or person designated in the municipal authority's decision on review, written notice of appeal.

(Code 1993, § 4-1-9)

3-10 Hearing on Administrative Appeal

(a) Time of Hearing. The City shall provide the appellant a hearing on an appeal under Section 4-1-9 within fifteen (15) days of receipt of the notice of appeal and shall serve the appellant with notice of such hearing by mail or personal service at least ten (10) days before such hearing. The office or person with whom a notice of appeal is filed shall immediately notify the City Attorney and City Clerk who shall forthwith advise the Mayor of such appeal.

(b) Conduct of Hearing. At the hearing the appellant and the municipal authority may be represented by counsel and may present evidence and call and examine witnesses and cross-examine witnesses of the other party. Such witnesses shall be sworn by the person conducting the hearing. The Mayor shall appoint an impartial decision maker who may be an officer, committee, board or commission of the City or the Common Council who did not participate in making or reviewing the initial determination, who shall make the decision on administrative appeal. The decision maker may issue subpoenas. An appellant's attorney of record may issue a subpoena to compel the attendance of a witness or the production of evidence. A subpoena issued by an attorney must be in substantially the same form as provided in Wis. Stats. § 805.07 (4) and must be served in the manner provided in Wis. Stats. § 805.07 (5). The hearing may, however, be conducted by an

impartial person, committee, board or commission designated by the Mayor to conduct the hearing and report to the decision maker.

(c) Record of Hearing. The person conducting the hearing or a person employed for that purpose shall take notes of the testimony and shall mark and preserve all exhibits. The person conducting the hearing may, and upon request of the appellant shall, cause the proceedings to be taken by a stenographer or by a recording device, the expense thereof to be paid by the City.

(d) Hearing on Initial Determination. Where substantial existing rights are affected by an initial determination, the municipal authority making such determination shall, when practicable, give any person directly affected an opportunity to be heard in accordance with this Section before making such determination.
(Code 1993, § 4-1-10; Ord. No. 96-04)

3-11 Final Determination.

(a) Within twenty (20) days of completion of the hearing conducted under Section 4-1-10 and the filing of briefs, if any, the decision maker shall mail or deliver to the appellant its written determination stating the reasons therefor. Such determination shall be a final determination.

(b) A determination following a hearing substantially meeting the requirements of Section 4-1-10 or a decision on review under Section 4-1-8 following such hearing shall be a final determination, judicial review of which may be obtained under Section 4-1-12.
(Code 1993, § 4-1-11)

3-12 Judicial Review

(a) Any party to a proceeding resulting in a final determination may seek review thereof by writ of certiorari within thirty (30) days after mailing of the final determination to the party's last known address. Said notice shall contain a statement which informs the party that any such judicial review shall be filed in the appropriate court within thirty (30) days of the date of the notice. The court may affirm or reverse the final determination, or remand to the decision maker for further proceedings consistent with the court's decision.

(b) The record of the proceedings shall be transcribed at the expense of the person seeking review. A transcript shall be supplied to anyone requesting the same at his expense. If the person seeking review established impecuniousness to the satisfaction of the reviewing court, the court may order the proceedings transcribed at the expense of the City and the person seeking review shall be furnished a free copy of the transcript. By stipulation, the court may order a synopsis of the proceedings in lieu of a transcript. The court may otherwise limit the requirement for a transcript.
(Code 1993, § 4-1-12)

3-13 Legislative Review.

(a) Seeking review pursuant to this Chapter does not preclude a person aggrieved from seeking relief from the Common Council or any of its boards, commissions, committees or agencies which may have jurisdiction.

(b) If in the course of legislative review under this Section a determination is modified, such modification and any evidence adduced before the Common Council, board, commission, committee or agency shall be made part of the record on review under Section 4-1-12.

(c) The Common Council, board, commission, committee or agency conducting a legislative review under this Section need not conduct the type of hearing required under Section 4-1-10.
(Code 1993, § 4-1-13)