Bangor City Council's ethics watchdog group hasn't investigated a violation in 20 years

The watchdog group charged with investigating ethics violations on the Bangor City Council rarely meets, has almost no power and serves at the mercy of the very public body it is supposed to oversee.

Bangor's board of ethics, a five-member City Council-appointed group, is charged with reviewing potential ethics violations by councilors, commission appointees and employees. But the board can only act on an allegation when at least half of the councilors, excluding the target of the potential probe, vote to authorize it.

That hasn't happened in at least 20 years, Deputy City Clerk Jodi Leonard said in response to a Freedom of Access Act request.

And past efforts to give the board more independence have failed out of fear that it would allow the public to use the board as a political weapon, three former members of the board said.

"I think having the ethics [board] is one of those things you do because it looks better," said George Burgoyne, a board member from 2010 to 2014. "But the reality of what ethics boards can do once they are set up is very limited. And that's why you rarely see the ethics board do anything."

Today, the board includes Chairman Michael Alpert, director of the University of Maine Press, Paul LeClair, who ran for City Council in 2015, and residents Amy Lee Tidd, Sherry Anderson and Emily Hunnefeld.

The board and the code of ethics “enables us to have a check and balance with the city council,” former governor and then-newly-elected City Councilor John Baldacci said months after the code and board were created in 1978, when fellow councilors unsuccessfully tried to repeal the measure. But in practice, the BDN has found no evidence of the code being enforced through the board of ethics.

Legally, the board of ethics has the authority to request voluntary statements from people involved in a potential violation and review all city records. It also can deliberate in executive session. But if news broke of an investigation against a councilor — whether or not the claim was substantiated — it could damage that councilor’s reputation, a former board member said.

“We were worried sort of about the court of public opinion, having a headline that said ‘so and so is being investigated by the Board of Ethics,’” said Justin Allen, who served on the board from 2010 to 2013. “People are headline skimmers.”
There is value in making it easier for the board to investigate, but “it didn’t outweigh the risk of making it a witchhunt organization,” he said.

Systems of oversight that allow elected officials to police themselves are largely ineffective, according to Aaron Scherb, director of legislative affairs for the government watchdog group Common Cause, who compared it to “the fox watching the hen house.”

“We can’t rely on elected officials to police themselves because time and time again they will pat each other’s backs or turn the other way,” Scherb said.

What does the code say?

Bangor’s code is detailed, barring city employees, councilors and board members from unethical activities such as:

— Deliberating in the approval of a contract when they have a conflict of interest

— Participating in the hiring or firing of a city employee to whom they are related

— Disclosing confidential information about the city's dealings

— Accepting money from people interested in doing business with the city

— Using city property for private purposes

— Using position to influence elections

But there have been several cases over the past decade for which the City Council opted not to refer accusations or questionable behavior by fellow councilors to the board of ethics.

— Councilor Joe Baldacci in November 2015 was criticized for writing a column in the BDN supporting council candidates Meg Shorette and Sarah Nichols for backing his effort to raise the minimum wage in Bangor. He referred to himself as a councilor in the column raising questions about whether he used his position to influence an election.

— In 2011, former Councilor Charlie Longo accused Councilman Cary Weston during a public meeting of having a conflict of interest when a company Weston co-owned, Sutherland-Weston Marketing/Communications of Bangor, donated software valued at about $7,000 to the city to help in its website redesign. Longo claimed the donation may have given Weston access to staff other councilors did not have.

Weston at the time denied the company's donation was a conflict of interest and his business partner, Elizabeth Sutherland, said Weston's role as city

councilor had no bearing on the donation.

— And in 2005, local cleaning company CMC & Maintenance Inc. accused Councilors Dan Tremble and Susan Hawes of having a personal or financial relationship with the owner of River City Commercial Cleaning Inc. after the council voted 5-4 to award the company a $708,344 cleaning contract for the Bangor International Airport cleaning. At the time, CMC owner Michael McCue said his business was the lowest bidder for the contract and alleged in court that Tremble and Hawes were clients of an accounting business owned by the same person who owned River City and thus should not have been allowed to vote.

The City Council took no action against any councilor in those three incidents and did not refer any matter to the ethics board.

Even if the Board of Ethics was called upon to investigate an alleged violation, the only thing it can do is send its findings to the City Council, which, at the most, can issue a censure — a proclamation disapproving their fellow councilor's actions.

The City Council did censure two elected officials in recent years: former Councilor Hal Wheeler in 2010, for secretly recording a conversation he had with city staff, and former Councilor Longo in 2013 for saying that Gov. Paul LePage " hits the bars pretty heavy." But neither case was reviewed by the Board of Ethics, and the censures were initiated by the council directly.

The effectiveness of the Board of Ethics was questioned not long after it was created in March 1978 at the same time the city's code of ethics was established, according to previously published reports. Former Councilor John "Buddy" Gass unsuccessfully tried to repeal the code of ethics less than a year later calling it "worthless" and "just a bunch of garbage," the BDN reported in December 1978.

Gass' repeal effort, which failed by a 6-3 vote, stemmed from a disagreement over whether two other councilors should be permitted to discuss and vote on a downtown revitalization proposal. Councilor George Wood, who backed the repeal effort, described the code as ineffective because "the board of ethics can't investigate past the data we give them," and that in his opinion, the code's procedure "almost approaches the point of deception," the BDN reported at the time.

What should Bangor do?

Former members of the board were frustrated by the limited authority they were granted, according to Wayne Mallar, who served from 1997 to 1999.

"It's not a very practical approach," Mallar said. City councilors are "governing themselves, and I don't think it's something they can do."

Bangor was the first city in the state to pass a code of ethics, the BDN reported in 1978. Not every city and town in Maine has a code of ethics, and those that do approach oversight in different ways, according to David Lourie, a Cape Elizabeth-based municipal law attorney.

Portland, for instance, has regulations requiring councilors to engage in ethical behavior, such as recusing themselves from voting or discussing a matter when there is a conflict of interest. But it doesn't have an official code of ethics.

Bangor's code requires the Board of Ethics to meet quarterly and file an annual report outlining all of its activities to the City Council. But City Solicitor Norm Heitmann, who typically attends the board meetings, said they don't usually meet that often and he couldn't recall a single time the board had filed an annual report over the past 18 years. Heitmann was unable to find a single agenda for any meetings held in 2015.

The board met three times in 2016, and it was scheduled to meet again March 14, but that meeting was cancelled because of a snowstorm.

Alpert, who joined the board last summer, said its members have been reviewing the city's ethics code line by line so they can find ambiguities and recommend possible changes to the council. But they are not currently considering any changes that would give the board more teeth.

Alpert defended the board's existence, saying "it sets the standards that city officials are directed to follow."

Several city councilors said they would support discussing possible revisions to the code of ethics that would give the board independence.

"Maybe taking the decisions out of our hands would be best for everyone," City Councilor Joseph Perry said. "I guess I don't think there is any harm [in the Board of Ethics] reviewing anything they want."