



BOARD OF COMMISSIONERS

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AD HOC COMMITTEE TO DEVELOP ETHICS ORDINANCE

THURSDAY, SEPTEMBER 15, 2011

AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Adoption of Agenda
4. Public Participation (five minutes maximum per speaker, or longer at the discretion of the Chairperson related only to issues contained on the agenda)
5. Discussion on Development of Ethics Ordinance (attached)
6. New Business
7. Public Participation (five minutes maximum per speaker or longer at the discretion of the Chairperson)
8. Adjournment

MEMBERS: Miller-Chair, Gralewski-Vice-Chair, Mocerì, Smith, Vosburg and Tocco (ex-officio).

MACOMB COUNTY BOARD OF COMMISSIONERS

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Chair

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Fred Miller
District 9
Sergeant-At-Arms

Tom Mocerì - District 1

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Ray Gralewski - District 5

Don Brown - District 7

Kathy Tocco - District 11

Joe Sabatini - District 13

RESOLUTION NO. _____

FULL BOARD MEETING DATE: _____

AGENDA ITEM: _____

MACOMB COUNTY, MICHIGAN

RESOLUTION TO review draft of Ethics Ordinance (revised September 14, 2011)

INTRODUCED BY: Fred Miller, Chair, Ad Hoc Committee to Develop Ethics Ordinance

COMMITTEE/MEETING DATE

Ad Hoc 09-15-11

DRAFT – ETHICS ORDINANCE
(revised September 14, 2011)

SECTION 1. PURPOSE AND DEFINITIONS.

Sec. 1.1. Purpose. The residents and those conducting business in or with Macomb County are entitled to fair, ethical and accountable government. County officials, employees, and appointees hold positions of public trust and their actions must remain above suspicion. The purpose of this ordinance is to set forth standards of conduct for elected officials, employees, and appointees of Macomb County.

Sec. 1.2. General Standards of Conduct. Public Servants of the County shall observe the highest standards of ethical conduct and are obligated to:

- A. Comply with all laws and policies of County government;
- B. Be independent, impartial, and fair in their judgment and actions;
- C. Use their public office for the public good, not for personal gain;
- D. Conduct public business openly, as provided by law, in an atmosphere of respect and civility; and
- E. Cooperate fully with any request of the Ethics Board for information or assistance, subject to law.

Sec. 1.3. Definitions.

- A. Appointee means a public servant holding either a compensated or uncompensated position that is not subject to a collective bargaining agreement, is not elected to or holding office or holding an office that is subject to an election and whose approval is subject to the approval of the Board of Commissioners or exempt from approval under the Home Rule Charter of Macomb County.
- B. Confidential Information means information obtained by a public servant by reason of his or her official position concerning the property, government, or affairs of the County or any office, department, or agency of the County, not available to members of the public pursuant to the Michigan Freedom of Information Act or other applicable laws, regulations, or procedures.
- C. County-Wide Elected Official means the person holding the office of County Executive, Public Works Commissioner, Clerk/Register of Deeds, Treasurer, Prosecuting Attorney, or Sheriff.
- D. Department Head means the administrative head of any department, office, board, commission or other administrative unit of County government regardless of the title of the position.

- E. Employee means a person employed by Macomb County whether on a full-time or part-time basis
- F. Gift means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, travel, lodging, and honoraria for speaking engagements related to or attributable to government employment or the official position of an officer or employee.
- G. Immediate Family means a person's spouse and the person's children and step-children, by blood or adoption, or anyone over the age of 21 who resides with that person.
- H. Intra-governmental gift means, for the purpose of this ordinance, any gift given to an officer or employee from another officer or employee of Macomb County
- I. Personal gain means any benefit which is accepted or received by a public servant or is perceived by a reasonable person to be accepted or received by a public servant, as remuneration for the purpose of improperly influencing an official action in a specific manner or for refraining from the performance of an official action in a specific manner, or as inducement for the public servant to act in favor of some interest other than the public interest.
- J. Public Servant means an employee, county-wide elected official, commissioner, or appointee
- K. Prohibited Source means any person or entity who:(1) is seeking official action (i) by an officer or (ii) by an employee, or by the officer or another employee directing that employee; (2) does business or seeks to do business (i) with the officer or (ii) with an employee, or with the officer or another employee directing that employee; (3) conducts activities regulated (i) by the officer or (ii) by an employee, or by the officer or another employee directing that employee; or (4) has interests that may be substantially affected by the performance or nonperformance of the official duties of the officer or employee
- L. Purchasing/Procurement Personnel means the County Purchasing Manager and any employees in the Purchasing Department directly involved in the procurement of supplies and services on behalf of any department of the County.
- M. Relative means people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and

including the father, mother, grandfather, or grandmother of an individual's spouse and the individual's fiancé or fiancée

SECTION 2. STANDARDS OF CONDUCT

Sec. 2.1. Conflicts Of Interest

In order to ensure independence and impartiality, county officials, both elected and appointed, and employees shall not use their position to influence or otherwise affect government decisions or actions in which they possess a personal interest which may present an apparent or real conflict of interest.

- A. A Public Servant shall not represent his or her personal opinion as that of the county.
- B. A Public Servant shall not engage in a business transaction in which the Public Servant may profit from his or her official position or authority or benefit financially from confidential information which the Public Servant has obtained or may obtain by reason of that position or authority.
- C. A Public Servant shall not participate in the negotiation or execution of contracts, making of loans, granting of subsidies, issuance of permits or certificates or other regulation or supervision, which involves Macomb County and an entity in which the Public Servant has a financial or personal interest.
- D. This ordinance shall not in any manner vary or change the requirements of Contracts of Public Servants with Public Entities Act, 1968 PA 317, MCL 15.321 to 15.330, which governs the solicitation by and participation in government contracts by officers and employees of the County and preempts all local regulation of such conduct.

Sec. 2.2. Gifts and Gratuities

Except as permitted by this ordinance, no Public Servant of Macomb County shall intentionally solicit or accept any gift from any prohibited source, including intra-governmental gifts, or which is otherwise prohibited by law or ordinance.

- A. This prohibition shall not apply to:
 - 1. Opportunities, benefits, and services that are available on the same conditions as for the general public.
 - 2. Complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials.
 - 3. A gift received from a Public Servant's relative or immediate family member, provided that the relative or immediate family member is not acting as a third party's intermediary or an agent in an attempt to circumvent the article.
 - 4. Acceptance of unsolicited advertising of promotional material and other items of nominal intrinsic value.

5. Food or refreshments not exceeding \$ 75.00 per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared, or (ii) catered. For the purposes of this Section, "catered" means food or refreshments that are purchased ready to consume which are delivered by any means.
 6. Food, refreshments, lodging, transportation, and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of a Public Servant), if the benefits have not been offered or enhanced because of the official position or employment of the officer or employee, and are customarily provided to others in similar circumstances.
 7. Admission or registration fee, travel expenses, entertainment, lodging, meals or refreshments that are furnished to the Public Servant: (i) by the sponsor(s) of an event, appearance or ceremony which is related to official County business in connection with such an event, appearance or ceremony and to which one or more of the public are invited; or (ii) in connection with teaching, a speaking engagement or the provision of assistance to an organization or another governmental entity as long as the County does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshments for the same activity; and are customarily provided to others in similar circumstances
 8. Anything for which the Public Servant pays fair market value.
 9. Any contribution that is lawfully made under the Campaign Finance Laws of the State of Michigan.
 10. Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the recipient and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as: (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (ii) whether to the actual knowledge of the recipient the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iii) whether to the actual knowledge of the recipient the individual who gave the gift also at the same time gave the same or similar gifts to other officers or employees.
- B. Each of the exceptions listed in this Section is mutually exclusive and independent of every other.
- C. A Public Servant does not violate this Section if he or she promptly takes reasonable action to return the gift.

Sec. 2.3. Personal Disclosure for Public Servants and Vendors

County-wide elected officials, County Commissioners, candidates for county-wide offices and Commission, Office of County Executive Charter-Specified Staff, Department Heads and Purchasing/Procurement Personnel shall file an personal disclosure statement.

- A. The personal disclosure statement shall disclose the existence of the following financial interest of the Public Servant and his or her immediate family in any company, business, or entity that has contracted with Macomb County or which has sought licensure or approvals from Macomb County in the two calendar years prior to the filing of the statement:
 1. Any interest as a partner, member, employee or contractor in or for a co-partnership or other unincorporated association;
 2. Any interest as a beneficiary or trustee in a trust;
 3. Any interest as a director, officer, employee or contractor in or for a corporation, limited liability company, partnership, sole proprietorship, or other business entity; and
 4. Legal or beneficial ownership of 10 % or more of the total outstanding stock of a corporation, limited liability company, partnership, sole proprietorship, or other business entity;
- B. The personal disclosure statement shall also include the address or location of any real estate holdings within Macomb County, excluding primary residence, of the Public Servant and his or her immediate family.
- C. Public servants specified under section 2.3(A) whom are not elected by the public shall file personal disclosure statements by January 31, 2012. Publicly elected public servants specified under section 2.3(A) and candidates for county offices shall file the personal disclosure statement 30 days after filing as a candidate for public office. Public servants would not be required to file an additional personal disclosure statement unless the substance of the document were to change, in which case they shall file an amended personal disclosure statement.
- D. The Human Resources Department shall develop a Personal Disclosure Form and notify all affected personnel. The County Clerk shall post the submitted Personal Disclosure forms on the County's website. The Personal Disclosure form may be submitted electronically.
- E. The County's purchasing department shall amend its standard contract form to include language which provides that County contracts shall be voidable or rescindable at the discretion of the County Executive or Chairperson of the Board of Commissioners at any time if a Public Servant has an interest in such contract and fails to disclose such interest. Such contract shall be voided or rescinded if a lobbyist or employee of the contracting party offers a prohibited gift, gratuity, honoraria or payment to a Public Servant in relation to the contract. A fine shall be assessed to the contractor in the event of a violation of this section of the Charter. If applicable, the actions of the contractor,

and its representative lobbyist or employee, shall be referred to the appropriate prosecuting authorities.

- F. If a person required to file a Personal Disclosure form discovers that the person neglected to disclose some required information, the person shall file an amended form within 10 days of the discovery or notification.

Sec. 2.4. Incompatible Employment

A Public Servant shall not engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the official or employee's official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of official duties.

- A. Subject to state law, for one (1) year after employment with Macomb County, a Public Servant shall not lobby or appear before the County Commission or any County office, department, agency, board, commission or body or receive compensation for any services in connection with any matter in which he or she was directly concerned, personally participated, actively considered or acquired knowledge while working for the county.
- B. Subject to state law, for a period of one (1) year after employment with the county, a Public Servant shall not accept employment with any person or company that did business with the county during the former Public Servant's tenure if that Public Servant was in any way involved in the award or management of that contract or the employment would require the sharing of confidential information.

Sec 2.5. Nepotism

It is the policy of Macomb County not to discriminate in its employment and personnel actions with respect to its employees and applicants on the basis of marital status.

- A. Notwithstanding this policy, the County will consider a member of an employee's immediate family for employment if the applicant possesses all the qualifications for employment. An immediate family member may not be hired, however, if the employment would:
 - 1. Create either a direct or indirect supervisor/subordinate relationship with a family member; or
 - 2. Create an actual conflict of interest or the appearance of a conflict of interest.
- B. The Department Head shall have the authority and responsibility for determining if such a potential for adverse impact does or does not exist.

- C. When a Department Head has made a determination that such adverse impact does not exist, the determination shall be reviewed by the Human Resources Director prior to any employment decision being made. The Department Head shall submit a Nepotism Review Request form developed by the Human Resources Department to the Human Resources Director. Only Department Heads and/or assistant department heads may sign the request form. The Human Resources Director will review the request form and concur (with or without restrictions) or not concur with the decision of the Department Head. If the Human Resources Director determines that an adverse impact would in fact occur, the Department Head, County Executive and Chairperson of the Board of Commissioners shall be notified.
- D. These criteria will also be considered when assigning, transferring, or promoting an employee.
- E. Employees who marry or become members of the same household may continue employment as long as there is not:
 - 1. A direct or indirect supervisor/subordinate relationship between the employees; or
 - 2. An actual conflict of interest or the appearance of a conflict of interest.

Should one of the above situations occur, the County would attempt to find a suitable position within the County of Macomb to which one of the affected employees may transfer. If accommodations of this nature are not feasible, the employees will first be permitted to determine which of them will resign. If no agreement between the employees can be reached, the County will decide which of the employees will be terminated.

- F. This Section shall in no way disqualify such relatives or their spouses who are bona fide appointed officers or employees of the County at the time of the election or appointment of an officer to elective County office.

Sec. 2.6. Inappropriate Use of County Time and Property for Political Activity

- A. Public servants are prohibited from engaging in political campaign activities using County property or engaging in such activity during working hours.
- B. Public servants are prohibited from soliciting appointees and employees to work on political campaign activities using County property or during working hours on their behalf or on the behalf of another.

- C. Public servants are prohibited from soliciting campaign contributions from County department heads and employees under their supervision, coordination, direction, or control.

Sec. 2.7. Confidential Information

- A. A Public Servant shall not divulge to any unauthorized person confidential information acquired in the course of service to the county in advance of the time prescribed for its authorized release to the public.
- B. A Public Servant shall not knowingly disclose to any unauthorized person information provided, obtained or discussed in closed or executive sessions of the Board of Commissioners in advance of the time prescribed for its authorized release to the public.
- C. A Public Servant shall not benefit financially from confidential information acquired in the course of holding office or employment or knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

Sec. 2.8. Use of Public Assets for Private Purposes

- A. A Public Servant shall use personnel resources, property and funds under the official or employee's official care and control judiciously and solely in accordance with prescribed constitutional, statutory and regulatory procedures and not for personal gain or benefit. All county vehicles shall be used in accordance with the County Vehicle policy.

SECTION 3. SANCTIONS

- A. Sanctions shall not be construed to diminish or impair the rights of a Public Servant under any collective bargaining agreement, nor the County's obligation to comply with such collective bargaining agreements.
- B. State statutes cited in this ordinance contain criminal penalties and civil remedies that apply, as provided in those statutes, to the conduct regulated by those statutes.
- C. A violation of this ordinance may be punished as a civil infraction by a fine of up to \$500.00.
- D. In addition to any other penalty, whether criminal or civil, a Public Servant who intentionally violates this ordinance may be subject to disciplinary action including censure, reprimand, removal, dismissal or discharge.
- E. In addition, the common law offense of misconduct in office (misfeasance,

malfeasance and nonfeasance) constitutes a felony as provided in the Michigan Penal Code, MCL 750.505 and willful neglect of duty constitutes a misdemeanor as provided in MCL 750.478.

SECTION 4. BOARD OF ETHICS

Section 2.4 of the Home Rule Charter of Macomb County establishes a Board of Ethics. The Board is charged with the enforcement of the ethics provisions of the Charter, this ordinance and the law. The provisions below governing procedure for the enforcement of this ordinance may, pursuant to Charter, be superseded by rules of procedure adopted by the Board of Ethics. For the purposes of this section, "Board" refers to the Board of Ethics.

Sec. 4.1. Open Meetings Act

- A. All meetings of the Board are subject to the Open Meetings Act, MCL 15.261, *et seq.* The Board may hold closed sessions when authorized by law.
- B. Public notice of the Board's meetings shall be provided for in accordance with the provisions of the Open Meetings Act.

Sec. 4.2. Complaints and Answers

- A. Any person may file a complaint alleging a violation of this ordinance with the Board of Ethics. The complaint shall comply with all of the following requirements:
 - 1. Be in writing.
 - 2. Specify 1 or more of the standards of prohibited conduct outlined in the ethics ordinance that was allegedly violated.
 - 3. Include evidentiary facts supporting the allegations in the complaint.
 - 4. Contain a statement that the complainant or designee has read the complaint and knows its contents, and believes the alleged violations to be true.
 - 5. Contain the signature of the complainant or designee before a notary.
- B. The identity of the complainant shall be kept confidential except as required by law or ordinance.
- C. A Public Servant shall not take retaliatory action of any type against the complainant or a witness. As such retaliatory action is itself a violation of this ordinance.
- D. The chairperson of the Board may administratively dismiss a complaint if (i) one or more complaints regarding the same matter are pending; or (ii) the Board previously addressed the subject matter; or (iii) he or she determines that the evidence given is clearly insufficient to support the complaint.

- E. A copy of the complaint shall be promptly served on the person alleged to have violated this ordinance.
- F. The person charged, or designee, shall file an answer within 21 days after service of the complaint. The answer shall comply with all of the following:
 - 1. Be in writing.
 - 2. Include a response to each allegation raised in the complaint.
 - 3. Contain the signature of the person charged or designee before a notary.
- F. Any additional written information a complainant or the person charged wants the Board to consider must be simultaneously filed with the Board and the opposing party no later than 21 calendar days before the date of the Board meeting scheduled to address the complaint. The opposing party must submit any written response to the executive secretary no later than 14 calendar days before the date of the Board meeting.
- G. Upon expiration of the time provided for written submissions, the complaint, answer, and any other written submissions shall be presented to the Board for its consideration at a meeting. Upon presentation of the complaint and answer, the Board may request additional information regarding the complaint. Any information acquired by the Board is confidential unless revealed by the Board.
- H. The complainant and the person charged shall have an opportunity to address the Board at the meeting scheduled to address the complaint.
- I. At any time, the Board may issue a complaint decision based on any of the following reasons:
 - 1. The Board lacks jurisdiction over the person subject to the complaint.
 - 2. The Board lacks jurisdiction over the subject matter.
 - 3. The complaint is barred because of release, prior judgment, or other disposition of the claim before the complaint was filed.
 - 4. The complaint on its face fails to state a claim of unethical conduct.
- J. If no genuine issue as to any material fact exists, then the Board may issue a complaint decision without a hearing.
- K. If the Board determines that the complaint cannot be resolved, the Board may schedule a formal hearing.
- L. The Board shall transmit copies of the Board's decision to the complainant, the person charged with unethical conduct and other persons as the Board directs.

Sec. 4.3. Advisory Opinions

- A. Any Public Servant may request an advisory opinion relating to matters affecting the ethical conduct of a Public Servant. The request shall be in writing, but need not be notarized.
- B. Upon the request for an advisory opinion, the Board may ask for additional information regarding the request.
- C. At any time, the Board may issue an advisory opinion based on any of the following reasons:
 - 1. The Board lacks jurisdiction over the person subject to the advisory opinion.
 - 2. The Board lacks jurisdiction over the subject matter.
 - 3. The request is barred because of release, prior judgment, or other disposition of the claim before the complaint was filed.
 - 4. The request on its face fails to state a claim of unethical conduct.
- D. If no genuine issue as to any material fact exists, then the Board may issue an advisory opinion without a hearing.
- E. If the Board determines that the request for an advisory opinion cannot be resolved, then the Board may schedule a hearing.
- F. Copies of the Board's order shall be transmitted to the party filing the request, the person subject to the request, and other persons as the board directs.

Sec. 4.5. Investigations Initiated by the Board of Ethics

- A. The Board may direct the prosecutor's office to make an informal investigation of any practice that could affect the ethical conduct of a public official or employee. The investigation and its results shall not be disclosed except to the board.
- B. The Board may vote to initiate an investigation upon a Board member's duly made motion. If the Board determines that there is reasonable cause to conclude that the practice could affect the ethical conduct of a public officer or employee and that substantial factual matters are in dispute, then the Board shall schedule a meeting on the practice. Notices of the meeting shall be sent to parties of interest.
- C. If the Board determines that there are no reasonable grounds to conclude that the practice could affect ethical conduct, then it shall terminate the investigation and a prompt written notice of the termination shall be sent to all persons of whom inquiry was made. The board may issue a report of its actions.

- D. If the Board determines that the matter cannot be resolved, then the board may schedule a hearing.

Sec. 4.6. Representation by Legal Counsel

- A. Interested parties attending a meeting or witnesses required to testify at a hearing at the request of the Board, the complainant or the person charged with unethical conduct have the right to be represented by legal counsel, provided at his or her own expense and not that of the county.

Sec. 4.7. Hearings

- A. The Board may hold a hearing to further review the merits of a complaint, a request for an advisory opinion, or upon conclusion of an investigation.
- B. Not fewer than 28 calendar days before the date of the hearing, any interested party shall be notified. The notice shall state the time, place, date, case name, and questions to be heard at the hearing as determined by the Board.
- C. The chairperson of the board shall preside over the hearings, or in the chairperson's absence, members of the board shall appoint a board member as presiding officer. A member of the board, a hearing officer, agent or employee of the Board shall not have direct or indirect ex-parte communication with any person in connection with any issue involved in a scheduled hearing except with the members of the Board or its agents or employees.
- D. The chairperson shall do any of the following:
 - 1. Administer oaths as deemed appropriate by the Board.
 - 2. Request the attendance of any witnesses whose testimony, in the judgment of the Board, will aid in the conduct of its investigations.
 - 3. Request the production of books, papers, and other documentary evidence to aid the Board in its investigation.
 - 4. Fix the time and form for the submission of evidence or argument.
 - 5. Adjourn a hearing for good cause to such time, date, and place as the chairperson determines to be appropriate. The rules of evidence applicable in the courts of the state need not be applied strictly in any hearing.
- E. The standard of review shall be the preponderance of the evidence. The complainant shall have the burden of introducing the requisite evidence to prove the alleged unethical conduct. The person requesting an advisory opinion shall have the burden of presenting facts or issues to the board for its consideration. The person whose conduct is being questioned has all of the following rights:

1. Be present.
 2. Be represented by counsel.
 3. Testify.
 4. Produce and examine witnesses.
 5. Cross-examine adverse witnesses.
 6. Introduce other evidence as may be material and relevant to the issues.
- F. At the conclusion of the hearing, the chairperson may request additional evidence or written argument concerning the subject matter to be submitted within such time and in the form as the presiding board member or hearing officer directs. The additional evidence or argument shall be disclosed to all interested parties.
- G. The Board shall publish its decisions and opinions, including dissents, and make them available for public inspection at its office, on the county website, and in the appropriate county agencies.
- H. The chairperson shall issue a proposal for decision. The Board shall act upon the proposal.
- I. All proceedings shall be recorded but need not be transcribed unless requested by the Board or a participating party. The Board shall determine the amount and source of payment for the transcript. The Board shall prepare an official record of its hearing, to include the notice of hearing, and all documents considered by the board. The Board may also include a transcript of evidence presented at the hearing.
- J. The Board may designate the record, or portion of the record, supporting or concerning any complaint, advisory opinion or investigation as a suppressed record, where public disclosure would constitute a clearly unwarranted invasion of an individual's privacy or where disclosure is prohibited by law.
- K. The Board shall deny public access to the original document and any legal analysis necessary to support the decision of the Board in a case where the record has been expunged.