

**ENROLLED ORDINANCE
NO. 2019-05**

Introduced by Commissioner Sauger, supported by Commissioner Drolet.

**AN ORDINANCE TO AMEND AND RESTATE ORDINANCE NO. 2016-03 ENTITLED
“AN ORDINANCE TO ESTABLISH AND TO PROVIDE FOR ENFORCEMENT AND
PENALTIES FOR VIOLATION OF A STANDARD OF ETHICS FOR PUBLIC SERVANTS
OF AND THOSE CONTRACTING WITH MACOMB COUNTY”**

IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CHARTER COUNTY OF MACOMB:

Section 1. Amendment. Ordinance No. 2016-03 entitled “An Ordinance to Establish and to Provide for Enforcement and Penalties for Violation of a Standard of Ethics for Public Servants of and Those Contracting with Macomb County” is amended in its entirety to read as follows:

**AN ORDINANCE TO PROVIDE STANDARDS OF ETHICAL CONDUCT APPLICABLE TO
ALL COUNTY PUBLIC SERVANTS AND TO PROVIDE CLEAR NOTICE OF REQUIRED
AND PROHIBITED CONDUCT.**

**ARTICLE 1
PURPOSE AND DEFINITIONS**

Sec 1. Short Title. The “Ethics Ordinance”.

Sec 2. Purpose, Applicability, and Review.

a. Purpose. The purpose of this Ordinance is to:

- (1) Establish standards of ethical conduct applicable to all County Public Servants (defined in Article I, Section 1.4(p) of the Charter and herein) in accordance with County Charter, Article 2 and applicable law; and
- (2) Provide all County Public Servants clear notice of prescribed (required) and proscribed (prohibited) conduct.

b. Applicability.

- (1) When there is a question or a complaint as to the applicability of any provision of this Ordinance or other laws or regulations establishing standards of conduct for Public Servants to a particular situation or conduct, that question or complaint shall be directed to the Ethics Board, established in accordance with County Charter, Article 2. It shall be the function of the Ethics Board to conduct hearings and/or issue an advisory opinion, as applicable.
- (2) This Ordinance is of limited personal jurisdiction only and shall be applicable to all County Public Servants, except
 - (a) District and Circuit Court Judges whose positions are funded through the County; and
 - (b) Uncompensated volunteers.
 - (c) Review. This Ordinance shall be reviewed every year to evaluate its operation and to propose any changes needed.

Sec 3. Conflict with Law.

- a. The requirements of this Ordinance are subject to state and federal laws, rules, and regulations.

- b. Preemption. To the extent state or federal law expressly preempts local government legislative action or executive rule and/or policy making authority with regard to specified issues, any conflict between this Ordinance and state or federal law shall be resolved in favor of state or federal law.
- c. More Restrictive Standard. To the extent this ordinance imposes a more restrictive or higher standard of conduct than is imposed by analogous state or federal law, any conflict between this Ordinance and state or federal law shall be resolved in favor of this Ordinance, unless state or federal law make it illegal for the higher standard of conduct in this Ordinance to apply.
- d. Individual Statutory and Constitutional Rights. This Ordinance shall not be applied in any manner which restricts or otherwise limits individual rights accorded by state or federal statutes or constitutions.
- e. This Ordinance shall not be construed as modifying the provisions of the Contracts of Public Servants with Public Entities Act, MCL 15.321-15.330.
- f. This Ordinance shall not be construed as modifying the provisions of any collective bargaining agreement between the County and any collective bargaining unit. However, where a collective Bargaining Agreement is permissive or does not otherwise exclude determining a violation of this ordinance, this ordinance shall control.

Sec 4. **Definitions.** As used in this Ordinance, the following terms shall be defined as follows; the ordinary meaning shall be applied to any term not specifically defined herein.

- a. *Appointing Authority* shall mean the individual having legal authority to appoint a person to a County employment position.
- b. *Appointee* shall mean any individual appointed to a compensated or uncompensated position in the County government, regardless of whether the individual's appointment is or is not subject to the approval of any authority other than the appointing authority.
- c. *Business Interest* shall mean having a direct or indirect financial stake, deriving a direct or indirect non-economic personal benefit, or realizing a private economic gain from a proposed County contract, transaction, agreement, appointment, approval, decision or other discretionary action, or from the investment of County funds entrusted for that purpose to the County Treasurer, the County Retirement Board, or the County Retiree Healthcare Trust Board, under any of the following circumstances:
 - (1) The Public Servant is a County policy making authority or a County final or intermediate decision maker who is also employed by the individual or entity seeking or benefitting from the proposed action;
 - (2) The Public Servant or a Close Relative of the Public Servant is an officer, director, member, or partner of the entity seeking or potentially benefitting from the proposed action;
 - (3) The Public Servant or a Close Relative of the Public Servant represents in a professional capacity the individual or entity seeking or benefitting from the proposed action;
 - (4) The Public Servant or a Close Relative of the Public Servant owns 10% or more of the stock or holds more than 10% ownership interest in the entity seeking or benefitting from the proposed action;
 - (5) The Public Servant owns stock or another interest totaling \$50,000.00 or more in value in an entity seeking or benefitting from the proposed action;
 - (a) Exception 1. This provision does not apply where the entity's stock is traded on a public exchange.

- (b) Exception 2. This provision does not apply to shares in a publicly traded mutual fund.
- (6) The Public Servant or a Close Relative of the Public Servant may realize a private gain, whether of an economic benefit nature or otherwise.
- d. *Charter* shall mean the Home Rule Charter of Macomb County, Michigan.
- e. *Close Relative* shall mean a Public Servant's:
 - (1) Spouse;
 - (2) Child, step-child, grand-child, or step grandchild;
 - (3) Parent, step-parent, foster parent, or grandparent
 - (4) Brother, sister, half-brother or half-sister, step-brother, step-sister;
 - (5) Brother-in-law, sister-in-law, father-in-law, or mother-in-law;
 - (6) Any individual claimed as a dependent on the Public Servant's federal income tax filings;
 - (7) Any individual residing or cohabitating with the public servant, regardless of the nature of the relationship between the individual and the public servant; and
 - (8) Uncles, aunts, and cousins of the 1st or 2nd degree.
- f. *Commission* shall mean the Macomb County Board of Commissioners.
- g. *Commission Chair* shall mean the duly selected Chairperson of the Macomb County Board of Commissioners or the Chairperson's designee.
- h. *Commissioner* shall mean a member of the Macomb County Board of Commissioners.
- i. *Complainant* shall mean the individual who files an ethics violation complaint with the Macomb County Ethics Board.
- j. *Confidential Information* shall mean information obtained by a public servant through his or her position with the County which is:
 - (1) Not otherwise available to the public under law including, but not limited to, Freedom of Information Act, MCL 15.231 *et seq.*, Social Security Number Privacy Act, MCL 445.81, and the Health Insurance Portability and Accountability Act of 1996 Pub L 104-191, 110 Stat 1936;
 - (2) Not to be disclosed under County policy or procedures;
 - (3) Not to be disclosed under County departmental policy or procedures; or
 - (4) Not authorized to be disclosed by the Public Servant.
- k. *Conflict of Interest* shall mean a situation or circumstance in which a Public Servant:
 - (1) Is in a position to receive a direct personal benefit from actions or decisions made in his or her official capacity, or direct benefit for a Close Relative from actions or decisions made in the Public Servant's official capacity;
 - (2) Has an actual or apparent financial interest, personal interest, or political interest which is or which may be incompatible with the County's actual or apparent interests; or
 - (3) May be biased or partial as a result of his or her personal interests.
- l. *County Agency* shall mean a department, office, board, commission, committee, or administrative unit, whether created by Charter, ordinance, or law.
- m. *County* shall mean the Charter County of Macomb
- n. *Due Process* shall mean the right of a Public Servant to fair treatment. It includes the right to notice of a complaint, access to all evidence upon which the complaint is based, the right to be represented by counsel at the Public Servant's expense, the right to be heard, and the right to confront the evidence and cross-examine witnesses

- supporting the allegations of the complaint, and the right to present exculpatory witnesses and evidence in his or her defense.
- o. *Elected Official* shall mean any individual elected to office in County government as the result of ballots cast either on a district-wide basis, or a country-wide basis.
 - p. *Entity* shall mean any governmental, business, non-profit, or private organization, agency, or unit recognized by law as having authority to enter into contracts and being subject to regulation and legal process. *Entity* shall include, but is not limited to, an association, corporate business organization or enterprise, sole proprietorship, general partnership, limited partnership, limited liability partnership, governmental agency or organization, limited liability company, business operating under an assumed name.
 - q. *Ethics* shall mean a set of moral principles distinguishing authorized conduct from prohibited conduct.
 - r. *Ethics Board* shall mean the Macomb County Ethics Board as provided by Charter, Article II, Section 2.4.
 - s. *Ethics Board Member* shall mean a member of the Macomb County Ethics Board.
 - t. *Executive or County Executive* shall mean the duly elected County Executive as Provided by Charter, Article III.
 - v. *Gift* shall mean anything having a direct or indirect monetary value. Gift shall include, but is not limited to any cash, cash equivalent, gratuity, discount, travel, entertainment, hospitality, food, drink, lodging, loan, loan forgiveness, and honoraria for speaking or appearance engagements.
 - w. *Governmental Entity* shall mean any unit, department, or agency of the United States federal government, the State of Michigan, a municipality including cities, villages, or townships, an authority, or other organization having the characteristics and indicia of government.
 - y. *Members of the Public* shall mean any person or individual who is not a County Public Servant.
 - z. *Nepotism* shall mean a Public Servant's use of his or her power, authority, or influence to secure employment for friends or Close Relatives.
 - aa. *Partisan Political Interest* shall mean having a direct or indirect political stake, deriving a direct or indirect personal political benefit, or realizing a private political gain from a proposed County contract, transaction, agreement, appointment, approval, decision or other discretionary action which benefits the subject Public Servant, or the subject Public Servant's political party. A Public Servant has a Partisan Political Interest in a proposed County contract, transaction, agreement, appointment, approval, decision or other discretionary action when:
 - (1) He or she has a decision making or advisory role in negotiating, initiating or approving the proposed County contract, transaction, agreement, appointment, approval, decision or other discretionary action, and
 - (2) The direct or indirect political benefit or political gain is different in type, kind, or degree than the political benefit or political gain bestowed upon the general public by the County contract, transaction, agreement, appointment, approval, decision or other discretionary action.
 - (3) Exception. Approving or confirming an appointment made or recommended by others, including an appointment of the approving or confirming Public Servant him- or herself, does not constitute a Partisan Political Interest.

- bb. *Personal Interest*. A Public Servant has a personal interest in a proposed County contract, transaction, agreement, appointment, approval, decision or other discretionary action involving another individual or entity where:
- (1) The Public Servant has a decision making or advisory role in negotiating, initiating, or approving the proposed County contract, transaction, agreement, appointment, approval, decision or other discretionary action involving any other individual or entity, and
 - (2) The proposed County contract, transaction, agreement, appointment, approval, decision or other discretionary action may bestow a direct or indirect economic or non-economic benefit or gain upon the Public Servant or the Public Servant's Close Relative, if the Close Relative is also:
 - (a) Employed by the individual or entity;
 - (b) An officer, director, member, or partner of the entity;
 - (c) Represents the individual or entity in a professional capacity;
 - (d) Owns 10% or more of the stock or holds more than 10% ownership interest in the entity; or
 - (e) Owns stock totaling \$50,000.00 or more in value in an entity seeking or benefitting from the proposed action;
 - (i) Exception 1. This provision does not apply where the entity's stock is traded on a public exchange.
 - (ii) Exception 2. This provision does not apply to shares in a publicly traded mutual fund.
 - (3) Negotiating, enforcing the terms of, or being subject to a county collective bargaining agreement does not involve a personal interest as defined here.
- cc. *Preponderance of the Evidence* shall mean a degree of evidence favoring one conclusion which slightly outweighs the evidence favoring any contrary conclusion. A preponderance of the evidence requires 51% certainty.
- dd. *Private Gain* shall mean any direct financial benefit that is different in type, nature, or degree from any financial benefit bestowed upon members of the general public or a significant sub-set of the general public as a result of a proposed County contract, transaction, agreement, appointment, approval, decision or other discretionary action involving another individual or entity.
- ee. *Probable Cause* shall mean an objectively reasonable belief that a violation of this Ordinance has been committed coupled with an objectively reasonable belief that the respondent was in some way involved in the commission of that violation.
- ff. *Prohibited Source* shall mean any individual or entity:
- (1) Soliciting, competing for, bidding on, or bound to the County by appointment, contract, or agreement;
 - (2) Engaged with the County in a joint venture, partnership, or business transaction;
 - (3) Involved in the investment or management of County funds entrusted for that purpose to the County Treasurer, the County Retirement Board, or the County Retiree Healthcare Trust Board;
 - (4) Regulated, inspected, or issued permits or licenses by the County or any County board, commission, or Public Servant;
 - (5) Seeking approval, action, or service from the County or any County board, commission, or Public Servant.

gg. *Public Servant* shall mean:

- (1) All County district-wide and countywide elected officials;
- (2) All appointees regardless of the underlying source of authority relied upon for the appointee's appointment;
- (3) All full- and part-time employees;
- (4) All individuals employed directly by the County on an individual contract basis;
- (5) All others paid by or through the County regardless of the originating source of the funds used for that purpose.

hh. *Respondent* shall mean the individual against whom an ethics complaint is made.

jj. *Vendors* shall mean publicly traded and privately held corporations, limited liability corporations, professional corporations, sole proprietorships, DBAs, or other business enterprises and organizations providing the County goods or services.

kk. *Volunteer* shall mean an individual serving the County without compensation or benefits of any manner. *Volunteer* includes individuals serving on a board, commission, or advisory group for an established term, and individuals serving only for the duration of a specific project, event, or occasion.

Sec. 5. General Standards of Conduct. A Public Servant shall act in the public interest and work for the common good of Macomb County and all County residents, businesses, and visitors.

a. Independence. A Public Servant shall be independent, impartial, unbiased, and fair in exercising judgment and decision making.

b. Compliance with County Ordinances and Policies. A Public Servant shall comply with all County ordinances policies, and procedures. This does not preclude advocating for changes to County policies and procedures, but requires compliance with them unless and until they are changed.

c. Favoritism and Discrimination. A Public Servant shall not show favoritism or discriminate on the basis of race, color, gender, gender identity, religion, marital status, national origin, age, disability, height or weight, sexual orientation, or sexual identification.

d. Personal Interests. A Public Servant shall not subordinate the interests of the County to the Public Servant's personal interests.

(1) If not expressly prohibited herein, a Public Servant may conduct himself or herself in any manner otherwise allowed by law.

(2) Prohibited Conduct. A Public Servant shall not:

(a) Use his or her position, title, office, or otherwise act to further his or her Business Interests, Partisan Political Interests, Personal Interests, or to realize Private Gain;

(b) Use his or her position, title, office, or otherwise act to further the Business Interests, Partisan Political Interests, or Personal Interests of a Close Relative, or to realize Private Gain for a Close Relative;

(c) Use or direct any others to act as his or her proxy to advance his or her Business Interests, Partisan Political Interests, Personal Interests, or to realize Private Gain;

(d) Use or direct any others to act as his or her proxy to advance the Business Interests, Partisan Political Interests, Personal Interests of a Close Relative, or to realize Private Gain for a Close Relative;

- (e) Use any of the following to further his or her Business Interests, Partisan Political Interests, Personal Interests, or to realize Private Gain:
 - (i) County owned vehicles;
 - (ii) County land, buildings, facilities, or other property;
 - (iii) County offices, office machines, computers, supplies, communications devices and systems, or mail systems;
 - (iv) County Public Servants, employees, personnel, vendors, or contractors during ordinary County work hours.
- (f) Use any of the following to further the Business Interests, Partisan Political Interests, Personal Interests of a Close Relative, or to realize Private Gain for a Close Relative:
 - (i) County owned vehicles;
 - (ii) County land, buildings, facilities, or other property;
 - (iii) County offices, office machines, computers, supplies, communications devices and systems, or mail systems;
 - (iv) County Public Servants, employees, personnel, vendors, or contractors during ordinary County work hours.

e. Political Activities.

- (1) Permissible Political Activities. Acting in his or her private personal capacity, a Public Servant may exercise his or her rights to political speech and expression and participate in the political process without restriction or limitation. Accordingly, a Public Servant may:
 - (a) Accept political campaign contributions on behalf of him or herself, a Close Relative, another candidate for public office, a political party, or on behalf of a ballot proposal or initiative unless otherwise prohibited under Section 5.d.(2) below.
 - (b) Solicit campaign contributions on behalf of him or herself, a Close Relative, another candidate for public office, a political party, or on behalf of a ballot proposal or initiative unless otherwise prohibited under Section 5.d.(2) below.
 - (c) Engage in or pursue political campaign activities on behalf of him or herself, a Close Relative, another candidate for public office, a political party, or on behalf of a ballot proposal or initiative unless otherwise prohibited under Section 5.d.(2) below.
 - (d) Attend a political rally, event, or fund-raiser which is lawfully conducted under Michigan campaign finance laws.
 - (e) Contribute to the political campaign or otherwise support a candidate for public office, a political party, or on behalf of a ballot proposal or initiative.
 - (f) Work as a paid or unpaid volunteer on behalf of a candidate for public office, a political party, or on behalf of a ballot proposal or initiative unless otherwise prohibited under Section 4.d.(2) below.
 - (g) Voice his or her political opinions.
 - (h) Vote.
- (2) Prohibited Political Activities. Public Servant shall not:
 - (a) Solicit or accept political campaign contributions in violation of Michigan campaign finance law.
 - (b) Personally use or solicit, encourage, enable, or otherwise allow others to use any of the following in pursuit of political campaign contributions or campaign

activities on behalf of him or herself, a Close Relative, or any other person, party, proposal, or initiative:

- (1) County owned vehicles;
 - (2) County land, buildings, facilities, or other property;
 - (3) County offices, office machines, computers, supplies, communications devices and systems, or mail systems;
 - (4) County Public Servants, employees, personnel, vendors, or contractors during ordinary County work hours.
- (c) Solicit or accept political campaign contributions or pursue political campaign activities on behalf of him or herself, a Close Relative, or any other person, party, proposal, or initiative:
- (1) While he or she is engaged in the performance of his or her official duties;
 - (2) On or using County property during ordinary County work hours;
 - (3) Using County facilities, property, business machines, communications devices or systems, resources, assets, or personnel regardless of whether subordinate or otherwise;
 - (4) From any subordinate Public Servant serving under his or her supervision, authority, direction, or control. Exception: a Public Servant does not violate this provision where:
 - (a) The Public Servant employs mass mailings, mass telephone or text messaging, or social media platforms as a means of solicitation addressed or directed to the general public on a County-wide or District-wide basis;
 - (b) The mass mailing, mass telephone or text messaging, or social media posts inadvertently reach another Public Servant;
 - (c) The mass mailing, mass telephone or text messaging, or social media post includes an express disclaimer stating that it was not intended to be sent to such persons; and
 - (d) The Public Servant takes actions to correct the distribution list to avoid recurrence of such solicitation.
- (d) Solicit or accept from any Member of the Public or entity other than the County, any payment, goods, services, employment, or promise of employment, or other thing of value in exchange for: (1) taking any action;(2) making any decision;(3) giving any approval; (4) issuing any decision; (5) voting for or against; (6) issuing any permit; (7) making any payment; (8) making any statement; (9) making or approving an appointment, or (10) undertaking any other effort as a Public Servant for the benefit of any individual or entity.

f. Gifts.

(1) A Public Servant Shall Not:

- (a) Solicit or accept a gift, favor, special privilege, or special discounted price on goods or services either directly from a Prohibited Source or through an intermediary or agent acting on behalf of a Prohibited Source.
- (b) Solicit or accept on behalf of a Close Relative a gift, favor, special privilege, or special discounted price on goods or services either directly from a Prohibited Source or through an intermediary or agent acting on behalf of a Prohibited Source.

- (c) Accept under any circumstance a gift, favor, special privilege, or special discount price on goods or services in exchange for providing services or otherwise satisfying the duties and obligations ordinarily arising from the discharge of his or her County duties.
- (2) A Public Servant may however:
- (a) Accept ordinary social hospitality of a value not exceeding \$75.00;
 - (b) Accept a gift, bequest, favor, or loan from a Close Relative, or friend so long as:
 - 1. The Close Relative, family member related to the Public Servant by blood or marriage, or friend is not a Prohibited Source; or
 - 2. The Close Relative, family member related to the Public Servant by blood or marriage, or friend is not acting as the intermediary or agent for a Prohibited Source.
 - (c) Accept a loan in the ordinary course of personal business from a public lending institution on the same terms available to the general public;
 - (d) Accept a scholarship, grant, or fellowship awarded on the same terms available to the general public;
 - (e) Accept an award, honor, or citation which acknowledges service or achievement and which has no cash or financial value;
 - (f) Accept complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals, or other informational materials.
 - (g) Accept food or refreshments made available at events, meetings, seminars, or occasions related to the Public Servant's official duties, provided, however:
 - 1. The food or refreshments do not exceed \$50.00 in value on any single calendar day; and
 - 2. The food or refreshments are consumed on the premises at which they are served.
 - (h) Accept food, refreshments, transportation, lodging, and other benefits which are related to private personal business or outside employment which is unrelated to the County, and unrelated to the Public Servant's official duties, provided, however:
 - 1. The benefits have not been offered or enhanced because of the Public Servant's position or official duties; and
 - 2. The benefits are customarily available to others under the same circumstances.
 - (i) Accept free or discounted admission or registration fees, travel expenses, entertainment, lodging, meals, or refreshments which are:
 - 1. Provided by the sponsor of an event to which the public is invited, and the event is related to official County business, and
 - (i) The County does not reimburse, compensate, or pay the Public Servant for such admission or registration fees, travel expenses, entertainment, lodging, meals, or refreshments, and
 - (ii) The free or discounted admission or registration fees, travel expenses, entertainment, lodging, meals, or refreshments are customarily offered to others under the same circumstances.

2. Offered in conjunction with teaching, speaking engagements, or service as a director, officer, board member, or committee member of an organization or governmental entity unrelated to the County; and
 - (i) The County does not reimburse, compensate, or pay the Public Servant or such admission or registration fees, travel expenses, entertainment, lodging, meals, or refreshments, and
 - (ii) The free or discounted admission or registration fees, travel expenses, entertainment, lodging, meals, or refreshments are customarily to others under the same circumstances.
 - (j) Accept free admission to a charitable or non-profit event or fund-raiser where:
 1. The Public Servant attends as a County representative, or
 2. Officials of other local governments are provided free admission because of their official status.
 - (k) Accept free admission to events honoring another Public Servant or governmental official where:
 1. The Public Servant attends as a County representative, or
 2. Officials of other local governments are provided free admission because of their official status.
 - (l) Accept a gift from another Public Servant or from a federal, state, local, or school district board, commission, elected official, appointee, or employee provided, however, the value of the gift does not exceed \$75.00.
 - (m) Accept any goods or services for which he or she pays fair market value.
 - (o) A Public Servant may not accept those things described in sub-paragraphs (i), (j), (k), and (l) immediately above on more than three occasions during any rolling six month period.
 - (p) A Public Servant shall disclose to the Board of Commissioners in an open meeting the acceptance of any of those things described in sub-paragraphs (i), (j), (k), and (l) within 30 days of receiving such things.
- g. Privileged and Confidential Information. With respect to Confidential Information defined in Section 4.j. of this Ordinance, or other privileged County information, a Public Servant shall not knowingly or intentionally:
- (1) Disclose medical, counseling, or psychological facts or evaluations concerning an individual if the individual's identity would be revealed by a disclosure of those facts or evaluation, including protected health information, as defined in 45 CFR 160.103, without a specific court order expressly authorizing disclosure, or a signed waiver executed by the individual to whom the information pertains;
 - (2) Disclose an individual's social security number without a specific court order expressly authorizing disclosure, or a signed waiver executed by the individual to whom the social security number pertains;
 - (3) Disclose bids, bid submissions, and bid related documents prior to the time for the public opening of bids or proposals, or if a public opening willnot be conducted, until the deadline for submission of bids or proposals has expired.
 - (4) Disclose another individual's personal information where disclosure would constitute an unwarranted invasion of that individual's privacy;
 - (5) Disclose law enforcement records where disclosure would:
 - (a) Interfere with law enforcement proceedings;
 - (b) Deprive a person of the right to a fair trial;

- (c) Constitute an unwarranted invasion of personal privacy;
 - (d) Identify a confidential source of information or the information furnished by a confidential source;
 - (e) Identify law enforcement investigative techniques or procedures;
 - (f) Endanger the life or physical safety of law enforcement personnel, including law enforcement officers' private information including, but not limited to an officer's home address, telephone number; the name, address, or telephone numbers of family members, relatives, children, or parents of active or retired law enforcement officers or agents; or otherwise jeopardize the life or safety of law enforcement officers or agents or their families, relatives, children, parents, or those who furnish information to law enforcement departments or agencies;
 - (g) Identify or provide a means of identifying a law enforcement undercover officer or a plain clothes officer as a law enforcement officer or agent;
 - (h) Reveal law enforcement operational instructions, the contents of law enforcement staff manuals, or law enforcement communication codes, or plans for deployment of law enforcement personnel;
 - (i) Compromise physical security measures at the Macomb County Jail, the courts, or the Juvenile Justice Center;
- (6) Disclose information submitted to the County or any County office, department or agency upon a promise of confidentiality by the County Executive or a County Elected Official;
 - (7) Disclose information or records subject to the attorney-client, physician-patient, psychologist-patient, or clergy privilege;
 - (8) Disclose appraisals of real property to be acquired by the County;
 - (9) Disclose test questions and answers, scoring keys, and other examination instruments or data used to administer a license, public employment, or academic examination;
 - (10) Disclose information regarding the County's Information Technology security measures, including security plans, security codes and combinations, passes, keys, and security procedures, except as otherwise required by law or ordinance;
 - (11) Disclose information regarding measures designed to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply;
 - (12) Access, read, download, copy, or otherwise possess County information or files, except as otherwise required by law or ordinance;;
 - (13) Allow, enable, authorize or otherwise permit Members of the Public to access, read, download, copy, or otherwise possess County information, files, or data collections;
 - (14) Allow, enable, authorize or otherwise permit Members of the Public to log onto or otherwise gain access to County computers, tablets, email systems, or communications devices;
 - (15) Use confidential or privileged information to realize or further the Business Interests, Partisan Political Interests, Personal Interests of, or to realize Private Gain for:
 - (a) The Public Servant;
 - (b) A Public Servant's Close Relative;

- (c) A Public Servant's current, former, or future business partner, associate, employer, contractor, vendor, or prohibited source; or
 - (d) An entity of any kind.
- h. Communications with Others. A Public Servant shall not represent his or her private opinions to be a statement of County policy, practice, procedure, County position, or the opinion of other Public Servants, except as follows:
 - (1) The County Executive may speak on behalf of the Executive's Office and/or the County in matters involving other governmental entities, business, industry, the media, or the general public.
 - (2) The Board of Commissioner's Chairperson may speak on behalf of the Board in matters involving other governmental entities, business, industry, the media, or the general public.
 - (3) A Countywide Elected Official may speak on behalf of the Countywide Elected Official's office or County agency in matters involving other governmental entities, business, industry, the media, or the general public.
 - (4) Human Resources Department personnel involved in labor contract negotiations may represent their opinions and positions to be those of the County within the context of such negotiations.
 - (5) County Departmental representatives duly authorized to engage in contract negotiations for goods and services may represent their opinions and positions to be those of the County within the context of such contract negotiations.
- i. Incompatible Employment.
 - (1) A Public Servant shall not accept or engage in employment with a Prohibited Source or provide services to a Prohibited Source on a contract basis.
 - (2) A Public Servant shall not accept or engage in employment with another private or public entity or provide services to another private or public entity on a contract basis where that entity is bound to the County by contract, intergovernmental agreement, permit, license, or joint business arrangement, and the Public Servant is or was:
 - (a) Involved in writing, negotiating, approving, or executing the contract, intergovernmental agreement, or similar joint business arrangement;
 - (b) Involved in monitoring, administering, or enforcing the contract, intergovernmental agreement, or similar joint business arrangement; or
 - (c) Involved in issuing or approving permits, licenses, certificates, or authorizations granted by the County to the other public or private entity, or granted by other private or public entity to the County.
 - (3) A Public Servant shall not violate MCL 15.181(b) by holding a public office which is incompatible with the performance of his or her official County duties. Such incompatibility exists under the statute where any of the following results:
 - (a) The subordination of one public office to another;
 - (b) The supervision of one public office by another; or
 - (c) A breach of duty of public office.
 - (4) Nothing in Section 5, paragraph h, shall be construed as prohibiting a Public Servant from:
 - (a) Speaking during public participation in any public meeting subject to Michigan Open Meetings Act, MCL 15.261 *et seq.*;

(b) Running for election to the same or different County elected office.

(c) Serving in the uniformed military services' reserve or guard forces.

Sec 6. Conflicts of Interest. In the performance of official duties, a Public Servant shall not engage in a Conflict of Interest, including influencing, attempting to influence, or participating in the decision making process or taking action which:

- a. Furthers the Public Servant's Business Interests, Partisan Political Interests, or Personal Interests, or those of the Public Servant's Close Relative;
- b. Provides a Private Gain to the Public Servant or the Public Servant's Close Relative;
- c. Provides an intangible personal benefit to the Public Servant or the Public Servant's Close Relative;
- d. Is contrary to the County's actual or apparent interests; or
- e. Is the product of bias or partiality resulting from the Public Servant's personal interests.

Sec 7. Public Servant Mandatory Disclosures.

- a. All Public Servants shall file a personal disclosure statement in the form and manner prescribed by the County through its Human Resources and Labor Relations Department. The County Clerk shall post submitted personal disclosure statements on the County's website.
- b. The Public Servant's disclosure statement shall disclose:
 - (1) The Public Servant's name, title, and position;
 - (2) All current employers other than the County;
 - (3) All entities for which the Public Servant serves as an officer, director, member, or partner;
 - (4) All entities in which the Public Servant owns 10% or more of the stock unless the stock is publicly traded and was acquired through a public exchange or is held by shares in a publicly traded mutual fund, portion of the ownership, and its value;
 - (5) All entities in which the Public Servant owns a 10% or greater ownership interest; and;
 - (6) All entities in which the Public Servant holds an ownership interest totaling \$50,000 or more in value.
- c. A Public Servant shall file his or her personal disclosure statement within 30 days of his or her hire date or the date of taking office.
- d. A Public Servant shall file an updated personal disclosure statement:
 - (1) On a periodic basis determined by the County's Human Relations and Labor Relations Department;
 - (2) Within 30 days of any change in the information reflected on his or her most recent personal disclosure statement; or
 - (3) Immediately, if the Public Servant has a Conflict of Interest that was not disclosed in a previously filed disclosure statement.
- e. A Public Servant shall publicly disclose the Public Servant's Conflict of Interest before any decision, action, or contract in which the Public Servant has a Conflict of Interest is considered by (1) any other Public Servant who is a subordinate or a superior to the Public Servant with the Conflict of Interest; (2) any County body on which the Public Servant with the Conflict of Interest serves; (3) any Appointee whose appointment is made or approved by the Public Servant who has the Conflict of Interest or the body on which that Public Servant serves. That disclosure shall either be in writing or otherwise made part of the official written record of the office or body in which the disclosing Public Servant serves. The Public Servant shall disclose the nature of the

Conflict of Interest and other actions taken by the Public Servant to comply with this Ordinance.

Sec. 8. Vendor Mandatory Disclosures.

- a. All existing County Vendors and any vendor submitting a proposal, bid or contract for County consideration shall file a vendor disclosure statement in the form specified by the County Executive.
- b. At a minimum, the vendor disclosure statement shall include (1) the employment of a Close Relative of a Public Servant; (2) any interest of a Public Servant as a director, officer, partner, beneficiary, trustee member, employee, or contractor in the entity; (3) any legal or beneficial ownership by a Public Servant of 10% or more of the total outstanding stock of a corporation, limited liability company, partnership, sole proprietorship, or other business entity; and (4) any instances in the last five calendar years of failure to perform or otherwise deliver on the terms of a contract or agreement with the County, County Agency, or Public Servant, including any suspensions or debarments.

Sec. 9. Nepotism.

- a. It is the general policy of the County not to discriminate in its employment and personnel actions with respect to its employees and applicants on the basis of marital status.
- b. Notwithstanding this policy or the status of being a Close Relative, a County Agency will consider a Close Relative of a Public Servant for employment if the applicant possesses all the qualifications for employment. However, a Close Relative may not be hired, if the employment would:
 1. Create either a direct or indirect supervisor/subordinate relationship between the Public Servant and a Close Relative of the Public Servant; or
 2. Create an actual Conflict of Interest or the appearance of a Conflict of Interest.
- c. The department head shall have the authority and responsibility for determining if such a potential for adverse impact exists.
- d. When a department head has made a determination that there is no potential for adverse impact, the determination shall be reviewed by the Human Resources Director before any employment decision is 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 their designees may sign the request form. The Human Resources Director will review the request form and concur (with or without restriction) or not concur with the decision of the department head. If the Human Resources Director determines that there is a potential for adverse impact, the department head, County Executive, and the Ethics Board must be notified in writing.
- e. The criteria in this section will also be considered when assigning, transferring, or promoting an employee.
- f. 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.
- g. If one of the situations described in f. above occur, the County shall attempt to find a suitable position within the County to which one of the affected employees may transfer. Exceptions may be made by the County Executive in cases where there is an intermediate level of supervision between the Public Servant and the employee who is a Close Relative of the Public Servant. If no accommodation is 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.

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

Sec. 10. Ethics Board.

a. Composition and Appointment. The Ethics Board shall be comprised of members appointed in accordance with County Charter Article II, Section 2.4.

b. Powers and Duties. The Ethics Board shall have the powers and duties provided in Article II, Section 2.5 of the County Charter.

- (1) Subject matter jurisdiction over all claims arising under this Ordinance; and
- (2) Personal jurisdiction over all Public Servants employed by the County at the time of an act or omission from which a complaint arises, at the time the complaint is filed, and at the time the complaint is adjudicated.

c. Rules.

(1) Within 180 days of the adoption of this Ordinance or the adoption of any subsequent revision of this Ordinance, the Ethics Board shall issue Rules of Procedure for the enforcement of this Ordinance consistent with the Charter and this Ordinance. The County Board of Commissioners shall review the Rules of Procedure and must either approve, with or without amendment, or reject the Rules of Procedure. In the event the Board of Commissioners fails to approve or reject the Rules of Procedure within 60 days of their submission, they shall become effective by default.

(2) The Ethics Board may at any time recommend to the County Board of Commissioners changes or amendments to its Rules of Procedure.

d. Annual Reporting. The Ethics Board shall submit an annual written report, no later than thirty days after each anniversary date of the adoption of this Ordinance. The annual written reports shall disclose:

- (1) The number of complaints filed;
- (2) The nature of the claims presented in each complaint and the Ordinance provision implicated by each complaint;
- (3) The identity of any individual or entity found in violation of this Ordinance;
- (4) The findings, result, or resolution of each filed complaint, including sanctions if any; and
- (5) The number of Ethics Board determinations for which review by a court was sought.

e. Meetings. All Ethics Board meetings shall be public meetings conducted in accordance with the Open Meetings Act, MCL 15.261 *et seq.* All Ethics Board decisions shall be made in an open session of a public meeting.

f. Records.

- (1) Disclosure. All Ethics Board records are public records and shall be subject to disclosure in accordance with the Freedom of Information Act, MCL 15.231 *et seq.*
- (2) Retention. All Ethics Board records shall be retained as follows:
 - (a) Minutes of Meetings. Indefinitely.
 - (b) Opinions. Indefinitely.
 - (c) Complaints and Records of Complaint Resolution. Twelve years.
 - (d) All Other Records. Seven Years.

- g. Advisory Opinions.
 - (1) On request of a Public Servant, the Ethics Board may issue an informal advisory opinion.
 - (2) Any Public Servant may request an advisory opinion on its own initiative.
 - (3) A request for an advisory opinion must be made in writing, signed by the requesting Public Servant. Neither the Public Servant's identity nor the corresponding advisory opinion may be disclosed except as required by law or ordinance;
 - (3) A Public Servant's request for an advisory opinion shall be limited to a contemplated course of conduct not yet acted upon by a Public Servant which causes concern over the lawfulness of the Public Servant's potential future actions.
 - (4) A request for an advisory opinion must fully and fairly provide sufficient factual development concerning a Public Servant's possible course of conduct to allow the Ethics Board to form a fully informed opinion;
 - (5) The Ethics Board shall issue an advisory opinion within 30 days of the request; and
 - (6) A Public Servant who conducts him or herself in conformity with an Ethics Board advisory opinion shall not be subject to investigation or sanctions; safe reliance upon an advisory opinion, however, shall be limited to the facts and circumstances presented in the request.
- h. Complaints.
 - (1) A complaint may be filed by any individual.
 - (2) A complaint must be made in writing, in the form prescribed by the Ethics Board, signed by the complainant, and must identify
 - (a) The provision(s) of this Ordinance allegedly violated;
 - (b) The alleged violator, and
 - (c) The evidentiary facts supporting the allegations in the complaint.
 - (3) The complaint must be mailed to the Ethics Board at 120 North Main Street, 2nd Floor, Mt Clemens, Michigan, 48043.
 - (a) Within 14 days thereafter, the Ethics Board shall acknowledge receipt in writing directed to the complainant.
- i. Summary Disposition of a Complaint. The Ethics Board, acting through its Chairperson alone, may summarily dispose of a complaint without investigation or hearing in the event the complaint exceeds the scope and applicability of the Ordinance. In the event a Complaint is summarily disposed of on this basis:
 - (1) The Complainant shall be notified of the summary disposition and the underlying reasons in writing within 14 days of such determination;
 - (2) The Respondent may at that time be notified that a complaint was filed and the nature of the allegations of the complaint, but the identity of the Complainant shall not be disclosed.
 - (3) In the event he or she summarily disposes of a complaint, the Board Chairperson shall inform the Board at the first meeting conducted thereafter.
 - (a) At either the first open meeting conducted after the disposition of the complaint or a meeting conducted within 14 days thereafter, the Board may override the Chairperson's determination by a simple majority vote of all serving members conducted after a motion and second calling for such vote.
 - (b) In the absence of action taken to override the Chairperson's determination as set forth in (a) above, the Chairperson's determination shall not be subject to challenge except by a court as provided by law.

j. Investigations.

- (1) In accordance with County Charter Section 2.6.3, the Ethics Board may investigate any matter related to its responsibilities under this Ordinance; such investigation shall be conducted in accordance with the provisions of this ordinance, the County Charter, and the Ethics Board Rules of Procedure.
- (2) An investigation shall not be undertaken unless the Ethics Board first determines that a complaint is supported by probable cause.
- (3) The complexity and scope of each investigation will dictate the time allotted for its completion. Nonetheless, the Ethics Board should make every reasonable effort to complete an investigation within 60 days of its initiation. For good cause or with the consent of the complainant and the Public Servant involved in a complaint, the Ethics Board may extend the time for a decision or action on a complaint for an additional 30 days.
- (4) Subpoena Power and Oaths. In accordance with County Charter Section 2.6.2, the Ethics Board shall have the power to issue subpoenas to compel the production of non-privileged records and to compel the appearances of witnesses at a public hearing on a complaint, and the authority to administer oaths to witnesses giving testimony at a public hearing on a complaint.
- (5) The Ethics Board may, on its own initiative, investigate any matter related to its responsibilities.
- (6) The Ethics Board may request the assistance of the Macomb County Sheriff's Office in investigating a complaint made under the provisions of this Ordinance. Providing such assistance is within the Sheriff's discretion and shall be subject to prioritization of law enforcement needs and the availability MCSO personnel assets. The investigation and its results shall not be disclosed except to the Ethics Board except as otherwise provided by law or ordinance.
- (7) The Ethics Board may retain the services of private investigators subject to available budget appropriations. In this regard, the Ethics Board may request from the Board of Commissioners appropriate budget amendment(s) to fund such services.

j. Summary Dismissal of a Complaint After Investigation.

- (1) At the conclusion of an investigation, the Ethics Board may summarily dismiss a complaint if the available evidence fails to establish that the Ordinance was violated.
- (2) If the available evidence shows the existence of a genuine issue of material fact as to (1) above, the complaint shall not be summarily dismissed.
- (3) Any discussion and the decision to summarily dismiss a complaint for failure to present a genuine issue of material fact shall be made in an open meeting.
- (4) In the event a complaint is summarily disposed of:
 - (a) The Complainant shall be notified of the summary dismissal and the underlying reasons;
 - (b) The Respondent may be notified that a complaint was filed and the nature of the allegations of the complaint, but the identity of the Complainant shall not be disclosed.
- (5) The determination to summarily dismiss a complaint after an investigation shall be made by a simple majority vote of all serving members conducted in the first public meeting conducted after the conclusion of the corresponding investigation.

- (6) In the event a complaint is not summarily dismissed after an investigation, the Ethics Board shall conduct a hearing to determine whether Respondent violated the Ordinance.
- k. Pre-Hearing Matters.
- (1) Within 7 days of the Ethics Board's determination that a complaint will not be summarily dismissed, both the Complainant and the Respondent shall be notified in writing by email and mail sent via United States Postal Service that the Board will conduct a hearing on the complaint.
 - (2) Both the Complainant and the Respondent shall be provided at least fourteen calendar days' notice of the hearing date, time, and place.
 - (3) Corporation Counsel may function as the Ethics Board's legal advisor as determined by the Ethics Board. Corporation Counsel is not available to represent a Respondent. A Respondent may be represented by a designated spokesperson or by legal counsel provided at the Respondent's sole expense.
- l. Hearings on a Complaint.
- (1) All hearings on a complaint shall be conducted in the course of the first meeting conducted after notifying the Complainant and Respondent of the pendency of a hearing in accordance with Section 10 of this Ordinance, unless the Respondent expressly requests a closed session in accordance with MCL 15.268(a). The Respondent may rescind his or her request for a closed session at any time under MCL 15.268(a), and the hearing may then only proceed in an open session.
 - (2) A Complainant bears the burden of going forward and shall be afforded the opportunity to present and support his or her claims through witness testimony, records and documentary matters, and audio.
 - (3) A Complainant also bears the burden of proof and must prove his or her claim by a preponderance of the evidence.
 - (4) A Respondent shall be afforded due process including:
 - a. A legible copy of the complaint and all the attachments, exhibits, or allied documents submitted with the complaint to the Ethics Board;
 - b. Legible copies of all evidence provided to the Ethics Board;
 - c. The right to be represented by a designated spokesperson or by legal counsel provided at the Respondent's sole expense;
 - d. The right to be heard, and the right to confront the evidence and cross-examine witnesses supporting the allegations of the complaint; and
 - e. The right to present exculpatory evidence and witnesses, and mitigating evidence and witnesses in his or her defense.
 - (5) To the extent witnesses for either the Complainant or Respondent are County Public Servants, appearance at an Ethics Board hearing shall be considered to be within the scope of the Public Servant's official duties and his or her supervisor or department directors shall not deny permission to appear during ordinary work hours. Overtime, comp-time, or other compensation shall not be paid to Public Servants appearing for an Ethics Hearing conducted outside of his or her ordinary work hours.
 - (6) Gathering evidence and securing the appearance of witnesses shall be the exclusive responsibility of the Complainant and Respondent, and the Ethics Board shall have no obligation to gather evidence or secure the appearance of witnesses for either.

- (7) All testimony shall be given under oath administered by the Board chairperson.
- (8) The Ethics Board shall not at any time provide legal advice to either the Complainant or Respondent.
- (9) A decision on the merits of a Complaint shall be rendered by simple majority vote of all serving members conducted in open session of the Ethics Board meeting during which the hearing is conducted, or by a simple majority vote of all serving members conducted in the first meeting conducted thereafter.
- (10) The Ethics Boards decisions are final and are reviewable only by a court as provided by law.

Sec 11. Sanctions

- a. A violation of this Ordinance shall be a municipal civil infraction made punishable by a fine of up to, but not exceeding, \$500.00. All violations shall be deemed to have occurred in Mt. Clemens. A Respondent subject to a fine shall have 60 days within which make payment in full. Failure to pay a fine may result in a civil collection action. The County shall be under no obligation to indemnify a Respondent for any fine imposed.
- b. This Ordinance shall not be construed to be the exclusive remedial measure applicable to Public Servant misconduct.
 - (1) A Public Servant appointed by the County Executive may also be removed by the County Executive.
 - (2) A non-elected Public Servant may be subject to criminal prosecution or County disciplinary action.
 - (3) An elected Public Servant may be subject to criminal prosecution or removal proceedings as provided by law.
 - (4) In addition to sanction imposed under this Ordinance, a Public Servant may be subject to employment workplace disciplinary actions for violation of County policies, ordinances, or lawful supervisory orders.
 - (5) Summary disposition, summary dismissal, or an Ethics Board determination in the Respondent's favor at the conclusion of a hearing does not preclude employment workplace disciplinary actions for violation of County policies, ordinances, or lawful supervisory orders..
- c. A permit, license, or other approval obtained in violation of this Ordinance shall be void.
- d. A contract secured in violation of this Ordinance may be voided by resolution of the County Board of Commissioners.



BOB SMITH
Chair, Board of Commissioners



FRED MILLER
Clerk/Register of Deeds

Adopted: December 12, 2019
Published: