



BOARD OF COMMISSIONERS

1 S. Main St., 9th Floor
Mount Clemens, Michigan 48043
586.469.5125 FAX 586.469.5993
macombcountymi.gov/boardofcommissioners

SEPTEMBER 21, 2012

NOTICE OF MEETING

There will be a **Regular Meeting** of the **BOARD OF COMMISSIONERS** with a **Special Agenda** on Thursday, September 27, 2012, at 7 p.m., on the 9th Floor of the Administration Building, in the Commissioners' Board Room, Mount Clemens.

SPECIAL PRELIMINARY AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Adoption of Agenda
5. Public Participation (five minutes maximum per speaker, or longer at the discretion of the Chairperson related only to issues contained on the agenda)
6. **Committee Reports:**
 - a) Economic Development, September 26 **(to be provided)**
 - b) Finance, September 27 **(to be provided)**
7. Item Waived by Board Operations Committee Chair:
 - a) Approve or Reject Rules of Procedure as Recommended by Ethics Board (page 1) **(attached)**
(second revision approved by Ethics Board on 9-20-12 is attached)

Corinne Bedard
Committee Reporter

MACOMB COUNTY BOARD OF COMMISSIONERS

Kathy D. Vosburg
District 8
Chair

Marvin E. Sauger
District 2
Vice Chair

Fred Miller
District 9
Sergeant-At-Arms

Toni Mocerì – District 1

David Flynn - District 4

James L. Carabelli - District 6

Roland Frascchetti- District 10

Bob Smith- District 12

Phillip A DiMaria- District 3

Ray Gralowski- 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 approve or reject the Rules of Procedure as recommended by the Ethics Board
(revised September 5, 2012) (revised September 20, 2012)

INTRODUCED BY: Kathy Tocco, Chair, Board Operations Committee

COMMITTEE/MEETING DATE

Board Operations 9-11-12 **REFERRED TO FULL BOARD**

Full Board 9-13-12 **(RULES WERE REJECTED)**

Special Full Board 9-27-12 **WAIVED BY BOARD OPERATIONS COMMITTEE CHAIR**



MACOMB COUNTY ETHICS BOARD
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Phone: 586-469-5525
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Donald J. Amboyer, PHD
Chair

Karen J. Smith
Vice Chair

Gregory G. Bauer

Anthony J. Bellanca

Reverend John L. Mack

September 21, 2012

Kathy D. Vosburg, Chair
Macomb County Board of Commissioners
1 South Main Street, 9th Floor
Mount Clemens, Michigan 48043

Re: Ethics Board Rules of Procedure
Second Revision, September 20, 2012

Dear Chair Vosburg:

Article II, Section 2.S.1 Home Rule Charter of Macomb County, Michigan specifies that the initial five Ethics Board Members shall propose rules of procedure for the enforcement of ethics provisions cited in the Charter, Enrolled Ordinance No. 2011-10, and law. Such proposed Rules of Procedure for the Ethics Board were initially submitted to the Board of Commissioners, in accordance with the Charter, on July 20, 2012.

Fellow Ethics Board Member, Anthony J. Bellanca, Esq., and myself attended the regular meeting of the Board of Commissioners on September 13, 2012, when more suggestions were made to modify the proposed Rules of Procedure. You kindly provided a listing of those suggestions that were discussed and acted upon, with advice of Corporation Counsel, by the Ethics Board at its meeting on September 20, 2012.

It is sincerely hoped that the enclosed Rules of Procedure will earn approval by the Board of Commissioners so the Ethics Board can do its work. Thank you in advance for your assistance and cooperation. Should there be any question or concern, please do not hesitate to contact me at your earliest convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Donald J. Amboyer', is written over a faint, larger version of the same signature.

DONALD J. AMBOYER, Ph.D., Chair
Macomb County Ethics Board

cc: Ethics Board Members

MACOMB COUNTY ETHICS BOARD RULES OF PROCEDURE

SECTION 1. AUTHORITY, PURPOSE, AND DEFINITIONS

Sec. 1.1 Authority. These Rules of Procedure are prepared by the authority conferred on the Ethics Board by Section 2.5.1 of the Home Rule Charter of Macomb County, Michigan.

Sec. 1.2. Purpose. The purpose of these Rules is to provide a due process procedure for the Ethics Board to facilitate complaints alleging violations of applicable ethics provisions cited in the Macomb County Ethics Ordinance with accompanying sanctions.

Sec. 1.3. Definitions. The definitions contained in Section 1.3 of the Ordinance are incorporated by reference. As used in these Rules:

- A. Advisory Opinion means a written opinion of the **B**oard concerning the possible unethical conduct of the person requesting the opinion or the possible unethical conduct of a public servant working under the jurisdiction or supervision of the person requesting the opinion.
- B. Board means the Ethics Board of Macomb County.
- C. Confidentiality means the Board shall use **its** discretion in keeping information **from the public record** in accordance with law.
- D. Charter means the Home Rule Charter of Macomb County, Michigan.
- E. Complainant means the person filing a complaint with the Board.
- F. Interested person means the complainant, respondent or witness.
- G. Ordinance means the Macomb County Ethics Ordinance No. 2011-10.
- H. Public Servant means county-wide elected officials, commissioners, employees and appointees of Macomb County, Michigan.
- I. Preponderance of the evidence means the evidence greater in weight or influence.
- J. Quorum means a majority of the members then in office constitutes a quorum for the transaction of business at any meeting of the Board.
- K. Respondent means the person against whom a complaint has been filed with the Board.
- L. Subcommittee means less than a quorum of the Board.
- M. Unethical conduct means a violation of the Standards of Conduct established in the Macomb County Ethics Ordinance.

Sec. 1.4. Decisions. Any determination or decision of the Board required by these Rules shall be made by a majority of the members present.

SECTION 2. PROCEDURE

Sec. 2.1. Advisory Opinions

- A. Any person may request an advisory opinion relating to matters affecting the ethical conduct of a public servant based upon the Standards of Conduct in the Ordinance (Section 2. and Section 3.) The request shall be in writing on an approved Board form (**Attachment A**), but need not be notarized.
- B. Upon receiving the request for an advisory opinion, the Board may ask any person for additional information regarding the request for investigative purposes. The Board shall notify the public servant who is named in 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 public servant subject to the request, and other persons as the Board directs.

Sec. 2.2. Complaints and Answers

- A. Any person may file a complaint alleging a violation of the Ordinance with the Board. The complaint shall comply with all of the following requirements:
 - 1. Be submitted electronically or by mail in writing on an approved form (**Attachment B**) provided by the Board.
 - 2. Specify one (1) or more of the standards of prohibited conduct outlined in the Ordinance that was allegedly violated.
 - 3. Include evidentiary facts supporting the allegations in the complaint.

4. Contain a statement that the complainant has read the complaint and knows its contents, and believes the alleged violations to be true.
 5. Contain the signature of the complainant before a notary public.
- B. The identity of the complainant shall be kept confidential except as required by law or Ordinance. The complaint shall be assigned an identifying number by the Board. All references to the complaint shall be by the identifying number.
 - C. A public servant will be notified forthwith of the complaint and shall not take retaliatory action of any type against the complainant or a witness, as such retaliatory action is itself a violation of the 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) the chairperson determines that the evidence given is clearly insufficient to support the complaint.
 - E. If the complaint is not administratively dismissed, a copy of the complaint shall be promptly served on the respondent and the identity of the complainant shall be provided to the respondent.
 - F. The respondent may file an answer within twenty-one (21) **calendar** 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 respondent charged before a notary public.
 - G. A sub-committee of the Board shall review the complaint and answer to determine whether good cause exists to forward the submissions for consideration by the full Board.
 - H. Any additional written information a complainant or respondent wants the Board to consider must be simultaneously filed with the Board and the opposing party no later than twenty-one (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 Board no later than fourteen (14) calendar days before the date of the Board meeting.
 - I. 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. 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.

- J. The complainant and the respondent shall have an opportunity to address the Board at the meeting scheduled to address the complaint. Pursuant to section 8(1) of the Open Meetings Act, the Board may meet in closed session if requested by the respondent.
- K. 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.
- M. If no genuine issue as to any material fact exists and the Board finds no violation, then the Board may issue a complaint decision without a hearing.
- N. If the Board determines that the complaint cannot be resolved, the Board may schedule a formal hearing.
- O. The Board shall transmit copies of the Board's decision to the complainant, the respondent, and other persons as the Board directs.

Sec. 2.3. Investigations Initiated by the Board of Ethics

- A. 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 conduct could affect the ethical behavior of a public servant and that substantial factual matters are in dispute, then the Board shall schedule a meeting on the conduct. Notices of the meeting shall be sent to parties of interest.
- B. If the Board determines that there are no reasonable grounds to conclude that the behavior could affect ethical conduct, then it shall terminate the investigation and a written notice of the termination shall be sent to all persons of whom inquiry was made within seven (7) **calendar** days. The Board may issue a report of its actions.
- C. **The Board may request Office of the Macomb County Sheriff to investigate any possible criminal act concerning the ethical conduct of a public servant. The investigation and its results shall not be disclosed except to the Board.**

Sec. 2.4. Representation by Legal Counsel

- A. The complainant and the respondent have the right to be represented by legal counsel, provided at his or her own expense and not that of Macomb County.

Sec. 2.5. Hearings

- A. The Board may hold a hearing to review the merits of a complaint, a request for an advisory opinion, or upon conclusion of an investigation.
- B. Not fewer than twenty-eight (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. Pursuant to section 8(1) of the Open Meetings Act, the Board may meet in closed session if requested by the respondent.
- D. The Chairperson of the Board shall preside over the hearings, or in the Chairperson's absence, the Vice-Chairperson shall preside. A member of the Board, agent or employee of the Board shall not have direct or indirect ex-parte communication with any interested person in connection with any issue involved in a scheduled hearing.
- E. The Chairperson shall do the following:
 - 1. Administer oaths as deemed appropriate by the Board.
 - 2. Pursuant to Section 2.6.2 of the Charter, subpoena or request the attendance of any witnesses whose testimony, in the judgment of the Board, will aid in the conduct of its investigations.
 - 3. Pursuant to Section 2.6.2 of the Charter, Subpoena or 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 of Michigan need not be applied strictly in any hearing.
- F. 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 respondent 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.
- G. 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 chairperson directs. The additional evidence or argument shall be disclosed to the complainant and respondent.
- H. The Chairperson shall issue a proposal for decision. The Board shall act upon the proposal. 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 notify the affected county agency**. All proceedings shall be recorded, but need not be transcribed unless requested by the Board, the complainant or respondent. The Board shall determine the amount and source of payment for the transcript.
- I. 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.
- J. **All records of the Board, except for published decisions and opinions, shall be kept at the Board Office for a period of one year.**
- 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 suppressed.
- L. All decisions of the Board are final and reviewable by a court of law as provided in the Charter.

Adopted by Macomb County Ethics Board on September 20 ,2012.

DONALD J. AMBOYER, Ph.D.
Board Chairperson

ANTHONY J. BELLANCA, ESQ.
Board Secretary

Submitted to the Macomb County Board of Commissioners on September 21 ,2012.

Approved by the Macomb County Board of Commissioners on _____,2012.

Date: _____, 2012

Kathy D. Vosburg, Board Chair

Carmella Sabaugh, County Clerk

Adopted: _____, 2012