

# **MODEL ETHICS ORDINANCE**

## **For Local Units of Government**



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## INTRODUCTION

While Michigan has several statutes governing the various aspects of ethics in government at both the state and local levels, local governmental entities may, by ordinance, establish and enforce ethics regulations for local public officials and public employees to the extent provided by law and/or charter.

The power to adopt ordinances is a governmental function conferred by the Legislature upon local governmental units for the governance of their local affairs. OAG, 2003-2004, No 7150, p 107, 108 (March 1, 2004). Included in a local government's ordinance authority is the power to enforce ordinances, generally by fines not to exceed \$500.00 or penalties of up to 90 days in jail. Examples of the Legislature having authorized local governmental units to adopt and enforce ordinances are contained in sections 3(k) and 4i of the Home Rule City Act, MCL 117.3(k) and MCL 117.4i; Chap VI, sections 1 through 14 of the General Law Village Act, MCL 66.1 - MCL 66.14; section 24(b) of the Home Rule Village Act, MCL 78.24(b), section 21(5) of the Charter Township Act, MCL 42.21(5); sections 1 through 7 of the Township Ordinances Act, MCL 41.181 – MCL 41.187; and MCL 46.11(j) for counties.

A well drafted ethics ordinance should provide clarity to public officials and employees as to behavior necessary to instill trust and faith in government on the part of the public.

[E]thics in government is not merely the absence of corruption but the presence of trust .....Ethics laws and enforcement efforts aimed solely at deterring corruption fail to apprehend that simple truth. Indeed, they foster the notion, unjustified in fact, that public officials are inherently dishonest. Such a policy not only fails to achieve its narrow goal of combating corruption but also destroys trust in municipal officials and thus ultimately undermines both the perception and reality of integrity in government. The purpose of ethics laws lies not in the promulgation of rules nor in the amassing of information nor even in the punishment of wrongdoers, but rather in the creation of a more ethical government, in perception and in fact . . . .

In the end, the touchstone of integrity in government .....reside[s] in the willingness of good citizens to serve in state and local government. Laws and agencies that chill that willingness to serve do far more harm than good. When, however, good citizens clamor to join the ranks of state and local officials, the ethical health of the state and local communities run strong.

Mark Davies, *1987 Ethics in Government Act: Financial Disclosure Provisions for Municipal Officials and Proposals for Reform*, 11 PACE L. Rev. 243, 266-267 (1991).

An ethics ordinance may be aspirational and/or punitive. An aspirational ordinance provides guidance to public officials and employees as to expected and prohibited conduct. An ethics ordinance that is also punitive provides civil and/or criminal penalties for violations of the

ethics ordinance. In drafting an ethics ordinance, consideration must also be given to collective bargaining agreements.

This office has developed this model ordinance as a means of assisting local officials in drafting an ethics ordinance for their local unit of government. While the adoption of such an ordinance is not required by state law, the information contained on this site is designed for local officials seeking to adopt an ethics ordinance. The various chapters and standards of conduct in this model ordinance are offered as suggestions and options for the governing body of a local unit to consider when drafting its own ethics ordinance. The governing body of each governmental unit should seek the advice of its legal counsel when drafting its ethics ordinance.

## **CHAPTER ONE - PURPOSE AND DEFINITIONS:**

Section 1 - 1. Purpose. The purpose of this ordinance is to set forth standards of conduct for the officers and employees of the [type of unit]. The ordinance also provides references to certain state statutes that regulate the conduct of officers and employees of local government. The ordinance provides for an Ethics Ombudsperson to assist the [name of unit's governing body] in the administration of this ordinance. A Board of Ethics is established to hear complaints against officers and employees of the [type of unit] and, when there is a reasonable basis to believe that the respondent has violated Chapter Two of this ordinance, to refer those complaints for prosecution and/or a disciplinary hearing by the appointing authority. The ordinance provides for penalties for violations of this ordinance.

*Commentary. If a unit chooses not to provide for an Ethics Ombudsperson or for a Board of Ethics, this section should be adjusted accordingly. If an Ethics Ombudsperson is not provided for, there would be no separate chapter establishing that office. If the Board of Ethics is not established, there should be in its place another Chapter entitled "Filing and Disposition of Complaints."*

### Section 1 - 2. Definitions.

"Employee" means a person employed by the [type of unit], whether on a full-time or part-time basis.

"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.

"Government contract" means a contract in which the [type of unit] acquires goods or services, or both, from another person or entity, but the term does not include a contract pursuant to which a person serves as an employee or appointed officer of the [type of unit].

"Governmental decision" means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, ordinance, or measure on which a vote by the

members of a legislative or governing body of a public entity is required and by which a public entity formulates or effectuates public policy.

"Immediate family" means a person and a person's spouse and the person's children and step-children, by blood or adoption, who reside with that person.

"Officer or Official" means a person who holds office, by election or appointment within the [type of unit] regardless of whether the officer is compensated for service in his or her official capacity.

"Official action" means a decision, recommendation, approval, disapproval or other action or failure to act which involves the use of discretionary authority.

"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 non-performance of the official duties of the officer or employee.

## **CHAPTER TWO – STANDARDS OF CONDUCT**

Section 2 – 1. Gift Ban. Except as permitted by this ordinance, no officer or employee of the [type of unit] shall intentionally solicit or accept any gift from any prohibited source or which is otherwise prohibited by law or ordinance.

Section 2 – 2. Exceptions. Section 2 – 1 is not applicable to the following:

- (1) Opportunities, benefits, and services that are available on the same conditions as for the general public.
- (2) Anything for which the officer or employee pays the fair market value.
- (3) Any contribution that is lawfully made under the Campaign Finance Laws of the State of Michigan.
- (4) A gift from a relative, meaning those 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.

(5) 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.

(6) Food or refreshments not exceeding \$[amount to be determined by unit's governing body] 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.

(7) 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 an officer or employee), 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.

(8) Intra-governmental and inter-governmental gifts. For the purpose of this ordinance, "intra-governmental gift" means any gift given to an officer or employee from another officer or employee of [type of unit], and "inter-governmental gift" means any gift given to an officer or employee by an officer or employee of another governmental entity.

(9) Bequests, inheritances, and other transfers at death.

(10) Any item or items from any one prohibited source during any calendar year having a cumulative total value of less than \$[amount to be determined by unit's governing body].

Each of the exceptions listed in this Section is mutually exclusive and independent of every other.

*Commentary. The dollar amount limitations permitted in Section 2 – 2 should be determined by each local unit based upon the standards of each municipality and the cost of such items in the area. For example, the State of Illinois places limits of \$75 and \$100 in subsections (6) and (10) respectively. However, a rural area of northern Michigan is not likely to be subject to a cost of living similar to that in Chicago or Detroit and the limits should reflect the local standards.*

Section 2 – 3. Disposition of gifts. An officer or employee does not violate this ordinance if he or she promptly takes reasonable action to return a gift from a prohibited source.

Section 2 – 4. Confidential Information. A public officer or employee shall not divulge to an unauthorized person, confidential information acquired in the course of employment in advance of the time prescribed by [name of governing body of local unit] or the [name of specific officer] for its authorized release to the public.

See: Freedom of Information Act (FOIA), 1976 PA 442, MCL 15.231 et seq. - Suppression of or refusal to provide public records of the [type of unit] is governed by the FOIA, the Records Retention Schedule of the local unit as approved by the State Archivist, and MCL 750.491 (Public records; removal, mutilation or destruction; penalty).

Section 2 – 5. Personal Opinion. An officer or employee shall not represent his or her personal opinion as that of the [type of unit].

Section 2 – 6. Public Resources. An officer or employee shall use personnel resources, property, and funds under the officer's 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.

Section 2 – 7. Personal Profit. A public officer or employee shall not engage in a business transaction in which the public officer or employee may profit from his or her official position or authority or benefit financially from confidential information which the public officer or employee has obtained or may obtain by reason of that position or authority. Instruction which is not done during regularly scheduled working hours except for annual leave or vacation time shall not be considered a business transaction pursuant to this subsection if the instructor does not have any direct dealing with or influence on the employing or contracting facility associated with his or her course of employment with this [type of unit].

Section 2 – 8. Incompatibility and Conflicts of Interest. Except as otherwise provided in Const 1963, statute, or in Section 2 - 10, an officer or employee 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 officer 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. The simultaneous holding of more than one public position under certain circumstances is contrary to the requirements of the Incompatible Public Offices Act, MCL 15.181 *et seq.* However, the simultaneous holding of certain public positions is specifically authorized by the Michigan Constitution of 1963 or state statute.

See: Incompatible Public Offices Act, 1978 PA 566, MCL 15.181 et seq.

See: Const 1963, Article 7, Section 28. Local officials are specifically authorized to serve on the governing bodies of intergovernmental entities.

Section 2 – 9. Personal and financial interests. Except as provided in Section 2 – 10, an officer or employee shall not participate in the negotiation or execution of contracts, making of loans, granting of subsidies, fixing of rates, issuance of permits or certificates, or other regulation or supervision relating to a business entity in which the officer or employee has a financial or personal interest.

See: Conflict of Interest Act, 1968 PA 317, MCL 15.321 et seq. This Act governs the solicitation by and participation in government contracts by officers and employees of the [type of unit] and preempts all local regulations of such conduct. However, the Conflict of Interest Act does not apply to contracts between the [type of unit] and its officers and employees which are based on the [type of unit]'s powers to appoint officers and hire employees.

See: State Ethics Act, 1973 PA 196, MCL 15.341 et seq. Section 2 of this Act, MCL 15.342, set forth the standards listed in Sections 2 - 4 to 2 - 9 of this ordinance. However, no sanctions are imposed for violation of these standards by officers and employees of local units of government. Hence, the need for this ordinance to impose sanctions for the violation of these standards of conduct.

Section 2 – 10. State Conflict of Interest Act, Validity of Contracts, and Voting on, Making, or Participating in Governmental Decisions.

(1) This ordinance shall not in any manner vary or change the requirements of 1968 PA 317, being sections 15.321 to 15.330 of the Michigan Compiled Laws which governs the solicitation by and participation in government contracts by officers and employees of the [type of unit] and preempts all local regulation of such conduct.

(2) This ordinance is intended as a code of ethics for the [type of unit]'s officers and employees. A contract in respect to which a public officer or employee acts in violation of this ordinance, shall not be considered to be void or voidable unless the contract is a violation of a statute which specifically provides for the remedy.

(3) Subject to subsection (4), sections 2 - 8 and 2 - 9 shall not apply and an officer shall be permitted to vote on, make, or participate in making a governmental decision if all of the following occur:

(a) The requisite quorum necessary for official action on the governmental decision by the [name of unit's governing body] to which the officer has been elected or appointed is not available because the participation of the officer in the official action would otherwise violate sections 2 - 8 and 2 - 9.

(b) The officer is not paid for working more than 25 hours per week for [type of unit].

(c) The officer promptly discloses any personal, contractual, financial, business, or employment interest he or she may have in the governmental decision

and the disclosure is made part of the public record of the official action on the governmental decision.

(4) If a governmental decision involves the awarding of a contract, Sections 2 - 8 and 2 - 9 shall not apply and a public officer shall be permitted to vote on, make, or participate in making the governmental decision if all of the following occur:

(a) All of the conditions of subsection (3) are fulfilled.

(b) The public officer will directly benefit from the contract in an amount less than \$250.00 or less than 5% of the public cost of the contract, whichever is less.

(c) The public officer files a sworn affidavit containing the information described in subdivision (b) with the [name of unit's governing body] making the governmental decision.

(d) The affidavit required by subsection (c) is made a part of the public record of the official action on the governmental decision.

#### Section 2 – 11. Political Activities of Public Employee or Public Officer.

(1) Employees of local units of government running for office, political campaigning by employees, and limitations on officers and employees seeking support from other employees for those campaigning for public office and for or against ballot proposals are regulated by the Political Activities by Public Employees Act, MCL 15.401 et seq. Complaints may be filed with the Michigan Department of Energy, Labor and Economic Growth. MCL 15.406. Violation of the provisions of this Act by employees and appointed officers are subject to appropriate disciplinary action, up to and including termination by the appointing authority. Violations of the ordinance are also subject to the sanctions listed in Chapter Five.

(2) Michigan Campaign Finance Act, MCL 169.201 et seq. Complaints regarding compliance with this Act may be filed with the Michigan Department of State.

See: Political Activities by Public Employees Act, 1976 PA 169, MCL 15.401 et seq.

See: Michigan Campaign Finance Act, MCL 169.201 et seq.

Section 2 – 12. Anti-nepotism. Unless the [name of governing body] shall by a two-thirds (2/3) vote, which shall be recorded as part of its official proceedings, determine that the best interests of the [type of unit] shall be served and the individual considered by such a vote



has met the qualifications for appointive office or employment, the following relatives of any elected or appointed officer are disqualified from holding any appointed office or employment during the term for which said elected or appointed officer was elected or appointed: spouse, child, parent, grandchild, grandparent, brother, sister, half-brother, half-sister, or the spouse of any of them. This Section shall in no way disqualify such relatives or their spouses who are bona fide appointed officers or employees of the [type of unit] at the time of the election or appointment of said officer to elective [type of unit] office.

Section 2 – 13. Representation Before Governmental Body.

An official or employee of the [type of unit] shall not represent any other person in any matter that the person has before the [type of unit] when the officer or employee appoints or otherwise supervises the board, commission, officer or employee responsible for handling the matter.

Section 2 - 14. Transactional Disclosure. Whenever an officer or employee is required to recuse himself or herself under Chapter Two of this ordinance, he or she:

(a) shall immediately refrain from participating further in the matter,

(b) shall promptly inform his or her superior, if any, and

(c) shall promptly file with the Board of Ethics, if any, and clerk of the [type of unit] a signed Affidavit of Disclosure disclosing the reason for recusal. The clerk shall send copies of the Affidavit of Disclosure to all of the members of the governing body of the [type of local unit] and the Affidavit shall be attached to the minutes of its next meeting.

See: Model Affidavit of Disclosure – Transactional Form

Section 2 - 15. Annual Disclosure Statement.

The following elected and appointed officers and employees shall file an annual disclosure statement: [list should include members of the unit's governing body, other elected and appointed officers and employees, such as the directors and deputy directors of administrative departments, members of the zoning board of appeals and planning commission, and those who regularly exercise significant discretion over the solicitation, negotiation, approval, awarding, amendment, performance, or renewal of government contracts].

The annual disclosure statement shall disclose the following financial interest of the officer or employee or his or her immediate family in any company, business, or entity that has contracted with the [type of unit] or which has sought licensure or approvals from the [type of unit] in the two calendar years prior to the filing of the statement:

(a) Any interest as a partner, member, employee or contractor in or for a co-partnership or other unincorporated association;

- (b) Any interest as a beneficiary or trustee in a trust;
- (c) Any interest as a director, officer, employee or contractor in or for a corporation; and
- (d) Legal or beneficial ownership of [percentage to be determined by the unit's governing body] % or more of the total outstanding stock of a corporation.

The annual disclosure statement shall include a summary listing each business transaction with the [type of unit] involving a financial interest described in this section of the [type of unit] officer or employee and/or the immediate family of the officer or employee during the two prior calendar years.

If there is no reportable financial interest or transaction applicable to the officer or employee and/or the immediate family of the officer or employee, the annual disclosure statement shall contain a certification to that effect.

See: Model Affidavit of Disclosure – Annual Form

*Commentary. It is understood that many local units of government do not have the need, the resources or the expertise to maintain an Ethics Board or Ethics Ombudsperson. However, for those local units who wish to create these vehicles for implementing an ethics ordinance, Chapter Three and Chapter Four (Alternative 1) offer these options.*

### **CHAPTER THREE – ETHICS OMBUDSPERSON**

Section 3 – 1. The [chief executive officer or other designated officer if the local unit does not have a chief executive officer], with the advice and consent of the [governing body] shall designate an Ethics Ombudsperson (EO) for the [type of unit].

Section 3 – 2. The EO may recommend to the [type of unit's governing body] that an advisory opinion be sought from the attorney for the [type of unit] regarding any requirement of this ordinance and its application to the officers and employees of the [type of unit].

Section 3 – 3. The EO shall promptly advise the governing body of the [type of local unit] of any problems encountered in the implementation of the ordinance and as to any recommendations that he or she may have for improvement of the ordinance. The EO shall perform such other duties as may be assigned by the [governing body].

## CHAPTER FOUR (ALTERNATIVE 1) - BOARD OF ETHICS

Section 4 – 1. There is hereby created a board to be known as the Board of Ethics of the [type of local unit]. The Board shall be comprised of three members appointed by the [chief executive officer or other designated officer if the local unit does not have a chief executive officer] with the advice and consent of the [type of local unit's] governing body. No person shall be appointed as a member of the Board who is related, either by blood or by marriage up to the degree of first cousin, to any elected officer of the [type of unit]. [For entities in which officers are elected on a partisan basis, insert the following: No more than two members of the Board shall belong to the same political party at the time such appointments are made. Party affiliation shall be determined by affidavit of the person appointed.] Members shall serve without compensation.

Section 4 – 2. At the first meeting of the Board, the initial appointees shall draw lots to determine their initial terms of 3, 2, and 1 year(s), respectively. Thereafter, all board members shall be appointed to 3-year terms by the [chief executive officer or other designated officer if the local unit does not have a chief executive officer] with the advice and consent of the [name of unit's governing body]. Board members may be reappointed to serve subsequent terms.

At the first meeting of the Board and thereafter at the discretion of the Board, the board members shall choose a chairperson from their number. Meetings shall be held at the call of the chairperson or any 2 board members. A quorum shall consist of two Board members, and official action by the Board shall require the affirmative vote of two Board members.

The business of the Board, including its hearings, shall be conducted at a public meeting held in compliance with the Open Meetings Act, 1976 PA 267, MCL 15.261 et seq.

Section 4 – 3. The [name of unit's governing body], may remove a Board member in case of incompetency, neglect of duty or malfeasance in office after service on the Board member by certified mail, return receipt requested, of a copy of the written charges against the Board member and after providing an opportunity to be heard in person or by counsel upon not less than 10 days' notice. Mid-term vacancies shall be filled for the balance of the term in the same manner as original appointments.

Section 4 – 4. The Board shall have the following powers and duties:

(1) To promulgate procedures and rules governing the performance of its duties and the exercise of its powers.

(2) Upon receipt of a signed, notarized, written complaint against an officer or employee, to investigate, conduct hearings and deliberations, issue referrals for disciplinary hearings and refer violations of Chapter Two of this Ordinance or state or federal criminal statutes to the attention of the appropriate attorney with a request for the filing of the appropriate criminal prosecution or civil infraction enforcement. The Board shall, however, act only upon the receipt of a written complaint alleging a violation of this ordinance and not upon its own initiative.

(3) To receive information from the public pertaining to its investigations and to seek additional information and documents from officers and employees of the [type of unit].

(4) To request the attendance of witnesses and the production of books and papers pertinent to an investigation. It is the obligation of all officers and employees of the [type of local unit] to cooperate with the Board during the course of its investigations. Failure or refusal to cooperate with requests by the Board shall constitute grounds for discipline or discharge of appointed officers and employees of the [type of local unit].

(5) The powers and duties of the Board are limited to matters clearly within the purview of this ordinance.

See: Model Ethics Complaint Form

Section 4 – 5. (a) Complaints alleging a violation of this ordinance shall be filed with the Clerk of the [type of local unit]. The Clerk or member of the Clerk's staff shall attend the Board meetings and act as secretary for the Board.

(b) Within 3 business days after the receipt by the Clerk of a complaint, the Clerk shall send by certified mail, return receipt requested, a notice to the respondent that a complaint has been filed against him or her together with a copy of the complaint. Within 3 business days after receipt by the Clerk of a complaint, the Clerk shall send by certified mail, return receipt requested, a notice of confirmation of receipt of the complaint together with a copy of the complaint to the complainant. The notices sent to the respondent and the complainant shall also advise them of the date, time, and place of the Board hearing to determine the sufficiency of the complaint and to establish whether there is a reasonable basis to believe that the respondent has violated Chapter Two of this ordinance. The Clerk shall also concurrently send copies of the foregoing complaint and notices to the members of the Board.

(c) The Board shall conduct a hearing to review the sufficiency of the complaint and, if the complaint is deemed sufficient to allege a violation of Chapter Two of this ordinance, to determine whether there is a reasonable basis to believe that the respondent has violated Chapter Two of this ordinance based on the evidence presented by the complainant and any additional evidence provided to the Board at the hearing pursuant to its investigatory powers. The complainant and respondent may be represented by counsel at the hearing. Within a reasonable period of time after the completion of the hearing which may be conducted in one or more sessions at the discretion of the Board, the Board shall issue notice to the complainant and the respondent of the Board's ruling on the sufficiency of the complaint and, if necessary, as to whether they find that there is a reasonable basis to believe that the respondent has violated Chapter Two of this ordinance.

If the complaint is deemed sufficient to allege a violation of Chapter Two of this ordinance and the Board finds that there is a reasonable basis to believe that the respondent has violated Chapter Two of this ordinance, then the Clerk shall notify in writing the attorney designated by the [type of local unit's governing body] and shall transmit to the attorney the

complaint and all additional documents in the custody of the Board concerning the alleged violation, with the Board's request for the filing of appropriate criminal or civil proceedings. The Clerk shall also provide these documents to the respondent's appointing authority within the [type of unit] with the Board's request for the commencement of appropriate disciplinary action consistent with any applicable collective bargaining agreement, civil service commission rules or employment regulations of the [type of local unit].

(d) Sections 2b - 2e of the [State Ethics Act, MCL 15.341 et seq.](#) set forth protections for officers and employees who act as whistleblowers regarding the conduct of the [type of unit's] officers and employees. Additional whistleblower protections are set forth in the [Whistleblowers' Protection Act, 1980 PA 469, MCL 15.361 et seq.](#)

(e) Any person who files a complaint alleging a violation of this ordinance knowing that material information provided therein is not true or that information provided therein was made in reckless disregard for the truth may be subject to a fine of up to \$500 as well as the reasonable costs incurred by the [type of local unit] in investigating the complaint and the reasonable costs incurred by the Respondent in responding to the complaint.

(f) A complaint must be filed with the Clerk within [number of years to be determined by the unit's governing body] years of the date the offense is alleged to have occurred.

#### **CHAPTER FOUR (ALTERNATIVE 2) – FILING AND DISPOSITION OF COMPLAINTS (For use when the ordinance does not provide for a Board of Ethics)**

Section 4 – 1. As deemed appropriate in its discretion, the [name of unit's governing body] shall:

(1) Upon receipt of a signed, notarized, written complaint against an officer or employee, investigate, conduct hearings and deliberations, conduct or issue referrals for disciplinary hearings and refer violations of Chapter Two of this ordinance or state or federal criminal statutes to the attention of the appropriate attorney with a request for the filing of the appropriate criminal prosecution or civil infraction enforcement.

(2) Receive information from the public pertaining to its investigations and seek additional information and documents from officers and employees of the [type of unit].

(3) Request the attendance of witnesses and the production of books and papers pertinent to an investigation. It is the obligation of all officers and employees of the [type of local unit] to cooperate with the [name of unit's governing body] during the course of its investigations. Failure or refusal to cooperate with requests by the [name of unit's governing body] shall constitute grounds for discipline or discharge of appointed officers and employees of the [type of local unit].

See: [Model Ethics Complaint Form](#)

Section 4 – 2. (a) Complaints alleging a violation of this ordinance shall be filed with the Clerk of the [type of local unit].

(b) Within 3 business days after the receipt by the Clerk of a complaint, the Clerk shall send by certified mail, return receipt requested, a notice to the respondent that a complaint has been filed against him or her together with a copy of the complaint. Within 3 business days after receipt by the Clerk of a complaint, the Clerk shall send by certified mail, return receipt requested, a notice of confirmation of receipt of the complaint together with a copy of the complaint to the complainant. The notices sent to the respondent and the complainant shall also advise them of the date, time, and place of the [name of unit's governing body] hearing to determine the sufficiency of the complaint and to establish whether probable cause exists that the respondent named in the complaint violated Chapter Two of this ordinance. The Clerk shall also concurrently send copies of the foregoing complaint and notices to the members of the [name of unit's governing body].

(c) The [name of unit's governing body] shall conduct a hearing to review the sufficiency of the complaint and, if the complaint is deemed sufficient to allege a violation of Chapter Two of this ordinance, to determine whether there is a reasonable basis to believe that the respondent has violated Chapter Two of this ordinance based on the evidence presented by the complainant and any additional evidence provided to the [name of unit's governing body] at the hearing pursuant to its investigatory powers. The complainant and respondent may be represented by counsel at the hearing. Within a reasonable period of time after the completion of the hearing which may be conducted in one or more sessions at the discretion of the [name of unit's governing body], the [name of unit's governing body] shall issue notice to the complainant and the respondent of the [name of unit's governing body]'s ruling on the sufficiency of the complaint and, if necessary, as to whether they find that there is a reasonable basis to believe that the respondent has violated Chapter Two of this ordinance.

If the complaint is deemed sufficient to allege a violation of Chapter Two of this ordinance and the [name of unit's governing body] finds that there is a reasonable basis to believe that the respondent has violated Chapter Two of this ordinance, then the Clerk shall notify in writing the attorney designated by the [type of local unit's governing body] and shall transmit to the attorney the complaint and all additional documents in the custody of the [name of unit's governing body] concerning the alleged violation, with the [name of unit's governing body]'s request for the filing of appropriate criminal or civil proceedings. The Clerk shall also provide these documents to the respondent's appointing authority within the [type of unit] with the [name of unit's governing body]'s request for the commencement of appropriate disciplinary action consistent with any applicable collective bargaining agreement, civil service commission rules or employment regulations of the [type of local unit].

(d) Sections 2b - 2e of the State Ethics Act, MCL 15.341 et seq, set forth protections for officers and employees who act as whistleblowers regarding the conduct of the [type of unit's] officers and employees. Additional whistleblower protections are set forth in the Whistleblowers' Protection Act, 1980 PA 469, MCL 15.361 et seq.

(e) Any person who files a complaint alleging a violation of this ordinance knowing that material information provided therein is not true or that information provided therein was made in reckless disregard for the truth may be subject to a fine of up to \$500 as well as the reasonable costs incurred by the [type of local unit] in investigating the complaint and the reasonable costs incurred by the Respondent in responding to the complaint..

(f) A complaint must be filed with the Clerk within [number of years to be determined by the unit's governing body] years of the date the offense is alleged to have occurred.

## CHAPTER FIVE – SANCTIONS

Section 5 – 1. Sanctions shall not be construed to diminish or impair the rights of an officer or employee under any collective bargaining agreement, nor the [type of local unit's] obligation to comply with such collective bargaining agreements.

Section 5 – 2. 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.

Section 5 – 3. A violation of this ordinance may be punished as a civil infraction by a fine of up to \$ [amount to be set by the local unit's governing body].... OR. ... A violation of this ordinance may be punished as misdemeanor by a fine of up to \$500 and/or 90 days in jail.

*Commentary. A specific ordinance violation may be either a civil infraction or a misdemeanor, but not both.*

Section 5 – 4. In addition to any other penalty, whether criminal or civil, an employee or officer who intentionally violates this ordinance may be subject to disciplinary action including censure, reprimand, removal, dismissal or discharge.

*Commentary. If the Charter of a Home Rule City or Home Rule Village provides for removal of an elected officer by the governing body of the city or village, the officer may be so removed. Michigan cases recognizing the removal power of city councils pursuant to applicable provisions of a city charter include *McComb v City Council of Lansing*, 264 Mich 609 (1933), *Wilson v City Council of Highland Park*, 284 Mich 96 (1938), and *City of Grand Rapids v Harper*, 32 Mich App 324 (1971). In *Hawkins v Common Council of the City of Grand Rapids*, 192 Mich 276, 285-286 (1916), the Michigan Supreme Court rejected the argument that the power to remove elected city officers rested exclusively with the Governor, upholding the authority of the city council to remove the City's elected treasurer under the provisions of the city charter. However, absent such a provision in a city or village charter, removal of elected officers of local units of government is accomplished only by the Governor. [MCL 168.383](#) (village); [MCL 168.369](#) (township); [MCL 168.327](#) (city); and [MCL 168.268](#) and [MCL 168.207](#) (county).*

Section 5 – 5. 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](#).