ENROLLED ORDINANCE

No. 2012-364

INTRODUCED BY COMMISSIONER(S): Gebhardt and Varga

AN ORDINANCE TO AMEND CHAPTER 73 OF THE WAYNE COUNTY CODE OF
ORDINANCES ENTITLED “FRAUD INVESTIGATION POLICY”, AS AMENDED, TO
PROVIDE CONSISTENCY WITH THE PROVISIONS OF THE WAYNE COUNTY ETHICS
ORDINANCE; AND TO CLARIFY THE PENALTIES FOR VIOLATION OF THIS
ORDINANCE.

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

SECTION 1: CODE OF ORDINANCES AMENDED

Chapter 73 of the Wayne County Code of Ordinances is amended to read as follows:

Sec. 73-1. Purposes.

The authority and responsibilities of the county prosecutor under the state constitution, statute and law, to conduct investigative activities on behalf of the county shall be published by the Director of the Department of Personnel and Human Resources to all elected officials, directors, officers and employees, to accomplish the following:

(1) To promote an atmosphere of honesty throughout the county.

(2) To inform all persons of the county's concern over improper activities and the action the county will take in those instances where individuals choose to conduct themselves against the best interests of the county.

(3) To place all elected and appointed officials, directors, officers and employees of the county on notice that wrongdoing of a criminal nature must be reported directly to the county prosecutor. Supervisors shall be advised of those reports, except when not appropriate.

(4) To advise all elected officials, directors, officers and employees to refrain from investigating, interviewing or
interrogating persons suspected of wrongdoing of a criminal nature in order to minimize the potential for civil liability, and to maximize the potential for successful conviction when the facts support that conclusion. Investigations involving suspected wrongdoing of a criminal nature shall only be conducted by the county prosecutor.

(5) To place all appointed officers, directors and employees on notice of the access to premises, records and property provisions in order to protect the county against possible charges of violation of expectancy of privacy.

Sec. 73-2. Actions required.

(A) In order to provide the protection needed by the county through the publication of its statement of policy pertaining to reporting, investigation, prosecution and prevention of suspected wrongdoing of a criminal nature by county elected officials, officers and employees, the following actions shall be taken by the Director of the Department of Personnel and Human Resources by April 12, 2012:

(1) The full text shall be made a part of county policy manuals.

(2) The full text shall be placed on each bulletin board throughout the county.

(3) The full text shall be sent to each elected or appointed official, director, officer and employee of the county, who shall be required to acknowledge in writing:

   a. They have received the policy statement;
   b. They have read the policy statement; and
   c. They have understood the policy statement.

(4) The full text shall be given to each new director, officer and full-time employee and part-time employee when they are hired, rehired or appointed/elected and the acknowledgement described in subsection (3) above shall be obtained.

(5) All acknowledgements obtained shall be placed in individual personnel files and shall be retained permanently.

(6) All labor contracts shall be negotiated to be consistent with this policy.
(B) The Director of the Department of Personnel and Human Resources shall annually submit a report regarding compliance with this section to the Chairperson of the County Commission, who shall refer the report to the appropriate committee.

Sec. 73-3. Policy established.

(a) The following policy is established pertaining to reporting, investigation, prosecution and prevention of suspected wrongdoing of a criminal nature by county elected officials, officers and employees:

(1) If a county elected official, officer or employee becomes aware of facts or circumstances which give cause to suspect any kind of wrongdoing of a criminal nature which involves county property or services, or which involves county employees while engaged in their scope of employment, he/she shall promptly make a report to the Wayne County Fraud and Corruption Investigation Unit within the Office of the Prosecuting Attorney. Examples of suspected wrongdoing of a criminal nature include among others all of the following: theft of public property; theft from other persons while on county duty or using county authority; embezzlement; soliciting or accepting kick-backs; soliciting or accepting favors or bribes from vendors or from beneficiaries of county services; unauthorized provision of official forms and identification; willful neglect; falsification, destruction or unauthorized sale of public records; falsification of payroll records or claims for expense reimbursement; short-changing or taking money from members of the public under false pretenses; deliberate sabotage of public property or processes; conversion of public property to personal or private use; abuse of public authority or investigatory powers for personal gain or satisfaction; and possession, sale or use of illegal controlled substances while on duty. If the suspected offense is of a criminal nature, then appropriate officials, as herein designated, shall assure that all reports receive prompt and discreet follow-up, investigation and where substantiated, prosecution and/or disciplinary action. If the suspected offense is not of a criminal nature, then the matter may be referred by the Prosecutor to the appropriate county official(s) and/or the Wayne County Ethics Board for a prompt and appropriate resolution.

(2) Except as provided in subsection 3 below, a person shall report all cases of work-related suspected wrongdoing of a
criminal nature to the Wayne County Fraud and Corruption Investigation Unit within the Office of the Prosecuting Attorney, by phone, in person, or electronically, to be verified, if requested, by a written statement. Unless it appears that the department head(s) may be involved in the wrongdoing, the Wayne County Fraud and Corruption Investigation Unit shall promptly confer with the affected department head(s), if appropriate under the law and if it would not compromise any criminal investigation. The Wayne County Fraud and Corruption Investigation Unit shall also promptly confer as needed with other appropriate county officials to protect county assets and interests.

(3) A person who is employed in the Wayne County Prosecutor’s Office shall report all cases of work-related suspected wrongdoing of a criminal nature in accordance with the applicable policy governing disqualifications and conflicts of interest of internal reviews.

(4) If a County Elected Official, Officer, or Employee becomes aware of facts or circumstances which give cause to suspect any kind of wrongdoing that is not of a criminal nature, then he/she shall promptly make a report to the Wayne County Ethics Board or to the appropriate Elected Official.

(5) The Wayne County Fraud and Corruption Investigation Unit shall designate a single phone number to accept reports of suspected wrongdoing, which shall be known as the “fraud hotline”.

(6) A county elected official, officer or employee shall not undertake any kind of investigation suspected wrongdoing before conferring with the Wayne County Fraud and Corruption Investigation Unit. If the Wayne County Fraud and Corruption Investigation Unit determines that the suspected wrongdoing is of a criminal nature or if it otherwise objects to the elected official, officer or employee undertaking an investigation, then the elected official, officer or employee shall not investigate the matter. Communications with the Wayne County Fraud and Corruption Investigation Unit are protected by investigative immunity. Communications with an elected official, officer or employee are not immune. The county shall not defend an elected official, officer or employee, from a slander or libel lawsuit or an award for damages, who violates this policy.
(7) The Director of the Department of Personnel and Human Resources shall establish a training program to assure that every department head, supervisor, and employee is made fully aware of this policy, of the tell-tale signs of wrongdoing, and of the specific disciplinary actions which will be taken if a person violates this policy.

(8) Every elected official, officer or employee shall cooperate with the Wayne County Fraud and Corruption Investigation Unit in making an investigation, and shall take no action which may jeopardize or compromise the investigation. If an elected official, officer or employee takes a deliberate action which impedes or compromises an investigation, that person may be charged with obstruction of justice, and prosecuted to the fullest extent that the law provides.

(9) Only the Wayne County Fraud and Corruption Investigation Unit, or other appropriate law enforcement agency may investigate suspected wrongdoing of a criminal nature. Fraud is often a difficult matter to detect, prove, and prosecute. Incriminating evidence may be hidden or destroyed before an investigation can be completed. Ill-founded accusations of wrongdoing, made to persons other than appropriate law enforcement officials, may result in an infringement of the civil rights of the accused, and substantial personal and county liability for slander or libel. Elected officials, officers or employees shall cooperate fully with the Wayne County Fraud and Corruption Investigation Unit to successfully isolate and establish whether wrongdoing has occurred or is continuing to occur, and if so, to assure successful prosecution of all parties involved.

(10) A person shall not disclose to any person other than those within the Wayne County Fraud and Corruption Investigation Unit the fact that an investigation has been or is being conducted, nor the results of the investigation, unless it is appropriate under the law and it would not compromise any criminal investigation.

(11) The Wayne County Fraud and Corruption Investigation Unit shall have unlimited access to the public records and property of the county, whether rented or owned. Except for property and premises in the direct possession, custody or use of a charter-created elected officer, investigators operating under the guidance of the prosecuting attorney shall have unlimited access to all offices, desks, desk
drawers, cabinets, files, boxes, storage containers, waste
baskets, shredder baskets, computers, safes, lockers, coat
racks, supply cabinets, closets, and storage areas without
notice and without the specific prior knowledge or consent
of the person or persons who ordinarily have custody,
possess and use of the space or equipment. All non-
elected officers and employees shall be required as a
condition of employment to sign a consent statement to such
unlimited access. The Wayne County Fraud and Corruption
Investigation Unit may search property and premises in the
direct possession, custody or use of an elected official
only with the specific consent of the subject official or
only after obtaining a search warrant from a court of
competent jurisdiction.

(12) Auditors, whether internal audit staff, members of the
auditor general's staff, external auditors, or federal
compliance auditors, shall be responsible for making
recommendations on administrative and accounting systems
which help prevent and detect fraud and other wrongdoing,
but not for the investigation of specific cases of suspected
fraud or wrongdoing. When fraud or wrongdoing is suspected,
auditors shall comply with the same rules and procedures as
would an employee.

(13) As Promulgated in SAS 99, Section 79, "Communications about
possible fraud to management and those charged with
governance ..." the county's internal and external auditors
shall communicate annually to the Audit Committee, after
completion of the fiscal year audit of county financial
statements, their evaluation and views of management's
identification of fraud risks and anti-fraud measures,
including but not limited to, the ability of management to
override information processed by the entity's financial
reporting system.

(14) The county shall assume no responsibility nor liability for
an employee, officer or elected official who incurs personal
liability for slander or libel by making statements or
releasing confidential reports to the news media.

(15) The Wayne County Fraud and Corruption Investigation Unit
shall confer semi-annually with the Audit Committee of the
County Commission pursuant to the Open Meetings Act,
regarding completed investigations, and recommend
improvements in this policy and in county fraud control
systems. The Chief Executive Officer, Chief Financial
Officer, Chief Judges of the Circuit, Probate and Recorders
Courts, Clerk, Register of Deeds, Sheriff, and Treasurer
shall be invited to take part in these sessions. The Wayne
County Fraud and Corruption Investigation Unit shall also
confer as needed with the Corporation Counsel regarding
civil actions to recover county property. The Auditor
General shall also make recommendations to the Audit
Committee regarding fraud control systems.

(b) The Whistleblowers' Protection Act (Public Act 469 of 1980)
prohibits retaliatory discharge of employees for reporting a violation
or suspected violation of federal, state or local laws, rules or
regulations, unless the employee knows the report is false. The act
also prohibits the discharge of an employee requested to participate
by a public body in an investigation, hearing, inquiry, or court
action.

If any employee believes that Wayne County has violated the Act, an
employee may bring a civil action in circuit court within 90 days of
the alleged violation of the Act.

(c) For purposes of the policy set forth in this Ordinance, any action
required by the Wayne County Fraud and Corruption Investigation Unit
shall be the responsibility of the person who directly oversees the
unit. All responsibilities of the unit may be undertaken by the Wayne
County Prosecuting Attorney and his or her designee.

SEC. 73-4. Penalties established.

To the extent provided by law and in addition to any penalties set
forth in this Ordinance or as otherwise provided by law or
disciplinary action taken by the County, a person who violates section
73-3(a)(6), (8), (9) or (10) of this Ordinance shall be responsible
for a Municipal Civil infraction of $500 per occurrence; and a person
who violates any other provision of this Ordinance shall be
responsible for a Municipal Civil infraction of $150 per occurrence.

SECTION 2: SEVERABILITY

The provisions of this Ordinance shall be severable. If a court of
competent jurisdiction declares any provision of this Ordinance
unconstitutional or otherwise invalid the remaining provisions of this
Ordinance shall remain valid and enforceable.

SECTION 3: EFFECTIVE DATE
This Ordinance is effective immediately upon adoption by the Wayne County Commission.

ADOPTED BY THE WAYNE COUNTY COMMISSION JUNE 21, 2012.

(2012-68-010)