

County Council of Cuyahoga County, Ohio

Ordinance No. O2014-0032

<p>Sponsored by: County Executive FitzGerald/Department of Law and Councilmember Miller</p> <p>Co-sponsored by: Councilmembers Conwell and Germana</p>	<p>An Ordinance enacting the County's Administrative Procedures Act, including establishment of the Administrative Rules Board and procedures for the publication of the Cuyahoga County Administrative Code; and declaring the necessity that this Ordinance become immediately effective.</p>
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WHEREAS, Council deems it necessary to enact the County's Administrative Procedures Act to streamline the process under which the County adopts, amends, and administers administrative county policies, rules, and regulations;

WHEREAS, Council deems it necessary for the County to launch an administrative code containing the County's administrative rules, policies, and regulations to be published online and readily accessible;

WHEREAS, it is necessary that this Ordinance become immediately effective in order that critical services provided by Cuyahoga County can continue and to provide for the usual, daily operation of the County departments.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. Chapter 102 of the Cuyahoga County Code is hereby amended as follows:

(a) The term "Administrative Code" is hereby added to the definitions in Chapter 102 as follows:

"Administrative Code" shall mean the Cuyahoga County Administrative Code published pursuant to Chapter 113 of the County Code.

(b) The Clerk of Council shall affix the proper numbering for the term "Administrative Code" in Chapter 102 and renumber the remaining definitions in the Chapter accordingly.

SECTION 2. Section 205.09 of the Cuyahoga County Code is hereby enacted to read as follows:

Section 205.09 Administrative Rules Board

A. Establishment.

1. **Establishment:** There is hereby established the Cuyahoga County Administrative Rules Board. It shall consist of the following five members:
 - i. The Director of Law;
 - ii. The Director of Budget and Management;
 - iii. The Deputy Law Director in charge of Risk Management; and
 - iv. Two attorneys employed by the county appointed by the Director of Law for one-year terms. The Director of Law shall ensure that the two attorneys selected for these appointments have diverse legal experiences, such as differing practice areas.
2. **Jurisdiction:** The Administrative Rules Board shall perform all functions assigned to it in the Cuyahoga County Code.

B. Alternates. Alternates on the Administrative Rules Board shall be appointed as follows:

1. The Director of Law shall appoint a Deputy or other high-level attorney from the Department of Law to attend meetings of the Board as an alternate if he or she is unable to attend a meeting.
2. The Director of Budget and Management shall appoint an alternate from within the Office of Budget and Management to attend meetings if he or she is unable to attend a meeting.
3. The Director of Law shall appoint an attorney to attend meetings of the Board as an alternate if the Deputy Law Director in charge of Risk Management is unable to attend a meeting.
4. The Director of Law shall appoint an alternate for each appointed-attorney member of the Board. The appointment of alternates shall not disturb the legal-experience diversity on the Board

C. Alternates Have Full Rights. Any properly appointed alternate shall have all the rights and responsibilities of a member of the Administrative Rules Board when attending a meeting on behalf of a member.

D. Officers. The Director of Law shall serve as Chairperson of the Administrative Rules Board. If the Director of Law is absent from any meeting, the Board shall choose one of its members to chair that meeting. For purposes of this section, the Director of Law shall include his or her alternates.

E. No Additional Compensation, Collective Action, and Conflicts of Interest.

1. The members of the Administrative Rules Board shall not receive compensation for their service on the Board. Members of the Board shall be entitled to reimbursement of reasonable and necessary expenses incurred by them in the exercise of their duties as approved by the Director of Law from the Law Department's budget.
2. The Administrative Rules Board is a board created by law, and its members act collectively in their official capacities. It shall not be a conflict of interest for a Board member to advocate, deliberate, or vote on a matter affecting their respective department, board, agency, commission, office, or the authority.

F. Clerk of the Administrative Rules Board. The County Executive shall designate a staff person to serve as the Clerk of Administrative Rules Board. The Clerk shall be responsible for publishing the agendas and meeting notices and shall record and publish the minutes.

G. Agendas and Meeting Notices. The Clerk of the Administrative Rules Board shall publish the notice and agenda for each Board meeting on the County's web site no later than 6:00 p.m. on the second business day before the Board meeting. The Board may amend the agenda and may also consider items not on the agenda by a vote of a majority of the members present either personally or through their alternates.

H. Regular Meetings. The Administrative Rules Board shall schedule regular meetings to take place at least once a week for the first year of its operations and then at least once every two weeks thereafter. If no business is pending before the Board, the Director of Law may instruct the Clerk of the Board to cancel any regular meeting for lack of sufficient business pending before the Board by publishing the cancellation notice on the County's web site.

- I. Special Meetings.** The Administrative Rules Board may conduct special meetings at a time other than its regularly scheduled meeting times. In the event of an emergency as determined by the Director of Law, the Board may conduct a meeting with less notice than that required under paragraph G herein. For any special or emergency meeting, in addition to the notice requirements of paragraph G, the Clerk of the Board shall also send notice to all news media organizations that request to be notified of such meetings.
- J. Public Meetings.** The meetings of the Administrative Rules Board shall be open to the public. The Board shall also provide an opportunity for public comment on matters before the Board toward the beginning of the meeting. The Board may require presenters to register with the Board before speaking and may set time limits on presentations, which may be extended at the discretion of the Chairperson.
- K. Executive Sessions.** The Administrative Rules Board may go into executive session to discuss and consider matters permitted to be discussed or considered in executive sessions under the Ohio Open Meetings Act. A motion to go into executive session must state the topic(s) of the executive session and approved by a majority of the members present through a roll call vote.
- L. Minutes.** The Clerk of the Administrative Rules Board shall prepare and publish the minutes of each Board meeting on the County's web site within a week of their approval.
- M. Journal.** The Clerk of the Administrative Rules Board shall maintain a Journal of the Board, containing the notices, agendas, and minutes of all Board meetings. The journal may be maintained electronically.
- N. Quorum.** A quorum of the Administrative Rules Board shall consist of three members attending personally or through their alternates.
- O. Vote Required for Board Actions.** Board action shall require the affirmative vote of any three members attending personally or through their alternates. Amendments to items before the Board and parliamentary motions may be adopted by a majority of those present, provided that a quorum is present.
- P. Rules of Procedure.** The Administrative Rules Board shall adopt its own Rules of Procedure, which shall include the deadlines for submission of requests to the Board and time deadlines for submission of written commentary on requests submitted for the Board's approval. The minimum deadline for public commentary must not be less than seven days.

SECTION 3. Chapter 113 of the Cuyahoga County Code is hereby enacted to read as follows:

Chapter 113: Administrative Rules

Section 113.01 Definitions

As used in Chapter 113 of the Cuyahoga County Code:

- A. “County Entity” or “County entity” includes the County and any County office, department, agency, board, commission, committee, or other County authority established by or pursuant to the Charter of Cuyahoga County, the Ohio Constitution, or Ohio law.
- B. “Rule” or “rule” means any official and legally binding county rule, policy, or regulation. It does not include internal day-to-day operational or such other managerial rule, policy, or other directive within a county entity.

Section 113.02 Adoption of Rules

County entities may adopt, amend, rescind, and administer rules on matters within their respective jurisdictions, as established by the County Charter, this Code, or general law, in accordance with the following procedures:

- A. A county entity seeking to adopt, amend, or rescind a rule shall submit a request, including the specific language of the rule, to the Clerk of the Administrative Rules Board in accordance with the procedures and deadlines established by the Board for such submissions.
- B. The Clerk of the Administrative Rules Board shall publish notice of the request, including the language of the rule, on its web site. The notice shall include the following:
 - 1. The contact information at which written commentary regarding the requested action may be submitted to the requesting county entity;
 - 2. A notice that any party seeking to submit any written commentary shall also provide a copy of its written commentary to the Clerk of the Board;
 - 3. Based on the type of proposed rule, the deadline pursuant to the Board’s Rules of Procedure, by which written public commentary may be submitted; and

4. Notice that any person may also appear at a Board meeting and provide verbal commentary during the public comment period at the beginning of the Board meeting.
- C. Upon expiration of the public comment period outlined in paragraph B, the Clerk shall place the request on the Administrative Rules Board's agenda for consideration.
- D. Each request shall be read at two regular meetings of the Administrative Rules Board before being approved by the Board. The Board may waive the two-reading requirement by a vote of four members of the Board.
- E. The County Entity submitting the request shall send a duly authorized representative, who is familiar with its request, to attend the Board meetings when its rule is being considered to present the request and answer any questions from the Board about the request.
- F. If a County Entity receives commentary or Board feedback on the merits or language of its rule and it deems it appropriate to revise its rule based on such commentary or feedback, the County Entity may revise its rule while it is being considered by the Board by notifying the Board of such revisions.
- G. In ruling on the request to approve a rule, the Administrative Rules Board shall determine (1) whether the requesting entity has the authority to adopt, amend, or rescind the rule and (2) whether the proposed rule conflicts with the County Code. If the Board determines that the proposed rule may properly be adopted as an administrative rule, policy, or regulation and that it does not conflict with the County Code, the Board shall approve the rule. The Board may provide feedback and revision suggestions to the County Entity while it considers the rule, but the Board's vote on approval or denial of the rule shall be based solely on the legality of the rule and whether it conflicts with the County Code.
- H. Any proposed rules approved by the Administrative Rules Board shall go into immediate effect, be legally binding, and be published in the Cuyahoga County Administrative Code.

Section 113.03 County Administrative Code

The Clerk of the Administrative Rules Board shall officially publish the Cuyahoga County Administrative Code and shall continually update the Administrative Code in an expeditious manner as approved by the Director of Law. The Administrative Code shall include all rules approved by the Board. The Clerk of the Board, with the approval of the Director of Law, may make such changes to the Administrative Code, including the numbers, titles and arrangement of articles and sections, as well

as correction of typographical errors, but no such change shall affect the substance or meaning of rules published in the Administrative Code.

Section 113.04 Supremacy of the County Code

Should any conflict exist between this Code and the Administrative Code, this Code shall govern.

Section 113.05 Executive's Authority

Nothing in Chapter 113 is intended to interfere with the Executive's administrative powers under the Charter and his or her authority to issue directives or executive orders, as approved by the Director of Law. Executive orders shall be electronically filed with the Clerk of Council and the Clerk of the Administrative Rules Board and published on the County's web site.

Section 113.06 Emergency Authority

In the event of an emergency, as declared by the County Executive, the County Executive may through the issuance of an Executive Order suspend and/or override the operations of any rule adopted pursuant to this Chapter for a period not to exceed 120 days.

Section 113.07 Transition Period

~~Nothing in Chapter 113 shall affect the legality or binding effect of any administrative county rules, policies, or other regulations that are subject to this Chapter, but were administratively adopted prior to its enactment, through December 31, 2015, but they shall be null and void thereafter.~~ **Any rules that were properly and legally adopted by a County entity prior to the enactment of Chapter 113 shall survive until February 28, 2015, but they shall be null and void thereafter.** The Clerk of the Administrative Rules Board shall work with county entities to ensure that they are aware of this expiration date and the need to submit all such rules to the Administrative Rules Board's consideration and approval for publication into the County Administrative Code.

SECTION 4. It is necessary that this Ordinance become immediately effective for the usual daily operation of the County and the reasons set forth in the preamble. Provided that this Ordinance receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter.

Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

SECTION 5. It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

On a motion by Mr. Miller, seconded by Mr. Brady, the foregoing Ordinance was duly enacted.

Yeas: Conwell, Jones, Brown, Hairston, Simon, Greenspan, Miller, Germana, Gallagher and Brady

Nays: None

County Council President

Date

County Executive

Date

Clerk of Council

Date

First Reading/Referred to Committee: October 14, 2014

Committee(s) Assigned: Council Operations & Intergovernmental Relations

Additional Sponsorship Requested: January 9, 2015

Committee Report/Second Reading: January 13, 2015

Legislation Amended on the Floor: January 27, 2015

Additional Sponsorship Requested on the Floor: January 27, 2015

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