



# LIVINGSTON COUNTY APPORTIONMENT COMMISSION REGULAR MEETING

August 27, 2021

1:30 P.M.

Board of Commissioners Hybrid Meeting

Zoom Virtual Meeting ID: 399-700-0062 / Password: LCBOC

<https://zoom.us/j/3997000062?pwd=SUdLYVFFcmozWnFxbm0vcHRjWkVIZz09>

304 E. Grand River Ave., Board Chambers, Howell, Michigan

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1. CALL TO ORDER
2. ROLL CALL
3. CALL TO PUBLIC
4. APPROVAL OF MINUTES
  - a. Minutes of July 23, 2021
5. DISCUSSION OF LEGAL OPINION
  - a. Overview - Mr. Dave Stoker
6. DISCUSSION OF MAPS
7. ADJOURNMENT

**LIVINGSTON COUNTY APPORTIONMENT COMMISSION  
MEETING MINUTES**



Date: July 23, 2021  
Time: 1:00 P.M.  
Location: Apportionment Commission Hybrid Meeting  
Zoom Virtual Meeting ID: 399-700-0062/Password: LCBOC  
<https://zoom.us/j/3997000062?pwd=SUdLYVFFcmozWnFxbm0vcHRjWkVIZz09>  
304 E. Grand River Ave., Board Chambers, Howell, Michigan 48843

Members Present: Elizabeth Hundley, Jennifer Nash, David Reader, Judy Daubenmier, and Meghan Reckling

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**1. CALL TO ORDER**

The meeting was called to order by County Clerk Hundley at 1:00 p.m.

Motion to record meetings.

It was moved by J. Daubenmier  
Seconded by J. Nash

**MOTION Carried (5-0-0)**

Motion to retain the recordings of the meetings for one (1) year.

It was moved by J. Nash  
Seconded by E. Hundley

**MOTION Carried (5-0-0)**

**2. PLEDGE OF ALLEGIANCE TO THE FLAG**

**3. ROLL CALL**

Roll call by the Chief Deputy County Clerk Cox indicated the presence of a quorum.

**4. CALL TO PUBLIC**

The following people addressed the Commission: Jordan Genso, City of Brighton; Dan Luria, Hamburg Township; and Bob Sexton, Brighton Township.

**5. INTRODUCTION OF COMMISSION MEMBERS**

**6. DISTRIBUTION OF MATERIALS**

**6.a Michigan statutes - Mr. Dave Stoker**

**6.b Relevant case law - Mr. Dave Stoker**

David Stoker of Cohl, Stoker & Toskey, P.C. provided the background of statutes and relevant case law to the Commission.

**7. ELECTION OF PERMANENT CHAIR**

E. Hundley asked for nominations for permanent Chairperson of the Livingston County Apportionment Commission for 2021.

J. Nash moved to nominate D. Reader as Chairperson  
Seconded by J. Daubenmier

Following no further nominations; It was moved by M. Reckling to close the nominations, and accept the nomination of D. Reader as Chairperson.  
Seconded by J. Daubenmier

**MOTION Carried (5-0-0)**

Clerk Hundley handed the meeting over to Chairman D. Reader

**8. ADOPT RULES OF PROCEDURE**

**8.a Review and make changes to Draft 2021 Rules of Procedure**

Motion to amend rule number two to add that all meetings will be held hybrid using Zoom technology and public notice of time, date, and place of meetings shall be posted at least 24 hours before the meeting.

It was moved by M. Reckling  
Seconded by J. Daubenmier

**MOTION Carried (5-0-0)**

Motion to amend rule number nine second sentence to read: Maps and plans must be submitted within 14 days of County Clerk sending Apportionment Commissioners all census information received from the Secretary of State of Michigan.

It was moved by M. Reckling  
Seconded by E. Hundley

**MOTION Carried (5-0-0)**

Motion to amend rule number seven to add that any member of the public may submit a proposed map and plan within the same time frame and guidelines as Commissioners. Any such map must be accompanied by a written description.

It was moved by M. Reckling  
Seconded by J. Nash

Motion to rotate location of future meetings to Hamburg, Hartland and the John E. LaBelle Public Safety Complex.

It was moved by J. Daubenmier  
Seconded by None

**NO SECOND, MOTION NOT CONSIDERED**

A friendly amendment was made by J. Daubenmier to amend number three to add the word "with" after the word compliance.

**MOTION Carried (5-0-0)**

Motion to adopt the 2021 Rules of Procedure as amended.

It was moved by E. Hundley  
Seconded by M. Reckling

**MOTION Carried (5-0-0)**

**9. DISCUSSION OF REDISTRICTING SOFTWARE OPTIONS**

**9.a Livingston County GIS Presentation - Diane Gregor**

**9.b Michigan Bureau of Elections - Information on Redistricting Tools**

A presentation was made by Diane Gregor and Sandon Lettieri of the IT Department. Three different tools were discussed: ARCGIS desktop; Michigan Bureau of Elections software; and ESRI.

**10. DISCUSSION AND POTENTIAL DETERMINATION OF NUMBER OF COUNTY COMMISSIONER DISTRICTS**

Motion to maintain nine (9) County Commissioner districts.

It was moved by E. Hundley  
Seconded by J. Nash

**MOTION Carried (5-0-0)**

**11. DISCUSS FUTURE MEETING DATES**

The next meeting will be Friday, September 3, 2021 at 1:00 p.m.

**12. ADDITIONAL BUSINESS**

None.

**13. ADJOURNMENT**

Motion to adjourn the meeting at 2:55 p.m.

It was moved by M. Reckling  
Seconded by J. Nash

**MOTION Carried (5-0-0)**

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Kristi Cox, Chief Deputy County Clerk

COHL, STOKER & TOSKEY, P.C.

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RICHARD D McNULTY

August 18, 2021

Elizabeth Hundley  
Livingston County Clerk  
200 E. Grand River Ave.  
Howell, MI 48843

Re: County Apportionment Commission Plan Time Frames

Dear Ms. Hundley:

You have requested this office's review of the "start date" for the County Apportionment Commission's establishment of new County Board of Commissioner districts under MCL 46.401 *et seq.* MCL 46.401(1) states:

**46.401 County apportionment commission; apportionment of county into county commissioner districts.**

(1) **Within 60 days after the publication of the latest United States official decennial census figures**, the county apportionment commission in each county of this state shall apportion the county into not less than 5 nor more than 21 county commissioner districts as nearly of equal population as is practicable and within the limitations of section 2. (*Emphasis added*)

\* \* \*

Failure of the County Apportionment Commission to establish these districts within this time frame requires the Commission to select from plans submitted by registered voters rather than establishing their own approved plan. This limitation is provided for at MCL 46.407, which in pertinent part provides:

**46.407 Apportionment plan; failure of apportionment commission to submit; submission by registered voter.**

**If the apportionment commission has failed to submit a plan for its county within 60 days but not less than 30 days after the latest official published census figures are available or within such additional time as may be granted by the court of appeals for good cause shown on petition from the**

**apportionment commission, any registered voter of the county may submit a plan to the commission for approval. The commission shall choose from among those submitted to it a plan meeting the requirements of the laws** of this state and file such plan in the office of the county clerk as set forth in section 5 within 30 days after the deadline for the filing of the commission's own plan or any extension granted thereon. (*Emphasis added*)

Therefore, the statutory time frame for submitting a plan is measured from “**when the latest official published census figures are available**” unless an extension is granted by the Court of Appeals.<sup>1</sup>

It is our understanding that the Michigan Secretary of State Election Bureau is suggesting that the official start date of this time frame will instead be September 30, 2021, though they also suggest each county consult with their legal counsel. September 30, 2021, was in fact the initial time frame anticipated for the release of the 2020 census data.<sup>2</sup> However, this apparently changed when a federal lawsuit was filed by the State of Ohio seeking an earlier release date.<sup>3</sup> The federal Court of Appeals for the Sixth Circuit on appeal held that Ohio had standing as an appropriate party to seek such an earlier release of data for redistricting, and remanded the case to the Ohio federal District Court.<sup>4</sup> The Census Bureau and State of Ohio then agreed to hold the case in abeyance as the Census Bureau agreed to release the redistricting data by August 16, 2021, in the “legacy” format used in prior censuses.<sup>5</sup> Subsequently the Census Bureau announced that it would in fact be releasing the data on August 12, 2021, and held a news conference for that release.<sup>6</sup>

The Census Bureau’s website now reflects that the “**2020 CENSUS REDISTRICTING DATA IS NOW AVAILABLE**”, and, in pertinent part, further states<sup>7</sup>:

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<sup>1</sup> The law, at MCL 46.404(a), also provides that the Michigan Secretary of State is to furnish the latest official published figures to the county apportionment commissions within 15 days after publication of the United States official census figures. However, the Apportionment Commission’s time limit runs from the “publication” and not receipt of the figures from the State.

<sup>2</sup> <https://www.census.gov/data/what-is-data-census-gov/upcoming-releases.html>

<sup>3</sup> *State of Ohio v Gina Raimondo, In her official capacity as Secretary of Commerce, et al.*, Case No. 3:21-cv-00064-TMR (SD Ohio, 2021).

<sup>4</sup> *State of Ohio v Gina Raimondo, et al*, Case No. 21-3494, 848 Fed.Appx. 187 (Mem), (6th Cir, May 21, 2021)[See: <https://www.opn.ca6.uscourts.gov/opinions.pdf/21a0245n-06.pdf>]

<sup>5</sup> See: <https://www.documentcloud.org/documents/20788367-state-of-ohio-may-25-2021-joint-motion-to-hold-case-in-abeyance>

<sup>6</sup> <https://twitter.com/uscensusbureau/status/1423351861160161291> and <https://www.census.gov/newsroom/press-releases/2021/news-conference-2020-census-redistricting-data.html?linkId=100000059333136>

<sup>7</sup> <https://www.census.gov/programs-surveys/decennial-census/decade/2020/2020-census-results.html>

**Decennial Census P.L. 94–171 Redistricting Data Summary Files,**

Includes the **official data**, documentation, and support materials to assist in assessing PL 94–171 redistricting data.

On August 12, we released the redistricting data to the states and the public. **States may use these data in redrawing congressional, legislative, and local district boundaries.** The Census Bureau will also deliver the final redistricting data toolkit to all states and the public by September 30. COVID-19-related delays and prioritizing the delivery of these apportionment results delayed our original plan. (*Emphasis added*)

\* \* \*

It is our understanding that the Census Bureau has therefore released the official 2020 census for redistricting as of August 12, 2021, but will also be providing a “toolkit” by no later than September 30, 2021, to make the official data more user-friendly. The Census release states the August 12, 2021, data is the “official” data for redistricting use, but it is published in a “legacy” format as used in prior censuses. This apparently is less user-friendly, and a toolkit will be forthcoming which will make this data “easier-to-use” and more compatible for the public generally. However, per the Census Bureau’s own website, the August 12, 2020, data is in a format that has been used “*the last two decades,*” and “*The data included in the August and September deliveries will be identical. States can use either the August delivery or the September delivery as appropriate, taking their own statutes and constitutional requirements into account. The Census Bureau considers both releases to be official and fit for use.*”<sup>8</sup>

Thus, it appears clear that the official data from the 2020 Census for redistricting was in fact made “available” on August 12, 2021, and published on the Census Bureau’s website that date. Based on the foregoing, it is our opinion that the 60-day time limit for submitting the County Apportionment Commission’s plan would run from this August 12, 2021, release date. As noted above, the time limit for the Apportionment Commission filing a plan per MCL 46.407 runs from 60 days “after the latest official published census figures are available” unless an extension is granted by the Court of Appeals. Thus, the time limits appear to have started with this internet publication of these “official” redistricting census figures. Note that there is no distinction in the Michigan law for the start of the time limit as to whether the release publication to be in any specific format.

This would then require the County apportionment to be completed by approximately October 11, 2021. As noted, failure to meet this time limit (unless an extension is granted by the Court of Appeals) would provide for submission of plans by any registered voter in the County, and the Apportionment Commission would then be required to select from those

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<sup>8</sup> See Questions 2, 4 and 8 from the Census August 12, 2021 FAQ Section at: <https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/release/redistricting-data-product-faqs.html>

submitted plans rather than a plan of its own.<sup>9</sup> However, if a Commission plan is timely filed, but it is then appealed and rejected by the Court of Appeals, the County Apportionment Commission would still have the option of coming up with its own plan that complies with the Court's Order.<sup>10</sup> Thus, complying with the 60-day time frame is important for allowing the County Apportionment Commission to retain authority to draft its own plan. To the extent there may be any arguable legal or factual question regarding the operative census publication date, the most prudent course in our opinion would be using the earliest date in that there are no adverse ramifications to acting in advance of the statutory date.

Do not hesitate to contact this office if you have any additional questions.

Sincerely,

COHL, STOKER & TOSKEY, P.C.

*/s/ David G. Stoker*

DGS/gmk

cc: Livingston County Apportionment Commission

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<sup>9</sup> MCL 46.407

<sup>10</sup> *In re Apportionment of Wayne County--2001*, 250 Mich App 614 (2002)