



# BOARD OF COMMISSIONERS

1 S. Main St., 9<sup>th</sup> Floor  
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## BOARD OF COMMISSIONERS

### REGULAR SESSION WITH A SPECIAL AGENDA

THURSDAY, SEPTEMBER 18, 2014

### FINAL SPECIAL 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. Executive Session to Discuss Attorney/Client Privileged Memorandum from Independent Counsel dated September 15, 2014
7. Adoption of Ordinance Establishing Standards and Procedures for Use of the County Seal (page 1) **(attached)**
8. **COMMITTEE REPORT:**
  - a) Government Operations, September 8 (page 6) **(attached)**
9. New Business
10. Public Participation (five minutes maximum per speaker or longer at the discretion of the Chairperson)
11. Roll Call
12. Adjournment

## MACOMB COUNTY BOARD OF COMMISSIONERS

David J. Flynn – Board Chair  
District 4

Kathy Tocco – Vice Chair  
District 11

Mike Boyle – Sergeant-At-Arms  
District 10

Toni Mocerì – District 1  
Don Brown – District 7

Marvin Sauger – District 2  
Kathy Vosburg – District 8

Veronica Klinefelt – District 3  
Fred Miller – District 9

Robert Mijac - District 5  
Bob Smith – District 12

James Carabelli – District 6  
Joe Sabatini – District 13

**BOARD OF COMMISSIONERS  
CHARTER COUNTY OF MACOMB, MICHIGAN**

Commissioner \_\_\_\_\_, supported by Commissioner \_\_\_\_\_, moved the following ordinance.

**ENROLLED ORDINANCE  
NO. 2014-\_\_**

**AN ORDINANCE ESTABLISHING STANDARDS AND PROCEDURES FOR USE OF  
THE COUNTY SEAL**

**SECTION 1. PURPOSE, DEFINITIONS, GENERAL APPLICABILITY.**

**A. Purpose**

This Ordinance is intended to provide standards and procedures for the use of the County Seal; to develop a countywide, enforceable and understandable policy framework to ensure the use of the County Seal is appropriate; and to ensure the public can easily identify official County-endorsed or County-owned materials and property.

**B. Definitions**

The following definitions shall apply to the terms used in this Ordinance:

1. *Charter* – The Home Rule Charter of Macomb County that took effect on January 1, 2011, as it may from time-to-time be amended.
2. *Commission* – The County Board of Commissioners created by the Charter.
3. *Correspondence* – Any electronic or printed letter, memo, note, postcard, or other communication, including any envelope in which it is placed, but not including pleadings, briefs or other documents filed in official court files (though they may have a cover letter that is correspondence) or other types of documents on which the use of the Seal would be inappropriate.
4. *County personnel* – All Public Servants, County employees, contract personnel or volunteers acting in an official capacity on behalf of the County or any Department.
5. *Department* – Any County department, office, board, commission, or other unit of County government.
6. *Document* – Any brochure, policy, code, guidelines, or other printed matter conveying official information from or about the County or a Department, about any County programs or services, or about County property, including any envelopes or folders in which such information is placed, except to the extent the use would be inappropriate for such use (for example, on pleadings filed in a court).
7. *Executive or County Executive* – The person holding the office of County Executive as provided in the Charter or that person’s designee(s).
8. *Public Servant* – A County employee, County-wide elected official, Commissioner, or appointee of the County.
9. *Seal* – The Seal of the County, which includes an outline of the boundaries of the County, flanked by a sailboat on the right and three gears on the left representing recreation and industry, a banner traversing the County’s outline containing three triskelions, the date 1818, the year Macomb County was established, and circumscribing the Seal are the words Macomb County and Michigan, separated by five-pointed stars, as registered with the United States Patent and Trademark Office on March 14, 2006 (Reg. No. 3,068,557), as depicted in the attached Exhibit.
10. *Style Guide* – A guide approved pursuant to Section 4 of this Ordinance, which, if and when approved, shall set forth technical guidelines for use of the Seal, including a

comprehensive list of permissible colors, fonts, sizes, proportions, and arrangements in conjunction with other text or objects.

### C. General Applicability

This Ordinance applies to all individuals and entities, including but not limited to Departments, Public Servants and County personnel.

## **SECTION 2. SEAL USE**

### A. Required Seal Use

1. Except as otherwise provided in this Ordinance, use of the seal is required on:
  - a. All Correspondence and Documents of the County, any Department, any Public Servant and any other County personnel, accompanied by the name of the originating Department.
  - b. All County vehicles, accompanied by the name of the Department when determined by the Executive to be appropriate.
  - c. All County buildings, accompanied by the name of the Building.
  - d. All uniforms worn by County personnel with the exception of the Sheriff Department personnel and animal control officers.
  - e. All County signs used to identify places (not including signs identifying roads).
  - f. All business cards and County-issued identification cards for Public Servants and County personnel.
  - g. Power Point slides or other presentation materials used by County personnel.
  - h. Larger equipment or other personal property owned by the County.
2. Exceptions include the following:
  - a. The County Sheriff Department may continue to use its own seal.
  - b. The County Prosecutor may continue to use the state seal.
  - c. If other currently serving County-wide Elected Officials have a seal, that Official may continue to use the seal until the Official is no longer serving.
3. The Executive may permit exceptions from the required use of the County Seal in the following circumstances:
  - a. When a bona fide County activity undertaken by a Public Servant would be jeopardized or adversely affected if the Public Servant were recognized as working for the County. For example (but not for limitation), the Executive may permit an exemption for the use of unmarked vehicles: (i) to inspect property the County may wish to acquire before a contract is in place for its acquisition; (ii) by County officials for security purposes, such as when with high ranking state or federal officials; (iii) by County officials when accompanying site selection personnel or others conducting confidential County development activities.
  - b. When security related to a particular office, installation, equipment, or site requires anonymity.
  - c. When materials are economic development promotional materials, do not include any offer of County assistance, do not convey any County position on a matter or issue, and do not state any official County policy, the Executive may permit use of an alternative seal or logo other than the Seal described in this Ordinance.

d. The Executive may present other circumstances warranting an exception to the Commission, and the Commission may, in its sole discretion, approve such exception by resolution.

B. Inappropriate Seal Use

- 1. The Seal shall not be used:
  - a. By any individuals or entities other than the County, County Departments, Public Servants, or County personnel, except if listed as a permissible Seal use under Section 2.C.
  - b. In a manner contrary to the Seal use requirements in Section 3 of this Ordinance
  - c. In any election campaign materials for any candidate for public office. (This does not prevent its use on informational materials officially provided by the County to explain a ballot proposal and its effects.)
  - d. In support of, on materials provided for, or on materials with the Seal or logo of any for-profit business or non-profit entity, except as listed as a permissible Seal use under Section 2.C.
  - e. On the personal property of any Public Servant or County personnel.
  - f. On any vehicle that is not owned by or leased by the County or a Department.
  - g. On any real property that is not owned by, leased by or otherwise contractually controlled by the County.
  - h. For any communications other than official County communications.
  - i. On any electronic media, sites, methods, programs, etc. or on printed media or materials other than official County media and materials. This includes websites, Twitter, LinkedIn, Facebook, and other electronic communications methods.
  - j. In any situation in which an object or communication bearing the Seal has more than one funding source, such that use of the Seal would create confusion regarding the nature of such object or communication.
  - k. In a manner that endorses a product, service or program that has not received an official County endorsement.
  - l. In a manner that endorses a message for which County endorsement is inappropriate and unauthorized.

2. County funds shall not be used to pay for any signs, printed materials, services, software, programming, supplies or materials that include inappropriate Seal use as defined above.

C. Permissible Seal Use

- 1. The Seal may be used on signs and materials also displaying the seals or logos of other non-County governmental entities when jointly engaged in a project or communication, if approved by the Executive.
- 2. The Seal may be used in conjunction with the seal or logo of a for-profit business or non-profit entity when that use is expressly provided in a contract between that for-profit business or non-profit entity and the County and only to the extent it will not be inappropriate to do so as provided in Section 2.B.1.k. and Section 2.B.1.l. above.
- 3. The Seal may be used by a Public Servant on a temporary basis on personal property or a vehicle that is not owned or leased by the County if the Public Servant is attending an event on behalf of the County, so long as the temporary Seal is put on immediately before the event and removed immediately after it concludes.

**SECTION 3. SEAL USE REQUIREMENTS**

#### A. Style

1. In the absence of a Style Guide approved in accordance with Section 4 of this Ordinance, and subject to the phase-in provisions Section 3.C. below, all uses of the Seal shall:
  - a. To the extent technologically possible, match the exact colors, fonts, and proportions of the image depicted in the attached Exhibit.
  - b. Be separated from any other image or text by a distance no shorter than the width of the Seal itself, as measured from outermost points of the circular banner containing the words Macomb County and Michigan, separated by five-pointed stars.
2. Once a Style Guide has been approved in accordance with Section 4 of this Ordinance, and subject to the phase-in provisions in Section 3.C. below, all uses of the Seal shall comply with the Style Guide.
3. The Seal shall be displayed only on the front driver's and passenger side doors of vehicles.

#### B. Sole Use

1. Except as otherwise expressly provided in this Ordinance, or through an exception granted as provided in this Ordinance, the Seal shall not be used in conjunction with any other Seal or logo.
2. Except as otherwise expressly provided in this Ordinance or an exception granted as provided in this Ordinance, the Seal shall not be used on vehicles in conjunction with any other graphics, pictures, representations or messages.

#### C. Phase-in

1. Because Seals not complying with the style requirements in Section A.1. above are currently in use, in order to avoid significant costs of immediately replacing all materials using such non-conforming Seals, the following phase-in will be used:
2. If a Style Guide is not approved in accordance with Section 4 of this Ordinance on or by April 1, 2015, any Seal produced or published after that date shall comply with the style requirements in Section 3.A.1.a. unless and until such Style Guide is later approved.
3. If a Style Guide is approved in accordance with Section 4 of this Ordinance:
  - a. The reorder or new order of any printed business cards, brochures, letterhead, folders, envelopes, invoices, pamphlets or materials shall comply with the Style Guide as of the date of its approval.
  - b. To the extent they have not already been replaced as a result of compliance with Section 3.C.1.a. above, all printed business cards, brochures, letterhead, folders, envelopes, invoices, pamphlets or materials in use shall comply with the Style Guide within 6 months of its approval.
  - c. All County and Department websites shall comply with this Ordinance within 3 months of its approval.
  - d. All PowerPoint slides and other electronically produced images shall comply with this Ordinance within 3 months of its approval.
  - e. Vehicles first put into service by the County shall comply with Style Guide within 6 months of its approval.
  - f. Existing vehicles shall comply with the Style Guide within 1 year of its approval.
  - f. Forms for County memos and other documents on which the Seal is affixed as part of word processing shall comply with the Style Guide within 6 months of its approval, and the Executive shall provide direction to appropriate County personnel to prepare needed templates to meet this requirement.

**SECTION 4. STYLE GUIDE**

- 1. The Executive may prepare a Style Guide and present such Style Guide for approval by the Commission by resolution.
- 2. A Style Guide shall not be approved unless it includes the following:
  - a. A requirement that nothing appear over the Seal.
  - b. A requirement that names of Departments, Public Servants, programs or services shall be placed below or to the side of the Seal as depicted and specified in the Style Guide.
  - c. A requirement that the Seal not be distorted and that its images and text not be modified or supplemented by additional images or text.
  - d. A description of acceptable sizes and proportions for use of the Seal.
  - e. A description of acceptable colors, materials, fonts, and prints for use of the Seal.
  - f. A description of the quality of printing and artwork for use of the Seal.
- 3. If a Style Guide is prepared and approved as provided in this Section, the Executive may propose amendments from time to time by presenting such amendments to the Commission. Any amendments to the Style Guide shall be phased-in in the same manner as the original Style Guide, pursuant to Section 3.C.3. of this Ordinance.

**SECTION 5. REMEDIES AND SANCTIONS**

- A. A violation of this Ordinance shall be a municipal civil infraction punishable by a fine of up to \$500.00. Law enforcement officers in the Macomb County Sheriff's Department are authorized to issue civil infraction citations for violations of this ordinance, and the County Prosecutor is authorized to prosecute such citations.
- B. Public Servants and County personnel who violate this Ordinance may be subject to the same personnel action(s) as for violations of other County ordinances or policies.

**SECTION 6. PUBLICATION AND EFFECTIVE DATE**

The Clerk shall publish this ordinance after its adoption. This ordinance shall take effect 10 days after its publication.

Date: \_\_\_\_\_, 2014

\_\_\_\_\_  
David Flynn, Commission Chair

\_\_\_\_\_  
Carmella Sabaugh, County Clerk

Adopted: \_\_\_\_\_, 2014  
 Delivered to Executive: \_\_\_\_\_, 2014  
 Notice Published: \_\_\_\_\_, 2014



# BOARD OF COMMISSIONERS

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**September 8, 2014**

**TO: BOARD OF COMMISSIONERS**

**FROM: KATHY TOCCO, CHAIR  
 GOVERNMENT OPERATIONS COMMITTEE**

**RE: RECOMMENDATIONS FROM GOVERNMENT OPERATIONS  
 COMMITTEE MEETING OF SEPTEMBER 8, 2014**

At a meeting of the Government Operations Committee, held Monday, September 8, 2014, the following recommendations were made and are being forwarded to the September 18, 2014 Full Board meeting for approval:

## **1. COMMITTEE RECOMMENDATION – MOTION (SEE ATTACHED)**

A motion was made by Miller, supported by Mocerri, to recommend that the Board of Commissioners approve the Macomb County Human Rights Policy; further, a copy of this Board of Commissioners' action is directed to be delivered forthwith to the Office of the County Executive. **THE MOTION CARRIED.** (roll call vote: Yes-Boyle, Flynn, Klinefelt, Miller, Mocerri, Sauger and Tocco; No-Brown, Carabelli, Sabatini and Vosburg)

## **2. COMMITTEE RECOMMENDATION – MOTION (SEE ATTACHED)**

A motion was made by Miller, supported by Mocerri, to recommend that the Board of Commissioners approve the amendments to the Procurement Ordinance (Ord. 2012-1); further, a copy of this Board of Commissioners' action is directed to be delivered forthwith to the Office of the County Executive. **THE MOTION CARRIED WITH BROWN, CARABELLI, SABATINI AND VOSBURG VOTING "NO."**

**A MOTION TO ADOPT THE COMMITTEE REPORT WAS MADE BY CHAIR TOCCO, SUPPORTED BY VICE-CHAIR FLYNN.**

## **MACOMB COUNTY BOARD OF COMMISSIONERS**

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Robert Mijac - District 5  
 Bob Smith – District 12

James Carabelli – District 6  
 Joe Sabatini – District 13

RESOLUTION NO. \_\_\_\_\_

FULL BOARD MEETING DATE: \_\_\_\_\_

AGENDA ITEM: \_\_\_\_\_

**MACOMB COUNTY, MICHIGAN**

RESOLUTION TO approve the Macomb County Human Rights Policy

INTRODUCED BY: Kathy Tocco, Chair, Government Operations Committee

**\*At the 9-8-14 meeting, the following friendly amendments were approved:**

- a) Sec. 1, Policy and Purpose, A, second line: insert "of" after "basis"
- b) Sec. 1, correct lettering of paragraphs to read A-E
- c) Sec. 2, Definitions, C, add "veterans status"
- d) Sec. 7, Complaints and Penalties, B, first line: delete "there"

**COMMITTEE/MEETING DATE**

<u>Government Operations</u>	<u>9-8-14</u>
<u>Full Board</u>	<u>9-18-14</u>



## **MACOMB COUNTY HUMAN RIGHTS POLICY**

### **Sec. 1 Policy and Purpose.**

- A. It is the policy of the Macomb County not to discriminate and not to contract with those who discriminate against any person on the basis of race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental limitation, familial status, veteran status, sexual orientation, or gender identity.
- B. The prohibitions against discrimination in this policy are intended to supplement federal and state civil rights law prohibiting discrimination in the areas of employment and public accommodations. Nothing in this policy is intended or shall be construed to violate any provision of the United States Constitution, the Michigan Constitution of 1963, or any federal or state law, rule or regulation.
- C. This policy supplements other County policies addressing discrimination or human or civil rights. If provisions of this policy impose additional requirements or limitations, it is intended that the policies so affected will be amended to be consistent with this policy.
- D. Nothing in this policy is intended to support or to advocate for or against any lifestyle or any political, religious other life views. To the contrary, it is the intention of this policy to help ensure all persons are treated fairly and equally. It is an express intent of this policy to guarantee to all of our citizens fair and equal treatment.
- E. Nothing in this policy is intended to require or shall be construed to require preferential treatment of any person identified in subsection (A).

### **Sec. 2. Definitions.** The following definitions shall apply to the terms used in this policy.

- A. Age – Chronological age.
- B. Commission – The County's Board of Commissioners.
- C. Discriminate, discrimination – To make a decision, offer to make a decision or refrain from making a decision based in whole or in part on the actual or perceived race, religion, color, national origin, gender, sex, age, marital status, physical or mental limitation, family status, veteran status, sexual orientation or gender identity of an individual. This definition includes any discrimination that is already prohibited under federal or state law, including, without limitation, discrimination based upon an individual's height or weight.
- D. County – Charter County of Macomb
- E. Employee – An individual who is hired for a wage, salary, fee, payment or other remuneration to perform work for an employer.
- F. Employer – The County government or a person or contractor employing one of more persons and doing business with the County government, including an agent of that government, person or contractor.
- G. Employment agency – A person regularly undertaking, with or without compensation, to procure, refer, recruit, or place an individual in an employment relationship with an employer.
- H. Executive (or County Executive) – The person holding the office of County Executive pursuant to the Home Rule Charter of the County of Macomb, or that person's designee.
- I. Familial (or Family) Status – One or more individuals under the age of 18 residing with a parent or other person having custody of in the process of securing legal custody of the individual or individuals or residing with the designee of the parent or other person having or securing custody, with the written permission of the parent or other person. For purposes of this definition, parent includes a person who is pregnant.
- J. Gender – The actual biological state of being male or female as of birth, or subsequent alteration through surgical procedure, and without regard to any outward physical display or expression of gender identity.

K. Gender identity – An individual’s appearance, expression, identity or behavior as being either male or female, whether or not that appearance, expression, identity or behavior is different from that which is traditionally associated with the individual’s designated gender at birth.

L. Individual – A single human being.

M. Labor organization – An organization of any kind, an agency or employee representation committee, group, association, or plan in which County employees participate in or are members of, which exists for the purpose, in whole or in part, of dealing with the County concerning collective bargaining, grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment. For purposes of this definition, a labor organization need not be subordinate to or affiliated with a national or international labor organization..

N. Marital Status – The state of being married, unmarried, divorced, or widowed.

O. Person – An individual, agent, association, corporation, organization, legal representative, limited liability company, partnership, receiver, trust or any other legal or commercial entity.

P. Physical or mental limitation – A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic substantially limits a major life activity of that individual and is unrelated to the individual's ability to perform the duties of a particular job or position or is unrelated to the individual's ability to utilize and benefit from a place of public accommodation. For the purposes of this definition, physical or mental disability does not include any condition caused by the current illegal use of a controlled substance or the use of intoxicating liquors by an individual.

Q. Place of public accommodation – A County-owned educational, governmental, health, entertainment, cultural, recreational, refreshment, transportation, park, or facility of any kind, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public.

R. Religious Organization or Institution – A religious corporation, association, educational institution or society, which is, in whole or substantial part, owned, supported, controlled or managed by a particular religion whose purpose or character is directed toward the propagation of that particular religion and that has the inculcation of religious values or the provision of charity as its purpose; primarily employs persons who share its religious tenets; and primarily serves persons who share its religious tenets or, on a charitable basis, the broader community. Religious organization or institution includes, for illustration and not limitation: churches, mosques, synagogues and other houses of worship; any subsidiary organizations; educational institutions affiliated with, controlled, or managed by those houses of worship or with articles of incorporation, bylaws and other documents stating an intention to inculcate its religious tenets in students; and, faith-based organizations that, due to a sense of duty based on particular religious tenets, provide charitable services to the public.

S. Sex – Includes, but is not limited to pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. Discrimination based on sex includes sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature under the following conditions:

i. Submission to the conduct or communication is made a term or condition, either explicitly or implicitly, to obtain employment, housing, or public accommodations.

ii. Submission to or rejection of the conduct or communication by an individual is used as a factor in decisions affecting the individual’s employment, housing, or public accommodations.

iii. The conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, or housing, or creating an intimidating, hostile, or offensive employment, housing, or public accommodations.

T. Sexual Orientation – Male or female homosexuality, heterosexuality or bisexuality, by orientation or practice, whether past or present. Sexual orientation does not include the physical or sexual attraction to a minor by an adult or any sexual activity or attempted activity otherwise prohibited by law.

**Sec. 3. County Employment.**

A. The County shall not discriminate in the employment, compensation, work classifications, conditions or terms, promotion or demotion, or termination of employment of any individual. No County officer or employee shall discriminate in the employment, compensation, work classifications, conditions or terms, promotion or demotion, or termination of employment of any individual.

B. To the extent not otherwise prohibited by law, the County shall require that any labor organization representing or acting on behalf of any County employees shall not exclude or expel from membership a member or applicant for membership, or otherwise discriminate in a manner prohibited by this policy when dealing with employers concerning collective bargaining, member grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment.

C. The County shall not engage, in any way directly or indirectly compensate, or accept any information about potential employees from an employment agency unless that employment agency agrees not to discriminate in the procurement, referral, placement, or recruitment of any individual for possible employment with the County.

**Sec. 4. Public Accommodations.** The County shall not discriminate in making available full and equal access to all goods, services, activities, privileges, and accommodations of any County-owned place of public accommodation.

**Sec. 5. General Prohibited Practices.** Neither the County nor any County officer or employee shall:

A. Adopt, enforce, or employ any policy or requirement, publish, post, circulate or otherwise broadcast any advertisement, sign, solicitation or notice which discriminates or suggests discrimination in providing employment or public accommodations.

B. Coerce, threaten or retaliate against a person for making a complaint or assisting in any investigation regarding a violation or alleged violation of this policy.

C. Require, request, conspire with, coerce or otherwise assist a person to retaliate against a person for making a complaint or assisting in an investigation.

D. Conspire with, assist, coerce, or request another to discriminate in any manner prohibited by this policy.

E. Adopt, enforce, or employ any policy, practice or requirement which, while facially neutral, has the effect of discriminating in a manner prohibited by this policy, except when there is a bona fide business necessity for such a policy, practice or requirement. For the purposes of this chapter, bona fide business necessity means that the policy, practice or requirement is reasonably necessary to the normal operation of the County government. A bona fide business necessity does not arise due to a mere inconvenience or because of suspected or actual objection by any persons.

**Sec. 6. Exceptions.** Regardless of any other provisions of the policy, the following practices of the County, its officers and its employees shall not be violations of this policy.

A. To make a decision, offer to make a decision or refrain from making a decision based in whole or in part on the actual or perceived race, religion, color, national origin, gender, sex, age, marital status, physical or mental limitation, family status, sexual orientation or gender identity of an individual required by applicable federal or state laws, rules or regulations or by any contract with a federal or state agency.

B. To refuse to enter into a contract with an unemancipated minor.

C. To provide discounts on products or service to students, minors and senior citizens or members of an organization.

D. To restrict or permit use of restrooms, lavatories, locker room facilities, shower rooms, changing rooms, jail accommodations and handling of prisoners, patient examination rooms, or other sleeping, toilet or bathing facilities on the basis of gender. Doing so shall not violate this policy's prohibitions on discrimination based on sexual orientation or gender identity.

- E. To comply with adopted institutional policies affecting County employment or County-owned public accommodations when those policies conform with applicable federal or state laws, rules or regulation.
- F. To restrict participation in a County instructional program, athletic event, or an athletic team on the basis of age or gender.
- G. To offer health or pension plans that provide for marital or family status limitations provided those limitations conform to state and federal laws, rules and regulations. Further, nothing in this policy shall be construed or interpreted to either require, nor prohibit, the County from offering employment benefits to the partner of an unmarried employee.
- H. Exercising his or her First Amendment rights to donate to a charitable organization of his or her choosing through the use of any County's automatic payroll deduction program. This policy shall not be construed to limit the availability of the County's automatic payroll deduction program only to charitable organizations that support or conform to the general intent and purposes of this policy. Except as otherwise provided by law, the County retains the discretion to determine whether or not to participate in or allow any payroll deduction.
- I. Allowing use of its facilities or services by persons that may be affiliated with, or otherwise supported by a religious organization or institution, which may espouse policies or practices inconsistent with the general intent of this chapter. Further, this policy shall not prohibit the County from allowing use of its facilities or services by persons not generally affiliated with or supported by a particular religious organization or institution, but who may espouse policies or practices inconsistent with the general intent of this policy.

#### **Sec. 7. Complaints and Penalties.**

- A. Any person claiming to be discriminated against in violation of this policy may file a signed, written complaint with the Macomb County Human Resources and Labor Relations Department setting forth the details, including the names, dates, witnesses and other factual matters relevant to the claim within 180 days of the incident forming the basis of the complaint. Copies of the complaint shall be forwarded to the Executive and Commission.
- B. The Office of the County Executive may investigate the complaint to determine whether it is substantiated and recommend to the head of the department alleged to have engaged in the discrimination appropriate remedial actions.
- C. In addition to the remedial actions provided in subsection B, if any County officer or employee engaged in discrimination in violation of this policy, reports shall be made to appropriate supervisory personnel and the Human Resources Department. Any employee engaged in discrimination in violation of this policy may be subject to appropriate actions under the applicable personnel policies and practices.
- D. When any responsive and remedial actions have been taken, a synopsis of the investigation findings and subsequent actions and results shall be forwarded to the Executive and the Commission.
- E. Any person or contractor doing business with the County claiming a violation of this Policy shall file a signed, written complaint with the Macomb County Purchasing Department setting forth the details, including the names, dates, witnesses and other factual matters relevant to the claim within 180 days of the incident forming the basis of the complaint. Copies of the complaint shall be forwarded to the Office of County Executive and Board of Commissioners.

RESOLUTION NO. \_\_\_\_\_

FULL BOARD MEETING DATE: \_\_\_\_\_

AGENDA ITEM: \_\_\_\_\_

**MACOMB COUNTY, MICHIGAN**

RESOLUTION TO approve amendments to Procurement Ordinance (Ord. 2012-1)

INTRODUCED BY: Kathy Tocco, Chair, Government Operations Committee

**COMMITTEE/MEETING DATE**

Government Operations 9-8-14  
Full Board 9-18-14

## ENROLLED ORDINANCE

### NO. 2012-1

AN ORDINANCE TO ESTABLISH COMPREHENSIVE POLICIES AND PROCEDURES GOVERNING THE AWARDING OF MACOMB COUNTY CONTRACTS FOR THE PROCUREMENT OF SERVICES, SUPPLIES, MATERIALS, AND EQUIPMENT.

**IT IS HEREBY ORDAINED BY THE CHARTER COUNTY OF MACOMB:**

#### ARTICLE 1. PURPOSE, POLICY, APPLICABILITY, AND DEFINITIONS

##### Sec. 1.1. Purpose

A. Section 8.10 of the Charter requires the Commission to adopt comprehensive policies and procedures governing the awarding of contracts, including the procurement and handling of services, supplies, materials, and equipment that are consistent with federal and state law, the Charter, and ordinances, resolutions, and policies of the Commission. The County Executive is responsible for implementing the policies adopted by the Commission, including requirements for competitive bidding and the use of sealed bids for procurements and contracts specified by ordinance.

B. This ordinance is intended to establish some of the required policies and procedures governing the awarding of Contracts for Procurement and handling of services, supplies, materials, and equipment.

C. It is the County's policy to enter into Contracts for services, supplies, materials, and equipment for fair and reasonable consideration, pursuant to a process that is managed in accordance with the law and designed to ensure that County funds are spent wisely and fairly; County policies and practices protect against fraud and favoritism; participation by Macomb County businesses is encouraged; equality of opportunity for all businesses is promoted; and the needs of the County are fulfilled.

##### Sec. 1.2. Applicability

A. When state or federal laws, rules, regulations, grant agreements, permit or license conditions, or other binding state or federal requirements or policies require contracting procedures different than those provided in this Ordinance, those state or federally required procedures shall be followed. If such state or federal requirements also allow compliance with the procedures in this Ordinance, then both shall be followed. Accordingly, except for article 1A, this Ordinance does not apply to the Martha T. Berry Medical Care Facility or the Macomb County Human Services Board, the Macomb County Community Mental Health Board and program, the Veterans Affairs Commission, the Community Corrections Advisory Board, and the Macomb County Community Action Advisory Board.

B. Nothing in this ordinance shall prevent any County officer, employee, or Department from complying with the terms and conditions of any grant, gift, bequest, or approved Cooperative Procurement agreement that is otherwise consistent with law.

C. Compliance with this Ordinance does not affect other applicable requirements. Commission approvals and other requirements may exist under applicable separate County, Executive office, or departmental policies or procedures, under applicable state or federal laws, rules, regulations, permit or license requirements, or grant agreements, or pursuant to other contracts. Without limiting the generality of the foregoing, this ordinance may provide requirements in addition to those provided in the County's Contracting Policy but it does not relieve or modify the need for County officers, employees, Departments and agencies to comply with that policy.

##### Sec. 1.3. Definitions

The following definitions shall apply to the terms used in this ordinance.

A. Age – Chronological age.

B. Change order – A signed written order directing the Contractor to make changes according to the "changes" clause of the contract.

C. Charter - The Home Rule Charter of Macomb County that took effect on January 1, 2011, as it may from time-to-time be amended.

- D. Commission - The County Board of Commissioners created by the Charter.
- E. Construction – The Services involved in building, altering, installing, renovating, or demolishing any public structure, building or other improvement to real property or any utility, not including the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.
- F. Contract – An agreement or understanding supported by present or future consideration.
- G. Contracting Policy – The Contracting Policy adopted by resolution of the Commission as it may from time to time be amended.
- H. Contract modification – Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any Contract accomplished by mutual action of the parties to the Contract.
- I. Contractor – A person who by contract furnishes services, materials, or supplies to Macomb County government. Contractor does not includes persons who are merely creditors or debtors of the County such as those holding the County’s notes and bonds or persons whose notes, bonds or stock is held by the County.
- J. Cooperative Procurement – Procurement conducted by or on behalf of more than one public procurement unit.
- K. County-based Enterprise – A business is deemed to be a county-based enterprise (CBE) if it satisfies all of the following criteria:
1. Its headquarters is physically located within Macomb County, or it has been conducting business at a location with a permanent street address in the County on an ongoing basis for not less than one taxable year prior to its bid or response to a Request for Proposals.
  2. It has made payment of property taxes on real or personal property within the past year on property which is ordinarily needed to perform the proposed contract.
  3. At least 50 percent of its regular full-time employees are based at the County location to perform the proposed contract.
  4. It has been dealing for at least one year on a regular commercial basis in the kind of goods or Services which are the subject of the bid or proposal.
- L. Department – Any County department, office, board, commission, or other unit of County government.
- M. Department Head – The person who, as a Countywide elected official or as a designee of the County Executive, is the head of a County Department, or that person’s designee.
- N. Discriminate, discrimination – To make a decision, offer to make a decision or refrain from making a decision based in whole or in part on the actual or perceived race, religion, color, national origin, gender, sex, age, marital status, physical or mental limitation, family status, sexual orientation or gender identity of an individual. This definition includes any discrimination that is already prohibited under federal or state law, including, without limitation, discrimination based upon an individual’s height or weight.
- O. Emergency - When immediate action is necessary:
1. For the imminent protection of or to mitigate an imminent threat to public health, welfare or safety, including widespread or severe damage, injury, or loss of life or property.
  2. To avert a catastrophe from a natural or human-made cause, including fire, flood, snowstorm, ice storm, tornado, windstorm, wave action, oil spill, water contamination, utility failure, hazardous peacetime radiological incident, major transportation accident, hazardous materials incident, epidemic, air contamination, blight, drought, infestation, explosion or hostile military or paramilitary action, or similar occurrences arising from terrorist activities, riots, or civil disorders.

3. For emergency repair or construction caused by unforeseen circumstances when the repair or construction is necessary to protect life or property.
  4. In response to a declared state of emergency or state of disaster under Michigan or federal law.
- P. Employee – An individual who is hired for a wage, salary, fee, payment or other remuneration to perform work for an employer.
- Q. Employment agency – A person regularly undertaking, with or without compensation, to procure, refer, recruit, or place an individual in an employment relationship with an employer.
- R. Employer – A person or contractor employing one or more persons and doing business with the County government, including an agent of that person or contractor.
- S. Ethics Ordinance – The County’s Ethics Ordinance, Ordinance No. 10, as it may from time-to-time be amended or replaced.
- T. Executive or County Executive - The person holding the office of County Executive as provided in the Charter or that person’s designee(s).
- U. Familial (or Family) Status – One or more individuals under the age of 18 residing with a parent or other person having custody of in the process of securing legal custody of the individual or individuals or residing with the designee of the parent or other person having or securing custody, with the written permission of the parent or other person. For purposes of this definition, parent includes a person who is pregnant.
- V. Gender – The actual biological state of being male or female as of birth, or subsequent alteration through surgical procedure, and without regard to any outward physical display or expression of gender identity.
- W. Gender identity – An individual’s appearance, expression, identity or behavior as being either male or female, whether or not that appearance, expression, identity or behavior is different from that which is traditionally associated with the individual’s designated gender at birth.
- X. Individual – A single human being.
- Y. Invitation for Bids – All documents (whether attached or incorporated by reference) utilized for soliciting Sealed Bids.
- Z. Locally-sourced foods –
1. Foods that are not processed (such as raw vegetables and fruits, eggs, meats and dairy products), that are grown, harvested or raised entirely within Macomb County.
  2. Foods that are processed (such as canned or packaged foods that have undergone preparation of some kind after having been grown, harvested or raised), for which the processor is located within Macomb County, or which primarily consisting of foods grown, harvested or raised within Macomb County.
- AA. Marital Status – The state of being married, unmarried, divorced, or widowed.
- BB. Person – An individual, agent, association, corporation, organization, legal representative, limited liability company, partnership, receiver, trust or any other legal or commercial entity.
- CC. Physical or mental limitation – A determinable physical or mental characteristic of an individual, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic substantially limits a major life activity of that individual and is unrelated to the individual’s ability to perform the duties of a particular job or position or is unrelated to the individual’s ability to utilize and benefit from a place of public accommodation. For the purposes of this definition, physical or mental disability does not include any condition caused by the current illegal use of a controlled substance or the use of intoxicating liquors by an individual.
- DD. Procurement – The buying, purchasing, renting, leasing, or acquiring of any Services, supplies materials, or equipment. It also includes all functions that pertain to the acquiring of any service, supply,



material, or equipment, including description of requirements, selection, and solicitation of sources, preparation and award of Contract, and all phases of Contract administration.

EE. Professional Services – Services which require a high degree of intellectual skill, advanced degrees, and/or professional licensing or certification and those providing such Services are distinguished from one another based on their specialized knowledge, experience and expertise, including by way of example and not limitation, accounting, actuarial, appraising, architectural, assessing, auditing, dental, engineering, environmental, investment adviser, legal, lobbying, medical, psychological or psychiatric, real estate brokerage, and title examination and abstracting services.

FF. Public Servant - A County employee, Countywide elected official, Commissioner, or appointee of the County.

GG. Purchasing Manager – The person designated by the County Executive to be the County's principal procurement official who shall be under the control, supervision, direction, and authority of the County Executive and shall have such authority to delegate to others as provided by the County Executive.

HH. Religious Organization or Institution – A religious corporation, association, educational institution or society, which is, in whole or substantial part, owned, supported, controlled or managed by a particular religion whose purpose or character is directed toward the propagation of that particular religion and that has the inculcation of religious values or the provision of charity as its purpose; primarily employs persons who share its religious tenets; and primarily serves persons who share its religious tenets or, on a charitable basis, the broader community. Religious organization or institution includes, for illustration and not limitation: churches, mosques, synagogues and other houses of worship; any subsidiary organizations; educational institutions affiliated with, controlled, or managed by those houses of worship or with articles of incorporation, bylaws and other documents stating an intention to inculcate its religious tenets in students; and, faith-based organizations that, due to a sense of duty based on particular religious tenets, provide charitable services to the public.

II. Request For Proposals (RFP) – All documents (whether attached or incorporated by reference) utilized for soliciting proposals.

JJ. Responsible Bidder – A person or entity with the capability in all respects to perform fully the requirements set forth in an Invitation for Bids.

KK. Responsive Bidder – A person or entity that has submitted a Sealed Bid which conforms in all material respects to the requirements set forth in the Invitation for Bids, unless irregularities or non-conformities are waived as provided in the Invitation for Bids.

LL. Sealed bid – An advertised, open, competitive solicitation for prices that are opened publicly.

MM. Services – The furnishing of time, labor, or effort by a Contractor not involving the delivery of a specific end product other than written documents such as reports, correspondence, drawings, plans, specifications, etc., which are incidental to the required performance.

NN. Sustainable and environmentally-sound farming practices – Farms that have Michigan Agriculture Environmental Assurance Program (MAEAP) verification from the Michigan Department of Agriculture and Rural Development or Good Agricultural Practices (GAP) certification from the USDA, Agricultural Marketing Service, Fruit and Vegetable Program, Specialty Crops Inspection (SCI) Division.

OO. Sex – Includes, but is not limited to pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. Discrimination based on sex includes sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature under the following conditions:

1. Submission to the conduct or communication is made a term or condition, either explicitly or implicitly, to obtain employment, housing, or public accommodations.
2. Submission to or rejection of the conduct or communication by an individual is used as a factor in decisions affecting the individual's employment, housing, or public accommodations.

3. The conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, or housing, or creating an intimidating, hostile, or offensive employment, housing, or public accommodations.

PP. Sexual Orientation – Male or female homosexuality, heterosexuality or bisexuality, by orientation or practice, whether past or present. Sexual orientation does not include the physical or sexual attraction to a minor by an adult or any sexual activity or attempted activity otherwise prohibited by law.

**Sec. 1.4. General Contracting Policy.**

A. Procurement of services, supplies, materials, and equipment shall comply with the provisions of articles 2 through 9 of this ordinance.

B. All activities by Public Servants and other covered persons related to Procurement shall comply with the Ethics Ordinance and the Commission's Contracting Policy.

C. As required by Charter, the County Organization Plan will provide for public access to the expenditure records of the County, including all Procurement Contracts.

**ARTICLE 1A. NON-DISCRIMINATION.**

**1A.1. Policy.**

A. It is the policy of the Macomb County not to discriminate and not to contract with those who discriminate against any person on the basis race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental limitation, familial status, veteran status, sexual orientation, or gender identity.

B. The prohibitions against discrimination in this article are intended to supplement federal and state civil rights law prohibiting discrimination. Nothing in this article is intended or shall be construed to violate any provision of the United States Constitution, the Michigan Constitution of 1963, or any federal or state law, rule or regulation.

C. This article supplements County policies addressing discrimination or human or civil rights. If provisions of this ordinance impose additional requirements or limitations, compliance with this ordinance is required.

C. Nothing in this article is intended to support or to advocate for or against any lifestyle or any political, religious other life views. To the contrary, it is the intention of this article to help ensure all persons are treated fairly and equally. It is an express intent of this article to guarantee to all citizens fair and equal treatment.

D. Nothing in this article is intended to require or shall be construed to require preferential treatment of any person identified in subsection (A).

**Sec. 1.A.2. Non-Discrimination Required.**

A. Except for purchase made under article 8 and as otherwise provided in this article, all written contracts with contractors for procurement by the County of services, supplies, materials and equipment, including professional services, in an amount over \$35,000 shall include a provision requiring that, except as provided in section 1.A.3, the contractor and any subcontractors and suppliers shall not:

1. Discriminate in the employment, compensation, work classifications, conditions or terms, promotion or demotion, or termination of employment of any individual.

2. Adopt, enforce, or employ any policy or requirement, publish, post, circulate or otherwise broadcast any advertisement, sign, solicitation or notice which discriminates or suggests discrimination in providing employment.

3. Coerce, threaten or retaliate against a person for making a complaint or assisting in any investigation regarding a violation or alleged violation of the requirements in subsection A.1.

4. Require, request, conspire with, coerce or otherwise assist a person to retaliate against a person for making a complaint or assisting in an investigation regarding a violation or alleged violation of the requirements in subsection A.1.

5. Conspire with, assist, coerce, or request another to discriminate in any manner prohibited by this article.

6. Adopt, enforce, or employ any policy, practice or requirement which, while facially neutral, has the effect of discriminating in a manner prohibited by this article, except when there is a bona fide business necessity for such a policy, practice or requirement. For the purposes of this article, bona fide business necessity means that the policy, practice or requirement is reasonably necessary to the normal operation of the business. A bona fide business necessity does not arise due to a mere inconvenience or because of suspected or actual objection by any persons.

B. The County shall not engage, in any way directly or indirectly compensate, or accept any information about potential employees from an employment agency unless that employment agency agrees not to discriminate in the procurement, referral, placement, or recruitment of any individual for possible employment with the County.

C. All invitations to bid and requests for proposal shall include a written notification of the requirements of this section and require any persons submitting bids or proposals to affirm their, and their subcontractors' and suppliers', compliance with these requirements.

### **Sec. 1A.3. Exceptions.**

Regardless of any other provisions of the policy, the following shall not be violations of this article.

A. The provisions of this article do not apply to any religious organization or institution with respect to its employment of individuals.

B. A governmental institution may restrict restrict employment opportunities based on duly-adopted institutional policies that conform to state and federal laws and regulations.

C. A person may discriminate based on an individual's age when such discrimination is required by other local, state or federal laws.

D. A person may refuse to enter into a contractual relationship with an un-emancipated minor.

E. A person may restrict or permit use of restrooms, lavatories, locker room facilities, shower rooms, changing rooms, jail accommodations and handling of prisoners, patient examination rooms, or other sleeping, toilet or bathing facilities on the basis of gender. Doing so shall not violate this policy's prohibitions on discrimination based on sexual orientation or gender identity.

F. An employer may restrict employment opportunities to members of one's family.

G. An employer offering health or pension plans may provide for marital or family status limitations in such plans provided those limitations conform to state and federal laws, rules and regulations. Further, nothing in this ordinance shall be construed or interpreted to either require, nor prohibit a private employer from offering employment benefits to the unmarried partner of an employee.

H. This article is not intended to and shall not be construed to require an employer to, and an employer shall not use this ordinance as a justification to, take any employment, promotion, compensation, benefits, termination or extension of employment action against, or alter the employment privileges of a professional employee, because that professional employee refuses to provide medical, social work, psychological or other professional counseling services when that counseling would reasonably conflict with that employee's sincerely held religious beliefs. However, this provision is not intended to alter or affect any professional ethics standards or codes of conduct.

### **Sec. 1A.4. Enforcement and Penalties.**

A. If any County officer or employee believes and contractor has violated a provision of this article, the County officer or employee shall notify the Purchasing Director in writing of the contractor's name and, to the extent known by the County officer or employee, the contract involved, the nature of the violation of

this article, the names of any know witnesses, any documents related to the violation, and the dates, places and other information about the occurrence of such violation,

B. Any other person who believes a violation of this article occurred may notify the Purchasing Director in writing providing as many details as possible.

C. The Purchasing Director shall investigate any complaint and shall, during that investigation, provide the contractor an opportunity to file a written response. In doing so, the Purchasing Director shall provide a written summary of the allegations and copies of any related documents. The Purchasing Director shall not provide names or contact information of the complainant(s). If the Purchasing Director believes a crime may have been committed, the Purchasing Director shall take no action until the Purchasing Director has consulted with the Sheriff or Prosecutor concerning the matter.

D. If the Purchasing Director concludes a contractor has violated this article, the Purchasing Director shall take one or more of the actions provided in subsection E. In doing so, the Purchasing Director shall act consistently so that similar violations of this article under similar circumstances are dealt with in a similar manner.

E. Violations of this article are a material breach of a contract subject to this article, and may result in one of more of the following:

1. Correspondence requiring and confirming corrective action(s) to address violations an prevent recurrence.
2. Termination of the contract with the contractor.
3. Replacement of the contractor with another contractor to finish the work/project. The terminated contractor shall pay all costs incurred by the County as the result of the change in contractors.
4. Disqualification from any County contracts for a period of two years.
5. Permanent disqualification for County contracts.
6. Any disqualification will apply to the contractor, its officers, persons with an interest of 5% or more of the contractor and any subsequent entities with which any such disqualified persons may become officers or have an interest of 5% more in that entity.

## **ARTICLE 2. PURCHASING MANAGER**

### **Sec. 2.1. Authority and Duties**

A. The Purchasing Manager shall serve as the principal procurement official for the County and shall be responsible for Procurement in accordance with this ordinance, as well as the management and disposal of surplus personal property.

B. In accordance with this ordinance, the Purchasing Manager shall:

1. Supervise County Procurement ;
2. Establish and maintain programs for specifications development, Contract administration, and inspection and acceptance of all Services, supplies, materials, and equipment, in cooperation with the user agencies;
3. Exercise general supervision over inventories of goods belonging to the County;
4. Establish procedures for Contract management, including the monitoring of compliance and payments.

C. Consistent with this ordinance and with the County Executive's approval, the Purchasing Manager may adopt operational procedures relating to the execution of his/her duties.

D. The Purchasing Manager shall work cooperatively with Departments and Public Servants in making determinations relative to Procurements.

### **ARTICLE 3 - REQUISITION PROCESS**

#### **Sec. 3.1. Requisition Required.**

The procurement process is initiated in all cases by the requesting Department. Each Department shall supply the Purchasing Manager with a requisition which will include such data as specifications, recommended vendor, and other details including budget and account information, and must be approved by the Department Head or authorized departmental representative.

### **ARTICLE 4 – COMPETITIVE BIDDING AND PROPOSALS**

#### **Sec. 4.1. General**

An openly publicized competitive process for the Procurement of services, supplies, materials, and equipment is the most effective means of determining the lowest cost from a responsible source and shall be utilized whenever possible. Procurements in excess of \$35,000, involving multiple purchases within a fiscal year that are likely to exceed \$35,000, that involve purchases over 3 or more fiscal years that will exceed \$105,000, and Procurements for Construction in excess of \$100,000, shall be subject to competitive sealed bidding. Professional Services Contracts shall not be governed by this article but shall instead be subject to the requirements set forth in Article 7.

A. Procurements shall be effected through one of the following methods:

1. Informal Bids
2. Sealed Bids
3. Multi-Step Sealed Bids
4. Small Purchases
5. Request for Proposal
6. Sole Source Procurement
7. Cooperative Procurement
8. Emergency Procurement

The conditions for the use of each method will be determined by the Purchasing Manager pursuant to the dollar expenditure limits adopted in this ordinance.

B. Except where otherwise provided:

1. Informal bids may be used for Procurements of \$5,000 to \$35,000. Competitive quotes are secured through bids generated by the Purchasing Manager. At least 3 bids shall be requested. These requests for bids shall contain standard terminology and specify a date by which they must be returned.
2. Sealed Bids shall be used for Procurements of \$35,000 and above. Requests or invitations for Sealed Bids shall contain standard terminology and performance specifications as well as the date and time due. Sealed Bids are solicited by public invitations for bids. All Sealed Bids must be received by the due date and time specified. Sealed Bids may not be received by facsimile or electronic mail.
3. Multi-step Sealed Bids may be used when it is impractical to initially prepare a purchase description to support an award based on price. An Invitation for Bids may be issued requesting the submission of un-priced offers to be followed by an Invitation for Bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.
4. Requests for proposals may be used to procure outside services or a combination of services and/or products based on a description of a problem or specific need. This Procurement method is more flexible and accommodates situations where it is desirable to obtain a custom proposal where ingenuity or creative solutions can be submitted to solve a problem in a more cost-effective manner.

5. A sole source procurement process may be used upon the written recommendation of the Purchasing Manager and the approval of the County Executive if, after conducting a good faith review of available sources, it is determined that there is only one source for the required supply or service item. Under this method, pricing must be established under government contract or negotiated. With this type of purchase more documentation is required and must be filed with each purchase order including the specific reasons for the designation as a sole source item and how the pricing was determined.

6. Cooperative Procurement allows the County to take advantage of bidding undertaken by other governmental units and may be used when state or federal governments enable local governments to take advantage of their bidding or when a joint effort with other local governments provides such procurement opportunities. Utilization of such programs requires verification that the programs used a procurement process that would meet the County's requirements under this ordinance given the types of goods being acquired and the amount of the proposed contract. Purchases over \$35,000 shall not utilize this process unless there is a cost per unit being acquired that is clearly more advantageous than is likely to result from the County's own solicitation of bids.

7. The Purchasing Manager may make or authorize others to make emergency Procurements of supplies or services pursuant to section 5.2.

8. Small purchases shall comply with Article 6.

C. When the County makes a Procurement, preference shall be given to products manufactured or services based first in Macomb County, then in Michigan, and then in the United States, when they are available at comparable prices and are of equal, superior, or similar quality. Food Procurement shall comply with Article 8A.

D. To the extent not prohibited by law, all contracts for construction, repair, alteration, or rebuilding of a County building or other property shall include a provision requiring the contractor and any subcontractor providing services under the contract to conduct pre-hire screening for illegal drug use by their employees who provide services under the contract.

E. To the extent not prohibited by law, all contract bid specifications involving the construction, alteration, repair, and improvement of County-owned buildings and facilities in which the cost is anticipated to exceed \$50,000, not including work done pursuant to any Collective Bargaining Agreement between the County and its employees, shall include such terms as will promote harmonious relations among all skilled tradespersons and laborers employed on the project. These terms shall include, when appropriate, a requirement that the successful bidder shall certify that he or she is able to furnish skilled tradespersons and laborers who are able to work in harmony with all other contractors who are employed upon the project and that the successful bidder shall enter into a project labor agreement with respect to prevailing wage rates and certified skills, with the Greater Detroit Building and Construction Trades Council, AFL-CIO, and its affiliated unions for the development and construction of the project.

#### **Sec. 4.2. Procedures for Sealed Bidding**

A. All vendors interested in providing goods or services to the County must register their business on the Purchasing System Website currently in use by the County. Vendors may access the Purchasing System Website through the County's website. All current bidding documents shall be posted at the Purchasing System Website. Vendors shall comply with the personal disclosure requirements set forth in the Ethics Ordinance.

B. An Invitation for Bids shall be issued and shall include specifications and all contractual terms and conditions applicable to the Procurement.

C. Adequate public notice of the Invitation for Bids shall be provided not less than 15 business days prior to the date of the opening of bids. At a minimum, such notice shall be posted to the Purchasing System website. The public notice shall state the place, date, and time of bid opening.

D. The Purchasing Manager, after consultation with Corporation Counsel, may establish standard contract provisions for use in County Procurement Contracts. To the extent not prohibited by law, these

clauses may include equal protection and non-discrimination compliance, labor harmony, and living wage provisions.

E. Bid, payment, and performance bonds or other security may be requested for Contracts as the Purchasing Manager deems necessary to protect the County's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder's responsibility.

1. The limits for bonds are 5% of the total bid quote covered either by a 5% bid bond or bank certified check for 5%, and 100% for a performance bond. Bid bonds or bank certified checks will be held by the Purchasing Manager until an award decision is made. Upon final award, all other bid deposits shall be returned. If a vendor fails to submit a bid bond or bank certified check with its bid, the bid will be rejected.

2. When a Construction Contract is awarded in excess of \$20,000, the following bonds or security shall be delivered to the County and shall become binding on the parties upon the execution of the Contract:

- a. A performance bond executed by a surety company authorized to do business in the State, or other security in a form satisfactory to the Purchasing Manager, in an amount equal to one-hundred percent (100%) of the price specified in the Contract; and

- b. A payment bond executed by a surety company authorized to do business in the State, or other security in a form satisfactory to the Purchasing Manager, for the protection of all persons supplying labor or material to the Contractor or its subcontractors for the performance of the work provided for in the Contract. The bond shall be in an amount equal to one hundred percent (100%) of the price specified in the Contract.

F. The Purchasing Manager shall have the discretion to determine, in consultation with Corporation Counsel, whether insurance coverage by the Contractor shall be required, and, if so, the types and amounts of coverage that shall be required. The Contractor shall have the County named as an additional insured as its interest may appear and furnish the Purchasing Manager with satisfactory evidence of the insurance.

G. An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when done for good cause and in the best interests of the County in the discretion of the Purchasing Manager in consultation with the County Executive and Corporation Counsel. Each solicitation issued by the County shall state that the solicitation may be canceled by the Purchasing Manager and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the County. The reasons shall be made part of the Contract file and shall be provided upon request to unsuccessful bidders.

H. All Sealed Bids shall be opened publicly by the Purchasing Manager or authorized representative in the presence of one or more witnesses at the time and place designated in the bid invitation. Information as deemed appropriate will be read by the Purchasing Manager including the name of each bidder, the amount of each bid, and relevant information pertinent to the award. Bids shall be unconditionally accepted without alteration or correction.

I. After solicitation has been made to vendors it may become necessary in certain instances to issue addendums amending the specifications, or extending the bid due date. If the Purchasing Manager or requisitioning Department deems it necessary to make changes to the specifications, such changes will be posted to the Purchasing System website. Clarifications, modifications, or amendments may be made to any bidding document and will appear on the Purchasing System website. It shall be the responsibility of the bidder to check the website for additional postings. This procedure ensures that the process stays intact and is completed by the deadline or opening of the Sealed Bid. Sealed Bids received by the County prior to the issuance of an extension or addendum shall be returned to the vendor along with the amended bid specification and due date.

J. A vendor may correct or withdraw a bid prior to the bid opening. The correction or withdrawal because of a mistake may be either in written form, delivered via the U.S. Postal Service or other carrier, or can be faxed or emailed to the Purchasing Department prior to the bid deadline. After the bid opening

no changes in the bid prices or provisions shall be permitted. In lieu of correcting the bid, a bidder alleging a material mistake may withdraw its bid if the mistake is clearly evident or the bidder submits evidence that clearly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids are to be supported by a written determination to be made by the Purchasing Manager in consultation with the County Executive and Corporation Counsel.

K. Bids shall be evaluated based on the requirements in the Invitation for Bid, which may include criteria to determine acceptability such as inspection, testing of quality, workmanship, delivery, and suitability for a particular purpose. The "Invitation for Bids" shall establish the evaluation criteria to be used which may include such factors as discounts, transportation costs, total life cycle costs, and/or value analysis. Criteria not requested in the bid or intentionally left out may not be used in the award evaluation. The responsibility and responsiveness of the bidder will also be a factor. A Responsible Bidder is a bidder whose reputation, past performance, and financial capabilities are such that the bidder would be judged by the appropriate authority to be capable of satisfying the County's needs for a specific contract. A responsive bid is a bid that does not vary from the specifications and the terms set in the RFP.

L. Failure to perform or unsatisfactory performance on one or more County Contracts within a 2-year period shall be cause for the Purchasing Manager to determine non-responsibility. The unreasonable failure of a bidder to promptly supply information or samples in connection with an inquiry with respect to responsibility, or unacceptable performance on prior Contracts, may also be grounds for a determination of non-responsibility with respect to such bidder. If a bidder who otherwise would have been awarded a contract is found non-responsible, the Purchasing Manager shall consult with the County Executive and Corporation Counsel and prepare a written determination of non-responsibility setting forth the basis of the finding. A copy of the determination shall be sent promptly to the non-responsible bidder.

M. A local preference percentage credit from the following allowance table will be applied to the bid of any County-based Enterprise. This credit will be subtracted from the bid of the County-based Enterprise. In comparing bids, the bid of the County-based Enterprise after subtraction of the credit shall be considered the official bid. However, if the County-based Enterprise is awarded the Contract, the bid without the equalization percentage credit shall be the Contract price.

<b>Contract Amount</b>	<b>Local Preference Percentage</b>
Up to \$50,000.00	5
\$50,001.00 to \$200,000.00	3
\$200,001.00 and over	1

1. No business shall receive these credits unless it has been certified by the Purchasing Manager.
2. Any business who claims entitlement to any local preference credit shall disclose the records necessary to establish eligibility to the County.
3. After applying any local preference credits as provided above, the Contract shall be awarded to the lowest Responsible Bidder thus evaluated.

N. All sealed bids for construction contracts shall provide a list of preferred subcontractors and identify, with documentation, whether each subcontractor is a County-based Enterprise.

O. After approval by the County Executive and any requisite Commission approval, the Contract shall be awarded by appropriate written notice to the lowest Responsive and Responsible Bidder whose bid best meets the requirements and criteria set forth in the Invitation for Bids, if the bid is within the amount of funds appropriated.

**ARTICLE 5 – PURCHASES EXEMPT FROM COMPETITIVE SEALED PROPOSALS;  
EMERGENCY PURCHASES**

**Sec. 5.1. Purchases Exempt from Competitive Sealed Proposals**

When a Department Head conducts a good-faith review of available sources and determines that the requisite contract by its very nature is not suitable to competitive bids or proposals, the Department Head



shall forward to the Purchasing Manager a request for an “exempt purchase.” The Purchasing Manager will review and approve or disapprove such requests and notify the County Executive. If the Purchasing Manager reviews and approves the Department Head’s recommendation that the Procurement is exempt from competitive bids or proposals, the Department is not required to employ the competitive proposal or bidding process to enter into a Contract. Examples of Contracts which may not be suitable for competitive bids or proposals are:

- A. There is only one source for the required services, supplies, materials, or equipment.
- B. There exists a long standing, successful relationship for Professional Services and the knowledge gained through this relationship adds value integral to the services provided.
- C. A sole supplier’s item is needed for trial use or testing.
- D. Purchases of used equipment.
- E. Purchases at auctions.

### **Sec. 5.2. Emergency Procurement**

In an emergency, the Purchasing Manager may make emergency Procurements. In each instance as much competition as is practical under the circumstances shall be obtained before making any award. Written documentation specifying the nature of the emergency must be included in the Contract file and approved by the County Executive.

## **ARTICLE 6. SMALL PURCHASES**

### **Sec. 6.1. Small Purchase Procurement**

Competitive quotations solicited by a Department Head or the Purchasing Manager shall be obtained for Procurements up to \$5,000 (“Small Purchase”) to determine the source that is in the County’s best interests.

### **Sec. 6.2. Small Purchase Procedures**

A. Three quotations shall be received whenever possible prior to a Small Purchase Procurement. Circumstances may exist where the Purchasing Manager determines that it is not feasible to secure three quotations. In other situations, the Purchasing Manager may determine that it is in the best interests of the County to consider only one supplier who has previous expertise relative to a Procurement. Whenever the Purchasing Manager determines that it is not feasible, or is not in the County’s best interests to obtain at least three quotations, the reason for this determination shall be indicated in writing and retained in the Procurement file. The Purchasing Manager shall conduct negotiations, as appropriate, as to price, delivery, and terms.

B. Evaluation factors which may justify an award to a vendor who has not provided the lowest quotation include, but are not limited to, delivery requirements, quantity requirements, quality, and past vendor performance. Whenever the Purchasing Agent or designee determines that it is in the County’s best interests to make a Small Purchase Procurement from a vendor who did not submit the lowest quote, the reason for this determination shall be indicated in writing and retained in the Procurement file.

## **ARTICLE 7– PROFESSIONAL SERVICES**

### **Sec. 7.1. General**

When procuring Professional Services, the user Department requiring such services may procure them through the Purchasing Department in accordance with the selection procedure specified in this article.

### **Sec. 7.2. Statement of Qualifications**

The Purchasing Manager may prepare a request for qualifications detailing the services needed. Persons engaged in providing Professional Services shall submit a statement of qualifications and expressions of interest in providing such Professional Services. The Public Servant or Department procuring such Professional Services may specify a uniform format for the statement of qualifications.

### **Sec. 7.3. Request for Proposals**

Requests for proposals shall be sent to qualified people showing an interest in providing the services required and they shall describe the services requested, list the types of information and data required of each bidder, and state the relative importance of particular qualifications. The award criteria should be documented by the Public Servant or head of the Department procuring the required Professional Services, or by the Purchasing Manager. The evaluation and selections process shall be conducted by a committee composed of the using Department director, the County Executive, and Corporation Counsel, or their designees. If the Commission is seeking its own Professional Services, the Commission shall select its own reviewing committee.

## **ARTICLE 8 - COOPERATIVE PROCUREMENT**

### **Sec. 8.1. Cooperative Procurement Authorized**

Subject to applicable state law, the County may participate in, sponsor, conduct, or administer a Cooperative Procurement agreement for Procurement with one or more public procurement units in accordance with an agreement entered into between the participants. Such Cooperative Procurement may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which are made available to other public procurement units.

### **Sec. 8.2. Sale, Acquisition, or Use of Goods**

The County may sell to, acquire from, or use any goods belonging to another public procurement unit independent of the requirements stated herein.

### **Sec. 8.3. Cooperative Use of Goods and Services**

The County may enter into an agreement independent of the requirements stated in this ordinance with any other public procurement unit for the cooperative use of goods or services under the terms agreed upon between the parties.

### **Sec. 8.4. Joint Use of Facilities**

The County may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

## **ARTICLE 8A – FOOD PROCUREMENT.**

### **Sec 8A.1 – General Policy**

For the reasons stated in Board of Commissioners Resolution 13-274, adopted October 28, 2013, it is the County's policy to encourage the purchase by County agencies of locally-sourced foods, and food produced by sustainable and environmentally-sound farming practices. Toward that end, the County, in cooperation with the Macomb Food Collaborative, will endeavor to create and maintain a list of producers and vendors of locally-sourced foods and of farmers with sustainable and environmentally sound farming practices, and to make such list available to all County Departments.

### **Sec 8A.2 – Preferences**

A preference percentage credit from the following allowance table will be applied to the bid of any producers and vendors of locally-sourced foods and of farmers with sustainable and environmentally sound farming practices. This credit will be subtracted from the bid of a producer or vendor of locally-sourced foods, or of a farmer with sustainable and environmentally sound farming practices. In comparing bids, the bid of a producer or vendor of locally-sourced foods, or of a farmer with sustainable and environmentally sound farming practices after subtraction of the credit shall be considered the official bid. However, if a producer or vendor of locally-sourced foods, or a farmer with sustainable and environmentally sound farming practices is awarded the Contract, the bid without the equalization percentage credit shall be the Contract price.

<b>Contract Amount</b>	<b>Preference Percentage</b>
Up to \$50,000.00	5
\$50,001.00 to \$200,000.00	3
\$200,001.00 and over	1

1. No bidder shall receive these credits unless it has been certified by the Purchasing Manager.
2. Any bidder that claims entitlement to this preference credit shall disclose the records necessary to establish eligibility to the County.
3. After applying any preference credits as provided above, the Contract shall be awarded to the lowest Responsible Bidder thus evaluated.
4. A bidder may not claim this credit in addition to the local preference credit described in subsection 4.2.M of this ordinance, but, if applicable, may claim one or the other credit.
5. All bids for food procurement contracts shall provide a list of suppliers and sub-vendors and identify, with documentation, whether each is a producer or vendor of locally-sourced foods, or a farmer with sustainable and environmentally sound farming practices.

#### **ARTICLE 9 - CONTRACT CHANGES.**

##### **Sec. 9.1. Change Orders and Contract Modifications**

A. When the total of Change Orders, Contract Modifications, or price adjustments on any Contract approved by resolution of the Commission exceeds 10% of the original Contract amount, the Change Order, Contract Modification, or price adjustment will be presented to the Commission. The Commission shall approve or reject the proposed Change Order, Contract Modification, or price adjustment at its next meeting if the Change Order, Contract Modification, or price adjustment is provided to the Commission prior to the deadline for submission of agenda items for that meeting. If the Commission fails to approve or reject the Change Order, Contract Modification, or price adjustment at that meeting, the County Executive may approve or reject the Change Order, Contract Modification, or price adjustment without Commission action.

B. The County Executive shall sign all Change Orders, Contract Modifications, and price adjustments.

#### **ARTICLE 10. EFFECTIVE DATE.**

##### **Sec. 10.1. Effective Date.**

This ordinance initially took effect in 2012. Its most recent amendment by Ord. No. 2014-\_\_\_, took effect on \_\_\_\_\_, 2014.