



BOARD OF COMMISSIONERS

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Mount Clemens, Michigan 48043
586.469.5125 FAX 586.469.5993
macombcountymi.gov/boardofcommissioners

NOVEMBER 3, 2011

NOTICE OF MEETING

There will be a meeting of the **BOARD OF COMMISSIONERS** on Thursday, November 10, 2011, at **7 p.m.**, on the 9th Floor of the County Administration Building, in the Commissioners' Board Room, Mount Clemens.

(Invocation this month is by Commissioner Bob Smith)

TENTATIVE AGENDA

1. **COMMITTEE REPORTS:**

a) Board Operations, November 1 **(attached)**

2. Correspondence from Executive

3. **RESOLUTIONS:**

a) Override Veto of Resolution 11-23 to Require Submission of County Contracts for Review and Action (offered by Board Chair) **(attached)**

b) Regarding Food Systems and Policy (offered by Mocerri; recommended by Health & Human Services Committee on 11-2-11; currently being developed)

4. **PROCLAMATIONS:**

a) Honoring Reverend Dr. Tyrone Martin – 10th Anniversary as Minister to the Greater Morning Star Missionary Baptist Church (offered by Miller; recommended by Board Operations Committee on 11-1-11; previously provided at committee meeting)

MACOMB COUNTY BOARD OF COMMISSIONERS

Kathy D. Vosburg
District 8
Chair

Marvin E. Sauger
District 2
Vice Chair

Fred Miller
District 9
Sergeant-At-Arms

Toni Mocerri – District 1

David Flynn - District 4

James L. Carabelli - District 6

Roland Frascchetti- District 10

Bob Smith- District 12

Phillip A DiMaria- District 3

Ray Gralowski- District 5

Don Brown- District 7

Kathy Tocco- District 11

Joe Sabatini- District 13

In addition to the agenda items listed, a committee report is anticipated from the following committee meeting: Finance, November 8.

Any other matters that require Full Board consideration and the reports listed above will be attached to your official Full Board agenda.

A handwritten signature in black ink, reading "Corinne Bedard". The signature is written in a cursive, flowing style.

Committee Reporter

November 1, 2011

TO: BOARD OF COMMISSIONERS

FROM: KATHY TOCCO, CHAIR
BOARD OPERATIONS COMMITTEE

RE: RECOMMENDATIONS FROM BOARD OPERATIONS
COMMITTEE MEETING OF NOVEMBER 1, 2011

At a meeting of the Board Operations Committee, held Tuesday, November 1, 2011, the following recommendations were made and are being forwarded to the Full Board for approval:

1. COMMITTEE RECOMMENDATION – MOTION (SEE ATTACHED)

A MOTION WAS MADE BY DiMARIA, SUPPORTED BY SAUGER, TO RECOMMEND THAT THE BOARD OF COMMISSIONERS CONCUR IN THE RECOMMENDATION OF THE COUNTY EXECUTIVE AND APPROVE THE APPOINTMENT OF STEVEN GOLD AS EXECUTIVE DIRECTOR OF THE HEALTH AND COMMUNITY SERVICES DEPARTMENT; 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.**

2. COMMITTEE RECOMMENDATION – MOTION (SEE ATTACHED)

A MOTION WAS MADE BY MILLER, SUPPORTED BY DiMARIA, TO RECOMMEND THAT THE BOARD OF COMMISSIONERS ADOPT ORDINANCE #4, ETHICS ORDINANCE FOR MACOMB COUNTY, AS AMENDED; 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-Brown, Flynn, Miller, Mocerì, Smith, Vosburg and Tocco; No-Fraschetti and Carabelli)

3. COMMITTEE RECOMMENDATION – MOTION (SEE ATTACHED)

A MOTION WAS MADE BY MOCERI, SUPPORTED BY FRASCHETTI, TO RECOMMEND THAT THE BOARD OF COMMISSIONERS CONCUR IN THE RECOMMENDATION OF THE BOARD CHAIR AND APPROVE THE APPOINTMENTS OF COMMISSIONERS JOE SABATINI AND MARV SAUGER TO THE RETIREE HEALTH CARE BOARD AS “COMMISSIONER DESIGNEE”; TERMS TO RUN CONCURRENT WITH COMMISSIONER TERMS; 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.**

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

RESOLUTION NO. _____

FULL BOARD MEETING DATE: _____

AGENDA ITEM: _____

MACOMB COUNTY, MICHIGAN

RESOLUTION TO concur in the recommendation of the County Executive and approve the appointment of Steven Gold as Executive Director of the Health and Community Services Department

INTRODUCED BY: Kathy Tocco, Chair, Board Operations Committee

COMMITTEE/MEETING DATE

<u>Board Operations</u>	<u>11-01-11</u>
<u>Full Board</u>	<u>11-10-11</u>

RESOLUTION NO. _____

FULL BOARD MEETING DATE: _____

AGENDA ITEM: _____

MACOMB COUNTY, MICHIGAN

RESOLUTION TO review of Ethics Ordinance (#4)

INTRODUCED BY: Kathy Tocco, Chair, Board Operations Committee

At the 11-1-11 meeting, the following amendments were approved:

Section 1.1., Purpose

- 1) Delete the second paragraph and replace with: "This applies to all public servants unless otherwise provided by state or federal law."

Section 1.3., Definitions

- 1) Paragraph C, #2, second line, change "services" to "serves"
- 2) Paragraph C, #2, third line, delete "as an attorney, accountant or other professional" and replace with "in any professional capacity."

Section 2., Conflicts of Interest

- 1) Paragraph B, insert after each Public Servant: "and his or her relative."

Section 3.2., Personal Disclosure for Public Servants

- 1) Delete paragraph "B"
- 2) Paragraph C, delete "Section 2.3(A)" in lines 1 and 3 and replace with "this section."

Section 3.4., Incompatible Employment

- 1) Add paragraph C as follows: Macomb County elected officials are prohibited from employment with Macomb County government for a period of one year after leaving elected office.

Other:

- 1) Renumber Section 4., Board of Ethics, to Section 5, and 4.1., Open Meetings Act, to 5.1.

COMMITTEE/MEETING DATE

Board Operations	11-1-11
Full Board	11-10-11

**ENROLLED ORDINANCE
NO. 2011- 4
AS APPROVED BY THE BOARD OPERATIONS COMMITTEE 11/1/11**

INTRODUCED BY COMMISSIONER(S):

AN ORDINANCE TO ESTABLISH A STANDARD OF ETHICS FOR ALL PUBLIC SERVANTS OF MACOMB COUNTY PURUANT TO SECTION 2.2 OF THE HOME RULE CHARTER OF MACOMB COUNTY, MICHIGAN

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

SECTION 1. PURPOSE AND DEFINITIONS.

Sec. 1.1. Purpose. The residents and those conducting business in or with Macomb County are entitled to fair, ethical and accountable government. County officials, employees, and appointees hold positions of public trust and their actions must remain above suspicion. The purpose of this ordinance is to set forth standards of conduct for elected officials, employees, and appointees of Macomb County.

This ordinance applies to all public servants unless otherwise provided by state or federal law.

Pursuant to Section 2.2 of the Home Rule Charter of Macomb County, an ethics ordinance shall be adopted governing all Public Servants. Therefore, the rules, requirements, and standards of conduct contained herein are expected of all Public Servants.

Sec. 1.2. General Standards of Conduct. Public Servants of the County shall observe the highest standards of ethical conduct and are obligated to:

- A. Comply with all laws and policies of County government;
- B. Be independent, impartial, and fair in their judgment and actions;
- C. Use their public office for the public good, not for personal gain;
- D. Conduct public business openly, as provided by law, in an atmosphere of respect and civility; and
- E. Cooperate fully with any request of the Ethics Board for information or assistance, subject to law.

Sec. 1.3. Definitions.

- A. Appointee means a person appointed to a compensated or uncompensated position in County government that is not subject to a collective bargaining agreement, who is not elected to or holding office or holding an office that is subject to an election and whose

appointment is subject to the approval of the Board of Commissioners or who is exempt from such approval under the Charter.

- B. Confidential Information means information obtained by a Public Servant by reason of his or her position that is not available to members of the public pursuant to the Michigan Freedom of Information Act or other applicable laws, regulations, or procedures.
- C. Conflict of Interest means one or more of the following situations:
 - 1. A decision to be made by the Public Servant or the body on which the Public Servant serves, or in the case of a County Commissioner or the County Executive, a decision to be made by any County body or Public servant, that could result in private gain for the Public Servant or a member of the Public Servant's family.
 - 2. A decision to be made by the Public Servant or the County body on which the Public Servant serves could result in private gain for (a) anyone the Public Servant represents in any professional capacity, (b) an entity for which the Public Servant serves as an officer, director, or, for a limited liability company or partnership, as a member, unless the interest is held in a manner so that the Public Servant does not directly control the number of shares, portion of the ownership interest, or its value, or (c) an entity in which the Public Servant either owns more than 10% of the total stock or other ownership interest in the entity, or has an interest totaling \$50,000 or more in value.
- D. County-Wide Elected Official means the person holding the office of County Executive, Public Works Commissioner, Clerk/Register of Deeds, Treasurer, Prosecuting Attorney, or Sheriff.
- E. Department Head means the administrative head of any department, office, board, commission or other administrative unit of County government regardless of the title of the position.
- F. Employee means a person employed in a position of County government whether on a full-time or part-time basis.
- G. Gift means any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value including, but not limited to, cash, food and drink, travel, lodging, and honoraria for speaking engagements.
- H. Immediate Family means a person's spouse and the person's children and step-children, by blood or adoption, or anyone over the age of eighteen (18) who resides with that person.

- I. Intra-governmental gift means, for the purpose of this ordinance, any gift given to a Public Servant from another Public Servant of Macomb County.
- J. Personal gain means any direct financial benefit that is different than any financial benefit members of the general public or a significant group of the general public would gain in similar circumstances.
- K. Public Servant means an employee, county-wide elected official, commissioner, or appointee.
- L. Prohibited Source means anyone doing business with, who is regulated by, who is seeking business from, or seeking any action from the County or any officer, office, agency or body of the County.
- M. Relative means people related to the individual as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, and including the father, mother, grandfather, or grandmother of an individual's spouse and the individual's fiancé or fiancée

SECTION 2. CONFLICTS OF INTEREST

In order to ensure independence and impartiality, county officials, both elected and appointed, and employees shall not use their position to influence or otherwise affect government decisions or actions in which they possess a personal interest which may present an apparent or real conflict of interest.

- A. A Public Servant shall not represent his or her personal opinion as that of the county.
- B. A Public Servant shall not engage in a business transaction in which the Public Servant and his or her relative may profit from his or her official position or authority or benefit financially from confidential information which the Public Servant has obtained or may obtain by reason of that position or authority.
- C. A Public Servant shall not participate in the negotiation or execution of contracts, making of loans, granting of subsidies, issuance of permits or certificates or other regulation or supervision, which involves Macomb County and an entity in which the Public Servant and his or her relative has a financial or personal interest.
- D. This ordinance shall not in any manner vary or change the requirements of Contracts of Public Servants with Public Entities Act, 1968 PA 317, MCL 15.321 to 15.330, which governs the solicitation by and participation in government contracts by officers and employees of the County and preempts all local regulation of such conduct.

SECTION 3. STANDARDS OF CONDUCT

Sec. 3.1. Gifts and Gratuities

Except as permitted by this ordinance, no Public Servant of Macomb County shall intentionally solicit or accept any gift from any prohibited source, including intra-governmental gifts, or which is otherwise prohibited by law or ordinance.

A. This prohibition shall not apply to:

1. Opportunities, benefits, and services that are available on the same conditions as for the general public.
2. Complimentary copies of trade publications, books, reports, pamphlets, calendars, periodicals or other informational materials.
3. A gift received from a Public Servant's relative or immediate family member, provided that the relative or immediate family member is not acting as a third party's intermediary or an agent in an attempt to circumvent the article.
4. Acceptance of unsolicited advertising of promotional material and other items of nominal intrinsic value.
5. Food or refreshments not exceeding Seventy-Five (\$ 75.00) Dollars per person in value on a single calendar day; provided that the food or refreshments are (i) consumed on the premises from which they were purchased or prepared, or (ii) catered. For the purposes of this Section, "catered" means food or refreshments that are purchased ready to consume which are delivered by any means.
6. Food, refreshments, lodging, transportation, and other benefits resulting from outside business or employment activities (or outside activities that are not connected to the official duties of a Public Servant), if the benefits have not been offered or enhanced because of the official position or employment of the officer or employee, and are customarily provided to others in similar circumstances.
7. Admission or registration fee, travel expenses, entertainment, lodging, meals or refreshments that are furnished to the Public Servant: (i) by the sponsor(s) of an event, appearance or ceremony which is related to official County business in connection with such an event, appearance or ceremony and to which one or more of the public are invited; or (ii) in connection with teaching, a speaking engagement or the provision of assistance to an organization or another governmental entity as long as the County does not compensate the public servant for admission or registration fees, travel expenses, entertainment, meals or refreshments for the same activity; and are customarily provided to others in similar circumstances
8. Anything for which the Public Servant pays fair market value.
9. Any contribution that is lawfully made under the Campaign Finance Laws of the State of Michigan.

10. Anything provided by an individual on the basis of a personal friendship unless the recipient has reason to believe that, under the circumstances, the gift was provided because of the official position or employment of the recipient and not because of the personal friendship. In determining whether a gift is provided on the basis of personal friendship, the recipient shall consider the circumstances under which the gift was offered, such as: (i) the history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between those individuals; (ii) whether to the actual knowledge of the recipient the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iii) whether to the actual knowledge of the recipient the individual who gave the gift also at the same time gave the same or similar gifts to other Public Servants.

- B. Each of the exceptions listed in this Section is mutually exclusive and independent of every other.
- C. A Public Servant does not violate this Section if he or she promptly takes reasonable action to return the gift.

Sec. 3.2. Personal Disclosure for Public Servants

County-wide elected officials, County Commissioners, candidates for county-wide offices and Commission, Office of County Executive Charter-Specified Staff, and Department Heads shall file a personal disclosure statement.

- A. The personal disclosure statement shall disclose the existence of the following financial interest of the Public Servant and his or her immediate family in any company, business, or entity that has contracted with Macomb County or which has sought licensure or approvals from Macomb County in the two calendar years prior to the filing of the statement:
 - 1. Any interest as a partner, member, employee or contractor in or for a co-partnership or other unincorporated association;
 - 2. Any interest as a beneficiary or trustee in a trust;
 - 3. Any interest as a director, officer, employee or contractor in or for a corporation, limited liability company, partnership, sole proprietorship, or other business entity; and
 - 4. Legal or beneficial ownership of 10 % or more of the total outstanding stock of a corporation, limited liability company, partnership, sole proprietorship, or other business entity;
- B. Public servants specified under this section whom are not elected by the public shall file personal disclosure statements by January 31, 2012. Publicly elected public servants specified under this section and candidates for county offices shall file the personal

- C. The Human Resources Department shall develop a Personal Disclosure Form and notify all affected personnel. The County Clerk shall post the submitted Personal Disclosure forms on the County's website. The Personal Disclosure form may be submitted electronically.
- D. The County's purchasing department shall amend its standard contract form to include language which provides that County contracts shall be voidable or rescindable at the discretion of the County Executive or Chairperson of the Board of Commissioners at any time if a Public Servant has an interest in such contract and fails to disclose such interest. Such contract shall be voided or rescinded if a lobbyist or employee of the contracting party offers a prohibited gift, gratuity, honoraria or payment to a Public Servant in relation to the contract. A fine shall be assessed to the contractor in the event of a violation of this section of the Charter. If applicable, the actions of the contractor, and its representative lobbyist or employee, shall be referred to the appropriate prosecuting authorities.
- E. If a person required to file a Personal Disclosure form discovers that the person neglected to disclose some required information, the person shall file an amended form within 10 days of the discovery or notification.

Sec. 3.3. Personal Disclosure for Vendors

All potential and existing County vendors shall be required to file a vendor disclosure statement in the manner specified by the County Purchasing Officer. At a minimum, the vendor disclosure statement shall include (a) the employment of a relative of a Public Servant of the County, (b) any interest of a Public Servant of the County as a director, officer, partner, beneficiary, trustee member, employee or contractor in the entity, (c) legal or beneficial ownership by a Public Servant of the County of 10 % or more of the total outstanding stock of a corporation, limited liability company, partnership, sole proprietorship, or other business entity, and (d) any instances in the last five calendar years of failure to perform or otherwise deliver on the terms of a contract or agreement with the County or any other public entity, including any suspensions or debarments.

Sec. 3.4. Incompatible Employment

A Public Servant shall not engage in or accept employment or render services for a private or public interest when that employment or service is incompatible or in conflict with the discharge of the official or employee's official duties or when that employment may tend to impair his or her independence of judgment or action in the performance of official duties.

- A. Subject to state law, for one (1) year after employment with Macomb County, a Public Servant shall not lobby or appear before the County Commission or any County office, department, agency, board, commission or body or receive compensation for any services in connection with any matter in which he or she was directly concerned, personally participated, actively considered or acquired knowledge while working for the county.
- B. Subject to state law, for a period of one (1) year after employment with the county, a Public Servant shall not accept employment with any person or company that did business with the county during the former Public Servant's tenure if that Public Servant was in any way involved in the award or management of that contract or the employment would require the sharing of confidential information.
- C. Macomb County elected officials are prohibited from employment with Macomb County government for a period of one year after leaving elected office.

Sec 3.5. Nepotism

It is the policy of Macomb County not to discriminate in its employment and personnel actions with respect to its employees and applicants on the basis of marital status.

- A. Notwithstanding this policy, the County will consider a member of an employee's immediate family for employment if the applicant possesses all the qualifications for employment. An immediate family member may not be hired, however, if the employment would:
 - 1. Create either a direct or indirect supervisor/subordinate relationship with a family member; or
 - 2. Create an actual conflict of interest or the appearance of a conflict of interest.
- B. The Department Head shall have the authority and responsibility for determining if such a potential for adverse impact does or does not exist.
- C. When a Department Head has made a determination that such adverse impact does not exist, the determination shall be reviewed by the Human Resources Director prior to any employment decision being made. The Department Head shall submit a Nepotism Review Request form developed by the Human Resources Department to the Human Resources Director. Only Department Heads or their designee may sign the request form. The Human Resources Director will review the request form and concur (with or without restrictions) or not concur with the decision of the Department Head. If the Human Resources Director determines that an adverse impact would in fact occur, the

Department Head, County Executive and Chairperson of the Board of Commissioners shall be notified.

- D. These criteria will also be considered when assigning, transferring, or promoting an employee.
- E. Employees who marry or become members of the same household may continue employment as long as there is not:
 - 1. A direct or indirect supervisor/subordinate relationship between the employees; or
 - 2. An actual conflict of interest or the appearance of a conflict of interest.

Should one of the above situations occur, the County would attempt to find a suitable position within the County of Macomb to which one of the affected employees may transfer. Exceptions may be made by the Human Resources Department in cases where there is an intermediate level of supervision between the division head or supervisor and the related employee. If accommodations of this nature are not feasible, the employees will first be permitted to determine which of them will resign. If no agreement between the employees can be reached, the County will decide which of the employees will be terminated.

- F. This Section shall in no way disqualify such relatives or their spouses who are bona fide appointed officers or employees of the County at the time of the election or appointment of an officer to elective County office.

Sec. 3.6. Inappropriate Use of County Time and Property for Political Activity

- A. Public servants are prohibited from engaging in political campaign activities using County property or engaging in such activity during time in which they are performing official duties.
- B. Public servants are prohibited from soliciting appointees and employees to work on political campaign activities using County property or during working hours on their behalf or on the behalf of another.
- C. Public servants are prohibited from soliciting campaign contributions from County department heads and employees under their supervision, coordination, direction, or control.

Sec. 3.7. Confidential Information

- A. A Public Servant shall not divulge to any unauthorized person confidential information acquired in the course of service to the county in advance of the time prescribed for its authorized release to the public.
- B. A Public Servant shall not knowingly disclose to any unauthorized person information provided, obtained or discussed in closed or executive sessions of the Board of Commissioners in advance of the time prescribed for its authorized release to the public.
- C. A Public Servant shall not benefit financially from confidential information acquired in the course of holding office or employment or knowingly use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

Sec. 3.8. Use of Public Assets for Private Purposes

- A. A Public Servant shall use personnel resources, property and funds under the official or employee's official care and control judiciously and solely in accordance with prescribed constitutional, statutory and regulatory procedures and not for personal gain or benefit. All county vehicles shall be used in accordance with the County Vehicle policy.

SECTION 4. SANCTIONS

- A. Sanctions shall not be construed to diminish or impair the rights of a Public Servant under any collective bargaining agreement, nor the County's obligation to comply with such collective bargaining agreements.
- B. State statutes cited in this ordinance contain criminal penalties and civil remedies that apply, as provided in those statutes, to the conduct regulated by those statutes.
- C. A violation of this ordinance may be punished as a civil infraction by a fine of up to \$500.00.
- D. In addition to any other penalty, whether criminal or civil, a Public Servant who intentionally violates this ordinance may be subject to disciplinary action including censure, reprimand, removal, dismissal or discharge.
- E. In addition, the common law offense of misconduct in office (misfeasance, malfeasance and nonfeasance) constitutes a felony as provided in the Michigan Penal Code, MCL 750.505 and willful neglect of duty constitutes a misdemeanor as provided in MCL 750.478.

SECTION 5. BOARD OF ETHICS

Section 2.4 of the Home Rule Charter of Macomb County establishes a Board of Ethics. The Board is charged with the enforcement of the ethics provisions of the Charter, this ordinance, and the law. For the purposes of this section, "Board" refers to the Board of Ethics.

Sec. 5.1. Open Meetings Act

- A. All meetings of the Board are subject to the Open Meetings Act, MCL 15.261, *et seq.* The Board may hold closed sessions when authorized by law.

- B. Public notice of the Board's meetings shall be provided for in accordance with the provisions of the Open Meetings Act.

Date: _____, 2011

Kathy D. Vosburg, Board Chair

Carmella Sabaugh, County Clerk

Adopted: _____, 2011

Notice Published: _____, 2011

RESOLUTION NO. _____

FULL BOARD MEETING DATE: _____

AGENDA ITEM: _____

MACOMB COUNTY, MICHIGAN

RESOLUTION TO concur in the recommendation of the Board Chair and approve the appointments of Commissioners Joe Sabatini and Marv Sauger to the Retiree Health Care Board as "Commissioner Designee"; terms to run concurrent with commissioner terms

INTRODUCED BY: Kathy Tocco, Chair, Board Operations Committee

COMMITTEE/MEETING DATE

<u>Board Operations</u>	<u>11-01-11</u>
<u>Full Board</u>	<u>11-10-11</u>

**BOARD OF COMMISSIONERS
MACOMB COUNTY, MICHIGAN**

RESOLUTION NO. _____

**RESOLUTION TO OVERRIDE VETO OF RESOLUTION TO REQUIRE SUBMISSION OF
COUNTY CONTRACTS FOR REVIEW AND ACTION**

WHEREAS, pursuant to Macomb County Charter Section 4.4, the County Board of Commissioners may approve contracts of the County; and

WHEREAS, the Board of Commissioners adopted Resolution 11-23 to request that the County Executive comply with the Charter and supply all contracts, \$15,000 and above, of the County to the Commission for review and action; and

WHEREAS, the County Executive stated in a letter, dated November 2, 2011, to the Chair and Members of the Board of Commissioners that Resolution 11-23 is vetoed; and

WHEREAS, the County Commission's power and duty to approve County contracts is essential to, among other things: improving the efficiency, economy, and effectiveness of county governmental operations; evaluating programs and performance; informing the general public and ensuring that executive actions reflect the public interest; gathering information to develop new legislative proposals or to amend existing ordinances; ensuring administrative compliance with legislative intent; and preventing executive encroachment on legislative authority and prerogatives;

NOW, THEREFORE, BE IT RESOLVED, that the County Board of Commissioner does hereby override the County Executive's veto of Resolution 11-23.



Macomb County Executive

Mark A. Hackel

Mark F. Deldin
Deputy County Executive

November 2, 2011

The Honorable Chair and Members,
Macomb County Board of Commissioners
1 South Main, 9th Floor
Mt. Clemens, MI 48043

Re: Resolution 11-23

Ladies and Gentlemen:

Since January 1, 2011, I have had the responsibility of administering the day-to-day operations of Macomb County government that are not otherwise administered by other countywide elected officials. It has also been my responsibility to supervise, coordinate, direct, and control the various agencies of the County and to supervise, coordinate, direct, and control the County's facilities, operations, and services. In doing so, I have followed the provisions of the Charter and the law and have relied on guidance of special counsel whenever needed.

As part of my duties and obligations, the Macomb County Home Rule Charter requires that I not only prepare, but also administer the County's comprehensive balanced budget. Similarly, the Uniform Budgeting & Accounting Act provides me with the final responsibility for controlling expenditures under the budget. The Charter also empowers me to sign, without limitation, all contracts and other instruments binding the County. In order to discharge these duties, I have entered into a variety of contracts on behalf of the County. Many of those contracts involved the expenditure of funds. All of the expenditures were within the amounts appropriated by the Board of Commissioners in December 2010 and later supplemented by additional appropriations.

My ability to enter into contracts and expend funds based upon appropriations made by the County Commission has permitted me to efficiently and economically operate County government. As spelled out in the preamble to the Charter, these are two of the primary purposes for the adoption of the Charter and establishment of the office of County Executive. The requirement in Resolution 11-23 that contracts over \$15,000 be sent to the Commission will return County government to the inefficiencies of pre-Charter operations.

The law requires that the Commission approve a budget and appropriate funds, and the Commission's appropriations are defined in the law as an authorization to expend funds for the purpose intended. A requirement that contracts related to a previous appropriation be approved again by the Commission makes the initial appropriation conditional and violates the law.

Resolution 11-23 – which was adopted on October 20, 2011 – creates confusion and ambiguity. If it is requesting that all County contracts previously entered into be forwarded to the Commission, this is a request that I cannot fulfill because certain countywide elected officials enter into contracts on behalf of the County over which I have no control, and because some agencies have specific statutory authority and enter into contracts on behalf of the County without my direct involvement. Resolution 11-23 does not make it clear whether or not you wish to review and take action with respect to those contracts.

To the extent that your request is referencing contracts for the expenditure of funds that have been entered into since January 1, 2011, you have already made a separate request and my staff is working to provide this information. All contracts entered into by County government are available to the public and certainly to the Commission.

To the extent that Resolution 11-23 is intended to be a mandate or directive to submit proposed contracts to the Commission for any sort of review and action, it is unauthorized by the Charter and a violation of the separation of powers inherent therein. Resolution 11-23 is therefore vetoed. Further, to the extent that it suggests or implies that my office has not been complying with the Charter, it is vetoed as inaccurate and untrue.

The Commission was created by the Charter and the legislative power of the County is vested in the Commission. Certain specific powers and duties were provided to the Commission in furtherance of its role as the legislative body of County government. Nothing in the Charter obligates me to forward to the Commission contracts related to the expenditure of appropriated funds nor does the Charter provide that all contracts must be approved by the Commission. Nothing in the Charter gives to the Commission the exclusive power to approve contracts.

In addition, the Commission cannot, by resolution or ordinance, create duties or powers not provided to the Commission by the Charter. Nor may the Commission, by resolution or ordinance, interfere with, assume, or revoke the powers and duties of the Executive.

There are, however, situations in which the approval of contracts by the legislative branch of County government is mandated. Certain real estate transactions, the issuance of bonds, certain grants, and other forms of contract will often require approval of the legislative branch of County government. The permissive power granted by the Charter to the Commission in Section 4.4 is necessary and appropriate for the approval of such contracts and instruments.

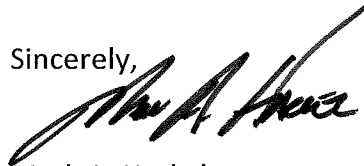
While the Charter was designed to establish a strong executive branch of government to undertake the administrative functions previously carried out by the Board of Commissioners, inherent in the Charter is also the concept of a separation of powers in which the Commission, as the legislative branch, establishes policy and the executive branch administers County government. This separation of powers provides a check and balance on the legislative and

executive branches of County government. Suggesting that the Commission can at any time and for any reason restrict or completely revoke the Executive's authority to expend appropriated funds contradicts this most fundamental principle of the County's Home Rule Charter.

As in the past, my office will continue to forward to the Commission for approval all contracts that are required by statute to be approved by the legislative branch of the County, all intergovernmental agreements required to be approved by the legislative branch of the County, and all other contracts or grants, which by statute or their terms, are required to be approved by the legislative branch of the County.

I believe this concept of shared power is intended by the Charter and will give to the people of Macomb County the efficient, economical, and ethical government they voted for when approving the Charter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Hackel". The signature is fluid and cursive, with a prominent loop at the end.

Mark A. Hackel
Macomb County Executive