

FOREWARD

This edition of the Wayne County Home Rule Charter has been compiled by the Office of Commission Counsel for the Wayne County Commission to help those persons who must comply with and make frequent reference to the provisions of the Charter. In the Compiler's Comments, Charter provisions are cross-referenced with one another and with case law, statutes, ordinances, charter history, and informed opinion regarding those provisions. The Compiler's Comments are meant to be helpful in researching, understanding and applying the Charter, but are not legally authoritative. Unless otherwise specifically indicated, the opinions expressed in these comments are those of former Commission Counsel, Ben Washburn, and the Office of Commission Counsel and are not those of the County's Corporation Counsel.

The Charter text as adopted by the voters has been carefully transcribed and is believed to be a 100% accurate rendering. This is not, however, a legally authoritative source. If the reader needs a certified copy of a Charter provision, he or she should contact the Office of the Wayne County Clerk, which is the official custodian of Wayne County election records.

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PREAMBLE

We, the people of Wayne County, by God's grace, and with gratitude for His blessings, for the land rich in natural resources we inhabit, for the freedom we enjoy governing ourselves in a democratic society, and for our role in putting the World on wheels, and being confident that we will overcome all present and future challenges, adopt this Home Rule Charter for the purpose of providing more efficient, responsive, and accountable government.

ARTICLE I GENERAL PROVISIONS

1.111 Declaration of Rights

- (a) Wayne County shall not discriminate against residents in the delivery of services.
- (b) Wayne County shall not discriminate against any employee, applicant for employment, or applicant for award of a County contract because of any factor not related to job or contract performance.
- (c) Wayne County shall not contract with any person or firm that discriminates against employees or applicants for employment because of any factor not related to job performance.
- (d) Wayne County may institute any legal program of affirmative action.

COMPILER'S COMMENTS:

Some of the policies declared by this section have been implemented by ordinance. These ordinances include:

The Purchasing Ordinance (83-138; amended and republished as 92-168 and then as 94-457, later amended by 96-261, and consolidated into a Comprehensive Procurement Ordinance as 2001-233. The latter was amended by Ordinances 2002-164 and 2002-733 before being repealed and replaced by Ordinance 2006-1101, which has subsequently been amended). (Code Chapter 120)

The Set-Aside Ordinance, also known as the Small and Minority Business Contracting Ordinance (83-18), amended by 83-187 which added Women-Owned Businesses, all of which was repealed September 22, 1988.

The Contracting Ordinance (84-143; as amended by 92-117, 93-698, 94-387, 94-504, 94-757, and 96-27, and folded into 2001-233). Ordinance 2001-233 was repealed and replaced by Ordinance 2006-1101, which has subsequently been amended.

The Equal Contracting Opportunity Ordinance (93-738). This ordinance was folded into the Comprehensive Procurement Ordinance (2001-233), and extensively revised in Ordinance 2006-1101, which has subsequently been amended. (Code Chapter 120)

The Employee Political Rights Ordinance (93-586). The purpose of this ordinance was to reconcile certain prohibited political activity with the protected and Constitutional First Amendment rights of employees, based upon existing case law and statutes. (Code Chapter 53)

1.112 Home Rule Powers

Wayne County, a body corporate, possesses home rule power enabling it to provide for any matter of County concern and all powers conferred by constitution or law upon charter counties or upon general law counties, their officers, or agencies.

Wayne County is not required to perform any service or function mandated by any statute applicable only to general law counties, their officers, or agencies.

COMPILER'S COMMENTS:

Historically, counties were established as a convenient local administrative branch of the state government. Just as any other agency of state government, these "general law" counties had only those powers which were expressly granted to them, or which were necessarily implied from an express grant. Only cities and villages were recognized to have "home rule" powers, that is, a general power to provide for the health, safety and welfare of their constituents.

For the first time, Article 7, Section 2 of the Michigan Constitution of 1963, extended the possibility of home rule to counties:

"Sec. 2. Any county may frame, adopt, amend or repeal a county charter in a manner and with powers and limitations to be provided by general law, which shall among other things provide for the election of a charter commission. The law may permit the organization of county government in a form different from that set forth in this constitution and shall limit the rate of ad valorem property taxation for county purposes, and restrict the powers of charter counties to borrow money and contract debts. Each charter county is hereby granted power to levy other taxes for county purposes subject to limitations and prohibitions set forth in this constitution or law. Subject to law, a county charter may authorize the county through its regularly constituted authority to adopt resolutions and ordinances relating to its concerns.

The board of supervisors by a majority vote of its members may, and upon petition of five percent of the electors shall, place upon the ballot the question of electing a commission to frame a charter.

No county charter shall be adopted, amended or repealed until approved by a majority of electors voting on the question."

The Constitutional Convention Comment throws important light upon the intent of this provision:

"This is a new section enabling counties, by vote of the people, to adjust their governmental structure to meet modern problems effectively.

The question of electing a charter commission to frame a charter may be put on the ballot by vote of the board of supervisors; or upon petition of five per cent of the electors the question must be put on the ballot. If the proposal is approved by the people, a charter commission is then elected.

The charter commission is limited by legislative action in the structural changes it may propose. But the legislature is authorized to permit county government "in form different from that set forth in this constitution." To become effective, the charter framed by the commission must be approved by a vote of the people.

A county charter may authorize the county to adopt resolutions and ordinances "relating to its concerns," subject to law. This means that the charter county need not have specific permission from the legislature to perform local functions and that such activities may be limited only by legislative enactment.

The charter county would be required to comply with property tax rates and debt limits established by general law. Such a county, however, is given new powers to levy taxes "other than property taxes," subject also to limitations in this constitution or by law.

This home rule section makes it possible for those counties with specific problems to deal with them effectively, but does so without disturbing unnecessarily the government of other counties in the state."

By the Charter Counties Enabling Act, Public Act 293 of 1966 the Michigan Legislature implemented this constitutional provision. (MCL 45.501 et seq; MSA 5.302 et seq).

A charter county and its officers are not limited in the same manner as are general law counties and their officers. Most case law deals only with general law counties.

Note that the general home rule powers adopted by this section are limited by Charter Section 7.118. The home rule powers of cities and villages override those of the county within their respective boundaries.

An attempt to exercise home rule powers is overridden, however, by state laws which address matters of state-wide, as opposed to merely local, concern. This limitation was cited by Third Circuit Judge Roland Olzark in Civil Action No. 84-401649 CK, Donald Gray vs. Wayne County Retirement System, et al, on August 31, 1984. In that case, a county ordinance was held invalid because it provided for "20 and out" retirement benefits, in contravention of a state law (MCL 46.12a) which required 25 years of service or reaching age 55 or 60 for retirement eligibility.

Ordinances adopted pursuant to these home rule powers include, among others:

Ordinance 87-97, adopted February 19, 1987 which establishes civil liability for the sale or transfer of an illegal drug to a minor, or for the supply of an illegal drug to any person which may foreseeably be sold or transferred to a minor. (Code Chapter 145)

An ordinance adopted by an initiative proposition on the ballot of November 8, 1988 to prohibit throughout the entire County gambling or gaming of a kind which is prohibited by charter or ordinance within the corporate limits of the county seat. (Code Chapter 189)

Ordinance 96-100, as amended by 97-297 prohibiting dumping on public and private property without permission. (Code Chapter 97)

Ordinance 98-253, establishing licensing requirements for operation of body art salons. (Code Chapter 144)

Ordinance 2000-328, prohibiting auto racing on public streets. (Code Chapter 207)

Ordinance 2005-697, requiring Truth-in-Labeling on Halal and Kosher foods. (Code Chapter 159)

Ordinance 2006-379, establishing maximum noise standards from vehicles and properties. (Code Chapter 170)

**Ordinance 2006-381, prohibiting graffiti without permission.
(Code Chapter 158)**

**Ordinance 2006-691, establishing a juvenile curfew. (Code
Chapter 167)**

1.113 Boundaries

The boundaries of Wayne County existing when this Charter takes effect may be changed only in accordance with law.

ARTICLE II ELECTIONS

CHAPTER I APPORTIONMENT

2.111 Apportionment of County Commission Districts

The County Apportionment Commission shall establish County Commission districts based exclusively upon population within 12 months after final census figures are certified by the United States Government. The districts shall be contiguous, compact and as nearly square as practicable, without regard to partisan political advantage. The districts shall be drawn so that each city, township, and village has the largest possible number of complete districts within its boundaries, and to assure proper and adequate representation of racial and language minorities in the County.

2.112 Apportionment Commission

Unless otherwise required by law, the County Apportionment Commission consists of the County Clerk, the Treasurer, the Prosecuting Attorney and the County chairperson of each of the 2 political parties whose candidates for Secretary of State received the most votes in the last election for that office. If a party has no County chairperson, a representative of that party shall be appointed by its state central committee. The County Clerk convenes the Commission. Three members of the Commission constitute a quorum. All action is by majority vote of Commissioners serving.

2.113 Apportionment Procedure

Unless otherwise required by law, the Commission has 30 days after certification of official census figures to approve and file an apportionment plan with the County Clerk and the Secretary of State. If the Commission fails to act within the 30 day period or an extension granted by the Court of Appeals, any registered voter may submit a plan to the Commission for approval. From the plans submitted, the Commission shall choose a plan meeting the requirements of law. The plan chosen by the Commission shall be filed with the County Clerk within 30 days of the initial or extended deadline for filing its plan.

2.114 Appeal of an Apportionment Plan

Any registered voter of Wayne County may, within 30 days of the filing of the plan with the County Clerk, ask the Court of Appeals to determine if the plan complies with the law and this Charter. A decision of the Court of Appeals may be appealed to the State Supreme Court as provided by law.

2.115 Final Apportionment Plan

A final apportionment plan is effective until a new plan is adopted after release of the next United States final census figures.

2.116 Elections

The election of County Commissioners and other elected County Officers shall be conducted in the manner and at the times required by law and this Charter.

CHAPTER 2 ELECTED OFFICERS

2.211 Terms * **

Unless otherwise provided by law or in accordance with this Charter, the Sheriff, the Prosecuting Attorney, the County Clerk, the Treasurer, and the Register of Deeds are elected at large on a partisan basis to 4 year terms, which expire at the same time as the term of the Governor.

2.212 Terms and Vacancies * ***

The method of electing and qualifications of the Prosecuting Attorney, Sheriff, County Clerk, County Treasurer, and Register of Deeds are those provided by law. If permitted by law, a vacancy in any office shall be filled by the appointment of the CEO with the approval of a majority of Commissioners serving. A successor shall be elected, for the unexpired term if any, at the next regularly scheduled County general election.

COMPILER'S COMMENTS:

* Sections 2.211 and 2.212 were both amended at the General Election of November 4, 1986 to delete the Drain Commissioner from the list of elected officers addressed by these two sections. In addition, sections 4.352, 7.120 and 8.122(b) were amended, and sections 4.115, 4.261, 4.262 and 4.263 were repealed. The vote was 291,053 (yes) to 114,465 (no) to the proposition: "Shall the Wayne County Home Rule Charter be amended to eliminate the office of Drain Commissioner, effective January 1, 1987, and further to separate and distribute the powers and duties of a Drain Commissioner between the executive and legislative branches in accordance with the general design of the Charter?". The validity of this full set of amendments and repealers was challenged before Third Circuit Judge Charles Farmer in Civil Action No, 86-635757CZ (Randolph Street Intercounty Drainage District, et al vs. County of Wayne). After the vote, however, the plaintiff dropped the case. The Drain Code has since been amended to more clearly authorize the Charter amendments.

** The substance of section 2.211 was held invalid, along with that of Section 8.122(b), in Lucas v. Wayne County Election Commission, et al, 381 NW2d 806 (Michigan App., 1985). The intent of the Charter

Commission in framing these provisions was to strengthen the office of the Chief Executive Officer, and to reduce political tensions between those offices and the office of CEO, by eliminating the opportunity for other elected county officers to run for that office while holding safe tenure in their own offices. The Michigan Court of Appeals held, however, that the legislature was without power to provide for a term of office which was less than the four-year term provided for those elective county officers named in article 7, section 4 of the Michigan Constitution of 1963.

*** The Chief Executive Officer was held not to be permitted by law to fill by appointment a vacancy in the office of Sheriff, because an existing statute, being MCL 168.209, prescribes the procedure for the filling of a vacancy in that office. Third Circuit Judge Paul Teranes in Civil Action No. 82 245 505 CZ Ficano vs. William Lucas and Loren Pittman, March 10, 1983.

ARTICLE III LEGISLATIVE

3.111 County Commission

The County Commission is the legislative body of the County and is vested with all legislative authority. The Commission has 15 members.

COMPILER'S COMMENTS:

While there was a clear intent in adopting the Charter to provide for a strong executive branch, it is also important to note that the County Commission is vested with ALL legislative authority, and not with more limited powers. Rather than a strong mayor/weak council form of government, Wayne County government is modeled after the co-equal branches of the state and federal governments, which are moderated by a court-developed doctrine on the separation of powers.

Both branches exercise certain control over the activities of the government. The dividing line is not between policy and procedure, nor a difference in subject matter. It is rather in the manner by which control is exercised. The legislative body is mainly limited to making law. It may direct within that law in great detail as to how a goal is to be accomplished. But it may not directly supervise the implementation of the law.

It may not, for example, simply require that the executive branch make regular reports on what it is doing, because such reporting constitutes an attempt to supervise performance. It may, however, require that any and all information be provided that is in the least bit related to any legislative proposal which is under current and active consideration by the legislative body.

It may not intervene in the implementation of a law, and take over the direct day-to-day supervision of an operation. But it can ask that a court undertake such supervision by a writ of mandamus, when the executive has failed or refused to implement the law as written. It may also rely upon other laws which make executive officers personally liable for unauthorized expenditures or for failure to perform their sworn duty to carry-out the requirements of the law.

A court will not issue a writ of mandamus unless it is satisfied that money damages will not suffice, and that irreparable harm will otherwise occur. It will not intervene over a trivial difference of opinion as to how something can best be done. It will, however, vigorously enforce the right of the legislative body to any and all information which it believes that it needs to dispose of any

legitimate item of business before it. It will not refuse such an order unless the information is totally irrelevant to the matter at hand.

Contrary to the usual rule of law, it is the gist of the separation of powers doctrine that the legislative body may indeed do indirectly, by legislation, that which it is not permitted to do directly.

3.112 Election; Filling of Vacancies

(a) The term of office of a Commissioner is 2 years, concurrent with that of a State representative. Commissioners are elected in even numbered years from single member districts on a partisan basis.

(b) If a vacancy occurs in the office of a Commissioner by death, resignation, removal from the district, or removal from office, the vacancy shall be filled by appointment within 30 days, by a majority of Commissioners serving. The appointee shall be a registered voter of the district belonging to the same political party as its previous Commissioner.

(c) If the vacancy is filled in an odd-numbered year, the appointee shall serve until a successor is elected in a special election in accordance with law. If the vacancy is filled in an even-numbered year, the appointee shall serve out the unexpired term. If a vacancy is not filled by appointment, it shall be filled by a special election regardless of the year when it occurs.

COMPILER'S COMMENTS:

When does a Commissioner take office when elected at a special election? In Opinion 87-056 dated October 26, 1987, the Corporation Counsel advised that a Commissioner takes office as soon as the oath of office is filed with the County Clerk, which can be as soon as 1:00 PM on the day after the election, or as long as 34 days later if the Board of Canvassers uses the full time allowed on a contested election. See Michigan Compiled Laws, Sections 45.318 and 168.825.

3.113 Compensation

The County Commission shall provide compensation for Commissioners by ordinance. A change in compensation after first established may not be made effective before the commencement of a new term. Any change in compensation shall be approved by the Commissioners at least 60 days prior to the primary election in which candidates for the next Commission term are to be nominated. The provision of a cost-of-living allowance or other compensation or reimbursement which would have the effect of increasing the compensation of a Commissioner (*) is prohibited.

COMPILER'S COMMENTS:

***A review of the proceedings of the Charter Commission discloses that an inadvertent clerical error was made in reporting-out the recommendations of the Commission. As adopted by the Commission, the last sentence ended: "compensation of a Commissioner during his term is prohibited"**

3.114 Meetings, Rules and Procedures

(a) At the first meeting of each new term, the Commission shall elect a chairperson and other officers of the Commission. The Commission shall establish its own rules and procedures.

COMPILER'S COMMENTS:

Attorney General Opinion 6712, dated February 19, 1992, upheld the validity of this provision. Under the Charter Counties Act, a charter may provide for duties and organization of a county commission which differs from the law for general law counties. The Wayne County Charter does so. A chairperson is therefore elected for a two-year term.

Under Michigan Compiled Laws, Section 46.3a, the Attorney General has opined that the election of a chairperson may be done by secret ballot, if a majority of members present first vote to have the election by secret ballot. (A.G. Opin. No. 4816 (1974)).

(b) The Commission shall hold at least 2 regular meetings per month. The Commission may provide for additional regular meetings. No fewer than 8 additional meetings shall be held annually in communities of the County; at least 4 meetings shall be held outside the County seat and at least 4 meetings shall be held within the County seat at locations other than the regular meeting place. The chairperson of the Commission may call special meetings. The chairperson shall call a special meeting upon written request of 3 Commissioners.

(c) The vote on final adoption of any resolution or ordinance shall be by roll call by a majority, or a 2/3 majority if required by this Charter, of Commissioners serving. The Commission's rules shall provide for votes other than on final adoption. A majority of Commissioners serving constitutes a quorum.

(d) The Commission shall have a Ways and Means Committee and an Audit Committee. The appropriation ordinance shall be referred to the Ways and Means Committee. The Audit Committee shall review the reports of the independent auditor and the Auditor General and shall monitor compliance with audit findings. At least 5 Commissioners shall serve on each committee and no Commissioner may serve on both. The County Commission may provide for other committees by resolution.

COMPILER'S COMMENTS:

It is important to note that the Charter specifically envisions that the work of the Commission shall and may be done by committee, and not always in a full member session. Because that is the place at which detailed inquiry is normally made, it is at that point that the power to call witnesses, by subpoena when necessary, is imperative. See Subsections 3.115(7) and (8), and 4.112(4).

3.115 Powers and Duties

Powers and duties of the Commission shall be exercised by ordinance if required by law or this Charter; otherwise they may be exercised by resolution. In addition to other powers and duties prescribed in this Charter, the Commission may:

- (1) Adopt, amend, or repeal ordinances or resolutions.
- ++ (2) Appropriate funds, levy taxes, fees and other charges, and authorize borrowing in accordance with Article V.
- * (3) Approve the making of all contracts by the County.
- ** (4) Approve or reject appointments by the CEO of the Deputy CEO, department heads, their deputy directors, and members of boards and commissions in accordance with Article IV.

COMPILER'S COMMENTS:

Section 4.385 Appointments provides:

“Unless otherwise specifically provided by this Charter or law:

- (1) The Deputy CEO, directors, deputy directors, members of boards and commissions, representatives of the County on intergovernmental bodies, and all other officials or representatives not in the classified service shall be appointed by the CEO with the approval of a majority of Commissioners serving.**
- (2) If the Commission fails to act on an appointment within 30 days after its submission to the Commission, the appointment is effective.**
- (3) Appointees in County government serve at the pleasure of the appointing authority.”**
- (5) Override a veto of the CEO by a 2/3 majority of Commissioners serving.

- + (6) Approve, amend, or reject rules or regulations issued by any department or officer of the County. If the Commission fails to act within 30 days of the submission of any rules or regulations, the rules or regulations become effective. The Commission may provide a procedure by which emergency rules and regulations become effective before their submission to the Commission.
- *** (7) Require any County officer or employee to testify and to produce records and documents.
- *** (8) Subpoena records, documents, and witnesses and administer oaths.
- **** (9) Appoint and remove, by a majority vote of Commissioners serving, the members of the Board of County Canvassers, the Metropolitan Airport Zoning Board of Appeals, the Planning and Development Commission, and the County Election Scheduling Board.
- (10) Appoint and, within authorized appropriations, provide compensation for employees of the Commission. The Commission shall appoint a Commission Clerk who shall be responsible for maintaining official records of the Commission and other duties prescribed by the Commission. The Commission Clerk may be removed by a majority of Commissioners serving.

COMPILER'S COMMENTS:

Appointees of both branches serve at the pleasure of their appointing authority. Section 4.385(3) reads:

“Unless otherwise specifically provided by this Charter or law:

...(3) Appointees in County government serve at the pleasure of the appointing authority.”

- (11) Merge the department of Register of Deeds with the department of County Clerk or provide for their subsequent separation.
- +++ (12) Judge the qualifications of Commissioners. A Commissioner may be removed from office by a 2/3 vote of commissioners serving upon conviction or admission of guilt during a term of office for a felony; if removed, a person shall not be eligible to run for or hold a county office for 3 years. With a fair hearing, a Commissioner may be removed by a 4/5 vote of commissioners serving for misfeasance or malfeasance of office or for removal of principal residency from his or her district.
- ++++ (13) Submit ballot questions including advisory questions and amendments to this Charter for approval by the registered voters. Any proposal for a tax increase

must be approved by a 2/3 vote of Commissioners serving to be placed on the ballot and approved by a vote of more than 60% of the qualified electors of Wayne County voting thereon in order to be adopted. Renewals of a previous tax increase or a previous increase in the total property tax limitation may be placed on the ballot by a majority vote of Commissioners serving and may be adopted by a majority vote of the qualified electors of Wayne County voting thereon.

- (14) Exercise any power granted by law to Charter or general law counties except those prohibited by this Charter.
- (15) Establish the compensation of other elected officers as provided by law or ordinance.

COMPILER'S COMMENTS:

*** Subsection 3 was implemented by the Contracting Ordinance (84-143, as amended by 92-117, 93-698, 94-387, 94-504, 94-757, and 96-27), by which certain routine contracting authority is delegated to the CEO. Some of these provisions were folded into a Comprehensive Procurement Ordinance 2001-233, which was repealed and extensively revised by Ordinance 2006-1101. Ordinance 2006-1101 has subsequently been amended.**

**** Subsection 4 must be considered together with Section 4.385. The means of calculating the time limits specified in these provisions is clarified by Ordinance 84-57, effective March 13, 1984. That ordinance also addresses the matter of placing proposed appointees on the payroll prior to Commission approval.**

***** Procedures to implement Subsections 7 and 8 and the powers conferred by Michigan Compiled Laws 46.11(N) are set forth in the Subpoena Powers Ordinance (86-24), adopted January 23, 1986. The subpoena process was modeled upon that used in civil actions in Michigan courts and that provided by statute for general law counties (MCL 46.11). The power to authorize a subpoena lies with the Chairperson of the Commission, but a subpoena may direct that the person or document subpoenaed be presented to a committee or a special hearing officer. The Corporation Counsel has opined in a letter of October 22, 1991 that the Charter requires that each subpoena be authorized by a vote of the full Commission. By extension of that rationale, such a vote would be subject to the CEO's veto, and any inquiry would have to be conducted by the full Commission. There is no indication in the minutes of the Charter Commission that such an awkward process was intended to be used to obtain information which is necessary and useful to properly consider a legitimate item of public business. The normal work of the Commission is conducted by committee and Subsection 3.114(d) expressly authorizes that. The committee level of review is where specific and detailed information of the kind sought by subpoena is mostly needed. Since the basic function of a subpoena is to document that reasonable efforts have been made at self-help before court intervention has been sought, and courts**

do not ordinarily encourage dilatory maneuvers, it does not appear likely that a court would sustain the Corporation Counsel's position on this point on any matter of legitimate public interest.

It should also be noted that under the separation of powers doctrine, a legislative body may not use its powers to supervise the performance of the executive branch. It may not appoint itself to administrative boards and committees. And it may not require that continuous periodic reports be provided on an activity, when no specific legislative business regarding that activity is under active review. On the other hand, there is no limit placed upon the information that it may require or upon the people that it may call to hear, when there is some actual piece of proposed legislation or business for it to consider. Courts have simply refused to enter into adjudging the merits of a legislative proposal and what information is reasonably needed to advance its consideration.

****** Subsection 9 is implemented by the following ordinances:**

Ordinance 83-9, adopted January 20, 1983 to create and empower a Board of Canvassers. (Code Chapter 17)

Ordinance 83-10, adopted January 20, 1983 to create and empower a Metropolitan Airport Zoning Board of Appeals. (Code Chapter 225)

Ordinance 83-20, adopted February 3, 1983, as amended by Ordinance 91-451, adopted June 13, 1991, to create and empower a County Planning and Development Commission. (Code Chapter 85)

Ordinance 83-11, adopted January 20, 1983 to create and empower a County Election Scheduling Board. (Code Chapter 37)

+ Subsection 6 is implemented in part by Ordinance 90-847, adopted December 20, 1990, which establishes a uniform rule-making procedure for all County agencies and delegates certain rule making powers to the Executive Branch. That Ordinance is based upon the Michigan Administrative Procedures Act, which in turn is based upon a long line of case law which requires that certain due process standards be observed in making rules. If a department observes the procedures set forth in the ordinance, the resulting rule should be safe from a court challenge. The Corporation Counsel in Opinion No. 91-002 declared the ordinance to be an impermissible attempt to amend the Charter and to be interference by the Commission in the affairs of the executive branch. The opinion appears to misconstrue the distinctions drawn under the separation of powers doctrine between legislative and executive functions. Another Corporation Counsel Opinion No. 85-108, dated November 22, 1985, more accurately concludes that the County Commission may amend a departmental rule at any time. That being the case, the Commission should also be able to delegate some of its rule-making authority to the executive branch, provided that adequate guidelines are provided to assure due process. It is this latter question that has been more

often at issue in separation of powers cases, that is, whether or not, under what conditions, and to what extent a branch may delegate its duties to another.

++ Corporation Counsel in opinion No. 85-116, dated October 14, 1985, noted that the County is without power to provide for the disposition of fines which are generated for the violation of a state law. Article VIII, Section 9 of the Michigan Constitution requires that these be applied exclusively to the support of public libraries. This provision does not, however, apply to fines and costs which a court may assess for violations of a local ordinance or park rule. The disposition of these fines and costs is governed by Michigan Compiled Laws, Section 600.8379, which provides that they may be disposed by a joint agreement of the several jurisdictions involved in the district court control unit.

+++ Subsection 12 was amended by the electorate on August 3, 2004 to provide the commission with express power to remove a commissioner for certain specified causes.

++++ Subsection 13 was amended by the electorate on August 4, 1998 to add all provisions following the first sentence. The first sentence was amended by the electorate on August 3, 2004 to add an express power to place advisory questions on the ballot.

+++++ At the general election held on November 6, 2012, voters rejected by a vote of 318,421 (yes) to 320,065 (no) a proposed amendment to add a new Subsection 16 to this Section. The ballot question certified to the County Clerk read:

“Shall Section 3.115 of the Wayne County Home Rule Charter, which sets forth the powers and duties of the Wayne County Commission, be amended to include the power and duty to approve all compensation of every employment position in the county, unless the compensation is established by state or federal law?”

3.116 Purchasing Policy

The Commission shall establish by ordinance the purchasing policy of the County. The ordinance shall provide for solicitation of sealed bids by advertisement for purchases over a specified amount.

COMPILER'S COMMENTS:

This Section was implemented by adoption of a Comprehensive Procurement Ordinance (2001-233, as amended by 2002-164 and 2002-733). Modeled on a national Model Procurement Code, this ordinance superseded the following six ordinances. It has since

been repealed and replaced by Ordinance 2006-1101. Ordinance 2006-1101 has been amended by Ordinances 2008-335, 2009-716, 2010-323, 2010-642, 2011-006, 2011-164, 2011-575, 2012-164, 2012-165, 2012-235, 2012-330 and 2012-442.

1. The Purchasing Ordinance (83-138, amended and republished as 92-168 and then as 94-457, also amended by 96-261).
2. The Contracting Ordinance (84-143, as amended by 92-117, 93-698, 94-387, 94-504, 94-757, and 96-27).
3. The Prompt Payment of Vendors Ordinance (92-169, adopted on April 2, 1992).
4. The Buy-American Ordinance (92-76, adopted on February 20, 1992, as amended by 92-479 on August 27, 1992).
5. The Urban Development Zone Ordinance (90-411).
6. The Equal Contracting Opportunity Ordinance (93-738 as adopted on December 16, 1993).

In Opinion 86-020, the Corporation Counsel opined that purchases made from County funds for the courts are subject to the requirements of the Purchasing Ordinance. In Opinion 86-018, however, it was concluded that the Election Commission, by Sections 689 and 690 of the Election Code, has total independent control over the award and management of ballot printing contracts.

Section 4.334 Purchasing, provides as follows:

- (a) The division of Purchasing is hereby created in the department of Management and Budget.
- (b) The division has powers and duties to:
 - (1) Establish a central purchasing system; and
 - (2) Manage and control all purchasing activities of the County to insure their cost effectiveness and efficiency.

3.117 Public County Hospital Facilities

The Commission shall provide by ordinance for the operation, maintenance, and administration of public County hospital facilities and shall assure an adequate level of physical and mental health services for the residents of the County.

COMPILER'S COMMENTS:

This Section was implemented by two ordinances, now repealed:

Ordinance 84-42, adopted on February 16, 1984 to provide for the operation, maintenance and administration of public county hospital facilities. Repealed in 1997.

Ordinance 86-248, as amended and republished, adopted on July 10, 1986, to establish a Citizen's Task Force on Health Care Delivery in Wayne County. Repealed in 1997.

The Michigan Court of Appeals held in University Medical Affiliates, et al vs. Wayne County Executive, Docket No. 79852, released April 16, 1985, that:

"Section 3.117 does not require the county to "own" Wayne County General Hospital. The Charter provision does, however, require that the physical and mental health needs of the county residents be provided through public hospital facilities. We find that the Patient Care Management System (PMCS) proposed by the County Executive fulfills this duty. PCMS creates the authority to arrange for several facilities to meet the needs of the county's indigent population and permits the county to contract with the hospital which is geographically convenient for the recipient...."

3.118 Non-Interference in Administrative Affairs

Except insofar as is necessary in the performance of the duties of office or as otherwise provided by this Charter, a Commissioner or an employee of the Commission shall not interfere, directly or indirectly, with the conduct of any executive department.

COMPILER'S COMMENTS:

This provision is a typical means of expressing the tenets embodied in the separation of powers doctrine, which is woven into the fabric of this Charter. That doctrine was developed by the federal and several state courts to moderate and resolve some of the conflicts between the legislative and executive branches of federal and state government. Wayne County with a population of more than two million people is larger and more complex than many states in the United States. It was appropriate, therefore, that the Charter adopt a flexible form of government modeled after the federal and state systems, rather than one of the five or six organizational models more commonly used for local units of government.

Many Corporation Counsel opinions have cited this provision as a limitation upon the County Commission. Some have gone so far as to conclude that since there is no similar provision in Article IV, that the powers of the Chief Executive Officer are unlimited. There is, of course, no basis in the case law regarding governmental powers to support such an expansive and autocratic interpretation of the Charter. Such an unfettered viewpoint of the executive function is not to be found in the anglo-american political experience. Something like it is found in the Napoleonic Code upon which some European and South American governments have been modeled.

It is clear and undisputable that neither a Commissioner nor a Commission staff member has the power to directly supervise the implementation of an executive branch program, or to hire and fire executive branch employees. When the legislative branch operates, it must carry out its function in a legislative way. Some of its powers and authority may be delegated to a committee or even a single hearing officer. But no Commissioner has the general individual power to countermand an executive instruction or to require from executive officers and employees that a report be made or that certain information be supplied (beyond what that to which they have a right as a citizen under the Freedom of Information Act).

It is also clear that a legislative body is well within its role when it operates in a legislative mode. This does not mean that it can always get something done in the exact way that it legislates. But it has at least seven options:

- (1) It can make a simple request of the relevant executive or department during a meeting of a committee or the full board.
- (2) If there is no effective State law on the subject, it can first pass an ordinance which establishes clear duties and firm and reasonable standards of conduct and performance on the part of responsible persons with respect to a specific activity, such as procurement. Then, it can ask a court to issue a writ of mandamus or an injunction to place an offending executive in contempt for failure to comply with the order of the court.
- (3) Or in some cases, it or another party can institute a suit for personal money damages against an executive

officer who has ordered or taken unauthorized actions to the detriment of the County.

(4) In some cases, it can pass an ordinance to prohibit some conduct, with civil infraction or misdemeanor penalties attached, and file a complaint with the Prosecuting Attorney for violations.

(5) It can ask for an independent audit of activities which pose a high risk of loss to the County, when there is reason to suspect irregular or deficient performance. It can also apply the oversight subpoena powers of the Commission to uncover such problems.

(6) It can refer well-grounded suspicions of illegal activity to the Prosecuting Attorney or Sheriff for a discreet investigation.

(7) And of course, it has the indirect powers of the purse.

Within all of these constraints, the executive has considerable wiggle room.

Firstly, it is difficult as a practical matter for a legislative body to foresee and thus provide for every condition and situation likely to be encountered in implementing a program.

Secondly, it is usually impossible for a larger deliberative body within its time constraints to sort-out and agree upon an expansive array of matters in any great detail. There is no need to place legal limits upon legislative activity when the practical ones are so pervasive and determinative.

Thirdly, it is often possible to achieve a particular objective by other reasonable and equally cost-effective means. Even if not specifically authorized, the executive is not at risk unless his unauthorized approach is less effective or more costly than the one which is specified. As a practical matter, specified implementation details do little more than set a minimum standard for efficiency and effect.

Courts also take a practical approach to the enforcement of legislation. A Writ of Mandamus or injunction is an extraordinary remedy, and a court will not chose to intervene with such an order unless some substantial public interest is at risk, which can not be rectified by money damages.

Fourthly, very few executives are willing to place their personal fortunes at risk by taking unauthorized actions. The more predominant problem in getting something done, is in providing gun-shy executives with sufficiently clear authority to encourage them to enact the will of the legislative body.

Considerable comment has been made about the use of the word "necessary" in describing the limitations upon the Commission. Claims that information or witnesses are excessive, unreasonable and unnecessary have often been raised as a defense against legislative inquiry. Courts have uniformly ruled that whatever information a legislative body considers itself to need is in fact necessary for its deliberations. The courts have wisely chosen to not open pandora's box, and encourage a flood of lawsuits over an arena of such endless susceptibility of conflict.

It is important to note that once the legislative body has acted in a legislative mode, by enactment of an ordinance, resolution or amended rule, the Chief Executive Officer has a sworn affirmative duty under Section 4.112 to: "Implement and enforce the laws of this State and County ordinances, resolutions, orders, and rules;..."

3.119 Auditor General

(a) A legislative Auditor General may be created by ordinance. The Auditor General shall be appointed by a majority of the Commissioners serving. The Auditor General may be removed for cause by a 2/3 vote of the Commissioners serving. The Auditor General shall be a CPA with at least 5 years experience in auditing governmental bodies. The compensation for the Auditor General shall be established by the Commission.

(b) The Auditor General shall:

- (1) Make audits of the financial transactions of all County agencies at least once every two years, or as otherwise directed by the County Commission;
- (2) Make compliance audits of the past or current operations of any County agency, as requested by the Audit Committee of the Commission;
- (3) Make performance audits of agency operations if requested by the executive officer in charge thereof; and
- (4) Make a full report to the County Commission of each individual audit and file a copy with the CEO.

(c) The audit staff shall have access to the staff, property, and to the financial and other records, including computer hardware and software, of all County agencies during their regular operating hours.

(d) Each officer or employee of the County has an affirmative duty to cooperate with the audit staff and to answer any question reasonably devised to enable the efficient and orderly completion of an audit.

(e) As soon as possible after the close of each fiscal year, the Auditor General shall make a report of the financial position of the County. Beginning with the fiscal year ending November 30, 1998, the Auditor General shall engage by contract an independent external auditor with the approval of a majority of the Commissioners serving, subject to the veto of the Chief Executive Officer and override requirement. The auditor shall be a certified public accountant. The term of the contract shall be established by the Commission, but the first term shall be for not less than three years and an auditor may not serve more than 8 consecutive years. The contract may be terminated for cause by a majority of the Commissioners serving.

(f) The Independent External Auditor shall audit annually all funds and property of the County and shall report the extent of compliance with Section 5.111 of the Charter. The audit and report shall be completed within 120 days after the fiscal year. Copies of the audit and report shall be transmitted to the Chief Executive Officer, the Commissioners, the State Treasurer, and as required by ordinance and shall be available for public inspection.

(g) The Auditor General shall perform other duties as required by ordinance. The performance of the Auditor General shall be annually reviewed by the County Commission.

(h) The Auditor General may hire, promote, discipline, and remove staff employees or consultant auditors within authorized appropriations.

COMPILER'S COMMENTS:

This Section was amended by a ballot proposition on November 5, 1996. Before amendment, this Section read as follows:

“(a) A legislative Auditor General may be created by ordinance. The Auditor General shall be appointed by a majority of Commissioners serving. The Auditor General may be removed for cause by a 2/3 vote of the Commissioners serving. The Auditor General shall be a CPA with at least 5 years experience in auditing governmental bodies. The compensation for the Auditor General shall be established by the Commission.

(b) The Auditor General shall perform duties required by the Commission and shall be supervised exclusively by the Commission and may inspect county records and property.

(c) The Auditor General may employ staff or consultant auditors within authorized appropriations.”

This provision was implemented by Ordinance 83-23 adopted on February 17, 1983, which was amended by Ordinances 90-284 and 91-485, and was then superseded by Ordinance 92-622, adopted on November 5, 1992, to create and empower a Legislative Auditor General. Ordinance 92-622 has been further amended and revised by Ordinances 92-676, 94-139, 97-501, 98-59, 2000-655, 2004-995, 2006-722 and 2012-027. (Code Chapter 65)

The fraud investigation policy is set forth in Ordinance 92-806, adopted December 17, 1992 as amended by 2011-145, 2012-007 and 2012-364. (Code Chapter 73)

The Auditor General is instructed by Ordinance 94-139 to conduct a regular audit of County Commission operations, as well as the office of the CEO. (Code Chapter 65)

Under Ordinance 84-111, the Auditor General is authorized to hear appeals from claimants against the County who are dissatisfied with decisions of the Corporation Counsel. (Code Chapter 25)

Under Ordinance 84-143 (The Contracting Ordinance), as amended by 92-117, 93-698, 94-387, 94-504, 94-757, and 96-27, and as superseded by Ordinance 2001-233 (the Comprehensive Procurement Ordinance), which is superseded by Ordinance 2006-1101, the Auditor General is expressly authorized access to contracts and supporting documents. The Auditor General is made responsible for review of compliance with conflict of interest disclosure requirements. (Code Chapter 120)

At the general election held on November 6, 2012, voters rejected by a vote of 307,854 (yes) to 330,148 (no) a proposed proposition to amend Section 3.119(e). The ballot question certified to the County Clerk read:

“Shall Section 3.119(e) of the Wayne County home rule charter be amended to remove the restriction that prohibits an independent external auditor from providing audit services to the county for more than eight (8) consecutive years; and further to require independent external auditors be selected based on a competitive process in accordance with the county’s procurement ordinance?”

3.120 Independent Commission Counsel

(a) An independent Commission Counsel may be appointed by a majority of the Commissioners serving. The Commission Counsel shall serve at the will of the Commission and shall be supervised exclusively by the Commission.

(b) The independent Commission Counsel shall be an attorney licensed to practice law in Michigan. Compensation for the Commission Counsel shall be established by the Commission.

(c) The Commission Counsel shall assert and defend the rights, powers and duties of the Commission, and shall perform related duties as required by the Commission. The Commission Counsel may employ staff or legal consultants within authorized appropriations.

COMPILER'S COMMENTS:

This Section was added to the Charter by voter approval of a ballot proposition on November 5, 1996, which also amended Section 4.312.

ARTICLE IV EXECUTIVE BRANCH

CHAPTER 1 CHIEF EXECUTIVE OFFICER

4.111 Chief Executive Officer

The Chief Executive Officer (CEO) is the head of the executive branch of County government.

4.112 Powers and Duties

(a) The executive and administrative power of the County is vested in the CEO. The CEO has power and duty to:

- (1) Supervise, coordinate, direct, and control all county facilities, operations, and functions except as otherwise provided by law or this Charter;

COMPILER'S COMMENTS:

The Chief Executive Officer (CEO) has very substantial administrative authority over all county departments and operations. The chief exceptions to the CEO's administrative reach are those departments headed by other Constitutionally created officers, who have certain powers and duties which are not subject to revision by the Legislature. These include the Prosecuting Attorney, the Register of Deeds, the County Clerk, the Sheriff and the Treasurer, as well as the Legislative Branch. This exception is addressed in both the Charter Counties Enabling Act, and in the Charter.

Section 4.116 provides:

"4.116 Coordination of County Functions

The CEO shall supervise, direct, and control functions of all departments of the County except those headed by elected officials, and shall coordinate the various activities of the County and unify the management of its affairs."

The Charter sections which create (recognize the existence of) those departments headed by other county-wide elected officers basically acknowledge and accede to their Constitutional and statutory powers and duties.

In Section 4.271, the Charter expressly acknowledges that these powers and duties may not be changed by a

Reorganization Plan. Further limits on reorganization are provided in Section 4.383 with respect to departments and divisions which are created by the Charter, but which do not have statutory or Constitutional status.

It should be noted that even departments with Constitutionally created heads are still subject to budget constraints (See Section 4.272), and personnel systems and central purchasing constraints (for which there is substantial case law and Attorney General's Opinion).

- (2) Implement and enforce the laws of this State and County ordinances, resolutions, orders, and rules;

COMPILER'S COMMENTS:

It is important to note that the CEO has not only the power, but also the sworn and court-enforceable duty to implement and enforce laws, ordinances, resolutions, orders and rules. See comment on Section 3.118. It should also be noted, however, that a court will not enforce a duty unless it has been stated in clear, specific, detailed, and unequivocal terms. It will not force the CEO to exercise a discretionary duty.

- (3) Exercise all powers and duties granted the CEO by law, ordinance, or other provisions of this Charter;

COMPILER'S COMMENTS:

The CEO was authorized by Ordinance 92-414 to take control of the operation of the Youth Home, to obtain a license, and to refuse to admit more youth than allowed by the license. (Code Chapter 149)

The CEO was authorized by Ordinance 91-880 to establish an emergency support program for homeless persons. (Code Chapter 165)

- (4) Submit reports and recommendations to the Commission on any matter affecting the County;

- (5) Exercise powers and duties required for emergency preparedness;

- (6) Maintain a Planning division in the office of the CEO; and

- (7) Veto any ordinance or resolution having the effect of law, or approving a contract, or any line item in an appropriation ordinance by transmitting to the Commission written

certification of the veto and reasons therefore. If the CEO fails to exercise the veto within 10 days after the submission of the ordinance or resolution to the CEO, the action of the Commission takes effect.

COMPILER'S COMMENTS:

Section 3.115 provides that: "...the Commission may ...(5) Override a veto of the CEO by a 2/3 majority of Commissioners serving."

The Charter is otherwise silent upon the procedures for the override of a veto. Since 1993-94, the rules of the County Commission have filled this gap by providing a 45-day deadline for completing an override. A matter which fails an override vote, may however, be immediately reintroduced for further consideration and action by a simple majority vote. The rule is mainly a means of clearing the agenda after a reasonable time. It is found in Rule 57 in the Rules for 2007-2008.

The ten-day clock on the CEO's veto does not begin to run until the action of the Commission has been certified and submitted to the CEO. It has been the practice that an action of the Commission take earlier immediate effect by having the CEO file a waiver of the ten-day period with the Clerk of the Commission.

(b) The Cooperative Extension Service shall be maintained in the executive branch.

4.113 Reorganization Plan

(a) Within 90 days after taking office, the CEO shall submit a proposed Executive Branch reorganization plan to the Commission. The plan may provide for the creation or abolition of any department, agency, division, or officer not expressly exempted by this Charter. The plan may assign all the powers, duties, and functions of the County among the agencies or departments not prohibited by this Charter. The CEO may propose amendments at any time to the Executive Branch reorganization plan.

(b) The Commission may approve or reject the proposed plan or any proposed amendment. If the Commission fails to act on the proposed plan or a proposed amendment within 90 days after its submission, the plan or the amendment becomes effective. A plan expires 180 days after the start of each term of office of the CEO, or sooner if a new plan becomes effective. If no plan is in effect, the organization set forth in this Charter revives.

COMPILER'S COMMENTS:

The last two sentences in Section 4.113(b) were adopted as a Charter amendment at the general election held on November 3, 1992. The ballot question certified to the County Clerk read:

"Shall Section 4.113 of the Wayne County Charter be amended to assure a County Commission review and approval of the Reorganization Plan at least once each four years, by clarifying that a plan expires 180 days after the start of each term of the CEO, or sooner if a new plan is adopted?"

Subsection 4.113(b) of the actual language of the Charter amendment certified to be posted on the wall in each voting precinct read:

"(b)The Commission may approve or reject the proposed plan or any proposed amendment. If the Commission fails to act on the proposed plan or a proposed amendment within 90 days after its submission, the plan or the amendment becomes effective. A plan expires 180 days after the start of each term of office of the CEO, or sooner if a new plan becomes effective. If no plan is in effect, the organization set forth in this Charter revives."

Sections 4.271 and 4.383 of this Charter establish certain limitations for a Reorganization Plan:

"4.271 Reorganization

The powers and duties specifically delegated by this Charter to departments headed by elected officers shall not be modified by a reorganization plan."

"4.383 Reorganization Power Limited

The powers and duties of all departments and divisions created under this Chapter may be modified by a reorganization plan other than powers and duties specifically granted to the division of Human Relations, the division of the Civil Service Commission, the division of Assessment and Equalization, the department of Senior Citizen Services, and the Retirement Commission."

Most of the controversy over the Reorganization Plan adopted in 1987 revolved around a question of maintaining or terminating a provision which delegated to the CEO the County Commission's powers under Section 3.115 to approve

or reject certain appointees of the CEO. By the terms of the Charter, a Reorganization Plan is designed to deal with changes in the organization of the executive branch. Once effective, the Reorganization Plan may not be changed except at the initiative of the CEO. The disputed provision was, however, actually a delegation of a specified legislative branch power, which could therefore have been retracted at any time the legislative branch so determined.

4.114 Transfers of Property and Records

All property, records, and equipment of any department, agency, board, commission, instrumentality, or other administrative unit of County government affected by this charter or a reorganization plan shall be transferred to the appropriate organizational unit established under this Charter or a reorganization plan as directed by the CEO.

4.115 Coordination of Road and Public Works Functions (Repealed)

COMPILER'S COMMENTS:

Section 4.115 was repealed, effective January 1, 1987, at the General Election of November 4, 1986, along with Sections 4.261, 4.262, and 4.263 and in addition to amendments to Sections 2.211, 2.212, 4.352, 7.120 and 8.122(b). The vote was 291,053 (yes) to 114,465 (no) to the proposition: "Shall the Wayne County Home Rule Charter be amended to eliminate the office of Drain Commissioner effective January 1, 1987, and further to separate and distribute the powers and duties of a Drain Commissioner between the executive and legislative branches in accordance with the general design of the Charter?" The validity of this full set of amendments and repealers was challenged before Third Circuit Judge Charles Farmer in Civil Action No. 86-635757CZ (Randolph Street Intercounty Drainage District, et al vs. County of Wayne). After the vote, however, the plaintiff dropped the case. The Drain Code has since been amended to more clearly authorize the Charter amendments.

The repealed Section 4.115 read as follows:

"The CEO shall coordinate the project activities of the departments of Drain Commissioner, Road Commission, and Public Works which affect County roads. The Road Commission and the Director of Public Works shall submit an annual project plan to the CEO 6 months before the next fiscal year and shall notify the CEO of any change in the project plan within 30 days."

4.116 Coordination of County Functions

The CEO shall supervise, direct, and control functions of all departments of the County except those headed by elected officials, and shall coordinate the various activities of the County and unify the management of its affairs.

4.121 Deputy CEO

The Office of the Deputy CEO is created. The Deputy CEO shall exercise the powers and duties of the CEO if the office is vacant or if the CEO is absent or disabled. The Deputy CEO shall also perform powers and duties delegated by the CEO.

4.122 Vacancies

If both the office of CEO and Deputy CEO become vacant, a majority of the Commissioners serving shall appoint an acting CEO to serve until the office of CEO is filled in accordance with this Charter.

COMPILER'S COMMENTS:

Section 9.111 sets forth the manner in which the office is to be regularly filled:

"9.111 Elected Chief Executive Officer

(a) The CEO shall be elected at large on a partisan basis for a 4 year term. A candidate for the office of CEO must be a qualified elector of the County at the time of election. If a party candidate nominated in the primary election dies or otherwise becomes unable to be elected, a successor candidate shall be selected in the same manner that a successor candidate is selected for the office of County Clerk.

(b) If the office of CEO becomes vacant, a successor shall be elected at a special election held concurrently with the next regular County general election. The successor shall fill the unexpired term.

(c) State law as to the qualifications and registration of voters, the filing for office by candidates, and the conduct and canvass of county elections for county officers elected under Article IV shall also apply to the office of CEO."

4.124 Removal by the Governor

The CEO may be removed from office by the governor for the same reasons and with the same due process as provided by law for the sheriff, prosecuting attorney, county clerk, register of deeds, and county treasurer.

COMPILER'S COMMENTS:

This Section was added to the Charter by voter approval of a ballot proposition on November 6, 2012.

CHAPTER 2 DEPARTMENTS HEADED BY ELECTED OFFICERS

Part I - Prosecuting Attorney

4.211 Department Created

The department of Prosecuting Attorney is hereby created. The head of the department is the elected Prosecuting Attorney.

4.212 Powers and Duties

The powers and duties of the department are those provided by law for prosecuting attorneys. Additional powers and duties may be assigned the department by a reorganization plan adopted in accordance with this Charter.

COMPILER'S COMMENTS:

The Prosecuting Attorney has been authorized to enforce or in some cases implement several ordinances which address matters of local concern:

- (1) Ordinance 96-536 authorizes a county crime victim compensation program. (Code Chapter 217)**
- (2) Ordinance 96-611 establishes the duty of a parent to take custody of a child who is released from the Youth Home. (Code Chapter 205)**
- (3) Ordinance 97-341 prohibits a person from using false identification to represent that he or she is a utility worker. (Code Chapter 203)**

(4) Ordinance 97-289 establishes a standard of parent responsibility for certain criminal acts of children in their custody. (Code Chapter 205)

(5) Ordinance 96-100, as amended by Ordinances 97-297 and 2000-404 prohibits a person from dumping debris and pollutants in waterways and drains and on other public and private property. (Code Chapter 97)

(6) Ordinance 2002-138, as amended by Ordinance 2005-244 authorizes the Prosecuting Attorney to operate a nuisance abatement program to seize and dispose of properties which are used for illegal drug activities. (Code Chapter 171)

(7) Ordinance 2006-720 prohibits county-wide the sale of certain drug use paraphernalia. (Code Chapter 173)

The Prosecuting Attorney is also assigned a duty under the Fraud Investigation Ordinance, 92-806 as amended by Ordinances 2011-145, 2012-007 and 2012-364, to conduct investigations of criminal misconduct by County officers and employees. (Code Chapter 73)

Part II - Sheriff

4.221 Department Created

The department of Sheriff is hereby created. The head of the department is the elected Sheriff.

4.222 Powers and Duties

The powers and duties of the department are those provided by law for sheriffs. Additional powers and duties may be assigned the department by a reorganization plan adopted in accordance with this Charter.

COMPILERS COMMENTS:

Ordinance 89-402, adopted June 1, 1989, authorizes the Sheriff to seek and collect reimbursement from jail prisoners and their insurers for the costs of medical services provided, pursuant to Michigan Compiled Laws Sections 801.4 et. seq. (Code Chapter 201)

Ordinance 89-629, superseded by Ordinance 89-653 on September 7, 1989, authorizes the Sheriff to conduct a drug abuse education program. (Code Chapter 153)

Ordinance 91-718, adopted on October 17, 1991, and as amended by Ordinances 95-499, 96-722, 2005-366 and 2006-917, creates a Jail Commissary Board to act as trustee of the Jail Inmate's Commissary Fund. (Code Chapter 193)

Ordinance 94-173 adopts the Michigan Motor Vehicle Code for enforcement within the county park system. (Code Chapter 241)

Ordinance 94-174 authorizes the Sheriff and Prosecuting Attorney to seek enforcement costs for the offenses of Operating a Motor Vehicle Under the Influence of Liquor or Narcotics. (Code Chapter 209)

Ordinance 94-408 authorizes the Sheriff to impound vehicles used by an offender of Ordinance 94-174, and to require a bond for redemption. (Code Chapter 213)

Ordinance 94-684 authorizes the Sheriff (and Public Service Weight Inspectors) to enforce road weight limits on truckers. (Code Chapter 237)

Ordinance 95-40 authorizes the Sheriff to dispose of unclaimed lost, found or abandoned property by auction. (Code Chapter 185)

Ordinance 95-315, as amended by Ordinances 96-436 and 2006-154, establishes guidelines for the use of Hamtramck jail space by local communities, sets a per diem rate, and directs the Sheriff to recover costs from inmates. (Code Chapter 197)

Ordinance 96-139 regulates the use of Hamtramck jail space in keeping with the original agreement between the courts and communities. (Code Chapter 197)

Ordinance 96-436 directs the Sheriff to work with the Department on Community Justice to establish a jail population management plan. (Code Chapter 197)

Ordinance 96-536 authorizes and directs the Sheriff to seek reimbursement from sentenced inmates for the costs of their incarceration. (Code Chapter 217)

Ordinance 99-262 authorizes the Sheriff to establish an electronic tether monitoring program. (Code Chapter 187)

Ordinance 2003-043, as amended by Ordinance 2003-951, authorizes the Sheriff to establish an indigent defense special revenue fund to receive a portion of funds collected from local jurisdictions for the board of prisoners. (Code Chapter 198)

Ordinance 2004-422, superseded by Ordinance 2007-371, adopts the Michigan Water Safety Rules for enforcement by the Sheriff's Marine Patrol. (Code Chapter 200)

4.223 Patrol of the Parks

The department shall provide patrol services for the County parks system and assure the safety of users of the County parks.

4.224 Contracts with Local Governments

The department may contract with units of government within the County to provide services with the approval of the Commission.

COMPILER'S COMMENTS:

The Sheriff's Department does not have a unilateral power to enter into contracts with the approval of the Commission, nor to agree to any terms. Section 4.224 must also be read in conjunction with the limitations of Section 7.111:

"7.111 Inter-Governmental Contracts

(a) The CEO with the approval of the County Commission may:

(1) Enter into any intergovernmental contract which is not specifically prohibited by law.

(2) Join, establish, or form with any other governmental unit an intergovernmental district or authority for the purpose of performing a public function or service, which each is authorized to perform separately, the performance of which is not prohibited.

(3) Accept, upon mutually agreed conditions, the transfer of performance of any municipal function or service from any governmental unit wholly or partially within the County, if the performance of that function or service by the County is not specifically prohibited by law, and if the function or service is offered on a County-wide basis.

(4) Provide by contract services or functions in any political sub-division of the County with the agreement of the legislative body of that sub-division and with approval of the contract by the Commission. The cost of services or functions provided to a political sub-division of the County, but not provided County-wide, shall be paid by the political sub-division in which the services or functions are performed. The revenues collected for the contracted services or functions shall be used first to pay for the contracted services.

(b) This section applies to all contracts of the County, including those to be performed by departments headed by elected officers."

Part III - County Clerk

4.231 Department Created

The department of County Clerk is hereby created. The head of the department is the elected County Clerk.

4.232 Powers and Duties

The powers and duties of the department are those provided by law for county clerks except as provided in Article III. Additional powers and duties may be assigned the department by a reorganization plan adopted in accordance with this Charter.

4.233 Central Records

The department shall maintain central records of the County as provided by law or ordinance.

COMPILER'S COMMENTS:

The Archival Records Ordinance (85-415) adopted on October 17, 1985, and amended by Ordinance 2006-1105, adds to the powers and duties of the County Clerk that of establishing and maintaining a central archival records system for the non-active records of all county departments. (Code Chapter 13)

Ordinance 95-450, as amended by Ordinance 98-234 authorizes the County Clerk to undertake a Civic Literacy Program to stimulate and educate voters. (Code Chapter 21).

4.234 Printing and Duplication

The department shall supervise and control the County printing and duplication facility.

Part IV - County Treasurer

4.241 Department Created

The department of County Treasurer is hereby created. The head of the department is the elected Treasurer.

4.242 Powers and Duties

The powers and duties of the department are those provided by law for treasurers. Additional powers and duties may be assigned the department by a reorganization plan adopted in accordance with this Charter.

4.243 Investment Power

The department shall receive, deposit, and invest funds belonging to and under the control of the County as provided by law and this Charter.

COMPILER'S COMMENTS:

Ordinance 89-791, as adopted November 2, 1989, and amended by Ordinance 99-153, establishes the investment policy of the County. (Code Chapter 117)

4.244 Tax Collections and Delinquent Taxes

The department shall collect current taxes assessed on the County tax rolls within the City of Detroit, determine, settle, and collect delinquent taxes, and act as the agent for the County in connection with the Delinquent Tax Revolving Fund.

COMPILER'S COMMENTS:

The Treasurer is authorized by an annual resolution of the County Commission, usually at it's last June meeting, to establish a separate Delinquent Tax Revolving Fund for taxes becoming delinquent in that year. By a separate companion resolution, the Treasurer may also be authorized to receive a fractional portion of the delinquent taxes collected, not to exceed \$25,000, as additional personal compensation for the performance of this function.

Part V - Register of Deeds

4.251 Department Created

The department of Register of Deeds is hereby created. The head of the department is the elected Register of Deeds.

4.252 Powers and Duties

The powers and duties of the department are those provided by law for registers of deeds. Additional powers and duties may be assigned the department by a reorganization plan adopted in accordance with this Charter.

Part VI - Drain Commissioner

4.261 Department Created (Repealed)

4.262 Powers and Duties (Repealed)

4.263 Annual Project Plan (Repealed)

COMPILER'S COMMENTS:

Sections 4.261, 4.262 and 4.263 were repealed effective January 1, 1987, at the General Election of November 4, 1986, along with Section 4.115, and in addition to amendments to Sections 2.211, 2.212, 4.352, 7.120 and 8.122(b). The vote was 291,053 (yes) to 114,465 (no) to the proposition: "Shall the Wayne County Home Rule Charter be amended to eliminate the office of Drain Commissioner effective January 1, 1987, and further to separate and distribute the powers and duties of a Drain Commissioner between the executive and legislative branches in accordance with the general design of the Charter?" The validity of this full set of amendments and repealers was challenged before Third Circuit Judge Charles Farmer in Civil Action No. 86-635757CZ (Randolph Street Intercounty Drainage District, et al vs. County of Wayne).

After the vote, however, the plaintiff dropped the case. The Drain Code has since been amended to more clearly authorize the Charter amendments.

The repealed sections read as follows:

Section 4.261: "The department of Drain Commission is hereby created. The head of the department is the elected Drain Commissioner."

Section 4.262: "The powers and duties of the department are those provided by law for drain commissioners. Additional powers and duties may be assigned the department by a reorganization plan adopted in accordance with this Charter."

Section 4.263: "The department shall submit an annual project plan to the CEO 6 months before the next fiscal year and shall notify the CEO of any change in the project plan within 30 days. The Drain Commissioner shall coordinate the project activities of the department with other County activities affecting County roads as directed by the CEO."

Part VII - General Provisions Governing Departments Headed by Elected Officers

4.271 Reorganization

The powers and duties specifically delegated by this Charter to departments headed by elected officers shall not be modified by a reorganization plan.

4.272 Functions Performed within Authorized Appropriations

Departments headed by elected officers shall exercise their powers and duties within authorized and allotted appropriations.

CHAPTER 3 OTHER DEPARTMENTS

PART I - Corporation Counsel

4.311 Department Created

The department of Corporation Counsel is hereby created. The director of the department is the Corporation Counsel. The director and deputy director shall be attorneys licensed to practice law in Michigan.

4.312 Powers and Duties

Except as otherwise provided by law or this Charter, the department shall provide legal services to the CEO, and all County agencies, and represent the County in all civil actions in which the County is a party.

COMPILER'S COMMENTS:

A procedure was established by Ordinance 83-166 to govern the engagement of outside legal counsel to advise, consult or represent the interests of the County Commission, its members, the Chief Executive Officer, and all other officials, departments, officers, agencies and instrumentalities and their directors, trustees, officers and employees. Under State law, elected officers have a right to appointed outside legal counsel whenever they are a defendant in a case which involves their official duties, if both the Prosecuting Attorney nor the Corporation Counsel decline to defend them.

This Section was amended by approval of a ballot proposition on November 5, 1996 which created an independent Commission Counsel and deleted the words "the Commission" from the list of agencies for which the Corporation Counsel primarily provides legal services.

4.313 Temporary Counsel

The Commission and the CEO may obtain the services of separate legal counsel on a temporary basis.

COMPILER'S COMMENTS:

The procedures and criteria for appointment of temporary outside counsel are set forth in Ordinance 83-166. (Code Chapter 49)

4.314 Division of Human Relations

(a) The division of Human Relations is hereby created in the department of Corporation Counsel. The director of the division shall be appointed by the CEO for a term of 6 years. The director of Human Relations may be removed for cause by the CEO with the approval of a majority of the Commissioners serving.

(b) The division shall provide advice to County agencies on matters of employment discrimination and contract compliance and may request the Commission and CEO to take appropriate action against non-complying agencies. The director shall provide reports at least monthly to the Commission and the CEO concerning the activities of the division.

COMPILER'S COMMENTS:

The Division of Human Relations was assigned express additional duties under:

The Purchasing Ordinance (83-138, as amended and republished in Ordinance 92-168 and then in 94-457).

The Contracting Ordinance (84-143, as amended by 92-117, 93-698, 94-387, 94-504, 94-757 and 96-27).

The Equal Contracting Opportunity Ordinance (93-738).

The Urban Development Zone Ordinance (90-411).

Each of these ordinances have since been superseded by Ordinance 2001-233 (the Comprehensive Procurement Ordinance), which has in turn been superseded by Ordinance 2006-1101. Ordinance 2006-1101 has subsequently been amended. (Code Chapter 120)

PART II - Personnel

4.321 Department Created

The Personnel department is hereby created. The director of the Personnel department shall have at least 5 years experience in personnel administration.

4.322 Powers and Duties

The Personnel department shall:

- (1) Perform the personnel and labor relations functions for all agencies of the County, except as otherwise provided by law or this Charter; and
- (2) Establish policies and programs for recruitment of potential employees and for training and development including career planning.

4.323 Labor Relations

(a) The division of Labor Relations is hereby created within the Personnel department. The director of the Labor Relations division shall be under the direct supervision of the CEO.

(b) The division of Labor Relations shall act for the County under the direction of the CEO in the negotiation and administration of collective bargaining contracts.

4.324 Employment Planning

(a) The division of Employment Planning is hereby created within the Personnel department.

(b) The division of Employment Planning shall:

- (1) Establish and administer a classification plan for all positions in the classified service;
- (2) Prepare, administer, and grade examinations of the classified service; and
- (3) Establish a uniform employee performance appraisal system for the classified service which shall rate each person at least once annually, furnishing a copy of the appraisal to the employee.

4.325 Classification Plan

(a) The classification plan, to the extent practicable and possible, shall assemble duties, responsibilities, and qualifications into broad organizational groupings. Each classification shall have common levels of responsibility and complexity. At least 4 persons must hold positions in each classification unless otherwise provided by ordinance. Entry into classified positions shall be by open, competitive examination. The classification plan and any amendment of the classification plan shall be filed with the County Clerk as a public record. The plan or an amendment is effective 30 days after filing or at a later date prescribed in the plan.

COMPILER'S COMMENTS:

To date, no ordinance has been formulated with regard to classifications containing less than 4 persons. The Corporation Counsel in Opinion 85-055 advised the Personnel Department that such an ordinance was necessary if any such classifications were to be established. Most of the one-of-a-kind positions are excepted from the classified service by Charter or ordinance.

(b) To the extent practicable, the division of Employment Planning shall use professionally developed examinations supported by empirical data demonstrating that the examination is predictive of, or significantly related to, the applicant's ability and capacity to serve in the position.

(c) The classified service includes all employees of the County except:

- (1) Elected officers and their deputies;
- (2) Persons holding appointments under this Charter;

- (3) Members of boards and commissions;
- (4) Persons employed to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the County;
- (5) Managerial or confidential positions as prescribed by ordinance; and
- (6) Employees serving directly under the County Commission or the CEO.

COMPILER'S COMMENTS:

Several managerial and confidential employee positions have been excepted from the classified service by ordinance:

Ordinance 84-70 excepts certain managerial attorney positions in the Departments of Sheriff, Prosecuting Attorney, Corporation Counsel and Public Works.

Ordinance 83-249 adopted on October 11, 1983 excepts the confidential secretaries of several top appointive and elected executive officers from the classified service.

Ordinance 84-40 adopted February 16, 1984 excepts the confidential managerial position of Deputy Treasurer - Investments from the classified service.

Ordinance 88-567 adopted November 3, 1988 excepts the managerial position of Medical Examiner from the classified service.

Ordinance 83-281, superseded by 90-435 adopted July 12, 1990 excepts the confidential positions of Equal Employment Opportunity Coordinator, Assistant Coordinator and clerical support from the classified service.

Ordinance 90-436 adopted July 12, 1990 excepts the confidential positions in the labor relations division from the classified service.

Ordinance 91-898 adopted December 19, 1991 excepts the managerial position of Departmental Executive - Chief of Staff in the Sheriff's Department from the classified service.

Ordinance 92-207 adopted April 2, 1992 excepts the confidential position of Departmental Executive - Public Information in the Sheriff's Department from the classified service.

Under Ordinance 94-104, as amended by Ordinances 94-580, 95-672, 96-169 and 96-371, all new persons hired are required to become County residents within 6 months of the date of hire. Ordinance 95-672 further required that all employees who were hired after March 1, 1977 and who still live in the County to maintain that residency. Both of these ordinances were invalidated by State legislation adopted in P.A. 212 of 1999, MCL 15.601.

Division heads within departments have also been excepted from the classified service by provisions of Reorganization Plans.

4.326 Civil Service Commission

(a) The Civil Service Commission is hereby created as a division within the Personnel department. The Commission consists of 3 members appointed for terms of 6 years, 1 of which expires in January of each odd year, but of the members first appointed, 1 shall serve a term of 2 years, 1 a term of 4 years, and 1 a term of 6 years. A commissioner shall not hold any other public office, except that of notary public, or be employed in any other capacity by the County or any other governmental agency, or any board, commission or department thereof. One commissioner shall be a qualified elector from the County seat, one commissioner shall be a qualified elector from outside the County seat, and the third member shall be a qualified elector with knowledge of and experience in labor relations. Not more than 2 commissioners may be from the same political party. A member may be removed by the CEO for cause.

(b) The Civil Service Commission shall meet at least once each month. Members shall be paid on a per diem basis. The Commission may not meet more than 6 days a month, except with prior approval of the director of the Personnel department.

(c) The Civil Service Commission shall hear and decide grievance cases arising under the classified service and grievance cases of examinees based on an allegation that the examination did not comply with the requirements of the Charter or the rules established by the division of Employment Planning. The Civil Service Commission may grant relief to an examinee only upon a finding of clear and convincing evidence that the examination failed to conform to those requirements.

(d) The Civil Service Commission may subpoena witnesses and documents, administer oaths, and take testimony. The Civil Service Commission may require compliance with a

subpoena by applying to an appropriate court. The Civil Service Commission may delegate its powers to a hearing officer. The hearing officer shall file a written report of the decision, setting forth findings of fact, conclusions of law, and recommended actions. The decision of the hearing officer is reviewable by the Commission in accordance with rules established by the Commission.

(e) The grievance procedure established by the Civil Service Commission is the exclusive procedure for classified employees not covered by a collective bargaining contract. If the classified employee is covered by a collective bargaining contract that contains a non-exclusive, different procedure, the employee may elect one of the procedures.

COMPILER'S COMMENTS:

In Opinion 85-056, the Corporation Counsel advised that when a grievance is based upon an allegation that an examination did not comply with the requirements of the Charter or the rules established by the division of Employment Planning, that the Civil Service Commission was the exclusive means of appeal. The Director of Personnel/Human Resources may not hear such an appeal or void an examination once the examination has been given. An attempt to do so is a nullity.

In Opinion 88-015, the Corporation Counsel advised that the Civil Service Commission has no authority to hear and determine appeals from employees who are excepted from the classified service.

(f) If the grievance procedure provided by the collective bargaining contract does not result in a final and enforceable determination, the classified employee may utilize the Civil Service Commission grievance procedure only after completion of the contract procedure.

4.327 Promotion

Except as otherwise provided by a collective bargaining contract, promotion in the classified service shall be by competitive examination. The names of the persons having the 3 highest passing scores in a promotion examination shall be forwarded to the head of the department for promotion selection. The employee must have received a favorable performance appraisal at the last performance rating prior to the selection. The division of Employment Planning shall give notice as provided by rule of the availability of positions in the classified service and the dates of promotion examinations at least 30 days in advance of any hiring or promotion examination.

COMPILER'S COMMENTS:

In Opinion 85-055, the Corporation Counsel advised that each vacancy must be posted at least 30 days in advance, whether or not there is already an eligible list in existence.

PART III - Management and Budget

4.331 Department Created

The department of Management and Budget is hereby created. The director of the department is the Chief Financial Officer. The director shall be appointed by the CEO and serve at the pleasure of the CEO. Approval by the Commission of the appointment is not required.

4.332 Powers and Duties

The department of Management and Budget has powers and duties to:

- (1) Effectuate the provisions of Article V of this Charter;
- (2) Implement administrative procedures and practices required by the CEO; and
- (3) Supervise and direct the activities of the divisions of the department.

4.333 Assessment and Equalization

(a) The division of Assessment and Equalization is hereby created within the department of Management and Budget. The director of the division has a 6-year term and may be removed for cause by the CEO with the approval of a majority of the Commissioners serving. The director shall possess qualifications required by law.

(b) The division has powers and duties to:

- (1) Assist the County Commission with the equalization of assessments of property subject to taxation in the County in accordance with law;
- (2) Prepare reports and other documents required by law; and
- (3) Enter into contracts with political subdivisions within the County to provide assessing, tax roll preparation, tax billing, or other related services.

4.334 Purchasing

(a) The division of Purchasing is hereby created in the department of Management and Budget.

(b) The division has powers and duties to:

- (1) Establish a central purchasing system; and

(2) Manage and control all purchasing activities of the County to insure their cost effectiveness and efficiency.

COMPILER'S COMMENT: See comment for Section 3.116.

The Purchasing Division and Director have significant powers and duties to implement each of the following ordinances:

The Purchasing Ordinance (83-138, amended and republished as 92-168 and then by 94-457, and again amended by 96-261).

The Contracting Ordinance (84-143, as amended by 92-117, 93-698, 94-387, 94-504, 94-757, and 96-27).

The Prompt Payment of Vendors Ordinance (92-169, adopted on April 2, 1992).

The Buy-American Ordinance (92-76, adopted on February 20, 1992, as amended by 92-479 on August 27, 1992).

The Urban Development Zone Ordinance (90-411).

The Equal Contracting Opportunity Ordinance (93-738 as adopted on December 16, 1993).

Each of the foregoing ordinances were folded into Ordinance 2001-233, the Comprehensive Procurement Ordinance, that is superseded by Ordinance 2006-1101, which has subsequently been amended. (Code Chapter 120)

In Opinion 86-020, the Corporation Counsel has opined that purchases made from County funds for the courts are subject to the requirements of the Purchasing Ordinance. In Opinion 86-018, however, it was concluded that the Election Commission, by sections 689 and 690 of the Election Code, has total independent control over the award and management of ballot printing contracts.

PART IV - Health

4.341 Department Created

The department of Health is hereby created.

4.342 Powers and Duties

The department shall maintain health programs, including programs relating to aging, air, land, and water pollution, respiratory disease, and substance abuse and shall be responsible for the activities provided by law for a medical examiner.

4.343 Environmental Protection

(a) The division of Environmental Protection is hereby created in the department of Health. The director of the division shall have had at least 5 years experience in environmental management.

(b) The division shall investigate violations of environmental protection laws and ordinances, and may seek civil and criminal penalties provided by law, and may recommend ordinances and rules providing additional protection for the County environment from contamination, impairment, or destruction.

COMPILER'S COMMENTS:

Ordinance 84-162, as amended, provides for the powers, duties, and qualifications of members of the administrative hearings board on food service sanitation licenses. (Code Chapter 157)

Ordinance 91-880 authorized the Department to conduct a homeless support program. (Code Chapter 165)

Ordinance 98-316 prohibited the operation of a drug abuse clinic within 1000 feet of a school. (Code Chapter 155)

Ordinance 99-537 authorized the Department to operate a rodent control education program. (Code Chapter 156)

Ordinance 2003-748 authorized the Department to operate a child lead testing program. (Code Chapter 151)

Ordinance 2005-697 authorized the Department to enforce a prohibition upon the advertisement and sale of food as Halal or Kosher, when it in fact is not such. (Code Chapter 159)

The administration of the following four programs was originally placed by ordinance with the Department of Health, but was transferred to the Department of Environment effective December 1, 1994, by amendment of the Reorganization Plan:

1. A Wayne County Air Pollution Control Ordinance (85-375) was adopted on September 19, 1985, and amended by Ordinance 89-213 on April 11, 1989. These were superseded by Ordinance 98-601

which amended and republished the Ordinance. Subsequently, the State of Michigan took over the program, but the Ordinance was left in place as a basis for the continuing enforcement of existing consent decrees. (Code Chapter 89)

2. A Solid Waste Management Program was established by Ordinance 90-407, adopted on June 27, 1990, and amended by Ordinance 90-509 on August 16, 1990 with respect to radio- active waste disposal. These were superseded by Ordinance 2000-654, which again was superseded by Ordinance 2004-787. (Code Chapter 105)

3. A Sewer Use Control Ordinance (86-94, as amended and republished by 95-225, and further amended by 97-210 and 98-473, and again amended and republished by 2010-682) was adopted to prohibit certain kinds of industrial discharges and to protect the sewer system from damage. It was previously enforced by the Department of Public Works. (Code Chapter 101)

4. A No-Dumping Ordinance (96-100 as amended by 97-210, 97-297, and 2000-404) prohibits dumping debris or pollutants in county waterways, drains, and property. (Code Chapter 97)

The Department of Environment was eliminated and its functions assigned to the Department of Public Services in 2009 by an amendment to the 2007 Reorganization Plan.

PART V - Public Works

4.351 Department Created

The department of Public Works is hereby created.

4.352 Powers and Duties

(a) The Department of Public Works shall exercise powers and duties provided by law or any reorganization plan. The Director of the Department of Public Works shall also exercise those executive powers and fulfill those executive duties which are provided by law for drain commissioners, unless otherwise provided by any reorganization plan.

(b) The County Commission shall exercise those legislative powers and duties provided by law for drain commissioners. Those powers and duties shall include but are not limited to those described in Section 3.115 (1) to (15) of this Charter and in addition the County Commission shall:

(1) Approve or reject appointments to boards of determination in accordance with Article IV.

(2) Approve the making of all contracts for all services for drainage districts subject to the provisions of the Purchasing Ordinance.

(3) Approve the apportionment of benefits for drainage districts.

(4) In order to insure the lowest possible cost to the taxpayers, the County Commission shall establish by Ordinance a policy whereby County employees shall be used to the maximum extent possible in cleaning, maintaining and constructing County drains.

(c) Nothing in this section is in derogation of the authority and those powers and duties provided by law for County drainage boards.

COMPILER'S COMMENTS:

Section 4.352 was amended at the General Election of November 4, 1986, along with Sections 2.211, 2.212, 7.120 and 8.122(b), and in addition to the repeal of Sections 4.115, 4.261, 4.262 and 4.263. The vote was 291,053 (yes) to 114,465 (no) to the proposition: "Shall the Wayne County Home Rule Charter be amended to eliminate the office of Drain Commissioner effective January 1, 1987, and further to separate and distribute the powers and duties of a Drain Commissioner between the executive and legislative branches in accordance with the general design of the Charter?" The validity of this full set of amendments and repealers was challenged before Third Circuit Judge Charles Farmer in Civil Action No. 86-635757CZ (Randolph Street Intercounty Drainage District, et al vs. County of Wayne). After the vote, however, the plaintiff dropped the case. The Drain Code has since been amended to more clearly authorize Charter changes.

The amended section 4.352 previously read as follows:

"The department shall exercise powers and duties provided by law or any reorganization plan."

The Department of Public Works enforced the Wayne County Sewer Use Ordinance, (86-94) from March 20, 1986 until December 1, 1994 when it was transferred to the Department of Environment by an amendment to the Reorganization Plan. The Department of Environment was eliminated and its functions assigned to the Department of Public Services in 2009 by an amendment to the 2007 Reorganization Plan.

Ordinance 84-176 establishes a minimum period of 7 years for spreading drainage district assessments.

Ordinance 86-35 establishes conditions for the pledge of the full faith and credit of the County for drainage district bonds.

Ordinance 86-322 directs the Drain Commissioner to provide certain specified information to the County Commission when drain taxes are proposed to be levied by special assessment.

PART VI - OFFICE OF PUBLIC SERVICES

4.361 Department Created

The Office of Public Services is created. The department head shall be appointed by the CEO pursuant to Section 4.385.

4.362 Powers and Duties

The department shall continue a system of county roads. Those powers and duties which are otherwise exercised under state law by a board of county road commissioners, are divided between the executive and legislative branches in accord with the general provisions of this Charter. The CEO shall administer and coordinate under road system laws. The County Commission shall approve the budget, contracts, appointments, rules, and borrowing; oversee budget compliance; and exercise other legislative powers and duties provided by the Charter.

The department shall comply with all general procedures, limitations and requirements established by this Charter. Additional powers and duties may be assigned to the department by a reorganization plan or ordinance.

COMPILER'S COMMENTS:

The original Sections 4.361 and 4.362 were repealed along with Section 7.117, and new sections 4.361, 4.362 and 8.123 were added to the Charter at the Primary Election held on August 7, 1984. The vote was 116,350 (yes) to 58,351 (no) to the proposition: "Shall the Wayne County Home Rule Charter be amended to abolish the Road Commission, to vest its administrative powers and duties in the executive branch, and to vest its legislative powers and duties in the legislative body?".

The original sections read as follows:

"4.361 Department Created

The department of the Road Commission is hereby created. The head of the department is the Road Commission consisting of 3 members. One member shall be a qualified

elector of the most populous city in the County; one shall be a qualified elector from another city in the County; and one shall be a qualified elector of a township in the County. The term of the members is 4 years."

"4.362 Powers and Duties

The department may exercise all powers and duties provided by law. Those powers and duties are not modified by this Charter and may not be modified by a reorganization plan, but additional powers and duties may be assigned the department by the reorganization plan."

An additional duty was assigned to the Office of Public Services in an Ordinance (85-481) adopted on November 26, 1985 which authorized Redford Township to permit angle parking along both sides of Six-Mile Road between Five Points Road and Kinloch Street, pursuant to Section 675(3) of the Michigan Vehicle Code. (Code Chapter 229)

Ordinance 94-329, adopted on May 19, 1994, provides for the establishment of Natural Beauty Roads pursuant to Michigan Compiled Laws, Section 247.381 et seq. (Code Chapter 245)

Ordinance 94-330, adopted on May 19, 1994, establishes standards for the erection of information signs on County property, and provides for civil penalties for violations of those standards. (Code Chapter 249)

Ordinance 96-756, as superseded by Ordinance 97-35, adopts the BOCA Building, Fire Prevention, Electrical, Mechanical, and Plumbing Codes for work done on County property. (Code Chapter 233)

Ordinance 2004-097 was enacted to clarify and specify which powers and duties of a Road Commission under State law are those of the Department of Public Services, and which are legislative powers and duties. (Code Chapter 247)

The following ordinances were superseded and obviated by State legislation which in 2002 created an independent Airport Authority:

- 1. A further additional duty was assigned to the Office of Public Services - Airport Division, by an Airport Security Ordinance (86-50) adopted on February 20, 1986, requiring cooperation with the Michigan State Police in maintaining airport security, and requiring that appropriate space be provided within the main terminal for State Police operations.**
- 2. Ordinance 91-170, adopted March 14, 1991, enacted the Michigan Vehicle Code to control traffic at Metropolitan Airport.**

3. The general operations of Metropolitan Airport were authorized by the Airport Ordinance 91-466. Certain aspects of this ordinance were amended by:

**91-497, 91-766, and 91-892 (Powers of Airport Director);
93-350 (Smoking ban);**

93-637 (Airport police insignia); and

93-652 (Baggage cart rental operations).

PART VII - Senior Citizens Services

4.371 Senior Citizens Services

The department of Senior Citizens Services is hereby created. The director of the department shall be appointed by the CEO for a 6 year term.

4.372 Powers and Duties

The department shall coordinate the operations of the County that provide services for senior citizens. The department shall serve as the advocate for senior citizens in County operations.

COMPILER'S COMMENTS:

- 1. The Senior Citizens Department was authorized by Ordinance 2004-315, as amended by Ordinance 2007-241, to establish a Chore Services Program for senior citizens. (Code Chapter 174)**
- 2. Pursuant to Charter Section 4.383, the specific duties provided within this Section may not be changed by a Reorganization Plan, but additional duties may be provided that means. By adoption of a Reorganization Plan in 2003, the Veterans Relief Division was incorporated within the Senior Citizens Department. Ordinance 98-798 established the parameters of the veterans relief program. (Code Chapter 175)**

PART VIII - General Provisions Governing Departments

4.381 Other Agencies

Other agencies, departments, instrumentalities, and boards and commissions of the County may be created only by ordinance or a reorganization plan.

COMPILER'S COMMENTS:

Ordinance 83-20 authorized a Planning and Development Commission. (Code Chapter 85)

A youth habilitation retreat program was authorized by Ordinance 87-324, superseded by 87-464, superseded in turn by 88-35. These ordinances were repealed in 1997.

A model youth services program was authorized by Ordinance 91-364, amended by 91-483 and 92-115, and superseded by 93-610. (Code Chapter 169) Distribution of funds for the youth services program as provided from a special 1/10th mill operating millage is directed by Ordinance 96-86 as amended by Ordinance 98-283. (Code Chapter 181)

An emergency homeless support program was authorized by Ordinance 91-880. (Code Chapter 165)

The CEO was authorized to operate the Youth Home and to set certain limits upon admissions by Ordinance 92-414. (Code Chapter 149)

Ordinance 94-205, adopted on April 12, 1994, creates a County Housing Commission and empowers it to acquire, maintain, construct, demolish, improve, operate and subsidize housing facilities. (Code Chapter 81)

Ordinance 91-718, as amended by 95-499, 96-722, 2005-366 and 2006-917, created a Jail Commissary Board to oversee the jail commissary and dispense funds for inmate recreation and education. (Code Chapter 193)

Ordinance 96-86, as amended by 98-283, established a community allocation formula for youth services funds. (Code Chapter 181)

Ordinance 97-5 established a Wayne County Women's Commission. (Code Chapter 177)

Ordinance 98-381 authorized establishment of a Wetlands Mitigation Bank. (Code Chapter 107)

Ordinance 99-392 authorized establishment of a Department of Jobs and Economic Development. This ordinance was amended by 2004-416 to revise the department as a Department of Economic and Neighborhood Development. (Code Chapter 78)

Ordinance 99-393 authorized establishment of a Department of Environment. (Code Chapter 91)

Ordinance 99-394 authorized establishment of a Department of Community Justice. (Code Chapter 202)

Ordinance 99-395 authorized establishment of a Department of Information Technology. (Code Chapter 38)

Ordinance 2001-045 authorized establishment of a Parent-Based Head Start Policy Council. (Code Chapter 172)

Ordinance 2002-1141 authorized establishment of a Department of Homeland Security. (Code Chapter 47)

4.382 Directors and Deputies

Unless otherwise specified by this Charter, each department shall be headed by a director. Each department, other than those headed by a board or commission, may have a deputy director who shall exercise the powers and duties of the director if the director is absent or disabled or if the office of director is vacant.

4.383 Reorganization Power Limited

The powers and duties of all departments and divisions created under this Chapter may be modified by a reorganization plan other than powers and duties specifically granted to the division of Human Relations, the division of the Civil Service Commission, the division of Assessment and Equalization, the department of Senior Citizen Services, and the Retirement Commission.

4.384 Divisions

The powers and duties of a division are subject to the control and supervision of the department except the powers and duties of divisions that are not modifiable under Section 4.383.

4.385 Appointments

Unless otherwise specifically provided by this Charter or law:

- (1) The Deputy CEO, directors, deputy directors, members of boards and commissions, representatives of the County on intergovernmental bodies, and all other officials or representatives not in the classified service shall be appointed by the CEO with the approval of a majority of Commissioners serving.
- (2) If the Commission fails to act on an appointment within 30 days after its submission to the Commission, the appointment is effective.
- (3) Appointees in County government serve at the pleasure of the appointing authority.

COMPILER'S COMMENTS:

The Corporation Counsel has issued dozens of opinions upon the applicability and meaning of Section 4.385 over the past eleven years, as it applies to appointees to statutory boards and commissions. Some are contradictory. All disregard the first phrase "unless otherwise specifically provided by this Charter or law". There is specific law regarding the appointment of virtually every statutory board and commission, which identifies the County Commission as the appointing authority, or which provides for removal of appointees only for cause, and not simply at will. Disagreements over the meaning of this section are not likely to be resolved except by extensive litigation, or by amendment of the several relevant statutes.

4.386 Vacancies

A vacancy in an office created under this article occurs if the holder of the office dies, resigns, is removed from office, or is no longer a qualified elector of the County.

COMPILER'S COMMENTS:

In Opinion 85-035, the Corporation Counsel advised that only the 21 offices specifically created under Article IV are required by this Section to be Wayne County residents and registered voters. Members of the Economic Development Corporation were held not to be so required.

ARTICLE V FINANCE

5.111 Financial Management Principles

Wayne County shall employ generally accepted principles of accounting, auditing, and reporting, appropriate to local government and as required by law, in the conduct of its financial affairs.

COMPILER'S COMMENTS:

Ordinance 94-103 requires that the Chief Financial Officer establish and maintain a Fixed Assets Account Group, consistent with generally accepted principles of accounting. (Code Chapter 69)

Ordinance 93-587, as amended by 2001-813 and 2002-1193, places restrictions on the personal use of County vehicles, requires that certain use records be kept, and that certain justification and competitive purchasing procedures be used to acquire those vehicles. (Code Chapter 33)

Ordinance 96-760 defines the requirements for the Capital Improvement Fund and Capital Improvement Program. (Code Chapter 113)

Most of that which is "required by law" is found in the Uniform Budgeting and Accounting Act, being Michigan Compiled Laws, Section 141.421 et seq.

5.112 Fiscal Year

The fiscal year of the County is established by ordinance.

COMPILER'S COMMENTS:

Ordinance 97-537 established a new fiscal year ending on September 30th. December 1, 1997 to September 30, 1998 was established as a ten-month transitional fiscal year.

5.113 Independent Audit *(Repealed effective November 30, 1997)*

(a) An independent external auditor shall be engaged pursuant to contract by the CEO with the approval of a majority of the Commissioners serving. The auditor shall be a certified public accountant. The term of the contract shall be established by the Commission, but the first term shall be for not less than 3 years and the auditor may not serve more than 8 consecutive years. The contract may be terminated for cause by a majority of the Commissioners serving.

(b) The auditor shall audit annually all funds and property of the County and shall report the extent of compliance with Section 5.111. The audit and report shall be completed within 120 days after the fiscal year. Copies of the audit and report shall be transmitted to the Commissioners, the State Treasurer, and as required by ordinance and shall be available for public inspection.

COMPILER'S COMMENTS:

This Section is repealed effective November 30, 1997 as a result of voter approval of a ballot proposal transferring this function to the Legislative Auditor General. See Section 3.119.

5.120 Form of the Budget and Appropriation Ordinance

No later than December 7, 2012, the County Commission shall establish the form (including but not limited to lump-sum and line-item) of the appropriation ordinance and comprehensive budget for the County. A change to the form of the appropriation ordinance and comprehensive budget shall be adopted by the County Commission at least 10 months before the beginning of a fiscal year to be effective for that fiscal year.

COMPILER'S COMMENTS:

This Section was added to the Charter by voter approval of a ballot proposition on November 6, 2012.

5.121 Budget and Ordinance Preparation and Submittal

The CEO shall prepare and submit a proposed appropriation ordinance and comprehensive budget for the County in the form established by the County Commission.

COMPILER'S COMMENTS:

This Section was amended by voter approval of a ballot proposition on November 6, 2012. Before amendment, this Section read as follows:

“5.121 Budget Preparation and Submittal

The CEO shall prepare and submit a comprehensive budget for the County.”

5.122 Policy Statement

At least 9 months before the next fiscal year, the CEO shall transmit the budget policy statement to all agencies to be included in the comprehensive budget. This statement shall

estimate the revenues available for appropriation in the next fiscal year and include a budget policy statement.

5.123 Budget Request

At least 6 months before the next fiscal year, all agencies included in the comprehensive budget shall submit to the CEO their budget requests and other information required by the CEO.

5.124 Budget Documents and Transmittal

The CEO shall transmit the comprehensive budget for the County's next fiscal year to the County Commissioners at least 120 days before the fiscal year. The comprehensive budget shall contain the budget message, budget document, the proposed appropriation ordinance, and other information required by law or ordinance.

5.125 Budget Message

The budget message shall:

- (1) Describe the proposed financial policy of the County;
- (2) Indicate the important features of the budget, including major changes;
- (3) Explain the budget in fiscal and program terms;
- (4) Explain the estimates of revenues and proposed expenditures;
- (5) Summarize the debt position;
- (6) Summarize the fiscal data for the 2 prior fiscal years and the current year for each major category of revenue and expenditure; and
- (7) Include estimates of revenue and expenditures for each major category for the next 5 fiscal years.

5.126 Budget Document

The budget document shall contain information showing:

- (1) Full costs of each agency by division;
- (2) Full costs of conducting County functions and operations;
- (3) Major program goals and objectives;

- (4) Objects of expenditures, including personnel, fringe benefits, pensions, supplies, materials, rent, travel, and equipment by agency;
- (5) A statement of estimated revenue;
- (6) A report of special funds;
- (7) A statement of expenditures;
- (8) A debt service statement;
- (9) A capital outlay statement;
- (10) A statement on pensions and budget stabilization; and
- (11) A statement of surplus or deficit.

(a) Statement of Estimated Revenue *(See (5) above.)*

The statement of estimated revenue shall include taxes, fees, tolls, special assessments, excises, charges, reimbursements, State grants and contract receipts, federal grants and contract receipts, investment income, all other receipts, and unencumbered balances available for re-appropriation. The statement shall include a comparison of estimated revenue by type to revenue by type in the current fiscal year and the prior 2 fiscal years and an explanation of any significant increase or decrease.

(b) Report of Special Funds *(See (6) above.)*

The report of special funds shall separately state the revenues and expenditures for the current year and prior 2 fiscal years of funds which can be used only for limited purposes.

(c) Statement of Expenditures *(See (7) above.)*

The statement of expenditures shall include:

- (1) An explanation of proposed expenditures in sub-unit detail certified by the CEO and as required by law;
- (2) A comparison of actual expenditures for each sub-unit detail in the current and prior 2 fiscal years;
- (3) An estimate of projected expenditures for the current and next 3 fiscal years; and

- (4) An indication of the amount and type of revenue available for each category of expenditure and expected increases or decreases in those revenues.

(d) Debt Service Statement *(See (8) above.)*

The debt service statement shall:

- (1) Describe the current status of any indebtedness issued by the County or a County agency;
- (2) Describe the present condition of any sinking or debt retirement fund;
- (3) Describe interest requirements for the next fiscal year;
- (4) Describe any authorization for debt which has not yet been issued;
- (5) Contain an accounting of revenue pledged for the retirement of any revenue bonds, including an estimate of those revenues in the current fiscal year and the next 5 fiscal years; and
- (6) Include certification by the CEO of the level of appropriations required to meet the debt service requirements of the County for the next fiscal year.

(e) Pensions and Budget Stabilization *(See (10) above.)*

The statement of pensions and budget stabilization fund shall contain the certification of the CEO with respect to the level of funding required for pensions under the State Constitution and the level of funding required for the budget stabilization fund.

(f) Capital Outlay *(See (9) above.)*

The capital outlay statement shall:

- (1) Provide an informational summary of projected revenues and expenditure for each special purpose capital outlay fund of the County;
- (2) State the estimated cost of each project upon completion;
- (3) State appropriations to date for the project;
- (4) Indicate the estimated annual operating cost for the project and the program utilizing the project, if any;
- (5) Indicate the source of operating funding for the project and any program utilizing the project for the current year and the next 3 fiscal years; and

- (6) Contain a 5-year forecast of capital outlay needs.

COMPILER'S COMMENTS:

Ordinance 96-760 sets forth the requirements of a ten-year capital improvement plan. (Code Chapter 113)

(g) Surplus or Deficit *(See (11) above.)*

The statement of surplus or deficit shall contain an estimate of the surplus or deficit for the current fiscal year in each fund.

5.127 Appropriation Ordinance

The proposed appropriation ordinance shall:

- (1) Incorporate the comprehensive budget in detail consistent with the chart of accounts and budget document;
- (2) Include appropriate budget execution instructions and establish the transfer and impoundment authority of the CEO; and
- (3) Include a statement of revenue by type and fund related to each proposed expenditure. The proposed ordinance may not recommend expenditures, including any accumulated deficit, that exceed revenues, including any surplus.

5.131 Appropriation Ordinance Introduced

At least 105 days before the next fiscal year, the County Commission shall introduce the proposed appropriation ordinance.

5.132 Hearings

At least 80 days before the next fiscal year, the County Commission shall complete hearings on the budget. The Commission shall afford an opportunity for persons authorized by law to testify. The Commission may direct the CEO to submit additional information concerning the comprehensive budget.

5.133 Public Hearings

At least 75 days before the next fiscal year, the County Commission shall hold at least 2 public hearings to receive citizen testimony. Notice of these hearings shall be published as required by law.

5.134 Appropriation Ordinance

(a) At least 30 days before the next fiscal year, the County Commission shall adopt an appropriation ordinance. The total of appropriations shall not exceed the revenue estimates certified by the CEO and any increase in revenue raising authority finally adopted. Whenever proposed total expenditures equal total available estimated revenues, a Commissioner proposing an amendment which increases appropriations on final adoption must propose a balancing increase in revenue raising authority or a reduction in other proposed expenditures. The appropriation ordinance shall contain the mandatory appropriation for debt service, pensions, and the budget stabilization fund certified by the CEO, shall contain budget execution instructions, and shall establish the transfer and impoundment authority of the CEO.

(b) An appropriation contained in the appropriation ordinance constitutes a determination by the County Commission that the appropriation is a serviceable level of funding.

COMPILER'S COMMENTS:

Subsection 5.134(a) was amended by voter approval of a ballot proposition on November 6, 2012. The last sentence of the Subsection, which read: "the format of the appropriation ordinance shall be consistent with the format of the CEO's proposed appropriation ordinance" was eliminated.

5.141 Budget Execution

Expenditures may be made only if authorized. An appropriation is not a mandate to spend.

COMPILER'S COMMENTS:

As noted in Corporation Counsel Opinion 81-103, under the Uniform Accounting and Budgeting Act, being Michigan Compiled Laws Section 141.421, et seq, an administrative officer may be sued to recover the costs of an unauthorized expenditure. Responsible elected officers are deemed to be "administrative officers" under the Act. Either the Michigan Attorney General or the Prosecuting Attorney is authorized to bring the action. Also see Charter Sections 4.272 and 5.143 which affirm this liability.

5.142 Allotments

On or before the first day of the fiscal year, the CEO shall establish a schedule of periodic allotments for the fiscal year. The CEO may revise the allotments from time to time. The allotments are binding on agencies included in the comprehensive budget and shall not be exceeded.

5.143 Disbursement Procedure

An expenditure may be made and a contractual obligation incurred only if an unencumbered and allotted appropriation is available. An expenditure made or obligation incurred in violation of this section is void. The Chief Financial Officer shall maintain an appropriations and allotments ledger, including a record of encumbrances. The CEO, in accordance with this Charter and as provided by law, shall establish a system of accounts and specify uniform accounting procedures and procedures for the expenditures of funds. Payments shall be made by the Treasurer only if authorized by the Chief Financial Officer and only if funds are available for the expenditure.

COMPILER'S COMMENTS:

Section 11 of the Purchasing Ordinance (94-457 as amended by 96-261 and folded into Ordinance 2001-233, the Comprehensive Procurement Ordinance) further provided:

“(a) No obligations shall be incurred against, and no payment shall be made from any allotment or appropriation except in accordance with appropriations duly made and unless the Chief Financial Officer certifies that there is a sufficient unencumbered balance in the allotment or appropriation and that sufficient funds will be or are available to meet the obligation

(b) Whenever the County is party to any contract, deed, lease or other instrument, the Chief Financial Officer shall attach a certification to the deed, contract, lease or other instrument stating that proper and fair consideration has been received by the County.”

Sub-section 9(D) of the Contracting Ordinance (84-143, as amended by 92-117, 93-698, 94-387, 94-504, 94-757 and 96-27) provided further:

“The Chief Financial Officer shall develop and institute a document approval procedure which shall reasonably assure that all departmental clearances and approvals have been obtained, including County Commission approval where applicable. The same or a similar checklist shall be attached to each order which is authorized and forwarded to the Wayne County Treasurer for payment of a contract. This checklist shall clearly indicate whether or not County Commission approval is required, and if so, then the date and means (emergency authorization by the chairperson, or by resolution of the Commission) by which it was granted.

The Treasurer shall not make payment on an order which lacks this information.”

All of these particular and specific ordinance requirements were repealed by the passage of Ordinance 2006-1101, which has subsequently been amended.

5.144 Reports to the County Commission

The CEO shall file a written report with the Commission on the financial condition of the County at least quarterly. The report shall include:

- (1) Expenditures and encumbrances since the prior report and year-to-date for each appropriation;
- (2) Any revision of allotments made by the CEO;
- (3) Actual revenue receipts by type, indicating variances from the revenue estimates contained in the comprehensive budget;
- (4) Unencumbered balances in appropriations and the current allotment schedule;
- (5) Statement of actions taken to comply with recommendations in audit reports; and
- (6) Additional information required by ordinance.

5.145 Appropriation Ordinance Amendments

The Commission may amend the appropriation ordinance. An amendment to increase appropriations may be made only if sufficient unappropriated revenue is available.

5.146 Budget Reductions

If the CEO certifies to the Commission a reduction in estimated revenue of any type that would cause an expenditure of an approved appropriation to exceed the available revenue and submits a proposed appropriation reduction, the Commission must reduce appropriations to avoid the deficit. If the Commission fails to amend the appropriation ordinance within 30 days after the certification of the reduced revenue, the requested appropriation reduction submitted by the CEO takes effect.

COMPILER'S COMMENTS:

Provision has been made in the annual appropriations ordinances from 1990 to 2012 for delegation to the CEO the power to initiate a similar certification process when expenditures will exceed appropriated levels. These

processes basically act as a forced amendment of the appropriations ordinance, which of course can be subsequently amended.

5.147 Transfers and Impoundments

Transfers among appropriations and impoundments of appropriations may only be made in accordance with the appropriation ordinance as adopted or amended.

5.148 Program Review

The Commission, upon recommendation of the CEO, shall establish a schedule requiring every County operation or function to have a program review at least every 4 years. The CEO shall conduct the program review and submit a report of each program review to the Commissioners. The program review shall analyze the necessity and cost effectiveness of the operation or function and include recommended changes, including expansion, elimination, or alterations of the operation or function.

5.151 Comprehensive Annual Report

Within 120 days after each fiscal year, the final comprehensive annual financial report, adhering to the accounting and reporting standards required by law or this Charter, and certified by the independent auditor, shall be transmitted to the Commission and the State Treasurer.

5.161 Budget Stabilization Fund

A separate budget stabilization fund is created. Except as otherwise provided by law or this Charter, appropriations to the fund may be made for any fiscal year. Appropriations from the fund may be made as provided by law. If the growth in general-purpose, general-fund revenues exceeds growth in the price index specified by ordinance, the CEO may recommend to the Commission appropriations to the budget stabilization fund not to exceed 50% of that excess growth.

COMPILER'S COMMENTS:

The first budget to include an appropriation for a budget stabilization fund was that for the 1996-97 Fiscal Year.

5.171 Budget Deficits

If expenditures exceed revenues in any fiscal year, the CEO shall submit a specific 5-year plan for short-term financial recovery and long-term financial stability to the Governor and the

Legislature prior to the adoption of the next annual budget. The 5-year plan shall include those items required by law, the Governor, or the Legislature.

5.172 Debt Limit and Borrowing Authority

The debt limit of the County shall be as provided by law. The County may borrow in accordance with law.

COMPILER'S COMMENTS:

Three ordinances have been adopted to govern the imposition of drainage taxes and special assessments: (Code Chapter 93)

Ordinance 84-176 adopted May 31, 1984, which provides that assessments be spread for a minimum of seven years, but that early payment not be barred.

Ordinance 86-35 adopted February 6, 1986, which amends 84-176 by making the term of an assessment an option for the community affected, and which provides further procedural requirements in cases in which the full faith and credit of the County is to be pledged for the prompt payment of any bonds, drain notes or other evidences of indebtedness of a Chapter 8 drainage district.

Ordinance 86-322 adopted August 21, 1986, prescribes the information required and procedure to be followed by the Drain Commissioner in submitting special assessment rolls to the County Commission for the levy of Chapter 8 drain taxes.

5.181 Taxing Authority

(a) The County may by ordinance levy and collect any tax, fee, rent, toll, or excise authorized by law. The County may levy an ad valorem property tax not in excess of 1% of the State equalized valuation of the taxable property within the County.

(b) The County is authorized to levy an ad valorem property tax not to exceed 6.07 mills. As provided by law, the 6.07 mills is a transfer of the millage allocated to the County from the 15 mill limitation authorized by Article IX, Section 6 of the Constitution. This section does not authorize an increase in rate of taxation as defined by Article IX, Section 31 of the Constitution.

(c) An increase in the authorization may be approved by the voters of the County for a period of not more than 20 years provided the increase does not produce a total authorization of more than 10 mills.

(d) The County may impose taxes without limitation as to rate or amount for the payment of principal and interest on bonds or evidences of indebtedness approved by the voters.

COMPILER'S COMMENTS:

Pursuant to Section 5.181(a), and state authorization, the fees for services provided by the Register of Deeds were fixed by an Ordinance (85-545) adopted on December 19, 1985.

Pursuant to Section 5.181(a), and state authorization, the fee for services provided in processing and issuing a concealed weapons permit was fixed by Ordinance 86-538, adopted on December 18, 1986.

Fee ordinances have been consolidated into a standard format known as the Comprehensive Fee Ordinance which has been amended frequently: 87-224, 87-308, 87-484, 88-66, 88-129, 88-396, 89-153, 89-631, 89-766, 89-769, 90-777, 90-830, 91-271, 91-285, 91-399, 92-165, 92-396, 92-539, 93-117, 93-156, 93-342, 93-558, 94-111, 94-597, 95-200, 95-456, 95-876, 96-165 and 97-209. There have numerous amendments since these. (Code Chapter 129)

Ordinance 96-471 was adopted by a vote of the public on November 5, 1996. It authorizes a levy of a 1% hotel room tax and a 2% car rental tax, the proceeds of which go to subsidize construction of a sports stadium. (Code Chapter 143)

5.182 Net Limitation Tax Rate

As provided by law, the net limitation tax rate to be allocated to other taxing units in the county is 8.93 mills. The net limitation tax rate is from the 15 mill limitation authorized by Article IX, Section 6 of the Constitution. The County Tax Allocation Board shall meet annually, as required by law, to allocate the net limitation tax rate. As provided by Article IX, Section 31 of the Constitution, the net limitation tax rate shall not be increased without a vote of the people.

5.191 General Provision

Failure to meet the deadlines prescribed by this article does not invalidate a duly enacted appropriation ordinance.

ARTICLE VI RETIREMENT

6.111 Retirement System

The Wayne County Employees Retirement System created by ordinance is continued for the purpose of providing retirement income to eligible employees and survivor benefits. The County Commission may amend the ordinance, but an amendment shall not impair the accrued rights or benefits of any employee, retired employee, or survivor beneficiary.

COMPILER'S COMMENTS:

The Wayne County Retirement Ordinance was republished on November 20, 1986 (Ordinance 86-486) to incorporate all prior amendments, conform the ordinance with federal law, remove outdated provisions, and reconcile inconsistent terminology. This was done again on November 17, 1994 in Ordinance 94-747, which has since been amended by Ordinances 97-728, 98-335, 2000-536, 2002-1103, 2002-1147, 2003-124, 2005-924 and 2010-514. (Code Chapter 141)

It has been ruled that those provisions of the Wayne County Retirement Ordinance which provided for "20 and out" benefits for non-union employees were invalid because in conflict with MCL 46.12a which requires that a county employee have at least 25 years of service to become eligible for retirement benefits if less than 60 years of age. (Donald Gray vs. Wayne County Retirement System, et al Civil Action No. 84-401 649 CK, August 31, 1984, Third Circuit Judge Roland Olzark presiding.)

6.112 Retirement Commission

The Retirement Commission is composed of 8 members: The CEO or the designee of the CEO, the chairperson of the County Commission, and 6 elected members. The members must be residents of Wayne County. Four members shall be active employees elected by active employees of the County in the manner provided by ordinance and 2 members shall be retired employees elected by retired employees of the County in the manner provided by ordinance. The term of the elected members is 4 years. The Retirement Commission shall administer and manage the Retirement System. The costs of administration and management of the Retirement System shall be paid from the investment earnings of the Retirement System.

COMPILER'S COMMENTS:

In Opinion 88-012, the Corporation Counsel advised that the Retirement Commission was without authority to amend the Retirement Ordinance or to expand benefits beyond those authorized by the Ordinance.

At the general election held on November 6, 2012, voters rejected by a vote of 302,104 (yes) to 321,515 (no) a proposed amendment to this Section. The ballot question certified to the County Clerk read:

“Shall Section 6.112 of the Wayne County Home Rule Charter be amended to expand the Wayne County Retirement Commission’s membership from 8 to 9, adding as a member the Wayne County Treasurer or his or her designee; and also to authorize the Chairperson of the Wayne County Commission, who is also a member of the Wayne County Retirement Commission, to appoint a person to serve as his or her designee on the Retirement Commission; and further to allow employees and retirees of the Wayne County Airport Authority to vote for and serve as members of the Wayne County Retirement Commission with no more than one member being an airport employee or retiree until such time as the Airport Authority establishes its own retirement system or pension plan?”

6.113 Financial Management

The financial objective of the Retirement System is to establish and receive contributions each fiscal year which, as a percentage of active member payroll, are designed to remain approximately level from year to year. Specifically, contributions shall be sufficient to (i) cover fully costs allocated to the current year by the actuarial funding method, and (ii) liquidate over a period of years the unfunded costs allocated to prior years by the actuarial funding method. The period of years used in the application of item (ii) shall not exceed 35 years for unfunded amounts in existence December 1, 1982, 25 years for unfunded amounts resulting from benefit changes effective on or after December 1, 1982, and 15 years for experience gains and losses during years ending after November 30, 1981. Contributions made after November 30, 1981, which are in excess of the minimum requirement, may be used to reduce contribution requirements in a subsequent fiscal year. The actuarial funding method must produce contribution requirements which are not less than those produced by the individual-entry-age-normal-cost-actuarial method.

6.114 Employment of Actuary

The actuary employed by the Retirement System must have 5 years experience as a practicing actuary.

ARTICLE VII SPECIFIC POWERS & PROVISIONS

7.111 Inter-Governmental Contracts

(a) The CEO with the approval of the County Commission may:

(1) Enter into any intergovernmental contract which is not specifically prohibited by law.

(2) Join, establish, or form with any other governmental unit an intergovernmental district or authority for the purpose of performing a public function or service, which each is authorized to perform separately, the performance of which is not prohibited.

(3) Accept, upon mutually agreed conditions, the transfer of performance of any municipal function or service from any governmental unit wholly or partially within the County, if the performance of that function or service by the County is not specifically prohibited by law, and if the function or service is offered on a County-wide basis.

(4) Provide by contract services or functions in any political sub-division of the County with the agreement of the legislative body of that sub-division and with approval of the contract by the Commission. The cost of services or functions provided to a political sub-division of the County, but not provided County-wide, shall be paid by the political sub-division in which the services or functions are performed. The revenues collected for the contracted services or functions shall be used first to pay for the contracted services.

(b) This section applies to all contracts of the County, including those to be performed by departments headed by elected officers.

COMPILER'S COMMENTS:

The Contracting Ordinance (84-143, as amended by 92-117, 93-698, 94-387, 94-504, 94-757 and 96-27) delegated to the Chief Executive Officer authority to execute certain routine intergovernmental contracts, but not those to purchase services from or to provide services to other units of government. Delegated for example are contracts to accept and expend budgeted grants from the federal and state governments, or the sale of surplus equipment if done pursuant to the Purchasing Ordinance. That ordinance was superseded by Ordinance 2006-1101, which has subsequently been amended.

7.112 Initiative, Referendum and Recall

(a) The people of Wayne County reserve the power to amend and revise this Charter, the power to recall elective officers, and the powers of initiative and referendum.

(b) The scope of these reserved powers are the same as comparable powers under the State Constitution. The procedures for the exercise of these reserved powers may be established by ordinance. In the absence of an ordinance establishing procedures, the procedures provided by law for the exercise of the reserved rights under the State Constitution are applicable. Petitions must be signed by registered voters constituting not less than 10% of the base vote to amend or revise the Charter; not less than 25% of the base vote to recall an elected officer; not less than 8% of the base vote to invoke the initiative; and not less than 5% of the base vote to invoke the referendum. The base vote is the total vote cast in the County or the affected district for all candidates for Governor at the last gubernatorial election. The petitions must be filed with the County Clerk.

COMPILER'S COMMENTS:

As of November 2012, the County Commission has not adopted an ordinance which would modify the procedures for the exercise of reserved rights.

7.113 Public Meetings

Meetings of the Commission and all other County boards and commissions are open to the public as provided by law.

COMPILER'S COMMENTS:

The requirements of the Open Meetings Act (Public Act 267 of 1976) are found in MCL 15.261 et seq, MSA 4.1800(11) et seq.

7.114 Freedom of Information

County records are public and open to inspection as provided by law.

COMPILER'S COMMENTS:

The requirements of the Freedom of Information Act (Public Act 442 of 1976) are found in MCL 15.231 et seq; MSA 1801(1) et seq.

The requirements of the Bullard - Plawecki Employee Right to Know Act (Public Act 397 of 1978) are in MCL 423.501 et seq; MSA 17.62(1) et seq.

7.115 Restrictions on Appointments and Employment

(a) An elected County officer may not be hired or appointed to a compensated County position until at least one year has passed after completion of the term of office. This restriction does not apply to officers elected prior to the effective date of this Charter.

(b) A member of an appointed board or commission may not be appointed or hired to a compensated County position created by that board or commission until at least one year has passed after the completion of the term of office.

7.116 Penalties for Violation

The County Commission may provide penalties for violations of this Charter or any ordinance.

7.117 Applicability of Article V of This Charter (Repealed)

COMPILER'S COMMENTS:

This Section was repealed along with Sections 4.361 and 4.362, and new Sections 4.361, 4.362 and 8.123 were added at the Primary Election held on August 7, 1984. The vote was 116,350 (yes) to 58,351 (no) to the proposition: "Shall the Wayne County Home Rule Charter be amended to abolish the Road Commission, to vest its administrative powers and duties in the executive branch, and to vest its legislative powers and duties in the legislative body?".

The repealed section had read as follows:

"Section 7.117 Applicability of Article V to This Charter

Provisions of Article V apply to the Road Commission unless the Road Commission is specifically exempted."

7.118 Home Rule Unaffected

This Charter does not affect the exercise of home rule powers of governmental units within the County.

7.119 Public Utilities

The acquisition, operation, and sale of public utility facilities by the County for furnishing light, heat, or power is subject to the restrictions imposed on cities and villages by the State Constitution and applicable law.

7.120 Drainage Boards

Unless otherwise required by law, each County drainage board shall consist of the Director of the Department of Public Works unless otherwise provided by any reorganization plan and 2 members of the County Commission.

COMPILER'S COMMENTS:

Section 7.120 was amended along with Sections 2.211, 2.212, 4.352 and 8.122(b), and along with the repeal of Sections 4.261, 4.262, 4.263 and 4.115 at the General Election of November 4, 1986. The vote was 291,053 (yes) to 114,465 (no) to the proposition: "Shall the Wayne County Home Rule Charter be amended to eliminate the office of Drain Commissioner effective January 1, 1987, and further to separate and distribute the powers and duties of a Drain Commissioner between the executive and legislative branches in accordance with the general design of the Charter?" The validity of this full set of amendments and repealers was challenged before Third Circuit Judge Charles Farmer in Civil Action No. 86-635757CZ (Randolph Street Intercounty Drainage District, et al vs. County of Wayne). After the vote, however, the plaintiff dropped the case. The Drain Code has since been amended to more clearly authorize the Charter amendments.

Section 7.120 previously read as follows:

"Unless otherwise required by law, each County drainage board shall consist of the Drain Commissioner and 2 members of the County Commission."

7.121 Severability

If any provision of this Charter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Charter.

ARTICLE VIII TRANSITIONAL PROVISIONS

8.111 Ordinances Continued

Ordinances, resolutions, rules and regulations in force when this Charter takes effect, which are not inconsistent with this Charter, remain effective until amended or repealed.

8.112 Laws Continued

Except as otherwise provided by this Charter, the general statutes and local acts of this State regarding counties and County officers continue in effect.

8.113 Succession of County Rights

Wayne County, as created and structured under this Charter, succeeds to and is vested with the property, real and personal, money, rights, credits and effects, and the records, files, books, and papers belonging to the County as it formerly existed. Neither the rights nor the liabilities existing when it becomes a Home Rule County, nor a suit or prosecution of any kind commenced before, and continuing at the time it becomes a Home Rule County is, in any manner, affected by the change, but is to continue, stand, or progress as if the change had not been made. The debts and liabilities of the County, the authorized tax rates approved by the voters, and taxes and assessments levied and uncollected at the time of the change remain effective until they expire, are discharged, or collected the same as if the change to home rule had not been made.

8.114 Retirement Commission

The Wayne County Retirement Commission continues to hold office until the members of the new Retirement Commission are elected under Section 6.112.

8.115 Transition by County Commission

The County Commission shall provide by ordinance or resolution for the orderly transition of County government not inconsistent with this Charter.

8.116 Civil Service Rights

This Charter does not affect any vested rights or vested status of any Wayne County employee under the civil service system in effect prior to the effective date of the Charter.

COMPILER'S COMMENTS:

The rights of civil service employees who become employees of the Wayne County Commission are expressly preserved by Ordinance 83-17, adopted February 3, 1983.

This Section does not prohibit the County, however, from modifying its civil service system. (Roberts v. Wayne Co. (1989) 439 N.W.2d 331, 176 Mich. App. 192)

8.117 Continuity of Government

(a) Departments headed by elected officers are established on the effective date of this Charter.

(b) Departments specifically created under Chapter 3 of Article IV are established six months after the effective date of this Charter or on the date prescribed by order of the CEO, whichever is earlier. When established, the prior entity exercising the same powers and duties is abolished.

(c) Other agencies, departments, instrumentalities, boards, commissions, and other administrative units of the County existing on the date this Charter becomes effective shall continue until displaced in accordance with a reorganization plan.

(d) The Board of Auditors is abolished on the effective date of this Charter.

8.118 Temporary Continuance of Positions

Persons holding unclassified positions in agencies, departments, instrumentalities, boards, commissions, and other administrative units of the County on the date this Charter becomes effective continue to hold those positions until successors are appointed in accordance with this Charter, the entity in which the position is held is abolished or displaced, or the CEO removes the person, whichever is earlier.

8.119 Effective Date

This Charter takes effect on January 1, 1983 but Sections 8.120 and 8.121 are effective upon adoption of this Charter.

8.120 Apportionment for Commissioners and Elections

(a) The existing County apportionment commission shall provide the apportionment plan as provided by law for the initial election of County Commissioners under this Charter in the 1982 primary and general elections for the Commission established under this Charter.

(b) The County Clerk shall provide, in accordance with law, for the election of all officers elected under this Charter on a district or County-wide basis in the 1982 primary and general elections.

(c) The election of a member of the Board of Auditors shall not be held in November, 1982.

8.121 Transition Planning

The existing County Board of Commissioners shall appropriate sufficient funds to operate a transition office for the persons elected under this Charter in the general election in 1982.

8.122 Elected Officers Continued and Original Terms

(a) The persons holding the offices of Prosecuting Attorney, Sheriff, County Clerk, Treasurer, Register of Deeds, and Drain Commissioner shall be continued in office until the expiration of the terms for which they were elected prior to the effective date of this Charter.

(b) The persons first elected under this Charter to the offices of Prosecuting Attorney, Sheriff, County Clerk, Treasurer, and Register of Deeds, shall serve terms of 2 years commencing January 1, 1985 and ending December 31, 1986. Their successors shall be elected for terms of 4 years.

COMPILER'S COMMENTS:

Subsection 8.122(b) was amended, along with Sections 2.211, 2.212, 4.352 and 7.120, and along with the repeal of Sections 4.115, 4.261, 4.262 and 4.263 at the General Election of November 4, 1986. The vote was 291,053 (yes) to 114,465 (no) to the proposition: "Shall the Wayne County Home Rule Charter be amended to eliminate the office of Drain Commissioner effective January 1, 1987, and further to separate and distribute the powers and duties of a Drain Commissioner between the executive and legislative branches in accordance with the general design of the Charter?" The validity of this full set of amendments and repealers was challenged before Third Circuit Judge Charles Farmer in Civil Action No. 86-63575CZ (Randolph Street Intercounty Drainage District, et al vs. County of Wayne). After the vote, however, the plaintiff dropped the case. The Drain Code has since been amended to more clearly authorize the Charter amendments.

The substance of this Section and that of Section 2.211 was held to be invalid, in Lucas v. Wayne County Election Commission, et al, 381 NW2d 806 (Mich. App., 1985). The intent of the Charter Commissioners in framing these provisions was to strengthen the office of Chief Executive Officer by eliminating the opportunity of other elected county officers to enjoy a safe harbor while challenging the CEO at the ballot box. The Michigan Court of Appeals held, however,

that the legislature was without power to provide for a term of less than the four-year term provided for the named county officers in Article 7, Section 4 of the Michigan Constitution of 1963. The Court did further note that the Drain Commissioner was not a constitutional office as were the other offices addressed by this provision.

Prior to amendment, this subsection read as follows:

“(b) The persons first elected under this Charter to the offices of Prosecuting Attorney, Sheriff, County Clerk, Treasurer, Register of Deeds, and Drain Commissioner shall serve terms of 2 years commencing January 1, 1985 and ending December 31, 1986. Their successors shall be elected for terms of 4 years.”

Section 8.123 Road Commission Abolished

The CEO shall implement this amendment within 60 days after adoption. Upon full implementation, the Board of Road Commissioners is abolished. No later than 60 days after adoption of this amendment, the CEO shall submit for approval of the County Commission a revised budget for the Office of Public Services.

COMPILER'S COMMENTS:

Section 8.123 was added along with new Sections 4.361 and 4.362, and the original Sections 4.361, 4.362 and 7.117 were repealed at the Primary Election held on August 7, 1984. The vote was 116,350 (yes) to 58,351 (no) to the proposition: "Shall the Wayne County Home Rule Charter be amended to abolish the Road Commission, to vest its administrative powers and duties in the executive branch, and to vest its legislative powers and duties in the legislative body?"

ARTICLE IX SELECTION OF THE CEO

9.111 Elected Chief Executive Officer

(a) The CEO shall be elected at large on a partisan basis for a 4 year term. A candidate for the office of CEO must be a qualified elector of the County at the time of election. If a party candidate nominated in the primary election dies or otherwise becomes unable to be elected, a successor candidate shall be selected in the same manner that a successor candidate is selected for the office of County Clerk.

(b) If the office of CEO becomes vacant, a successor shall be elected at a special election held concurrently with the next regular County general election. The successor shall fill the unexpired term.

(c) State law as to the qualifications and registration of voters, the filing for office by candidates, and the conduct and canvass of county elections for county officers elected under Article IV shall also apply to the office of CEO.

COMPILER'S COMMENTS:

Section 11a of the Charter Counties Enabling Act, being Michigan Compiled Laws, Section 45.511a, required that the voters be offered a choice between a proposed charter with an appointed Chief Administrative Officer, and one with a partisan elected county executive. At a special general election held on November 3, 1991, both forms of charter received more than a 70% "yes" vote, but a larger majority favored a charter with an elected executive. The vote was 310,678 (Yes) to 124,227 (No) for an elected county executive, and 268,521 (Yes) 101,436 (No) for an appointed administrator.

The appointive option presented to the voters read as follows:

"9.111 Appointed Chief Executive Officer

(a) The CEO shall be appointed for a 4 year term by a majority of the County Commissioners serving. The CEO must be a qualified elector of the County at the time of appointment.

(b) A commissioner or a former commissioner whose service on the County Commission did not terminate more than 2 years previously may not be appointed CEO.

(c) The CEO may be removed for cause by a 2/3 vote of Commissioners serving. Any successor shall be appointed for the unexpired term.

(d) The Commission shall select a Search Committee for the purpose of obtaining and screening candidates for the office of CEO at its first meeting after a vacancy occurs or the Commission has notice that a vacancy may occur. The Commission shall appoint the CEO within 3 months after the selection of the Search Committee."

Some commentators have contended that the Legislature mandated that a super executive/weak commission form of government be created. That view can not be sustained by a reading of the Enabling Act. Except for three differences, Section 11a requires that the powers and duties of an appointed administrator and of an elected executive be the same. It is difficult to imagine how an appointed administrator could wield such super powers. It is apparent that a co-equal branch approach was instead envisioned. The only three differences allowed between the two types of CEO were:

1. The manner of selection.
2. The manner of removal.
3. The veto power.

As the Charter was written, if the appointive CEO had been selected by the voters, he or she would also have had a veto power, by terms of the Charter. In Opinion 5935 (1981) the Attorney General advised that a county charter could not confer veto power upon an appointed CEO. This opinion was written pursuant to the Enabling Act's direction that the Attorney General make recommendations to the Governor as the Governor reviewed the proposed Charter for approval. In *Lucas v. Board of County Road Commissioners of Wayne County* (1984) 348 N.W.2d 660, 131 Mich. App. 642, the Michigan Court of Appeals held that the Attorney General's opinion was merely advisory to the Governor, and once approved by the Governor, that a Charter provision was valid.