Resolution -2012

- **WHEREAS**, the County Board is the "governing body" of Westchester County (*see* Laws of Westchester County ("LWC") 209.01); and
- **WHEREAS**, LWC Section 209.91(1) empowers the Westchester County Board of Legislators ("County Board") "to enact local laws, acts and resolutions"; and
- **WHEREAS**, LWC Section 209.91(2) provides that the County Board "shall have such further powers and duties as have heretofore been or may hereafter be lawfully granted or imposed by the Constitution, County Charter, local law, act or resolution of such board, or by any provision of any act of the legislature"; and
- **WHEREAS**, LWC Section 110.11(1) mandates that the County Executive "supervise, direct and control, subject to law and the provisions of this act and local laws, the administrative services and departments of the county"; and
- **WHEREAS**, LWC Section 110.11(5) mandates that the County Executive "see that the county officers, boards, agencies, commission and departments faithfully perform their duties"; and
- **WHEREAS**, LWC, Section 110.11(6) mandates that the County Executive "see that the acts and resolutions of the County Board and duly enacted local laws are executed and enforced within the county"; and
- **WHEREAS**, LWC Section 110.11(10) mandates that the County Executive "perform all such duties as may be prescribed for him...by act of the County Board"; and
- **WHEREAS**, LWC Section 143.21 specifically provides the that "the County Board shall have such powers with respect to the administration of social services and public assistance and care as are now or may hereafter be conferred by law upon boards of supervisors or other county legislative bodies"; and
- **WHEREAS,** County Law Section 750 provides that "[t]he county commissioner of public welfare. . . . shall perform such additional and related duties as. . . directed by the board of supervisors": and

WHEREAS, the County Board passed additions to the 2012 Budget Act which set the family share for low income daycare at 20% and overrode the County Executive's veto of same; and

WHEREAS, the County Board as passed Act 2011-191 mandating, *inter alia*, that "no changes to policies, programs and services contained in the finally adopted budget shall take place without the prior approval of the County Board of Legislators...." and unanimously overrode the County Executive's veto of same; and

WHEREAS, notwithstanding the foregoing powers of the County Board and the duly prescribed duties of the County Executive, the County Executive has failed to enforce the 2012 Budget Act which set the family share for low income daycare at 20% and Act 2011-191 by permitting the Commissioner of the Department of Social Services to seek approval from the New York State Office of Children and Family Services ("NYSOCFS") to raise the family share for low income daycare 35% without the prior approval of the County Board of Legislators; and

WHEREAS, notwithstanding the foregoing powers of the County Board and the duly prescribed duties of the Commissioner of the Department of Social Services, the Commissioner violated the 2012 Budget Act which set the family share for low income daycare at 20% and Act 2011-191 by seeking and obtaining from NYSOCFS approval to raise the family share for low income daycare to 35% effective June 1, 2012, without the prior approval of the County Board of Legislators; and

WHEREAS, it is a fundamental principle of organic law that each department of government should be free from interference in the lawful discharge of duties expressly conferred by either of the other branches; and

WHEREAS, it is well-settled through decisions of the court the that an executive branch is required to implement the adopted policy declarations of the Legislature unless judicially invalidated; and

WHEREAS, it is also well-settled through decisions of the court that laws are made by the elected legislative branch, not by appointed administrative officers.

NOW THEREFORE BE IT

RESOLVED, that the Chairman of the County Board is hereby authorized to commence or intervene in a court action/proceeding seeking, a declaration concerning Child Care programs adopted in the 2012 Budget Act which set the family share for low income daycare at 20%, established the number of Title XX day care slots and Act 2011-191, concerning the enforcement of appropriations in the finally adopted County budget. The County Board shall be represented by Legislative Counsel to the County Board and/or other Legal Counsel as designated by the Chairman pursuant to the procurement policy of the Laws of Westchester County. The Chairman shall keep all Honorable Members of the County Board informed of the status of any court action/proceeding via email distributed by the Clerk of the County Board.

Dated: May___, 2012 White Plains, New York