

Howard County, Maryland
Howard County Ethics Commission

HOWARD COUNTY COUNCIL
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3450 Court House Drive
Ellicott City, Maryland 21043
410-313-2100

2018 FEB 13 PM 1:29

February 8, 2018

The Honorable Allan Kittleman, County Executive
3430 Courthouse Drive
Ellicott City, MD 21043

The Honorable Mary Kay Sigaty, Council Chairperson
3430 Courthouse Drive
Ellicott City, MD 21043

Re: Recommended Changes to Ethics Code

Dear Mr. Kittleman and Ms. Sigaty:

Howard County Code §22.203(1) requires the Ethics Commission to forward recommended changes and amendments to the County Council for enactment. Pursuant to its obligation under this section, the Ethics Commission met on December 5, 2017, to review mandatory and discretionary provisions as described in October 3, 2017, correspondence from the State Ethics Commission (see attached letter). After review and consideration, the Ethics Commission recommends the following:

Mandatory Provisions: The Commission generally agrees to the mandatory changes that must be adopted by local governments to be in compliance with the requirements of Md. Code Ann., Gen. Prov. §5-801 *et seq.*, and COMAR 19A.04.

State Mandate 1: Gen. Prov. §5-504(d)(2). Precludes Governor, Lieutenant Governor, AG, Comptroller, Treasurer or a member of the General Assembly from lobbying (legislative matters) for one calendar year after leaving office.

Recommendation: Amend HC §22.204(c) Post-Employment Limitations and Restrictions.
(3) For one calendar year after a former elected official leaves office, a former elected official may not assist or represent another party for compensation in a matter that is the subject of legislative action before Howard County.

State Mandate 2: Gen. Prov. §5-606(a)(3): Effective January 1, 2019, Commission may not provide public access to the portion of a financial disclosure statement that includes an individual's home address as identified by the individual.

Recommendation: Amend HC §22.206(h) to include a provision that requires the Commission to redact from public disclosure an individual's home address.

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Discretionary/Optional provisions: The Commission discussed the optional suggestions set forth in the October 3, 2017, letter.

Optional Provision 1: Gen. Prov. §5-101(t), removes exchange-traded funds from the definition of interest.

Recommendation: Amend HC §22.202(k)(3) to exclude exchange-traded funds from the definition of interest.

Optional Provision 2: Gen. Prov. §5-506, adds three specific circumstances that constitute a violation of the prestige of office provision.

Recommendation: The Commission does not recommend adoption of this provision. The State's amendments are based on previous ethics advisory opinions interpreting the State statute. Unlike the State Ethics Commission, the Commission has not expanded the definition of HC §22.204(e) through advisory opinions; therefore, there is no need to add the State's optional language to §22.204(e).

Optional Provision 3: Gen. Prov. §5-607, changes the Schedule F disclosure (indebtedness to entities doing business with the State) to indebtedness to entities doing business with or regulated by the individual's governmental unit.

Recommendation: Amend HC §22.206 (j)(6) to indebtedness to entities doing business with or regulated by the official's governmental unit.

Optional Provision 4: Gen. Prov. §5-606(a)(2), suggests that the Commission provide internet access to financial disclosure statements through an online registration program.

Recommendation: The Commission takes no position on this suggestion. The Commission considered and discussed security issues, cost and maintenance issues, and public access issues. The Commission considered whether the requirement would deter volunteers from serving on a Board/Commission. The Commission reviewed its current practice of providing accessibility of statements to the public and noted this practice has been consistent with the procedure for inspection used by the State Ethics Commission. The Commission noted that there has never been an issue with providing timely public access.

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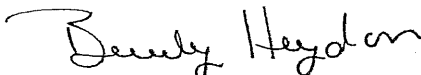
Optional Provision 5: Gen. Prov. §5-704 codifies disclosure requirements for lobbyists who serve on State boards and commissions. It also codifies a state requirement for such a lobbyist who is disqualified from participating in a specific matter to file a statement or recusal with the board or commission.

Recommendation: The Commission recommends no amendments or revisions to lobbying activity set forth in HC 22.207. Unlike the State, the Commission does not require lobbyists to file a separate statement of recusal.

In addition to the above recommendations, the Commission recommends that HC §22.204(h) be removed from the Ethics Code. The analogous State provision was removed from the State ethics code in 2015. See attached letter dated August 24, 2016, in which the Commission previously made this recommendation.

The Commission further recommends that all amendments be in effect prior to October 1, 2018, which is the deadline for certifying to the State Ethics Commission that the local ethics code complies with the State code.

Sincerely,

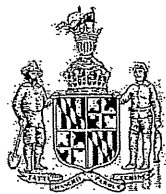


Beverly Heydon
Assistant County Solicitor
Executive Secretary, on behalf of the Howard County
Ethics Commission

cc: Charles Fuller, Ethics Commission Chair

BH
Enclosures

EXECUTIVE DEPARTMENT
STATE OF MARYLAND



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LARRY HOGAN
GOVERNOR

COMMISSION MEMBERS:

JANET E. McHUGH, *Chair*
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JACOB YOSEF MILIMAN
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MICHAEL W. LORD
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General Counsel
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Staff Counsel
KATHERINE P. THOMPSON
Assistant General Counsel

October 3, 2017

Gary Kuc
Howard County Ethics Commission
3450 Court House Drive
Ellicott City, MD 21043

Re: Local Government Ethics Update

Dear Mr. Kuc:

As you are aware, there were significant changes mandated to county and municipal ethics laws and county boards of education ethics regulations by legislation (SB315 – Chapter 277 of the Acts of 2010) enacted during the 2010 General Assembly session. The law became effective October 1, 2010. Counties and municipalities required to adopt a local ethics law must include conflict of interest and financial disclosure provisions for local elected officials that are at least equivalent to the State's provisions; financial disclosure provisions for candidates for local elected office that are at least equivalent to State provisions; conflict of interest and financial disclosure provisions for local employees and appointed officials that are similar to State provisions; and local lobbying provisions that are substantially similar to State provisions. The State Ethics Commission previously approved the Howard County local Ethics Law as being in compliance with Subtitle 8 of the Maryland Public Ethics Law (Md. Code Ann., Gen. Prov., Title 5 (Supp. 2016)).

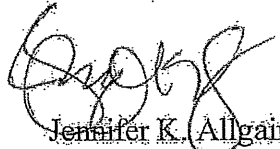
We are writing to notify the Howard County that the requirements under the State Ethics Law are changing. House Bill 879, enacted during the 2017 Legislative session, made multiple modifications to the State Ethics Law, some of which will change the requirements for local government ethics laws. Those changes include additional disclosures for State elected officials that local governments must incorporate into their Ethics Ordinances for their elected officials. However, a number of changes relax certain of the financial disclosure requirements, particularly for debt and stock holding disclosures, and make home addresses confidential from public disclosure. We have included an attachment describing the changes that need to be included in the new drafts of Ethics Law, highlighting the additional provisions that must be included in a law to be compliant with State law, and the changes that relax some requirements and may be adopted if desired by the City. In addition, we have also included our new model laws with the changes

highlighted on our website. Most of the changes take effect October 1, 2017 and our regulations implementing these changes are in the approval process.

Commission staff is available to provide guidance and assistance to the Howard County as you work through updating your law to incorporate the new changes. Please do not hesitate to contact us should you have any questions regarding the new local government ethics law requirements. As a reminder, any and all future changes to the ethics ordinance must be submitted to the Commission for review and approval in compliance with Subtitle 8 of the Maryland Public Ethics Law and COMAR 19A.04.

Finally, Section §5-807(b) of the Public Ethics Law requires each local jurisdiction to file the Local Government Ethics Law Annual Certification by October 1 of each year. Given the timing of these legislative changes, we do not anticipate 2017 certifications will include any of the changes discussed above. Our office has already received the Howard County's certification for 2017. Please contact our office if you have any questions regarding this matter.

Sincerely,



Jennifer K. Allgair
General Counsel

Enclosures

Changes that **must** be adopted for local government compliance with the requirements of Subtitle 8 of the Public Ethics Law or COMAR 19A.04.:

1. 5-504(d)(2). Precludes Governor, Lieutenant Governor, AG, Comptroller, Treasurer or a Member of the General Assembly from lobbying (legislative matters) for one calendar year after leaving office. *Needs to be added to the conflict of interest section covering local elected officials.*
2. 5-606(a)(3). Effective January 1, 2019, Commission may not provide public access to the portion of a financial disclosure statement that includes an individual's home address as identified by the individual (i.e. the Commission must redact the information before making it publicly available). Applies to all statements, whether posted on the Internet or viewable only in the Office. *Home addresses should be redacted from public disclosure. Local employees and elected officials don't have to worry about the public being able to see their home address on their filings submitted after January 1, 2019.*

Changes that **must** be adopted for local government compliance with the requirements of Subtitle 8 of the Public Ethics Law or COMAR 19A.04. for those local governments with lobbying provisions:

1. 5-501(a-1). Adds new subsection prohibiting former lobbyists who become a public official or State employee (i.e. take job with the State) from participating in a case, contract or other specific matter for 1 calendar year after terminating their registrations if they previously assisted or represented another party in the matter (a "reverse" post-employment restriction for lobbyists). Does not apply to uncompensated or minimally compensated (less than 25% of grade 16) board/commission members or elected officials. *ONLY FOR JURISDICTIONS WITH LOBBYING PROVISIONS. Needs to be added the conflict of interest provisions to cover employees compensated over a certain amount.*
2. 5-607(i). Adds another category to Schedule H – for a statement filed on or after January 1, 2019, if the filer's spouse is a regulated lobbyist, must disclose the entity that has engaged the spouse to lobby. *ONLY FOR JURISDICTIONS WITH LOBBYING PROVISIONS. Requires spouses of lobbyists to disclose the entities that engage the lobbyist spouse on their annual disclosure filings.*

Changes that **may** be adopted if the local government chooses:

1. 5-101(t). Removes "exchange-traded funds" from the definition of "interest". An ETF is a diversified collection of assets (like a mutual fund) that trades on an exchange (like a stock). *Now, as is the case with mutual funds, financial disclosure filers will no longer have to disclose interests they hold in ETFs.*
2. 5-506. Adds three specific circumstances that constitute violation of the prestige of office provision (influencing the award of a State or local contract to a specific person; initiating a solicitation for a person to retain the compensated services of a particular lobbyist or firm; using public resources or title to solicit a political contribution regulated in accordance with the Election Law Article). In the last situation, employees and public officials may not use title or public resources, State officials may not use public

resources. *The State Ethics Commission has already interpreted these kinds of actions to be in violation of the prestige of office provision. Local governments are able to include these specific circumstances in their law if they would like or any other for clarifying purposes.*

3. 5-607(g). Changes the Schedule F disclosure (indebtedness to entities doing business with the State) to indebtedness to entities doing business with or regulated by the individual's governmental unit. *Instead of disclosing all indebtedness to entities doing business with the local government, only debts with entities doing business with the specific governmental unit must be disclosed by filers.*
 4. 5-606(a)(2). Effective January 1, 2019, Ethics Commission must provide Internet access, through an online registration program, to financial disclosure statements submitted by State officials, candidates for office as State officials, and Secretaries of a principal department of the Executive Branch. *Local governments can now decide to put the local disclosure forms online for public viewing.*
 5. 5-704. Codifies disclosure requirements for lobbyists who serve on State boards and commissions. Also codifies a requirement for such a lobbyist who is disqualified from participating in a specific matter to file a statement of recusal with the board or commission. *ONLY FOR JURISDICTIONS WITH LOBBYING PROVISIONS. Requires lobbyists who serve on local boards to submit disclosure forms that mirror the forms for local elected officials.*
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Howard County, Maryland

Howard County Ethics Commission

*3450 Court House Drive
Ellicott City, Maryland 21043
410-313-2100*

COPY

August 24, 2016

Allan Kittleman, County Executive
3430 Court House Drive
Ellicott City, Maryland 21043

Calvin Ball, County Council Chair
3430 Court House Drive
Ellicott City, Maryland 21043

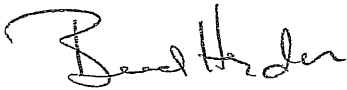
RE: Recommended change to Ethics Code

Dear Mr. Kittleman and Dr. Ball:

Howard County Code §22.203(l) requires the Ethics Commission to forward recommended changes and amendments to the County Council for enactment. Pursuant to its obligation under this section, the Ethics Commission recommended that I forward the enclosed opinion to the Administration and County Council.

The Ethics Commission recommends that the County consider removing §22.204(h) from the Ethics Code and promulgating it elsewhere in the County Code; such as under the jurisdiction of Purchasing.

Sincerely,



Beverly Heydon
Assistant County Solicitor
Executive Secretary, Ethics Commission

Enclosure