

**M E M O R A N D U M**

October 17, 2022

TO: Government Operations & Fiscal Policy Committee

FROM: Christine Wellons, Senior Legislative Attorney

SUBJECT: Bill 17-22, Public Ethics Law - Amendments

PURPOSE: Committee worksession – recommendations expected

**Expected Attendees**

Bruce Romer, Vice-Chair, Ethics Commission  
Robert Cobb, Staff Director and Chief Counsel, Ethics Commission  
Aisha Memon, General Counsel, Housing Opportunities Commission  
Caitlin E. McDonough, Esq., Harris Jones & Malone, LLC (representing HOC)

Bill 17-22, Public Ethics Law – Amendments, sponsored by Council President Albornoza at the request of the Ethics Commission, was introduced on June 21, 2022. A public hearing occurred on July 26, 2022.<sup>1</sup>

The bill would:

- (1) define terms under the Public Ethics Law;
- (2) alter ethics requirements related to procurement;
- (3) prohibit retaliation against an individual for communicating with the Ethics Commission or participating in an investigation of a potential ethics violation; and
- (4) alter the required contents of financial disclosure statements.

**BACKGROUND AND BILL SPECIFICS**

The Ethics Commission requested Bill 17-22 to achieve several goals.

First, the bill would clarify that certain ethics provisions that apply to County vendors under County procurement law (Section 11B-52(a) of the County Code) also apply to vendors of the Housing Opportunities Commission (HOC) and vendors of the Montgomery County Revenue Authority (MCRA).

In addition, the bill would make updates to the Public Ethics Law (Chapter 19A of the County Code) to accommodate changes to State law. Specifically, the bill would alter the definition of

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<sup>1</sup> #SecurityCameras #SecurityIncentives

*restricted donor* and add a definition of *quasi-governmental entity*. The bill also would expand the scope of financial disclosures with respect to business interests attributable to the filer. Finally, the bill would clarify that reprisals against employees for cooperation with the Ethics Commission are prohibited.

## **SUMMARY OF THE PUBLIC HEARING**

At the public hearing on July 26, 2022, the Chief Counsel for the Ethics Commission, Robert Cobb, spoke in favor of Bill 17-21.

Mr. Cobb also raised three considerations by the Ethics Commission, which are described in a memorandum attached at ©10. First, the Commission raised the issue of potential conflicts of interest that might be created when individuals from various stakeholder groups are appointed to advisory boards, committees, or commissions (BCCs).

Second, the Commission recommended that the law be amended to specifically require financial disclosure filings by members of the Police Advisory Committee and the Administrative Charging Committee. Third, the Commission recommended that BCC members be required to undergo training on the Montgomery County Public Ethics Law. These additional three issues are discussed further below.

## **ISSUES**

The Committee might wish to consider the following issues and potential amendments in connection with Bill 17-22.

### **1. Vendors of the Housing Opportunities Commission (HOC) and the Montgomery County Revenue Authority (MCRA)**

The Housing Opportunities Commission has submitted comments (©50) to the Committee raising concerns about applying Section 11B-52 to the HOC. Under Section 11B-52, a County contractor engaged in a procurement matter must not offer to employ a County employee who has significant participation in the procurement matter. However, the contractor may obtain a waiver of this prohibition from the Ethics Commission under certain circumstances.

HOC has argued that Section 11B-52 should not be applied to its contractors because the Section: “(1) places burdensome procurement restrictions on third-party vendors who are not subject to County procurement laws, (2) duplicates and complicates existing ‘conflict of interest’ protections that already apply to HOC employees, and (3) creates a new and ambiguous administrative compliance process.” (©50). The Committee might wish to give HOC an opportunity to elaborate upon these concerns during the worksession.

Council staff notes that under the HOC’s current contract template for vendors (©53), vendors already must follow the same rule that exists under Section 11B-52(a), except that, under the contract template, the vendor may obtain a waiver of the rule from HOC itself. Under Section 11B-52(a) any waiver would need to be obtained from the Ethics Commission. Council staff

believes that obtaining waivers from the Ethics Commission would not be overly burdensome or confusing, and that the Ethics Commission has the best expertise to evaluate the waiver requests. In addition, the waiver process through the Ethics Commission offers greater transparency than waivers from the entity itself.

However, Council staff agrees with the HOC that a clarification under the bill might be helpful. As written, it is potentially unclear under the bill whether the entirety of Section 11B-52 would apply to HOC contractors, or just Section 11B-52(a). Subsections (b) and (c) of Section 11B-52 involve obtaining permissions from the Chief Administrative Officer, which seem inapplicable to HOC and other entities not generally subject to Chapter 11B.

Council staff would suggest the following amendment if the Committee wishes to clarify that HOC (and other entities not generally covered by the County procurement law) are subject to Section 11B-52(a) only, but not to other subsections of Section 11B-52.

*Amend lines 4-11 as follows.*

- (a) Unless authorized by law or the Ethics Commission under Chapter 19A, a person while engaged in a procurement matter with [the County] an agency or County agency must not employ or offer to employ a public employee if the duties of the public employee include significant participation in the procurement matter, regardless of whether the procurement matter is governed by this Chapter. [Public] Agency or County agency, public employee, employ, and significant participation, as used in this [[section]] subsection, are defined in Chapter 19A.

Alternatively, if the Committee wishes to completely remove HOC – and any agency not otherwise subject to the procurement law – from the scope of Section 11B-52(a) under the bill, it could adopt an amendment to *delete lines 3 through 11* of the bill.

**Decision point:** whether to amend the bill regarding the application of Section 11B-52 to HOC and other entities not generally regulated by the County procurement law.

## **2. Board, Committee, and Commission (BCC) Appointees**

The County Council and the County Executive collectively appoint the members of approximately 80 boards, committees and commissions (BCC). The vast majority of these BCCs are purely advisory in nature, designed to provide information and recommendations to elected policymakers. In many instances, the membership of advisory BCCs is designed to reflect diverse viewpoints, including the viewpoints of individuals, businesses, and nonprofits with special expertise or experience in a subject matter.

Without the viewpoints of diverse stakeholders, the advisory BCCs likely would be less valuable as resources to policymakers and the community. At the same time, the Ethics Commission has raised the concern that inherent conflicts of interest can arise in some

circumstances under Section 19A-11 when a member of a stakeholder group is appointed to a BCC that makes recommendations that could directly affect that stakeholder group. For example, there might be a conflict of interest if a board member from a certain industry is recommending how to regulate the industry.

To rectify this issue, the Ethics Commission has suggested that, in each instance in which a stakeholder member is specified under the law, the law should clarify that the member is a “representative of” the stakeholder group. Thus, it would be clear to policymakers and the public that the member is representing the interests of the stakeholder group. Council staff agrees with this approach going forward, and Council staff can endeavor to clarify language regarding each BCC in the next Technical Corrections Bill.

**Decision point:** Whether to direct Council staff to clarify in the law when a BCC member represents a particular stakeholder group.

### **3. Financial Disclosures – Police Accountability Board (PAB) and Administrative Charging Committee (ACC) Members**

The Ethics Commission has recommended that the law should be amended to clarify that each member of the newly created Police Accountability Board and Administrative Charging Committee is subject to the Ethics Law requiring annual financial disclosure statements. Council staff believes that the PAB and ACC members already are subject to the financial disclosure requirement. However, Council staff does not oppose clarifying the issue under the law.

To make this clarification, the Committee could consider the following potential amendment.

*After line 56, insert the following.*

19A-17. Who must file a financial disclosure statement.

The following persons must file a public financial disclosure statement under oath:

\* \* \*

(b) the following public employees:

\* \* \*

(15) the Inspector General and the deputy Inspector General; [and]

(16) members of the Police Accountability Board;

(17) members of the Administrative Charging Committee; and

[(16)] (18) any person who is appointed to serve in an acting capacity in any position listed in the preceding paragraphs while the position is vacant; and

\* \* \*

**Decision point:** whether to adopt the amendment described above to make clear that PAB and ACC members must file financial disclosure statements.

#### **4. Training of BCC Members**

The Ethics Commission has recommended, and Council staff agrees, that Section 2-148 of the County Code should be amended to require Public Ethics Law training for each member of a board, committee, or commission.

The Committee might wish to consider the following amendment to require ethics training of board, committee, and commission members.

*After line 2, insert the following.*

2-148. Appointments, removals, and training.

\* \* \*

(d) Each member of a group must complete training on the Maryland Open Meetings Act, [and] basic parliamentary procedure, and the Montgomery County Public Ethics Law. The Executive must establish standards for this training by method 2 regulation.

**Decision point:** whether to adopt the amendment described above to require ethics training of board, committee, and commission members

**NEXT STEPS:** Committee recommendation on whether to enact Bill 17-22, including any amendments.

This packet contains:	<u>Circle #</u>
Bill 17-22	© 1
Economic Impact Statement	© 8
Robert Cobb Memorandum (Proposed Amendments)	© 10
Proposed 2022 Ethics Law Amendments	© 12
State Ethics Law Commission Memorandum	© 15
Required changes to local ethics laws/ordinances as a result of HB 363	© 17
Model Ethics Law A	© 28
Robert Cobb Memorandum (Public Comment)	© 49
Housing Opportunity Commission – Comments and Sample Contract	© 50

Bill No. 17-22  
Concerning: Public Ethics Law –  
Amendments  
Revised: June 15, 2022 Draft No. 1  
Introduced: June 21, 2022  
Expires: December 21, 2023  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: \_\_\_\_\_  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Council President at the Request of the Ethics Commission

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**AN ACT** to:

- (1) define terms under the Public Ethics Law;
- (2) alter ethics requirements related to procurement;
- (3) prohibit retaliation against an individual for communicating with the Ethics Commission or participating in an investigation of a potential ethics violation;
- (4) alter the required contents of financial disclosure statements; and
- (2) generally amend the Public Ethics Law.

By amending

Montgomery County Code  
Chapter 11B, Procurement  
Section 11B-52

Chapter 19A, Ethics  
Sections 19A-4, 19A-10, 19A-18, and 19A-19

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec 1. Sections 11B-52, 19A-4, 19A-10, 19A-18, and 19A-19 are amended as follows:**

### 11B-52. Ethics; Contractor conduct.

(a) Unless authorized by law or the Ethics Commission under Chapter 19A, a person while engaged in a procurement matter with [the County] an agency or County agency must not employ or offer to employ a public employee if the duties of the public employee include significant participation in the procurement matter, regardless of whether the procurement matter is governed by this Chapter. [Public] Agency or County agency, public employee, employ, and significant participation, as used in this section, are defined in Chapter 19A.

\* \* \*

### 19A-4. Definitions.

Unless the context clearly indicates otherwise, the following words have the following meanings:

(a) *Agency or County agency* means:

- (1) any department, principal office, or office of the executive or legislative branch of County government;
- (2) any board, commission, committee, task force, or similar body appointed by the County Executive or County Council;
- (3) the Revenue Authority, the Housing Opportunities Commission, and the Board of License Commissioners;
- (4) each independent fire department or rescue squad that receives funds from the County or uses property owned by the County; and
- (5) any other public body if the Commission finds that:

(A) the public body is subject to the County's legislative authority to enact an ethics law; and

(B) the policies articulated in section 19A-2 would be significantly furthered by the application of this Chapter to the public body.

\* \* \*

(o) *Restricted donor* means a person or business that:

- (1) is registered or must register as a lobbyist under Section 19A-21;
- (2) does business with the County agency with which the public employee is affiliated;
- (3) is engaged in an activity regulated or controlled by the County agency with which the public employee is affiliated; [or]
- (4) has a financial interest that may be substantially and materially affected in a manner distinguishable from the public generally by the performance or nonperformance of the public employee's duties; or
- (5) is an association, or any entity acting on behalf of an association, that is engaged only in representing counties or municipal corporations.

(p) Quasi-governmental entity means an entity that:

- (1) is created by the State of Maryland or County law;
- (2) performs a public function; and
- (3) is supported in whole or in part by the State of Maryland but is managed privately.

(q) *Year* means calendar year.

# **19A-10. Complaint; Adjudicatory Hearing.**



\* \* \*

(o) A public employee must not retaliate against an individual for:

(1) communicating with the Commission; or

(2) participating in an investigation of a potential violation of this Chapter or of Sections 2-109, 11B-51, or 11B-52(a).

**19A-18. Financial disclosure statement; procedures.**

\* \* \*

(b) Each candidate for an office listed in subsection 19A-17(a) must file with the County Board of Elections a financial disclosure statement covering the year prior [year and the current year up] to the date of filing the candidate's certificate of candidacy. The statement must be filed with the certificate of candidacy or certificate of nomination. The County Board of Elections must not accept a certificate of candidacy or certificate of nomination unless a financial disclosure statement in proper form has been filed. [If a] A statement [has been] filed for the prior year under subsection (a)[, then the statement required by this subsection need only cover the current year up to the date of filing the certificate of candidacy or nomination] that is available for inspection under subsection (f) satisfies the requirements of this subsection.

(c) If at the end of a calendar year in which a candidacy is pending and no election has occurred, the candidate must file a financial disclosure statement with the County Board of Elections covering the year just ended. The statement must be filed on or before the last day to withdraw a candidacy. A statement filed under subsection (a) on or before the last day to withdraw a candidacy covering the year just ended that is available for inspection under subsection (f) satisfies the requirements

of the subsection. The County Board of Elections must notify each candidate of this obligation to file the financial disclosure statement at least 20 days before the last day to withdraw a candidacy. If [the candidate does not file a timely statement under this subparagraph, the candidacy is withdrawn by operation of law] a statement required under this subsection is overdue and not filed within 8 days after the candidate receives written notice from the County Board of Elections of the failure to file, the candidate is deemed to have withdrawn the candidacy.

\* \* \*

#### **19A-19. Content of financial disclosure statement.**

- (a) Each financial disclosure statement filed under Section 19A-17(a) must disclose the following:

\* \* \*

(11) Relationship with University of Maryland Medical System, state or local government, or quasi-governmental entities.

(A) A filer must disclose any financial or contractual relationship with:

- (i) the University of Maryland Medical System;
- (ii) a governmental entity of the State of Maryland or of a local government in the State of Maryland; or
- (iii) a quasi-governmental entity.

(B) For each financial or contractual relationship reported, the schedule must include:

- (i) a description of the relationship;
- (ii) the subject matter of the relationship; and

(iii) the consideration.

(C) A public employee, other than an elected official or candidate for elective office, is not required to disclose employment as a public official under this paragraph.

(D) Prior to the release of a statement, the Commission must redact any information concerning consideration disclosed under this paragraph.

(b) For the purposes of subsections (a)(1) and (a)(2), the following interests must be treated as the interests of the filer of the statement:

(1) an interest held by a member of the filer's immediate family;

(2) an interest held by a relative of the filer, if the filer, at any time during the reporting period, directly or indirectly controlled the interest;

(3) [an interest held by a business entity in which the filer held a 30% or greater interest at any time during the reporting period; or]

[(4)] an interest held by a trust or estate in which, at any time during the reporting period:

(A) the filer held a reversionary interest or was a beneficiary; or

(B) if a revocable trust, the filer was a settlor; or

(4) An interest held, at any time during the reporting period, by:

(A) a business entity in which the filer held a 10% or greater interest;

(B) a business entity under subparagraph (A) of this subsection in which the business entity held a 50% or greater interest;

128                   (C)   a business entity under subparagraph (B) of this subsection  
129                           in which the business entity held a 50% or greater interest;  
130                           and

131                   (D)   a business entity in which the filed directly or indirectly,  
132                           through an interest in one or a combination of other business  
133                           entities, holds a 10% or greater interest.

134       (c)   Each statement filed under Sections 19A-17(b) and 19A-17(c) must  
135       disclose all information required to be disclosed under subsection (a).  
136       However, the filer need not specify the nature or amount of consideration  
137       given in exchange for an interest or the fair market value of an interest.  
138       For a debt, the filer need only disclose the information required under  
139       subsection (a)(6)(A).

140       (d)   For each disclosure of the name of a business in a statement filed under  
141       this Article, the filer must also disclose any other names that the business  
142       is trading as or doing business as.

# Economic Impact Statement

Office of Legislative Oversight

## Bill 17-22

## Public Ethics Law – Amendments

### SUMMARY

The Office of Legislative Oversight (OLO) anticipates that enacting Bill 17-22 would have an insignificant impact on economic conditions in the County in terms of the Council’s priority indicators.

### BACKGROUND

Per the request of the County Ethics Commission, Bill 17-22 would make the following changes to the County’s Public Ethics Law: “(1) define terms under the Public Ethics Law; (2) alter ethics requirements related to procurement; (3) prohibit retaliation against an individual for communicating with the Ethics Commission or participating in an investigation of a potential ethics violation; [and] (4) alter the required contents of financial disclosure statements.”<sup>1</sup>

### INFORMATION SOURCES, METHODOLOGIES, AND ASSUMPTIONS

Per Section 2-81B of the Montgomery County Code, the purpose of this Economic Impact Statement is to assess the impacts of Bill 17-22 on County-based private organizations and residents in terms of the Council’s priority economic indicators and whether the Bill would likely result in a net positive or negative impact on overall economic conditions in the County.<sup>2</sup> Because the proposed changes to the Public Ethics Law are mostly technical in nature, OLO anticipates that the Bill would have insignificant impacts on private organizations, residents, and overall economic conditions in the County in terms of the indicators prioritized by the Council.

### VARIABLES

Not applicable

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<sup>1</sup> [Bill 17-22](#).

<sup>2</sup> Montgomery County Code, [Sec. 2-81B](#).

# Economic Impact Statement

Office of Legislative Oversight

## IMPACTS

WORKFORCE ▪ TAXATION POLICY ▪ PROPERTY VALUES ▪ INCOMES ▪ OPERATING COSTS ▪ PRIVATE SECTOR CAPITAL INVESTMENT ▪  
ECONOMIC DEVELOPMENT ▪ COMPETITIVENESS

### Businesses, Non-Profits, Other Private Organizations

Not applicable

### Residents

Not applicable

## DISCUSSION ITEMS

Not applicable

## WORKS CITED

Montgomery County Code. [Sec. 2-81B, Economic Impact Statements](#).

Montgomery County Council. [Bill 17-22, Public Ethics Law – Amendments](#). Introduced on June 21, 2022.

## CAVEATS

Two caveats to the economic analysis performed here should be noted. First, predicting the economic impacts of legislation is a challenging analytical endeavor due to data limitations, the multitude of causes of economic outcomes, economic shocks, uncertainty, and other factors. Second, the analysis performed here is intended to *inform* the legislative process, not determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the Bill under consideration.

## CONTRIBUTIONS

Stephen Roblin (OLO) prepared this report.



## MONTGOMERY COUNTY ETHICS COMMISSION

### MEMORANDUM

To: Gabe Albornoz, President, Montgomery County Council

FROM: Robert Cobb, Staff Director, Chief Counsel, Ethics Commission *RC*

CC: Marc Elrich, County Executive

RE: Proposed Amendments to the County Code

DATE: April 22, 2022

The Ethics Commission recommends changes to the County's Procurement Chapter, Chapter 11B of the County Code, and to the County's Public Ethics Law. The text of the recommended changes is reflected in Attachment A to this Memorandum.

The recommended change to the Procurement Chapter is to clarify the coverage of the law with respect to certain County agencies that are covered by the County's ethics law but are not generally subject to the County's procurement law. The provision at issue, 11B-52(a), is subject to Ethics Commission interpretation pursuant to 19A-7. While it might be reasonable for the Commission to interpret 11B-52(a) to apply to agencies that are subject to Ethics Commission jurisdiction pursuant to Chapter 19A, such as the Housing Opportunities Commission (HOC) and the Montgomery County Revenue Authority (MCRA), the Commission believes that Chapter 11B should be amended to make clear that the law applies to these agencies.

Code section 11B-52(a) prohibits County vendors from negotiating with or offering employment to public employees significantly participating in procurement matters involving the vendor. The provision imposes restrictions on vendors that parallel restrictions on public employees in the conflict of interest laws, including the prohibition on working on matters affecting an entity with which an employee is seeking employment (19A-11(a)(2)(D)) and the one year bar of going to work for an entity subject to an employee's having significantly participated in regulating or in a contract matter involving the entity. (19A-13(b)). While HOC and MCRA employees are subject to the requirements of 19A, the application of the parallel restriction on vendors is not clear. The Commission believes that HOC and MCRA vendors should be prohibited from offering jobs to County employees working on procurement matters affecting the vendors. A consequence of the change would be to clarify that 11B-52(a) would also apply to other procurements not viewed as falling under the Procurement Chapter, such as procurement activity not involving the expenditure of County funds.



The other contemplated changes are to Chapter 19A and are a product of changes to the State Ethics Law as implemented by the State Ethics Commission. The requirement for the County to change its ethics law to meet the new State standards was the subject of a February 18, 2022, letter from the State Ethics Commission to the County Attorney. See Attachment B, with its own related attachments, Attachments B1 and B2. In short, the reason for the recommended changes to 19A is to meet state requirements.

19A-4(o) would include in the definition of *restricted donor* “an association . . . that is engaged only in representing counties or municipal corporations.” The consequence of this provision is that gifts from organizations like the Maryland Association of Counties (MACO) would be treated in the same manner as gifts from other restricted donors.

*Quasi-governmental entity* would become a defined term in proposed 19A-4(p). The term is then used in new provisions concerning financial disclosure (proposed 19A-19(a)(11) that are aimed at assuring that certain financial arrangements made with the University of Maryland Medical System, State or local governments or quasi-governmental organizations are disclosed.

A separate change to the financial disclosure provisions of the ethics law would require disclosure of successive levels of business entities held by other business entities based on percentage of ownership attributable to an employee. See proposed 19A-19(b)(5).

A change to 19A-10(a)(1) would make explicit in the ethics law that reprisals against employees for reporting matters or cooperating with the Ethics Commission is prohibited.

If there are questions about these recommendations, please contact Robert Cobb at 240-777-6674 or at [Robert.Cobb@montgomerycountymd.gov](mailto:Robert.Cobb@montgomerycountymd.gov).



## Attachment A

**Sections 11B-52, 19A-4, 19A-10, and 19A-19 are amended as follows:**

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### **11B-52. Ethics; Contractor conduct.**

(a) Unless authorized by law or the Ethics Commission under Chapter 19A, a person while engaged in a procurement matter with an agency or County agency [the County] must not employ or offer to employ a public employee if the duties of the public employee include significant participation in the procurement matter[.], regardless of whether the procurement matter is governed by this Chapter. Agency or County agency, [P]public employee, employ, and significant participation, as used in this section, are defined in Chapter 19A.

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### **19A-4. Definitions.**

(o) *Restricted donor* means a person or business that:

- (1) is registered or must register as a lobbyist under Section 19A-21;
- (2) does business with the County agency with which the public employee is affiliated;
- (3) is engaged in an activity regulated or controlled by the County agency with which the public employee is affiliated; [or]
- (4) has a financial interest that may be substantially and materially affected in a manner distinguishable from the public generally by the performance or nonperformance of the public employee's duties[.]; or

(5) is an association, or any entity acting on behalf of an association, that is engaged only in representing counties or municipal corporations.

(p) *Quasi-governmental entity* means an entity that is created by State or County law, that performs a public function, and that is supported in whole or in part by the State but is managed privately.

(q) *Year* means calendar year.

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#### **Sec. 19A-10. Complaint; Adjudicatory Hearing.**

(a) (1) Any individual may file a confidential written complaint with the Commission. The complaint must allege facts under oath that would support a reasonable person in concluding that a violation of this Chapter or Sections 2-109, 11B-51 or 11B-52(a) occurred. A public employee may not retaliate against an individual for communicating with the Commission or participating in an investigation of a potential violation of this Chapter or Sections 2-109, 11B-51 or 11B-52(a).

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#### **Sec. 19A-19. Content of financial disclosure statement.**

(a) Each financial disclosure statement filed under Section 19A-17(a) must disclose the following:

(11) Relationship with University of Maryland Medical System, State or Local Government, or Quasi-Governmental Entity.

(A) A filer must disclose any financial or contractual relationship with: (i) The University of Maryland Medical System;

(ii) A governmental entity of the State or a local government in the State; or

(iii) A quasi-governmental entity.

(B) For each financial or contractual relationship reported, the schedule shall include:

(i) A description of the relationship;

(ii) The subject matter of the relationship; and

(iii) The consideration.

Public employees, other than elected officials and candidates for elective office, are not required to disclose employment as a public official under this paragraph. The Commission shall redact any information concerning consideration paid required to be disclosed under this paragraph prior to release of a statement.

(b) For the purposes of subsections (a)(1) and (a)(2), the following interests must be treated as the interests of the filer of the statement:

(1) an interest held by a member of the filer's immediate family;

(2) an interest held by a relative of the filer, if the filer, at any time during the reporting period, directly or indirectly controlled the interest;

(3) an interest held by a business entity in which the filer held a 30% or greater interest at any time during the reporting period; [or]

(4) an interest held by a trust or estate in which, at any time during the reporting period:

(A) the filer held a reversionary interest or was a beneficiary; or

(B) if a revocable trust, the filer was a settlor[.];

(5) An interest held, at any time during the applicable period, by:

(A) A business entity in which the filer held a (10)% or greater interest;

(B) A business entity described in subparagraph (A) of this subsection in which the business entity held a 25% or greater interest;

(C) A business entity described in subparagraph (B) of this subsection in which the business entity held a 50% or greater interest; and

(D) A business entity in which the public employee directly or indirectly, though an interest in one or a combination of other business entities, holds a 10% or greater interest.

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(d) For each disclosure of the name of a business in a statement filed under this Article IV, the filer must also disclose any other names that the business is trading as or doing business as.

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**COMMISSION MEMBERS:**

JANET E. McHUGH, *Chair*  
BONNIE A KIRKLAND  
JAMES N. ROBEY, JR.  
CRAIG D. ROSWELL  
GENEAU M. THAMES

**STATE ETHICS COMMISSION**

**45 CALVERT STREET, 3<sup>rd</sup> FLOOR  
ANNAPOLIS, MARYLAND 21401  
410-260-7770 / 1-877-669-6085  
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ANA L. HENRY  
*Assistant General Counsel*

February 18, 2022

**CONFIDENTIAL**

**Sent via email to: [marc.hansen@montgomerycountymd.gov](mailto:marc.hansen@montgomerycountymd.gov)**

Marc Hansen  
County Attorney  
Montgomery County  
101 Monroe Street, 3rd Floor  
Rockville, MD 20850

Re: Required Amendments to Local Ethics Laws

Dear Mr. Hansen:

I am writing to notify the County that the requirements under the State Ethics Law are changing. House Bill 363 and House Bill 1058, were enacted during the 2021 General Assembly session, which made multiple modifications to the State Ethics Law, which will change the requirements for local government ethics laws. Those changes include new conflict of interest provisions and additional disclosures for State elected officials that local governments must incorporate into their ethics ordinances for their elected officials. The State Ethics Commission updated its local government regulations in COMAR 19A.04 to reflect the required changes. I have included an attachment describing the changes that need to be included in the new drafts of the ethics law, highlighting the additional provisions that must be included in a law to be compliant with State law. In addition, I have also included our new model laws with the changes highlighted.

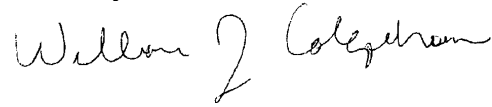
As you are aware, counties, municipalities are required to adopt a local ethics laws or ordinances that must include conflict of interest and financial disclosure provisions for local elected officials that are at least equivalent to the State's provisions; financial disclosure provisions for candidates 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. (SB315 – Chapter 277 of the Acts of 2010 and Subtitle 8 of Maryland Public Ethics Law).

Commission staff is available to provide guidance and assistance to the 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(c) of the Public Ethics Law requires each local jurisdiction to file the Local Government Ethics Law Annual Certification by October 1 of each year. The certification forms are available on the Commission's website or by request. Please contact our office if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Colquhoun". The signature is fluid and cursive, with a large, stylized "W" and "C".

William J. Colquhoun  
General Counsel

cc: County Ethics Commission

enc.

**Changes to local ethics laws or ordinances required**  
**as a result of HB 363 (2021) and HB 1058 (2021)**

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

1. Definition for “Quasi-governmental entity”. (Md. Code Ann., Gen’l. Prov. Art § 5-101(gg-1)).

Where to add: In definition section of ethics law or ordinance.

Practitioner’s Tip: If you include definitions in either the instructions to your financial disclosure statement or on the form itself, you will need to include this definition (See No. 8).

Model Language: Model A, Section 3, Definitions, (p). Model B, Section 2, Applicability and Definitions, (e).

*“Quasi-governmental entity” means an entity that is created by State statute, that performs a public function, and that is supported in whole or in part by the State but is managed privately.*

2. Prohibit gift acceptance from associations engaged in representing counties or municipal or corporations. (Md. Code Ann., Gen’l. Prov. Art § 5-505(b)(2)(v)).

Where to add: In the prohibited donor portion of the gift section of conflicts of interest of ethics law or ordinance.

Practitioner’s Tip: Primarily this will affect advice you give regarding gifts given by or on behalf of the Maryland Association of Counties (MACo) or the Maryland Municipal League (MML).

Model Language: Model A, Section 5, Conflicts of Interest, (f)(3)(v). Model B, Section 4, Conflicts of Interest, (h)(3)(v)

An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has reason to know:

. . .

*Is an association, or any entity acting on behalf of an association that is engaged only in representing counties or municipal corporations.*

3. Prohibit disclosure of confidential information by former official or employee. (Md. Code Ann., Gen'l. Prov. Art § 5-507).

Where to add: In the confidential information portion of conflicts of interest of ethics law or ordinance.

Practitioner's Tip: Advice and enforcement matters relating to confidential information now include former officials and employees.

Model Language: Model A, Section 5, Conflicts of Interest, (g). Model B, Section 4, Applicability and Definitions, (i)

Disclosure of confidential information. Other than in the discharge of official duties, an official or employee or *former official or employee* may not disclose or use confidential information, that the official or employee acquired by reason of the individual's public position *or former public position* and that is not available to the public, for the economic benefit of the official or employee or that of another person.

4. Prohibit retaliation against individual for reporting ethics violation or participating in ethics investigation. (Md. Code Ann., Gen'l. Prov. Art § 5-509).

Where to add: The end of the conflicts of interests section of ethics law or ordinance.

Practitioner's Tip: Creates a new conflict of interest provision related to retaliation. You may wish to add this to your complaint form or instructions.

Model Language: Model A, Section 5, Conflicts of Interest, (h). Model B, Section 4, Applicability and Definitions, (j).

*An official or employee may not retaliate against an individual for reporting or participating in an investigation of a potential violation of the local ethics law or ordinance.*

5. Prohibit disclosure of amount of consideration received from: UMMS, State or local governmental entities and quasi-governmental entities. (Md. Code Ann., Gen'l. Prov. Art § 5-606(a)(3)(ii)).

Where to add: Financial Disclosure as public record portion of ethics of law or ordinance.

Practitioner's Tip: You will need to make certain when providing copies of financial disclosure statements to redact the consideration related to these entities (See No. 8).

Model Language: Model A, Section 6, Financial Disclosure-elected officials, officials, and employees, (e)(6). Model B, Section 5, Financial Disclosure-local elected officials and candidates to be local elected officials, (c)(6).

*The Commission or office designated by the Commission shall not provide public access to information related to consideration received from:*

*(i) The University of Maryland Medical System;*

*(ii) A governmental entity of the State or a local government in the State; or*

*(iii) A quasi-governmental entity of the State or local government in the State.*

6. Disclosure of name business trades as or does business under. (Md. Code Ann., Gen'l. Prov. Art § 5-507(a-1)).

Where to add: Financial Disclosure prior to contents of statement in ethics law or ordinance.

Practitioner's Tip: Include this in your financial disclosure instructions or on the form itself.

Model Language: Model A, Section 6, Financial Disclosure-elected officials, officials, and employees, (g). Model B, Section 5, Financial Disclosure-local elected officials and candidates to be local elected officials, (e).

*An individual who is required to disclose the name of a business under this section shall disclose any other names that the business is trading as or doing business as.*

7. Disclosure of gifts from association engaged in only representing counties or municipal corporations. (Md. Code Ann., Gen'l. Prov. Art § 5-509).

Where to add: Financial Disclosure gifts to be disclosed portion of ethics law or ordinance.

Practitioner's Tip: You will need to update your instructions to the financial disclosure form and the form itself. Gifts from MACo and MML that reach the thresholds described in the law will need to be disclosed.

Model Language: Model A, Section 6, Financial Disclosure-elected officials, officials, and employees, (h)(4)(i). Model B, Section 5, Financial Disclosure-local elected officials and candidates to be local elected officials, (f)(4)(i).

*A statement filed under this section shall include a schedule of each gift in excess of \$20 in value or a series of gifts totaling \$100 or more received during the reporting period from or on behalf of, directly or indirectly, any one person who does business with the \*County, City, or Town\* or from an association, or any entity acting on behalf of an association that is engaged only in representing counties or municipal corporations.*



8. Disclosure of relationships with UMMS, State or local government or quasi-governmental entity. (Md. Code Ann., Gen'l. Prov. Art § 5-607(j)(1-2)).

Where to add: Financial Disclosure contents following sources of earned income to be disclosed portion of ethics law or ordinance.

Practitioner's Tip: You will need to update the instructions to your financial disclosure statement and the form itself. I am also willing to provide a copy of the State Ethics Commission's version of the statement upon request.

Model Language: Model A, Section 6, Financial Disclosure-elected officials, officials, and employees, (h)(9)(i-ii). Model B, Section 5, Financial Disclosure-local elected officials and candidates to be local elected officials, (f)(9)(i-ii).

*Relationship with University of Maryland Medical System, State or Local Government, or Quasi-Governmental Entity.*

*(i) An individual shall disclose the information specified in General Provisions Article §5-607(j)(1), Annotated Code of Maryland, for any financial or contractual relationship with:*

*(A) The University of Maryland Medical System;*

*(B) A governmental entity of the State or a local government in the State; or*

*(C) A quasi-governmental entity of the State or local government in the State.*

*(ii) For each financial or contractual relationship reported, the schedule shall include:*

*(A) A description of the relationship;*

*(B) The subject matter of the relationship; and*

*(C) The consideration.*

9. Attributable interests in business entities that must be disclosed. (Md. Code Ann., Gen'l. Prov. Art § 5-608(a)(2)(i-iv)).

Where to add: Financial Disclosure portion defining interests that are attributable to filer.

Practitioner's Tip: You will need to update the instructions to your financial disclosure statement and the form itself.

Model Language: Model A, Section 6, Financial Disclosure-elected officials, officials, and employees, (h)(10)(2)(i-iv). Model B, Section 5, Financial Disclosure-local elected officials and candidates to be local elected officials, (g)(2)(i-iv).

For the purposes of . . . of this chapter, the following interests are considered to be the interests of the individual making the statement:

(1) An interest held by a member of the individual's immediate family, if the interest was, at any time during the reporting period, directly or indirectly controlled by the individual.

(2) *An interest held, at any time during the applicable period, by:*

*(i) A business entity in which the individual held a (10)% or greater interest;*

*(ii) A business entity described in section (i) of this subsection in which the business entity held a 25% or greater interest;*

*(iii) A business entity described in section (ii) of this subsection in which the business entity held a 50% or greater interest; and*

*(iv) A business entity in which the individual directly or indirectly, through an interest in one or a combination of other business entities, holds a 10% or greater interest.*

(3) An interest held by a trust or an estate in which, at any time during the reporting period:

(i) The individual held a reversionary interest or was a beneficiary; or

(ii) If a revocable trust, the individual was a settlor.

19A.04.00.00

## Appendix A — Model Ethics Law A

Authority: General Provisions Article, §§5-205 and 5-206, and Title 5, Subtitle 8, Annotated Code of Maryland

### CHAPTER \_\_\_\_ — ETHICS PROVISIONS

#### Section 1. Short title.

This chapter may be cited as the \*name of County, City or Town\* Public Ethics \*Law or Ordinance\*.

#### Section 2. Statement of purpose and policy.

(a) The \*County, City, or Town\* of \*name of County, City or Town\*, recognizing that our system of representative government is dependent in part upon the people maintaining the highest trust in their public officials and employees, finds and declares that the people have a right to be assured that the impartiality and independent judgment of public officials and employees will be maintained.

(b) It is evident that this confidence and trust is eroded when the conduct of the \*County, City, or Town\*'s business is subject to improper influence and even the appearance of improper influence.

(c) For the purpose of guarding against improper influence, the \*County, City, or Town\* \*name of Council or other legislative body\* enacts this Public Ethics \*Law, Ordinance\* to require \*County, City, or Town\* elected officials, officials, employees, and individuals appointed to boards and commissions to disclose their financial affairs and to set minimum standards for the conduct of local government business.

(d) It is the intention of the \*Council or other legislative body\* that this chapter, except its provisions for criminal sanctions, be liberally construed to accomplish this purpose.

#### Section 3. Definitions.

In this chapter, the following terms have the meanings indicated.

(a) (1) "Business entity" means a corporation, general or limited partnership, sole proprietorship, joint venture, unincorporated association or firm, institution, trust, foundation, or other organization, whether or not operated for profit.

(2) Business entity does not include a governmental entity.

(b) "Commission" means the \* name of County, City, or Town\* Ethics Commission established under §4(a) of this chapter.

(c) (1) "Compensation" means any money or thing of value, regardless of form, received or to be received by any individual covered by this chapter from an employer for service rendered.

(2) For the purposes of §8 of this chapter, if lobbying is only a portion of a person's employment, "compensation" means a prorated amount based on the time devoted to lobbying compared to the time devoted to other employment duties.

(c-1) "Designated second home" means:

(1) If an individual owns one second home, the individual's second home; or

(2) If an individual owns more than one second home, any one second home the individual identifies to the Commission as the individual's designated second home.

(d) "Doing business with" means:

(1) Having or negotiating a contract that involves the commitment, either in a single or combination of transactions, of \$5,000 or more of \*County, City, or Town\* controlled funds;

(2) Being regulated by or otherwise subject to the authority of \*County, City, or Town\*; or

(3) Being registered as a lobbyist under §8 of this chapter.

(e) (1) "Elected official" means any individual who holds an elective office of \*County, City, or Town.\*

(2) "Elected official" does not include the Sheriff, State's Attorney, Register of Wills, or Clerk of the Court.

(f) (1) "Employee" means an individual who is employed by \*County, City, or Town.\*

(2) "Employee" does not include an elected local official.

(3) "Employee" does not include an employee of:

(i) The offices of the Sheriff, State's Attorney, Register of Wills, or Clerk of the Court;

(ii) The County Health Department; or

(iii) The County Department of Social Services.

(g) "Financial interest" means:

(1) Ownership of any interest as the result of which the owner has received, within the past 3 years, or is presently receiving, or in the future is entitled to receive, more than \$1,000 per year; or

(2) Ownership, or the ownership of securities of any kind representing or convertible into ownership, of more than 3 percent of a business entity by a \*County, City, or Town\* official or employee, or the spouse of an official or employee.

(h) (1) "Gift" means the transfer of anything of economic value, regardless of the form, without adequate and lawful consideration.

(2) "Gift" does not include a contribution as defined in Election Law Article, Annotated Code of Maryland.

(h-1) "Home address" means the address of an individual's:

(1) Principal home; and

(2) Designated second home, if any.

(i) "Immediate family" means a spouse and dependent children.

(j) (1) "Interest" means a legal or equitable economic interest, whether or not subject to an encumbrance or a condition, that is owned or held, in whole or in part, jointly or severally, directly or indirectly.

(2) For purposes of §6 of this chapter, "interest" includes any interest held at any time during the reporting period.

(3) "Interest" does not include:

(i) An interest held in the capacity of a personal agent, custodian, fiduciary, personal representative, or trustee, unless the holder has an equitable interest in the subject matter;

(ii) An interest in a time or demand deposit in a financial institution;

(iii) An interest in an insurance policy, endowment policy, or annuity contract under which an insurer promises to pay a fixed amount of money either in a lump sum or periodically for life or a specified period;

(iv) A common trust fund or a trust which forms part of a pension or profit sharing plan which has more than 25 participants and which has been determined by the Internal Revenue Service to be a qualified trust under the Internal Revenue Code;

(v) A college savings plan under the Internal Revenue Code; or

(vi) A mutual fund or exchange-traded fund that is publicly traded on a national scale unless the mutual fund or exchange-traded fund is composed primarily of holdings of stocks and interests in a specific sector or area that is regulated by the individual's governmental unit.

(k) "Lobbyist" means a person required to register and report expenses related to lobbying under §8 of this chapter.

(l) "Lobbying" means:

(1) Communicating in the presence of a \*County, City, or Town\* official or employee with the intent to influence any official action of that official or employee; or

(2) Engaging in activities with the express purpose of soliciting others to communicate with a \*County, City, or Town\* official or employee with the intent to influence that official or employee.

(m) "Official" means an elected official, an employee of the \*County, City, or Town\*, or a person appointed to or employed by the \*County, City, or Town\* or any \*County, City, or Town\* agency, board, commission, or similar entity:

(1) Whether or not paid in whole or in part with \*County, City, or Town\* funds; and

(2) Whether or not compensated.

(n) "Person" includes an individual or business entity.

(n-1) "Principal home" means the sole residential property that an individual occupies as the individual's primary residence, whether owned or rented by the individual.

(o) "Qualified relative" means a spouse, parent, child, brother, or sister.

(p) "Quasi-governmental entity" means an entity that is created by State statute, that performs a public function, and that is supported in whole or in part by the State but is managed privately.

(q) "Second home" means a residential property that:

(1) An individual occupies for some portion of the filing year; and

(2) Is not a rental property or a time share.

## Section 4. Administration.

(a) (1) There is a \*County, City or Town\* Ethics Commission that consists of \_\_\_\_ members, appointed by the \*Mayor or other chief executive officer\* with the concurrence of the \*Council or other legislative body\*.

(2) The Commission members shall serve \_\_\_\_ year overlapping terms.

(3) A Commission member may serve until a successor is appointed and qualifies.

(b) (1) The Commission shall elect a chairman from among its members.

(2) The term of the chairman is one year.

(3) The chairman may be reelected.

(c) (1) The \*County, City, or Town\* Attorney shall assist the Commission in carrying out the Commission's duties.

(2) If a conflict of interest under §5 of this chapter or other conflict prohibits the \*County, City, or Town\* Attorney from assisting the Commission in a matter, the \*County, City, or Town\* shall provide sufficient funds for the Commission to hire independent counsel for the duration of the conflict.

(d) The Commission is the advisory body responsible for interpreting this chapter and advising persons subject to this chapter regarding its application.

(e) The Commission shall hear and decide, with the advice of the \*County, City, or Town\* Attorney or other legal counsel if appropriate, all complaints filed regarding alleged violations of this chapter by any person.

(f) The Commission or an office designated by the Commission shall retain as a public record all forms submitted by any person under this chapter for at least four years after receipt by the Commission.

(g) The Commission shall conduct a public information and education program regarding the purpose and implementation of this chapter.

(h) The Commission shall certify to the State Ethics Commission on or before October 1 of each year that the \*County, City, or Town\* is in compliance with the requirements of General Provisions Article, Title 5, Subtitle 8, Annotated Code of Maryland, for

elected local officials.

(i) The Commission shall:

(1) Determine if changes to this chapter are required to be in compliance with the requirements of General Provisions Article, Title 5, Subtitle 8, Annotated Code of Maryland; and

(2) Shall forward any recommended changes and amendments to the \*County, City, or Town\* Council for enactment.

(j) (1) Any person subject to this chapter may request an advisory opinion from the Commission concerning the application of this chapter.

(2) The Commission shall respond promptly to a request for an advisory opinion and shall provide interpretations of this chapter based on the facts provided or reasonably available to the Commission within 60 days of the request.

(3) In accordance with all applicable State and \*County, City, or Town\* laws regarding public records, the Commission shall publish or otherwise make available to the public copies of the advisory opinions, with the identities of the subjects deleted.

(4) The Commission may adopt additional policies and procedures related to the advisory opinion request process.

(k) (1) Any person may file a complaint with the Commission alleging a violation of any of the provisions of this chapter.

(2) A complaint shall be in writing and under oath.

(3) The Commission may refer a complaint to the \*County, City, or Town\* Attorney, or other legal counsel if appropriate, for investigation and review.

(4) The Commission may dismiss a complaint if, after receiving an investigative report, the Commission determines that there are insufficient facts upon which to base a determination of a violation.

(5) If there is a reasonable basis for believing a violation has occurred, the subject of the complaint shall be given an opportunity for a hearing conducted in accordance with the applicable \*County, City, or Town\* rules of procedure.

(6) A final determination of a violation resulting from the hearing shall include findings of fact and conclusions of law.

(7) Upon finding of a violation, the Commission may take any enforcement action provided for in §9 of this chapter.

(8)(i) After a complaint is filed and until a final finding of a violation by the Commission, all actions regarding a complaint are confidential.

(ii) A finding of a violation is public information.

(9) The Commission may adopt additional policies and procedures related to complaints, complaint hearings, the use of independent investigators and staff, the use of witness and document subpoenas, and cure and settlement agreements.

(l) The Commission may grant exemptions to or modifications of the conflict of interest and financial disclosure provisions of this chapter to officials or employees serving as members of \*name of County, City or Town\* boards and commissions, when the Commission finds that the exemption or modification would not be contrary to the purposes of this chapter, and the application of this chapter would:

(1) Constitute an unreasonable invasion of privacy; and

(2) Significantly reduce the availability of qualified persons for public service.

(m) The Commission may:

(1) Assess a late fee of \$5 per day up to a maximum of \$500 for a failure to timely file a financial disclosure statement required under §6 or 7 of this chapter; and

(2) Assess a late fee of \$10 per day up to a maximum of \$1,000 for a failure to file a timely lobbyist registration or lobbyist report required under §8 of this chapter.

## Section 5. Prohibited conduct and interests.

(a) Participation prohibitions.

(1) Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

(i) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee or a qualified relative of the official or employee has an interest.

(ii) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

(A) A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

(B) A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;

(C) A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating employment or has any arrangement concerning prospective employment;

(D) If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;

(E) An entity, doing business with the \*County, City, or Town\*, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or

(F) A business entity that:

1. The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and

2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(2) A person who is disqualified from participating under paragraph (1) of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

(i) The disqualification leaves a body with less than a quorum capable of acting;

(ii) The disqualified official or employee is required by law to act; or

(iii) The disqualified official or employee is the only person authorized to act.

(3) The prohibitions of paragraph 1 of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.

(4) A former regulated lobbyist who is or becomes subject to this chapter as an employee or official, other than an elected official or an appointed official, may not participate in a case, contract, or other specific matter as an employee or official, other than an elected official or appointed official, for one calendar year after the termination of the registration of the former regulated lobbyist if the former regulated lobbyist previously assisted or represented another party for compensation in the matter.

(b) Employment and financial interest restrictions.

(1) Except as permitted by regulation of the Commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

(i) Be employed by or have a financial interest in any entity:

(A) Subject to the authority of the official or employee or the \*County, City, or Town\* agency, board, or commission with which the official or employee is affiliated; or

(B) That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or

(ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

(2) The prohibitions of paragraph (1) of this subsection do not apply to:

(i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;

(ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;

(iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with regulations adopted by the Commission; or

(iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

(c) Post-employment limitations and restrictions.

(1) A former official or employee may not assist or represent any party other than the \*County, City, or Town\* for compensation in a case, contract, or other specific matter involving the \*County, City, or Town\* if that matter is one in which the former official or employee significantly participated as an official or employee.

(2) A former elected official may not assist or represent another party for compensation in a matter that is the subject of legislative action for one calendar year after the elected official leaves office.

(d) Contingent compensation. Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the \*County, City, or Town\*.

(e) Use of prestige of office.

(1) (i) An official or employee may not intentionally use the prestige of office or public position:

(a) For the private gain of that official or employee or the private gain of another; or

(b) To influence, except as part of the official duties of the official or employee or as a usual and customary constituent service without additional compensation, the award of a state or local contract to a specific person.

(ii) An official may not directly or indirectly initiate a solicitation for a person to retain the compensated services of a particular regulated lobbyist or lobbying firm.

(2) This subsection does not prohibit the performance of usual and customary constituent services by an elected official without additional compensation.

(3) (i) An official, other than an elected official, or employee may not use public resources or the title of the official or employee to solicit a contribution as that term is defined in the Election Law Article.

(ii) An elected official may not use public resources to solicit a contribution as that term is defined in the Election Law Article.

(f) Solicitation and acceptance of gifts.

(1) An official or employee may not solicit any gift.

(2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

(3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has reason to know:



(i) Is doing business with or seeking to do business with the \*County, City or Town\* office, agency, board, or commission with which the official or employee is affiliated;

(ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;

(iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit;

(iv) Is a lobbyist with respect to matters within the jurisdiction of the official or employee; or

(v) Is an association, or any entity acting on behalf of an association that is engaged only in representing counties or municipal corporations.

(4) (i) This paragraph does not apply to a gift:

(A) That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;

(B) Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or

(C) Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.

(ii) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:

(A) Meals and beverages consumed in the presence of the donor or sponsoring entity;

(B) Ceremonial gifts or awards that have insignificant monetary value;

(C) Unsolicited gifts of nominal value that do not exceed \$20 in cost or trivial items of informational value;

(D) Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;

(E) Gifts of tickets or free admission extended to an elected official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;

(F) A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the \*County, City, or Town\* and that the gift is purely personal and private in nature;

(G) Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or

(H) Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is in no way related to the official's or employee's official position.

(g) Disclosure of confidential information. Other than in the discharge of official duties, an official or employee or former official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the individual's public position or former public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

(h) An official or employee may not retaliate against an individual for reporting or participating in an investigation of a potential violation of the local ethics law or ordinance.

## Section 6. Financial disclosure — elected officials, officials, and employees.

(a) This section applies to all elected officials, all candidates to be elected officials, and the following \*County, City, or Town\* employees:

List by Job Title

(b) Except as provided in subsection (d) of this section, an elected official, employee, or candidate to be an elected official shall file the financial disclosure statement required under this subsection:

- (1) On a form provided by the Commission;
- (2) Under oath or affirmation; and
- (3) With the Commission.

(c) Deadlines for filing statements.

(1) An incumbent official or employee shall file a financial disclosure statement annually no later than April 30 of each year for the preceding calendar year.

(2) An official or employee who is appointed to fill a vacancy in an office for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a statement for the preceding calendar year within 30 days after appointment.

(3) (i) An individual who, other than by reason of death, leaves an office for which a statement is required shall file a statement within 60 days after leaving the office.

(ii) The statement shall cover:

(A) The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and

(B) The portion of the current calendar year during which the individual held the office.

(d) Candidates to be elected officials.

(1) Except for an official or employee who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate to be an elected official shall file a financial disclosure statement each year beginning with the year in which the certificate of candidacy is filed through the year of the election.

(2) A candidate to be an elected official shall file a statement required under this section:

- (i) In the year the certificate of candidacy is filed, no later than the filing of the certificate of candidacy;
- (ii) In the year of the election, on or before the earlier of April 30 or the last day for the withdrawal of candidacy; and
- (iii) In all other years for which a statement is required, on or before April 30.

(3) A candidate to be an elected official:

(i) May file the statement required under §6(d)(2)(i) of this chapter with the \*County, City, or Town\* Clerk or Board of Election Supervisors with the certificate of candidacy or with the Commission prior to filing the certificate of candidacy; and

(ii) Shall file the statements required under §6(d)(2)(ii) and (iii) of this chapter with the Commission.

(4) If a statement required by a candidate is overdue and not filed within 8 days after written notice of the failure to file is provided by the \*County, City, or Town\* Clerk or Board of Election Supervisors, the candidate is deemed to have withdrawn the candidacy.

(5) The \*County, City, or Town\* Clerk or Board of Election Supervisors may not accept any certificate of candidacy unless a statement required under this section has been filed in proper form.

(6) Within 30 days of the receipt of a statement required under this section, the \*County, City, or Town\*, clerk or Board of Election Supervisors shall forward the statement to the Commission, or an office designated by the Commission.

**(e) Public record.**

(1) The Commission or office designated by the Commission shall maintain all financial disclosure statements filed under this section.

(2) The Commission or office designated by the Commission shall make financial disclosure statements available during normal office hours for examination and copying by the public, subject to reasonable fees and administrative procedures established by the Commission.

(3) If an individual examines or copies a financial disclosure statement, the Commission or the office designated by the Commission shall record:

- (i) The name and home address of the individual reviewing or copying the statement; and
- (ii) The name of the person whose financial disclosure statement was examined or copied.

(4) Upon request by the individual whose financial disclosure statement was examined or copied, the Commission or the office designated by the Commission shall provide the official or employee with a copy of the name and home address of the person who reviewed the official's or employee's financial disclosure statement.

(5) For statements filed after January 1, 2019, the Commission or the office designated by the Commission may not provide public access to an individual's home address that the individual has designated as the individual's home address.

(6) The Commission or office designated by the Commission shall not provide public access to information related to consideration received from:

- (i) The University of Maryland Medical System;
- (ii) A governmental entity of the State or a local government in the State; or
- (iii) A quasi-governmental entity of the State or local government in the State.

(f) Retention requirements. The Commission or the office designated by the Commission shall retain financial disclosure statements for four years from the date of receipt.

(g) An individual who is required to disclose the name of a business under this section shall disclose any other names that the business is trading as or doing business as.

(h) Contents of statement.

(1) Interests in real property.

(i) A statement filed under this section shall include a schedule of all interests in real property wherever located.

(ii) For each interest in real property, the schedule shall include:

- (A) The nature of the property and the location by street address, mailing address, or legal description of the property;
- (B) The nature and extent of the interest held, including any conditions and encumbrances on the interest;
- (C) The date when, the manner in which, and the identity of the person from whom the interest was acquired;

(D) The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired;

(E) If any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of the person to whom the interest was transferred; and

(F) The identity of any other person with an interest in the property.

(2) Interests in corporations and partnerships.

(i) A statement filed under this section shall include a schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability corporation, regardless of whether the corporation or partnership does business with the \*County, City, or Town\*.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability corporation;

(B) The nature and amount of the interest held, including any conditions and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(iii) An individual may satisfy the requirement to report the amount of the interest held under item (ii)(B) of this paragraph by reporting, instead of a dollar amount:

(A) For an equity interest in a corporation, the number of shares held and, unless the corporation's stock is publicly traded, the percentage of equity interest held; or

(B) For an equity interest in a partnership, the percentage of equity interest held.

(3) Interests in business entities doing business with \*County, City, or Town\*.

(i) A statement filed under this section shall include a schedule of all interests in any business entity that does business with the \*County, City, or Town\*, other than interests reported under paragraph (2) of this subsection.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The nature and amount of the interest held, including any conditions to and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received in exchange for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

#### (4) Gifts.

(i) A statement filed under this section shall include a schedule of each gift in excess of \$20 in value or a series of gifts totaling \$100 or more received during the reporting period from or on behalf of, directly or indirectly, any one person who does business with the \*County, City, or Town\* or from an association, or any entity acting on behalf of an association that is engaged only in representing counties or municipal corporations

(ii) For each gift reported, the schedule shall include:

(A) A description of the nature and value of the gift; and

(B) The identity of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.

(5) Employment with or interests in entities doing business with \* County, City, or Town\*.

(i) A statement filed under this section shall include a schedule of all offices, directorships, and salaried employment by the individual or member of the immediate family of the individual held at any time during the reporting period with entities doing business with the \*County, City, or Town\*.

(ii) For each position reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The title and nature of the office, directorship, or salaried employment held and the date it commenced; and

(C) The name of each \*County, City, or Town\* agency with which the entity is involved as indicated by identifying one or more of the three categories of "doing business", as defined in §3(d) of this chapter.

(6) Indebtedness to entities doing business with or regulated by the individual's \*County, City, or Town\* unit or department.

(i) A statement filed under this section shall include a schedule of all liabilities, excluding retail credit accounts, to persons doing business with or regulated by the individual's \*County, City, or Town\* unit or department owed at any time during the reporting period:

(A) By the individual; or

(B) By a member of the immediate family of the individual if the individual was involved in the transaction giving rise to the liability.

(ii) For each liability reported under this paragraph, the schedule shall include:

(A) The identity of the person to whom the liability was owed and the date the liability was incurred;

(B) The amount of the liability owed as of the end of the reporting period;

(C) The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and

(D) The security given, if any, for the liability.

(7) Employment with \*County, City, or Town\*. A statement filed under this section shall include a schedule of the immediate family members of the individual employed by the \*County, City, or Town\* in any capacity at any time during the reporting period.

#### (8) Sources of earned income.

(i) A statement filed under this section shall include a schedule of the name and address of each place of employment and of each business entity of which the individual or a member of the individual's immediate family was a sole or partial owner and from which the individual or member of the individual's immediate family received earned income, at any time during the reporting period.

(ii) A minor child's employment or business ownership need not be disclosed if the agency that employs the individual does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.

(iii) For a statement filed on or after January 1, 2019, if the individual's spouse is a lobbyist regulated by the \*County, City, or Town\*, the individual shall disclose the entity that has engaged the spouse for lobbying purposes.

#### (9) Relationship with University of Maryland Medical System, State or Local Government, or Quasi-Governmental Entity.

(i) An individual shall disclose the information specified in General Provisions Article §5-607(j)(1), Annotated Code of Maryland, for any financial or contractual relationship with:

(A) The University of Maryland Medical System;

(B) A governmental entity of the State or a local government in the State; or

(C) A quasi-governmental entity of the State or local government in the State.

(ii) For each financial or contractual relationship reported, the schedule shall include:

(A) A description of the relationship;

(B) The subject matter of the relationship; and

(C) The consideration.

(10) A statement filed under this section may also include a schedule of additional interests or information that the individual making the statement wishes to disclose.

(i) For the purposes of §6(h)(1), (2), and (3) of this chapter, the following interests are considered to be the interests of the individual making the statement:

(1) An interest held by a member of the individual's immediate family, if the interest was, at any time during the reporting period, directly or indirectly controlled by the individual.

(2) An interest held, at any time during the applicable period, by:

(i) A business entity in which the individual held a (10)% or greater interest;

(ii) A business entity described in section (i) of this subsection in which the business entity held a 25% or greater interest;

(iii) A business entity described in section (ii) of this subsection in which the business entity held a 50% or greater interest; and

(iv) A business entity in which the individual directly or indirectly, through an interest in one or a combination of other business entities, holds a 10% or greater interest.

(3) An interest held by a trust or an estate in which, at any time during the reporting period:

(i) The individual held a reversionary interest or was a beneficiary; or

(ii) If a revocable trust, the individual was a settlor.

(j) (1) The Commission shall review the financial disclosure statements submitted under this section for compliance with the provisions of this section and shall notify an individual submitting the statement of any omissions or deficiencies.

(2) The \*County, City, or Town\* Ethics Commission may take appropriate enforcement action to ensure compliance with this section.

## Section 7. Financial disclosure — appointed members of boards and commissions.

(a) (1) The \*County, City, or Town\* appointed officials listed in paragraph (b) of this section shall file the statement required by §6 of this chapter.

(2) The appointed officials shall be required to disclose the information specified in §6(g) of this chapter only with respect to those interests, gifts, compensated positions, and liabilities that may create a conflict, as provided in §5 of this chapter, between the member's personal interests and the member's official local duties.

(3) An official shall file a statement required under this section annually, not later than April 30 of each calendar year during which the official holds office.

(b) Appointed officials required to file:

(list of appointed official titles)

(c) The Commission shall maintain all disclosure statements filed under this section as public records available for public inspection and copying as provided in §6(e) of this chapter.

## Section 8. Lobbying.

(a) Except as provided in subsections (b) and (c) of this section, a person or entity who engages in lobbying as defined in §3(l) shall file a lobbying registration with the Commission if the person or entity, during the calendar year:

(1) Expends, exclusive of personal travel and subsistence expenses, in excess of \$\_\_\_\_\_ in furtherance of this activity; or

(2) Is compensated in excess of \$\_\_\_\_\_ in connection with this activity.

(b) The following activities are exempt from regulation under this section:

(1) Professional services in drafting bills or in advising and rendering opinions to clients as to the construction and effect of proposed or pending \*Council or other legislative body\* actions when these services do not otherwise constitute lobbying activities;

(2) Appearances before the \*Council or other legislative body\* upon its specific invitation or request if the person or entity engages in no further or other activities in connection with the passage or defeat of \*Council or other legislative body\* actions;

(3) Appearances before a \*County, City, or Town\* agency upon the specific invitation or request of the agency if the person or entity engages in no further or other activities in connection with the passage or defeat of any agency executive action;

(4) Appearance as part of the official duties of a duly elected or appointed official or employee of the State or a political subdivision of the State, or of the United States, and not on behalf of any other entity;

(5) Actions of a publisher or working member of the press, radio, or television in the ordinary course of the business of disseminating news or making editorial comment to the general public who does not engage in further or other lobbying that would directly and specifically benefit the economic, business, or professional interests of the person or entity or the employer of the person or entity;

(6) Appearances by an individual before the \*Council or other legislative body\* at the specific invitation or request of a registered lobbyist if the person performs no other lobbying act and notifies the \*Council or other legislative body\* that the person or entity is testifying at the request of the lobbyist;

(7) Appearances by an individual before a government agency at the specific invitation or request of a registered lobbyist if the person or entity performs no other lobbying act and notifies agency that the person or entity is testifying at the request of the lobbyist;

(8) The representation of a bona fide religious organization solely for the purpose of protecting the right of its own members to practice the doctrine of the organization; and

(9) Appearance as part of the official duties of an officer, director, member, or employee of an association engaged exclusively in lobbying for counties and municipalities and not on behalf of any other entity.

(c) Limited exemption — employer of a lobbyist.

(1) A person or entity who compensates one or more lobbyists and who would otherwise be required to register as a lobbyist is not required to file a registration and submit lobbying reports if the person or entity reasonably believes that all expenses incurred in connection with the lobbying activities will be reported by a properly registered person or entity acting on behalf of the person or entity.

(2) A person or entity exempted under this subsection becomes subject to this section immediately upon failure of the lobbyist to report any information required under this section.

(d) (1) The registration filed under this section shall be filed on or before the later of the beginning of the calendar year in which the person or entity expects to lobby and within five days of first engaging in lobbying activities in the calendar year.

(2) The registration filed under this section:

(i) Shall be dated and on a form developed by the Commission;

(ii) Shall include:

(A) The lobbyist's full and legal name and permanent address;

(B) The name, address, and nature of business of any person or entity on whose behalf the lobbyist acts; and

(C) The written authorization of any person or entity on whose behalf the lobbyist acts or an authorized officer or agent, who is not the lobbyist, of the person or entity on whose behalf the lobbyist acts;

(iii) A statement of whether the person or entity on whose behalf the lobbyist acts is exempt from registration under subsection (c) of this section;

(iv) The identification, by formal designation, if known, of matters on which the lobbyist expects to act;

(v) Identification of the period of time within a single calendar year during which the lobbyist is authorized to engage in these activities, unless terminated sooner; and

(vi) The full legal signature of the lobbyist and, when appropriate, the person or entity on whose behalf the lobbyist acts or an agent or authorized officer of the person or entity on whose behalf the lobbyist acts.

(e) A lobbyist shall file a separate registration for each person or entity that has engaged or employed the lobbyist for lobbying purposes.

(f) A lobbyist may terminate the lobbyist's registration by providing written notice to the Commission and submitting all outstanding reports and registrations.

(g) A person or entity may not engage in lobbying activities on behalf of another person or entity for compensation that is contingent upon the passage or defeat of any action by the \*Council or other legislative body\* or the outcome of any executive action.

(h) Activity report.

(1) A lobbyist shall file with the Commission or the office designated by the Commission:

(i) By July 31, one report concerning the lobbyist's lobbying activities covering the period beginning January 1 through June 30; and

(ii) By January 31, one report covering the period beginning July 1 through December 31.

(2) A lobbyist shall file a separate activity report for each person or entity on whose behalf the lobbyist acts.

(3) If the lobbyist is not an individual, an authorized officer or agent of the entity shall sign the form.

(4) The report shall include:

(i) A complete and current statement of the information required to be supplied with the lobbyist's registration form.

(ii) Total expenditures on lobbying activities in each of the following categories:

(A) Total compensation paid to the lobbyist not including expenses reported under items (B)—(I) of this subparagraph;

(B) Office expenses of the lobbyist;

(C) Professional and technical research and assistance not reported in item (i) of this subparagraph;

(D) Publications which expressly encourage persons to communicate with \*County, City, or Town\* officials or employees;

(E) Names of witnesses, and the fees and expenses paid to each witness;

(F) Meals and beverages for \*County, City, or Town\* officials and employees;

(G) Reasonable expenses for food, lodging, and scheduled entertainment of \*County, City, or Town\* officials or employees for a meeting which is given in return for participation in a panel or speaking engagement at the meeting;

(H) Other gifts to or for officials or employees or their spouses or dependent children; and

(I) Other expenses.

(i) Special gift report.

(1) (i) With the six-month activity report required under subsection (h) of this section, a lobbyist shall report, except for gifts reported in item (h)(4)(ii)(G) of this section, gifts from the lobbyist with a cumulative value of \$75 or more during the reporting period to an official, employee, or member of the immediate family of an official or employee.

(ii) The lobbyist shall report gifts under this paragraph regardless of whether the gift was given in connection with lobbying activities.

(2) The report shall include the date, beneficiary, amount or value, and nature of the gift.

(j) Notification to official and confidentiality.

(1) If any report filed under this section contains the name of an official or employee or a member of the immediate family of an official or employee, the Commission shall notify the official or employee within 30 days.



(2) The Commission shall keep the report confidential for 60 days following receipt by the Commission.

(3) Within 30 days of the notice required under paragraph (1) of this subsection, the official or employee may file a written exception to the inclusion in the report of the name of the official, employee, or member of the immediate family of the official or employee.

(k) The Commission may require a lobbyist to submit other reports the Commission determines to be necessary.

(l) The Commission or office designated by the Commission shall maintain all registrations and reports filed under this section.

(m) (1) The Commission shall review the registrations and reports filed under this section for compliance with this section and shall notify persons engaging in lobbying activities of any omissions or deficiencies.

(2) The Commission may take appropriate enforcement action to ensure compliance with this section.

(n) Annual report.

(1) The Commission shall compute and make available a subtotal under each of the ten required categories in subparagraph (h)(4) (ii) of this section.

(2) The Commission shall compute and make available the total amount reported by all lobbyists for their lobbying activities during the reporting period.

(o) The Commission shall make lobbying registrations and reports available during normal business hours for examination and copying subject to reasonable fees and procedures established by the Commission.

## Section 9. Enforcement.

(a) (1) Upon a finding of a violation of any provision of this chapter, the Commission may:

(i) Issue an order of compliance directing the respondent to cease and desist from the violation;

(ii) Issue a reprimand; or

(iii) Recommend to the appropriate authority other appropriate discipline of the respondent, including censure or removal if that discipline is authorized by law.

(2) If the Commission finds that a respondent has violated §8 of this chapter, the Commission may:

(i) Require a respondent who is a registered lobbyist to file any additional reports or information that reasonably related to the information that is required under §8 of this chapter;

(ii) Impose a fine not exceeding \$5,000 for each violation; and

(iii) Suspend the registration of an individual registered lobbyist if the Commission finds that the lobbyist has knowingly and willfully violated §8 of this chapter or has been convicted of a criminal offense arising from lobbying activities.

(b) (1) Upon request of the Commission, the \*County, City, or Town\* Attorney may file a petition for injunctive or other relief in the circuit court of \_\_\_\_\_ County, or in any other court having proper venue for the purpose of requiring compliance with the provisions of this chapter.

(2) (i) The court may:

(A) Issue an order to cease and desist from the violation;

(B) Except as provided in subparagraph (ii) of this paragraph, void an official action taken by an official or employee with a conflict of interest prohibited by this chapter when the action arises from or concerns the subject matter of the conflict and if the legal action is brought within 90 days of the occurrence of the official action, if the court deems voiding the action to be in the best interest of the public; or

(C) Impose a fine of up to \$5,000 for any violation of the provisions of this chapter, with each day upon which the violation occurs constituting a separate offense.

(ii) A court may not void any official action appropriating public funds, levying taxes, or providing for the issuance of bonds, notes, or other evidences of public obligations.

(c) (1) Any person who knowingly and willfully violates the provisions of §8 of this chapter is guilty of a misdemeanor, and upon conviction, is subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both.

(2) If the person is a business entity and not a natural person, each officer and partner of the business entity who knowingly authorized or participated in the violation is guilty of a misdemeanor and, upon conviction, is subject to the same penalties as the business entity.

(d) In addition to any other enforcement provisions in this chapter, a person who the Commission or a court finds has violated this chapter:

(1) Is subject to termination or other disciplinary action; and

(2) May be suspended from receiving payment of salary or other compensation pending full compliance with the terms of an order of the Commission or a court.

(e) (1) A person who is subject to the provisions of this chapter shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to complete and substantiate a report, statement, or record required under this chapter for three years from the date of filing the report, statement, or record.

(2) These papers and documents shall be available for inspection upon request by the Commission or the \*Council or other legislative body\* after reasonable notice.

## Section 10. Severability.

If any section, sentence, clause, or phrase of this chapter is held invalid or unconstitutional by any court of competent jurisdiction, the ruling shall not affect the validity of the remaining portions of this chapter.

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## Appendix B — Model Ethics Law B

Authority: General Provisions Article, §§5-205 and 5-206, and Title 5, Subtitle 8, Annotated Code of Maryland

### CHAPTER \_\_\_\_ — ETHICS PROVISIONS

#### Section 1. Short title.

This chapter may be cited as the \* County, City or Town\* Public Ethics \*Law or Ordinance.\*

#### Section 2. Applicability and Definitions.

(a) The provisions of this chapter apply to all \* County, City or Town\* elected officials, employees, and appointees to boards and commissions of \*County, City or Town\*.

(b) “Designated second home” means:

(1) If an individual owns one second home, the individual’s second home; or

(2) If an individual owns more than one second home, any one second home the individual identifies to the Commission as the individual’s designated second home.

(c) “Home address” means the address of an individual’s:

(1) Principal home; and

(2) Designated second home, if any.

(d) “Principal home” means the sole residential property that an individual occupies as the individual’s primary residence, whether owned or rented by the individual.

(e) “Quasi-governmental entity” means an entity that is created by state statute, that performs a public function, and that is supported in whole or in part by the state but is managed privately.

(f) “Second home” means a residential property that:

- (1) An individual occupies for some portion of the filing year; and
- (2) Is not a rental property or a time share.

### Section 3. Ethics Commission.

(a) There is a \*name of County, City or Town\* Ethics Commission that consists of \_\_\_\_ members appointed by the \*Mayor or other chief Executive Officer\*.

(b) The Commission shall:

- (1) Devise, receive, and maintain all forms required by this chapter;
- (2) Develop procedures and policies for advisory opinion requests and provide published advisory opinions to persons subject to this chapter regarding the applicability of the provisions of this chapter to them;
- (3) Develop procedures and policies for the processing of complaints to make appropriate determinations regarding complaints filed by any person alleging violations of this chapter; and
- (4) Conduct a public information program regarding the purposes and application of this chapter.

(c) The \*County, City, or Town\* Attorney shall advise the Commission.

(d) The Commission shall certify to the State Ethics Commission on or before October 1 of each year that the \*County, City, or Town\* is in compliance with the requirements of General Provisions Article, Title 5, Subtitle 8, Annotated Code of Maryland, for elected local officials.

(e) The Commission shall determine if changes to this chapter are required to be in compliance with the requirements of General Provisions Article, Title 5, Subtitle 8, Annotated Code of Maryland, and shall forward any recommended changes and amendments to the \*County, City, or Town\* Council for enactment.

(f) The Commission may adopt other policies and procedures to assist in the implementation of the Commission’s programs established in this chapter.

### Section 4. Conflicts of interest.

(a) In this section, “qualified relative” means a spouse, parent, child, or sibling.

(b) All \* County, City, or Town\* elected officials, officials appointed to \* County, City, or Town\* boards and commissions subject to this chapter, and employees are subject to this section.

(c) Participation prohibitions. Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

(1) Except as permitted by Commission regulation or opinion, an official or employee may not participate in:

(i) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, to the knowledge of the official or employee, the official or employee, or a qualified relative of the official or employee has an interest;

(ii) Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the following is a party:

(A) A business entity in which the official or employee has a direct financial interest of which the official or employee may reasonably be expected to know;

(B) A business entity for which the official, employee, or a qualified relative of the official or employee is an officer, director, trustee, partner, or employee;

(C) A business entity with which the official or employee or, to the knowledge of the official or employee, a qualified relative is negotiating employment or has any arrangement concerning prospective employment;

(D) If the contract reasonably could be expected to result in a conflict between the private interests of the official or employee and the official duties of the official or employee, a business entity that is a party to an existing contract with the official or employee, or which, to the knowledge of the official or employee, is a party to a contract with a qualified relative;

(E) An entity, doing business with the \*County, City, or Town\*, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if the official or employee may be reasonably expected to know of both direct financial interests; or

(F) A business entity that:

1. The official or employee knows is a creditor or obligee of the official or employee or a qualified relative of the official or employee with respect to a thing of economic value; and

2. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or employee or a qualified relative of the official or employee.

(2) A person who is disqualified from participating under paragraphs (1)(i) or (ii) of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:

(i) The disqualification leaves a body with less than a quorum capable of acting;

(ii) The disqualified official or employee is required by law to act; or

(iii) The disqualified official or employee is the only person authorized to act.

(3) The prohibitions of paragraph (1)(i) or (ii) of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.

(4) A former regulated lobbyist who is or becomes subject to this chapter as an employee or official, other than an elected official or an appointed official, may not participate in a case, contract, or other specific matter as an employee or official, other than an elected official or appointed official, for one calendar year after the termination of the registration of the former regulated lobbyist if the former regulated lobbyist previously assisted or represented another party for compensation in the matter.

(d) Employment and financial interest restrictions.

(1) Except as permitted by regulation of the Commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

(i) Be employed by or have a financial interest in any entity:

(A) Subject to the authority of the official or employee or the \*County, City, or Town\* agency, board, commission with which the official or employee is affiliated; or

(B) That is negotiating or has entered a contract with the agency, board, or commission with which the official or employee is affiliated; or

(ii) Hold any other employment relationship that would impair the impartiality or independence of judgment of the official or employee.

(2) This prohibition does not apply to:

(i) An official or employee who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;

(ii) Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;

(iii) An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted by and in accordance with regulations adopted by the Commission; or

(iv) Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.

(e) Post-employment limitations and restrictions.

(1) A former official or employee may not assist or represent any party other than the \*County, City, or Town\* for compensation in a case, contract, or other specific matter involving the \*County, City, or Town\* if that matter is one in which the former official or employee significantly participated as an official or employee.

(2) A former elected official may not assist or represent another party for compensation in a matter that is the subject of legislative action for one calendar year after the elected official leaves office.

(f) Contingent compensation. Except in a judicial or quasi-judicial proceeding, an official or employee may not assist or represent a party for contingent compensation in any matter before or involving the \*County, City, or Town\*.

(g) Use of prestige of office.

(1) (i) An official or employee may not intentionally use the prestige of office or public position:

(A) For the private gain of that official or employee or the private gain of another; or

(B) To influence, except as part of the official duties of the official or employee or as a usual and customary constituent service without additional compensation, the award of a state or local contract to a specific person.

(ii) An official may not directly or indirectly initiate a solicitation for a person to retain the compensated services of a particular regulated lobbyist or lobbying firm.

(2) This subsection does not prohibit the performance of usual and customary constituent services by an elected local official without additional compensation.

(3) (i) An official, other than an elected official, or employee may not use public resources or the title of the official or employee to solicit a contribution as that term is defined in the Election Law Article.

(ii) An elected official may not use public resources to solicit a contribution as that term is defined in the Election Law Article.

(h) Solicitation and acceptance of gifts.

(1) An official or employee may not solicit any gift.

(2) An official or employee may not directly solicit or facilitate the solicitation of a gift, on behalf of another person, from an individual regulated lobbyist.

(3) An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has the reason to know:

(i) Is doing business with or seeking to do business with the \*County, City or Town\* office, agency, board, or commission with which the official or employee is affiliated;

(ii) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the official duties of the official or employee;

(iii) Is engaged in an activity regulated or controlled by the official's or employee's governmental unit;

(iv) Is a lobbyist with respect to matters within the jurisdiction of the official or employee; or

(v) Is an association, or any entity acting on behalf of an association that is engaged only in representing counties or municipal corporations.

(4) Paragraph (5) of this subsection does not apply to a gift:

- (i) That would tend to impair the impartiality and the independence of judgment of the official or employee receiving the gift;
- (ii) Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official or employee; or
- (iii) Of significant value that the recipient official or employee believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official or employee.

(5) Notwithstanding paragraph (3) of this subsection, an official or employee may accept the following:

- (i) Meals and beverages consumed in the presence of the donor or sponsoring entity;
- (ii) Ceremonial gifts or awards that have insignificant monetary value;
- (iii) Unsolicited gifts of nominal value that do not exceed \$20 in cost or trivial items of informational value;
- (iv) Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official or the employee at a meeting which is given in return for the participation of the official or employee in a panel or speaking engagement at the meeting;
- (v) Gifts of tickets or free admission extended to an elected local official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;
- (vi) A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing, that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the \*County, City, or Town\* and that the gift is purely personal and private in nature;
- (vii) Gifts from a person related to the official or employee by blood or marriage, or any other individual who is a member of the household of the official or employee; or
- (viii) Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is in not related in any way to the official's or employee's official position.

(i) Disclosure of confidential information. Other than in the discharge of official duties, an official or employee or former official or employee may not disclose or use confidential information, that the official or employee acquired by reason of the individual's public position or former public position and that is not available to the public, for the economic benefit of the official or employee or that of another person.

(j) An official or employee may not retaliate against an individual for reporting or participating in an investigation of a potential violation of the local ethics law or ordinance.

## **Section 5. Financial disclosure — local elected officials and candidates to be local elected officials.**

(a) (1) This section applies to all local elected officials and candidates to be local elected officials.

(2) Except as provided in subsection (b) of this section, a local elected official or a candidate to be a local elected official shall file the financial disclosure statement required under this section:

- (i) On a form provided by the Commission;
- (ii) Under oath or affirmation; and
- (iii) With the Commission.

(3) Deadlines for filing statements.

(i) An incumbent local elected official shall file a financial disclosure statement annually no later than April 30 of each year for the preceding calendar year.

(ii) An individual who is appointed to fill a vacancy in an office for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a statement for the preceding calendar year within 30 days after

appointment.

(iii) (A) An individual who, other than by reason of death, leaves an office for which a statement is required shall file a statement within 60 days after leaving the office.

(B) The statement shall cover:

1. The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and

2. The portion of the current calendar year during which the individual held the office.

(b) Candidates to be local elected officials.

(1) Except for an official who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate to be an elected local official shall file a financial disclosure statement each year beginning with the year in which the certificate of candidacy is filed through the year of the election.

(2) A candidate to be an elected local official shall file a statement required under this section:

(i) In the year the certificate of candidacy is filed, no later than the filing of the certificate of candidacy;

(ii) In the year of the election, on or before the earlier of April 30 or the last day for the withdrawal of candidacy; and

(iii) In all other years for which a statement is required, on or before April 30.

(3) A candidate to be an elected official:

(i) May file the statement required under §5(b)(2)(i) of this chapter with the \*County, City, or Town\* Clerk or Board of Election Supervisors with the certificate of candidacy or with the Commission prior to filing the certificate of candidacy; and

(ii) Shall file the statements required under §5(b)(2)(ii) and (iii) with the Commission.

(4) If a statement required to be filed by a candidate is overdue and not filed within 8 days after written notice of the failure to file is provided by the \*County, City, or Town\* Clerk or Board of Election Supervisor, the candidate is deemed to have withdrawn the candidacy.

(5) The \*County, City, or Town\* Clerk or Board of Election Supervisors may not accept any certificate of candidacy unless a statement has been filed in proper form.

(6) Within 30 days of the receipt of a statement required under this section, the \*County, City, or Town\* Clerk or Board of Election Supervisors shall forward the statement to the Commission or the office designated by the Commission.

#### (c) Public record.

(1) The Commission or office designated by the Commission shall maintain all financial disclosure statements filed under this section.

(2) Financial disclosure statements shall be made available during normal office hours for examination and copying by the public subject to reasonable fees and administrative procedures established by the Commission.

(3) If an individual examines or copies a financial disclosure statement, the Commission or the office designated by the Commission shall record:

(i) The name and home address of the individual reviewing or copying the statement; and

(ii) The name of the person whose financial disclosure statement was examined or copied.

(4) Upon request by the official or employee whose financial disclosure statement was examined or copied, the Commission or the office designated by the Commission shall provide the official with a copy of the name and home address of the person who reviewed the official's financial disclosure statement.

(5) For statements filed after January 1, 2019, the Commission or the office designated by the Commission may not provide public access to an individual's home address that the individual has designated as the individual's home address.

(6) The Commission or office designated by the Commission shall not provide public access to information related to consideration received from:

(i) The University of Maryland Medical System;

(ii) A governmental entity of the State or a local government in the State; or

(iii) A quasi-governmental entity of the State or local government in the State.

(d) Retention requirements. The Commission or the office designated by the Commission shall retain financial disclosure statements for four years from the date of receipt.

(e) An individual who is required to disclose the name of a business under this section shall disclose any other names that the business is trading as or doing business as.

(f) Contents of statement.

(1) Interests in real property.

(i) A statement filed under this section shall include a schedule of all interests in real property wherever located.

(ii) For each interest in real property, the schedule shall include:

(A) The nature of the property and the location by street address, mailing address, or legal description of the property;

(B) The nature and extent of the interest held, including any conditions and encumbrances on the interest;

(C) The date when, the manner in which, and the identity of the person from whom the interest was acquired;

(D) The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired;

(E) If any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of the person to whom the interest was transferred; and

(F) The identity of any other person with an interest in the property.

(2) Interests in corporations and partnerships.

(i) A statement filed under this section shall include a schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability corporation, regardless of whether the corporation or partnership does business with the \*County, City, or Town\*.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability corporation;

(B) The nature and amount of the interest held, including any conditions and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

(iii) An individual may satisfy the requirement to report the amount of the interest held under item (ii)(B) of this paragraph by reporting, instead of a dollar amount:



(A) For an equity interest in a corporation, the number of shares held and, unless the corporation's stock is publicly traded, the percentage of equity interest held; or

(B) For an equity interest in a partnership, the percentage of equity interest held.

(3) Interests in business entities doing business with \*County, City, or Town\*.

(i) A statement filed under this section shall include a schedule of all interests in any business entity that does business with the \*County, City, or Town\*, other than interests reported under paragraph (2) of this subsection.

(ii) For each interest reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The nature and amount of the interest held, including any conditions to and encumbrances on the interest;

(C) With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received in exchange for the interest, and, if known, the identity of the person to whom the interest was transferred; and

(D) With respect to any interest acquired during the reporting period:

1. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and

2. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.

#### (4) Gifts.

(i) A statement filed under this section shall include a schedule of each gift in excess of \$20 in value or a series of gifts totaling \$100 or more received during the reporting period from or on behalf of, directly or indirectly, any one person who does business with the \*County, City, or Town\*, or from an association, or any entity acting on behalf of an association that is engaged only in representing counties or municipal corporations.

(ii) For each gift reported, the schedule shall include:

(A) A description of the nature and value of the gift; and

(B) The identity of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.

(5) Employment with or interests in entities doing business with \* County, City, or Town\*.

(i) A statement filed under this section shall include a schedule of all offices, directorships, and salaried employment by the individual or member of the immediate family of the individual held at any time during the reporting period with entities doing business with the \*County, City, or Town\*.

(ii) For each position reported under this paragraph, the schedule shall include:

(A) The name and address of the principal office of the business entity;

(B) The title and nature of the office, directorship, or salaried employment held and the date it commenced; and

(C) The name of each \*County, City, or Town\* agency with which the entity is involved.

(6) Indebtedness to entities doing business with or regulated by the individual's \*County, City, or Town\* unit or department.

(i) A statement filed under this section shall include a schedule of all liabilities, excluding retail credit accounts, to persons doing business with or regulated by the individual's \*County, City, or Town\* unit or department owed at any time during the reporting period:

(A) By the individual; or

(B) By a member of the immediate family of the individual if the individual was involved in the transaction giving rise to the liability.

(ii) For each liability reported under this paragraph, the schedule shall include:

(A) The identity of the person to whom the liability was owed and the date the liability was incurred;

(B) The amount of the liability owed as of the end of the reporting period;

(C) The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and

(D) The security given, if any, for the liability.

(7) A statement filed under this section shall include a schedule of the immediate family members of the individual employed by the \*County, City, or Town\* in any capacity at any time during the reporting period.

**(8) Sources of earned income.**

(i) A statement filed under this section shall include a schedule of the name and address of each place of employment and of each business entity of which the individual or a member of the individual's immediate family was a sole or partial owner and from which the individual or member of the individual's immediate family received earned income, at any time during the reporting period.

(ii) A minor child's employment or business ownership need not be disclosed if the agency that employs the individual does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.

(iii) For a statement filed on or after January 1, 2019, if the individual's spouse is a lobbyist regulated by the \*County, City, Or Town\*, the individual shall disclose the entity that has engaged the spouse for lobbying purposes.

**(9) Relationship with University of Maryland Medical System, State or Local Government, or Quasi-Governmental Entity.**

(i) An individual shall disclose the information specified in General Provisions Article §5-607(j)(1), Annotated Code of Maryland, for any financial or contractual relationship with:

(A) The University of Maryland Medical System;

(B) A governmental entity of the State or a local government in the State; or

(C) A quasi-governmental entity of the State or local government in the State.

(ii) For each financial or contractual relationship reported, the schedule shall include:

(A) A description of the relationship;

(B) The subject matter of the relationship; and

(C) The consideration.

(10) A statement filed under this section may also include a schedule of additional interests or information that the individual making the statement wishes to disclose.

(g) For the purposes of §5(f)(1), (2), and (3) of this chapter, the following interests are considered to be the interests of the individual making the statement:

(1) An interest held by a member of the individual's immediate family, if the interest was, at any time during the reporting period, directly or indirectly controlled by the individual.

(2) An interest held, at any time during the applicable period, by:

(i) A business entity in which the individual held a (10)% or greater interest;

(ii) A business entity described in item (i) of this subsection in which the business entity held a 25% or greater interest;

(iii) A business entity described in item (ii) of this subsection in which the business entity held a 50% or greater interest; and

(iv) A business entity in which the individual directly or indirectly, through an interest in one or a combination of other business entities, holds a 10% or greater interest.

(3) An interest held by a trust or an estate in which, at any time during the reporting period:

- (i) The individual held a reversionary interest or was a beneficiary; or
- (ii) If a revocable trust, the individual was a settlor.

(h) (1) The Commission shall review the financial disclosure statements submitted under this section for compliance with the provisions of this section and shall notify an individual submitting the statement of any omissions or deficiencies.

(2) The \*County, City, or Town\* Ethics Commission may take appropriate enforcement action to ensure compliance with this section.

## **Section 6. Financial disclosure — employees and appointed officials.**

(a) This section only applies to the following appointed officials and employees:

(list of appointed official titles and employee titles)

(b) A statement filed under this section shall be filed with the Commission under oath or affirmation.

(c) On or before April 30 of each year during which an official or employee holds office, an official or employee shall file a statement disclosing gifts received during the preceding calendar year from any person that contracts with or is regulated by \*County, City, or Town\*, including the name of a business entity in which the individual directly or indirectly, though an interest in one or a combination of other business entities, holds a 10% or greater interest. The donor of the gift and the approximate retail value at the time of receipt.

(d) An official or employee shall disclose employment and interests that raise conflicts of interest or potential conflicts of interest in connection with a specific proposed action by the employee or official sufficiently in advance of the action to provide adequate disclosure to the public.

(e) An individual who is required to disclose the name of a business under this section shall disclose any other names that the business is trading as or doing business as.

(f) Relationship with University of Maryland Medical System, State or Local Government, or Quasi-Governmental Entity.

(1) An individual shall disclose the information specified in General Provisions Article §5-607(j)(1), Annotated Code of Maryland, for any financial or contractual relationship with:

- (i) The University of Maryland Medical System;
- (ii) A governmental entity of the State or a local government in the State; or
- (iii) A quasi-governmental entity of the State or local government in the State.

(2) For each financial or contractual relationship reported, the schedule shall include:

- (i) A description of the relationship;
- (ii) The subject matter of the relationship; and
- (iii) The consideration.

(g) The Commission shall maintain all disclosure statements filed under this section as public records available for public inspection and copying as provided in §5(c) and (d) of this chapter.

## **Section 7. Lobbying.**

(a) A person shall file a lobbying registration statement with the Commission if the person:

(1) Personally appears before a \*County, City, or Town\* official or employee with the intent to influence that person in performance of the official duties of the official or employee; and

(2) In connection with the intent to influence, expends or reasonably expects to expend in a given calendar year in excess of \$\*----\* on food, entertainment, or other gifts for officials or employees of \*County, City, or Town\*.

(b) A person shall file a registration statement required under this section on or before the later of January 15 of the calendar year or within 5 days after first performing an act that requires registration in the calendar year.

(c) (1) The registration statement shall identify:

(i) The registrant;

(ii) Any other person on whose behalf the registrant acts; and

(iii) The subject matter on which the registrant proposes to make appearances specified in subsection (a) of this section.

(2) The registration statement shall cover a defined registration period not to exceed one calendar year.

(d) Within 30 days after the end of any calendar year during which a person was registered under this section, the person shall file a report with the Commission disclosing:

(1) The value, date, and nature of any food, entertainment, or other gift provided to a \*County, City, or Town\* official or employee; and

(2) If a gift or series of gifts to a single official or employee exceeds \$\* \_\_\_\_\_ \* in value, the identity of the official or employee.

(e) The Commission shall maintain the registrations and reports filed under this section as public records available for public inspection and copying for four years after receipt by the Commission.

## Section 8. Exemptions and modifications.

The Commission may grant exemptions and modifications to the provisions of §§4 and 6 of this chapter to employees and to appointed members of \*name of County, City or Town\* Boards and Commissions, when the Commission finds that an exemption or modification would not be contrary to the purposes of this chapter, and the application of this chapter would:

(a) Constitute an unreasonable invasion of privacy; and

(b) Significantly reduce the availability of qualified persons for public service.

## Section 9. Enforcement.

(a) The Commission may:

(1) Assess a late fee of \$5 per day up to a maximum of \$500 for a failure to timely file a financial disclosure statement required under §5 or 6 of this chapter;

(2) Assess a late fee of \$10 per day up to a maximum of \$1,000 for a failure to file a timely lobbyist registration or lobbyist report required under §7 of this chapter; and

(3) Issue a cease and desist order against any person found to be in violation of this chapter.

(b) (1) Upon a finding of a violation of any provision of this chapter, the Commission may:

(i) Issue an order of compliance directing the respondent to cease and desist from the violation;

(ii) Issue a reprimand; or

(iii) Recommend to the appropriate authority other appropriate discipline of the respondent, including censure or removal if that discipline is authorized by law.

(2) If the Commission finds that a respondent has violated §7 of this chapter, the Commission may:

(i) Require a respondent who is a registered lobbyist to file any additional reports or information that reasonably relates to the information that is required under §7 of this chapter;

(ii) Impose a fine not exceeding \$5,000 for each violation; and

(iii) Suspend the registration of an individual registered lobbyist if the Commission finds that the lobbyist has knowingly and willfully violated §7 of this chapter or has been convicted of a criminal offense arising from lobbying activities.

(c) (1) Upon request of by the Commission, the \*County, City, or Town\* Attorney may file a petition for injunctive or other relief in the circuit court of \_\_\_\_\_ County, or in any other court having proper venue for the purpose of requiring compliance with the provisions of this chapter.

(2) (i) The court may:

(A) Issue an order to cease and desist from the violation;

(B) Except as provided in subparagraph (ii) of this paragraph, void an official action taken by an official or employee with a conflict of interest prohibited by this chapter when the action arises from or concerns the subject matter of the conflict and if the legal action is brought within 90 days of the occurrence of the official action, if the court deems voiding the action to be in the best interest of the public; or

(C) Impose a fine of up to \$5,000 for any violation of the provisions of this chapter, with each day upon which the violation occurs constituting a separate offense.

(ii) A court may not void any official action appropriating public funds, levying taxes, or providing for the issuance of bonds, notes, or other evidences of public obligations.

(d) In addition to any other enforcement provisions in this chapter, a person who the Commission or a court finds has violated this chapter:

(1) Is subject to termination or other disciplinary action; and

(2) May be suspended from receiving payment of salary or other compensation pending full compliance with the terms of an order of the Commission or a court.

(e) A \*County, City, or Town\* official or employee found to have violated this chapter is subject to disciplinary or other appropriate personnel action, including removal from office, disciplinary action, suspension of salary, or other sanction.

(f) Violation of §7 of this chapter shall be a misdemeanor subject to a fine of up to \$\*10,000\* or imprisonment of up to one year.

(g) A finding of a violation of this chapter by the Commission is public information.



## MONTGOMERY COUNTY ETHICS COMMISSION

### MEMORANDUM

July 19, 2022

To: Gabe Albornoz, President  
Montgomery County Council

From: Robert W. Cobb, Staff Director/Chief Counsel, Ethics Commission *RWC*

Subject: Public comment/additional recommendations for Bill 17-22

In the context of the Public Hearing on July 26, 2022, concerning Bill 17-22, Public Ethics Law amendments, I wanted to bring to your attention recommendations for additional ethics related changes to County law that will be addressed to the Government Operations Committee when it takes up consideration of Bill 17-22.

When the county creates a new County Board, Committee, or Commission (BCC), as it recently did through Bill 16-21, establishing the Building Performance Improvements Board (BPIB), a conflict of interest issue is presented when persons are appointed to the BCC from groups of persons whose employers or businesses are affected by matters before the BCC – even where the express intent of the legislation is to have persons from such groups appointed to the BCC. If, in establishing a BCC, the intent is for members to represent the constituent groups from which they are appointed while serving on the BCC, the organization's mandate should make this clear. The Ethics Commission believes Bill 16-21 establishing the BPIB should be amended to clarify that the members are to represent the views of the groups from which they are appointed.

Another recommendation for Bill 17-22 will be to specifically include the Police Accountability Board and Administrative Charging Committee (established through Bill 49-21) as entities whose members are required to complete public financial disclosure statements.

Also, the Ethics Commission recommends that Section 2-148 of the County Code be amended to specify that BCC members are to receive ethics training as a part of their orientation as BCC members. A corresponding change to the Public Ethics Law should be considered.

I would be happy to provide further information about these recommendations.

**MONTGOMERY COUNTY ETHICS COMMISSION**

100 MARYLAND AVENUE, ROOM 204, ROCKVILLE, MARYLAND 20850  
OFFICE: 240.777.6670 FAX: 240.777.6672



Housing Opportunities Commission of Montgomery County

Comments on Council Bill 17-22 - Submitted to the Government Operations Committee

October 20, 2022

The Housing Opportunities Commission of Montgomery County (HOC) takes this opportunity to submit comments to the Montgomery County Council, Government Operations Committee on Council Bill 17-22, which would make several changes to the County's Public Ethics Law. The majority of the provisions proposed in CB 17-22 would update the Public Ethics Law to be consistent with state ethics statutes that recently became effective. Beyond those changes for consistency with state law, CB 17-22 also proposes language that would explicitly apply Section 11B-52(a) of the County Code to County agencies that are generally not subject to the County's procurement law, including HOC and the Montgomery County Revenue Authority (MCRA). While HOC is generally supportive of most of the provisions in the legislation, it has serious concerns with the proposed amendments to Section 11B-52(a), as it (1) places burdensome procurement restrictions on third-party vendors who are not subject to County procurement laws, (2) duplicates and complicates existing "conflict of interest" protections that already apply to HOC employees, and (3) creates a new and ambiguous administrative compliance process.

(1) Application of County Procurement Policies to Non-County Procurements

Generally, HOC and its vendors are not subject to the County's procurement policies and procedures. Rather, HOC has its own distinct procurement policy that is specifically designed to comply with Housing and Urban Development (HUD) regulations, a requirement HOC must meet to fully access vital federal funding for the development of affordable housing in Montgomery County. The proposed legislation would require third-party entities who now operate under a totally separate procurement process to be subject to a single, specific provision that they may or may not be aware of. Currently, Section 11B-52 of the Public Ethics Law applies solely to entities engaging in procurement matters that are subject to the County's full procurement policies and procedures. By definition, these entities have willingly entered into a situation whether they know that they are subject to those provisions by choosing to engage in a County procurement. Contrastingly, entities engaging in HOC procurements have taken the appropriate steps to ensure compliance with HOC's HUD-based procurement policy and, under CB 17-22, would be simultaneously subject to multiple procurement procedures.

(2) Existing Ethics Requirements Already Address Conflicts of Interest and Employment

HOC believes the better approach to addressing ethical and conflict of interest concerns relating to County employees engaging in employment discussions with entities conducting business with the County, though a procurement or otherwise, is to directly regulate those employees. HOC employees, like other County employees, are already subject to Section 19A of the Public Ethics Law, including Section 19A-13, which states the following:

***Sec. 19A-13. Employment of former public employees.***





*(a) A former public employee must not work on or otherwise assist any party, other than a County agency, in a case, contract, or other specific matter if the employee significantly participated in the matter as a public employee.*

*(b) For one year after the effective date of termination from County employment, a former public employee must not enter into any employment understanding or arrangement (express, implied, or tacit) with any person or business if the public employee significantly participated during the previous 3 years:*

*(1) in regulating the person or business; or*

*(2) in any procurement or other contractual activity concerning a contract with the person or business (except a non-discretionary contract with a regulated public utility).*

*(c) Significant participation means making a decision, approval, disapproval, recommendation, rendering of advice, investigation, or similar action taken as an officer or employee. Significant participation ordinarily does not include program or legislative oversight, or budget preparation, review, or adoption.*

HOC believes the current statutory requirements placed on HOC employees adequately address conflict of interest concerns by laying out clear scenarios where employees may not engage in employment with a qualifying vendor. These employees are fully aware of these limitations and undergo a County-conducted ethics training to ensure their full understanding of their obligations under the law.

Furthermore, to ensure full compliance and transparency, HOC has worked with the Ethics Commission to voluntarily include employee non-solicitation language (see highlighted blue language in Attachment A) in its procurement contracts, so that entities that enter into a contract with HOC are fully aware of the statutory limitations on HOC employees. This language, which was approved by the Ethics Commission, now serves as model language for other County agencies who conduct procurements outside of the County procurement policy and procedures.

### 3. Arbitrary and Ambiguous Administrative Burden

The passage of CB 17-22, as introduced, raises several questions about how the new provisions would be practically applied to HOC employees. Firstly, the waiver mechanism is unclear. Under current law, there is a clear process for County employees to seek a waiver from the Ethics Commission for applicable restrictions. The process for a third-party vendor seeking to employ or extend and offer for employment under the new provisions is not clear.

Additionally, the unique nature of the HOC, as an agency, and the functions it performs make the application of Section 11B-52(a) concerning. Unlike the general County government, HOC is a small agency where a significant percentage of the staff would meet the definition of "significantly participates" in the procurement process. The impact on HOC employees would be relatively high and HOC has concerns about the Ethics Commission's ability to review the potential number of waiver requests. Also, per its current procurement policy, HOC's contracts may be up to a maximum term of five years. The long-term nature of these contracts raises questions about the timely application of these restrictions to ongoing vendors. For example, the proposed provision would require a vendor to





seek a waiver before even communicating potential employment to an HOC employee who participated in a procurement panel four years prior and has had no subsequent overlap with the vendor during the actual contract period. HOC views this oversight as an ineffective and inefficient measure to prevent conflicts of interest that may result in disproportionate disadvantage to HOC employees' ability progress in their professions.

In light of these concerns, HOC respectfully requests that the Committee and the County Council amend CB 17-22 to remove the proposed application of Section 11B52(a) to the HOC and other County entities who do not participate in the County procurement process, while maintaining the application of other existing ethics requirements for eligible employees. The HOC remains supportive of the other provisions of CB 17-22 that would update the Public Ethics Law to be consistent with state statute.

Contract No.: \_\_\_\_\_

## AGREEMENT FOR SERVICES

**THIS AGREEMENT FOR SERVICES** (this “**Agreement**”), effective as of \_\_\_\_\_, 20\_\_ (the “**Effective Date**”), is made by and between the HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY (“**HOC**”), whose address is 10400 Detrick Avenue, Kensington, MD 20895, and \_\_\_\_\_ (“**Contractor**”), whose address is \_\_\_\_\_.

**WHEREAS**, HOC desires to engage Contractor to render services described herein;

**WHEREAS**, Contractor warrants that it is qualified and willing to perform the desired services; and

**WHEREAS**, the [Acting] Executive Director of HOC, or his/her designee, is the duly authorized designee to act as signatory of this instrument on behalf of HOC and is solely responsible for all contractual changes and modifications hereto.

**NOW THEREFORE**, in consideration of the foregoing recitals (which shall be incorporated herein), the mutual covenants and promises hereunder, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the parties covenant and agree to the following:

### ARTICLE I — COMPENSATION

The parties hereto agree that the total consideration paid to Contractor by HOC shall [be no more than / not exceed (NTE) / be up to / be in the amount of] \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_). Contractor agrees that all hourly rates and fees shall not increase for [the initial \_\_\_\_ years / the term of this Agreement]. After year \_\_\_\_\_, Contractor may request, in writing, a price adjustment for any renewal period; provided, however, any request will not exceed the percentage change in the Customer Price Index for the Baltimore-Washington Metropolitan prior year. All requests for price adjustment are subject to the review and written approval of HOC.

Payments will be made after the invoice(s) have been approved by HOC and the work has been completed to the satisfaction of HOC, unless HOC has provided written notice to Contractor that Contractor is in default under this Agreement. HOC will make reasonable efforts to pay invoices within thirty (30) days of approval.

All invoices must reference this Agreement's Contract Number and shall be sent to:

Housing Opportunities Commission of Montgomery County  
10400 Detrick Avenue  
Kensington, MD 20895  
Attn: Accounts Payable

with a copy to:

Housing Opportunities Commission of Montgomery County  
10400 Detrick Avenue  
Kensington, MD 20895  
Attn: \_\_\_\_\_

## ARTICLE II — TERM

This Agreement shall expire, unless sooner terminated, on \_\_\_\_\_. HOC, in its sole discretion, shall have \_\_\_\_\_ renewal option(s) that shall be exercised by HOC by providing Contractor written notice of such renewal and renewal documents stating the new term of the Agreement. Each renewal is for one-year, or any portion thereof.

## ARTICLE III — SERVICES

Contractor, in consideration of the fee specified herein, agrees to \_\_\_\_\_  
[add description of services / provide services as described in **Exhibit A** to this Agreement, which is attached hereto and incorporated herein] and any other services described in this Agreement (collectively, the **"Scope of Services"**).

Any request for changes to the Scope of Services described herein must be made in writing to HOC's Contract Administrator. This includes any work that would increase or decrease the cost of the work. Any changes made without a signed change order from HOC will be at the sole risk of Contractor and will be done at no additional cost to HOC.

The services outlined herein shall be performed at the direction of HOC's Contract Administrator (information provided below).

As a material inducement to HOC entering into this Agreement, the Contractor warrants and represents to HOC:

- i. That it is financially solvent, able to pay all debts as they mature;
- ii. That it is able to furnish the materials, equipment and labor required to perform its obligations hereunder;

iii. That it is authorized to do business in the State of Maryland and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the work in the Scope of Services;

iv. That its execution of this Agreement and its performance thereof is within its duly authorized power; and

v. That it possesses a high level of experience and expertise in providing the Scope of Services, and that it will perform the services hereunder with the care, skill and diligence of a contractor providing a similar scope of services.

#### ARTICLE IV – INSURANCE

Contractor shall procure and maintain in force, at its own expense, such insurance as will protect Contractor and HOC from any and all claims which may arise out of or result from the Contractor's work under this Agreement, whether such execution be by itself, its employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable. Such insurance shall remain in effect during the entire term of this Agreement (including any renewals) and shall not be less than the following limits of liability:

TYPE	LIMIT NOT TO BE LESS THAN
Professional Liability	\$1,000,000 per claim

Professional Liability insurance must include contingent bodily injury and property damage. Coverage shall be with an insurance company that is licensed to conduct business in the State of Maryland and that is otherwise acceptable to HOC. Contractor shall submit a certificate of insurance evidencing such insurance prior to commencing work; Contractor shall also submit a copy of the insurance policy and additional insured endorsements if required by HOC. Contractor shall immediately report any change in insurance coverage to HOC and Contractor shall provide HOC with evidence of continued and/or renewed insurance prior to the expiration of the policy.

The amounts of insurance required in this Agreement shall not be construed as the maximum amount of insurance required by contract or as a limitation of any potential liability on the part of Contractor, nor shall failure to request evidence of insurance be construed as a waiver of Contractor's obligation to provide the insurance coverage specified in this Agreement. Contractor's insurance shall be primary and noncontributory, and shall not include any provision that would bar, restrict, or preclude coverage for claims by HOC against Contractor, including but not limited to "cross-liability" or "insured vs. insured" exclusion provisions. Contractor will also ensure that all of the liability policies contain a waiver of subrogation in favor of the additional insured.

HOC must be included as an additional insured on Contractor's commercial general liability, automobile, and excess/umbrella insurance policies for liability arising out of Contractor's services provided under this Agreement.

#### **ARTICLE V — OWNERSHIP OF DOCUMENTS AND WORK PRODUCT**

All plans, drawing, specifications, computer programs, reports, manuals, maps, photographs, data, studies, surveys, agreements, documents, memoranda, strategies, and all other work product prepared and furnished by Contractor shall become the property of HOC. Contractor shall deliver such documents to HOC and shall not have claim for further engagement or additional compensation as a result of use by HOC or full exercise of its ownership rights in said materials. Contractor agrees that any of the above cited work products are subject to the rights of HOC to use, duplicate and disclose in whole or part in any manner for any purpose whatsoever and to permit others to do so. If the material is copyrightable, Contractor may copyright subject to notice and agreement of HOC, but HOC reserves a royalty-free, non-exclusive and irreversible license to reproduce, publish and use such materials in whole or in part and to authorize others to do so. It is understood, however that all work products furnished by Contractor pursuant to this Agreement are instruments of its services with respect to this Agreement. Any re-use by HOC for purposes other than for this Agreement will be at the risk of HOC and without liability to Contractor.

Contractor warrants that it has title to or right of use of all documents, materials, or data used or developed by Contractor or supplied to HOC. If Contractor uses any document or material subject to copyright, patent, or other privacy right, Contractor warrants that it will have all licenses, permits, and authority to use such items and will hold HOC harmless and indemnify it for any claims of improper or unauthorized use.

#### **ARTICLE VI — INDEMNIFICATION OF HOC**

Contractor shall indemnify, defend, and hold harmless HOC and its Commissioners, directors, officers, agents, affiliates, subsidiaries, partners, members, lenders, employees, volunteers, successors and assigns ("**HOC Parties**") from and against any and all claims, actions, losses, liens, costs, demands, judgements, damages, injuries (including death), expenses (including reasonable attorneys' fees and litigation expenses), and liabilities asserted against or sustained or incurred by any HOC Parties arising from or in any way related to Contractor's and/or its directors, officers, agents, students, licensees, contractors, subcontractors, employees, affiliates, subsidiaries, volunteers, and representatives breach of this Agreement, negligent acts or omissions, gross negligence, willful misconduct, fraud, and/or failure to perform any obligations under this Agreement. This section shall survive the termination and/or lapse of this Agreement.

## ARTICLE VII — LICENSES AND RESPONSIBILITIES

Contractor shall, without additional expenses to HOC, be responsible for obtaining any necessary licenses and permits, if any are required, in connection with the performance of services specified herein. Contractor shall take proper safety and health precautions to protect HOC, the public, and the property of others, including the securing of insurance policies as set out above. Contractor shall also be responsible for all services performed until completion of this Agreement.

## ARTICLE VIII — CONFLICTS OF INTEREST

No member, officer, or employee of HOC; no member of a governing body from the locality in which a project is situated; no member of a governing body from the locality of which HOC was activated; and no other public official of such a locality shall exercise any function or responsibilities with respect to the work described herein during his or her tenure, or, for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

Contractor represents that it has conducted a conflicts check and has disclosed to HOC any current engagements which are competitive or adverse to HOC's operations or industry, or to the work outlined in this Agreement.

## ARTICLE IX – NON-SOLICITATION OF HOC EMPLOYEES

During the term of this Agreement (including all exercised renewals), Contractor shall not employ or offer to employ a HOC employee if the HOC employee has had **“Significant Participation”** in the **“Procurement”** of this Agreement. For purposes of this Agreement, (i) Significant Participation shall mean making a decision, approval, disapproval, recommendation, rendering of advice, investigation, or other similar action (Significant Participation does not ordinarily include program oversight or budget preparation, review, or adoption); and (ii) Procurement shall mean buying, purchasing, leasing, or otherwise acquiring any goods, services, or construction, including all functions that pertain to the obtaining of any goods, service, or construction (including description of requirements, selection and solicitation of sources, evaluation of offers, preparation and award of contract, dispute and claim resolution, and all phases of contract administration).

This Article IX can be waived by HOC, in its sole discretion. Waiver requests should be submitted to HOC's Director of Human Resources and a decision will be made by HOC's Executive Director. In considering a waiver request, HOC will consider whether (1) HOC would be materially harmed if the waiver was granted; (2) the proposed employment is likely to create an actual conflict of interest; and (3) granting the waiver will give the HOC employee an unfair economic advantage over other HOC employees or members of the public. HOC may condition a waiver on one or more requirements, including that the HOC employee comply with the relevant sections

of the Montgomery County Public Ethics Law (including, without limitations, Sections 19A-11(2)(D), 19A-13(a), and 19A-13(b)).

Violation of this Article IX is considered a breach of this Agreement and may result in termination of this Agreement. Violations of this Article IX may also result in Contractor being deemed ineligible for future work with HOC.

## **ARTICLE X – CONFIDENTIALITY**

Contractor will keep in strict confidence all reports; files; records; discussions and negotiations; marketing materials and content; documents (including this Agreement); customer lists and records; design definitions and specifications; technology and software information (including unpublished computer code); data; trade secrets; HOC tenant and employee information; information relating to the past, present, or future business affairs of HOC, including without limitation, research, development, business plans and ideas, operations, strategies, financial information, and technology and software systems; and all other materials and information (whether in electronic, hard-copy, photographic, audio-visual, email, verbal, or any other format whatsoever) that Contractor has received, reviewed, generated, or assembled that is in any way related to HOC or this Agreement (the “**Confidential Information**”). The Confidential Information also includes confidential information belonging to third parties that HOC discloses or otherwise provides to Contractor for purposes related to this Agreement.

Contractor agrees that the Confidential Information shall not be disclosed, disseminated, published, or otherwise made available to any individual or organization without the prior written approval of HOC. Contractor will not use the Confidential Information except in relation to this Agreement and will not use the Confidential Information for its own competitive or financial benefit or to cause harm or loss to HOC. Contractor shall institute and maintain reasonable security procedures to protect the Confidential Information in a secure manner and in accordance with all applicable federal and state privacy laws; the security procedures must be at least as effective as those taken by Contractor to protect its own confidential information or those that would be taken by a reasonable person in the position of Contractor, whichever is most effective.

If Contractor becomes legally obligated to disclose any Confidential Information, Contractor shall give HOC ten (10) days’ advance written notice so that HOC may seek a protective order or other appropriate remedy. Contractor shall cooperate fully with HOC in connection with its effort to obtain a protective order or other remedy. Notwithstanding any legal obligation of Contractor to disclose the Confidential Information, Contractor shall use its best efforts to narrow the scope of the Confidential Information that it is required to disclose and to have the required disclosure treated confidentially. Contractor acknowledges that the Confidential Information is proprietary and confidential, and that HOC will suffer irreparable injury in the event of the use, delivery, or disclosure of the Confidential Information, and there may be no adequate remedy at law for such violation. Contractor agrees that in the event of any unauthorized use, delivery, disclosure, or threatened unauthorized use, delivery, or disclosure of

the Confidential Information, HOC, in addition to all other remedies it may have in law or equity, shall be entitled to obtain a temporary restraining order and/or injunction, on an ex parte basis, prohibiting any further use, delivery, or disclosure of the Confidential Information by Contractor.

The Confidential Information is being provided without any representation or warranty, express or implied, as to its accuracy or completeness, and in no event shall HOC be held liable for any inaccuracy or incompleteness of the Confidential Information. No license under any agreement, patent, or other intellectual property right is granted or conveyed hereby or by any disclosure of Confidential Information made hereunder. At HOC's request, Contractor will promptly return HOC's papers and property and shall destroy all physical and electronic copies. Unless HOC requests otherwise, Contractor will retain HOC's papers and property for a period of at least five (5) years. Contractor shall ensure that any contracts with subcontractors, consultants, or other parties in relation to this Agreement shall contain the same or similar confidentiality provisions for the benefit of HOC, and Contractor shall be responsible for those parties' observance of the terms of this Article IX. This section shall survive the termination and/or lapse of this Agreement.

#### **ARTICLE XI – PIA**

Contractor acknowledges and accepts that HOC is subject to the Public Information Act, Md. Code Ann., Gen. Prov. §§ 4-101 – 4-601. This Agreement and any and all other documentation and communication between Contractor and HOC may be subject to disclosure unless an exception applies.

#### **ARTICLE XII – NOTICES & HOC CONTRACT ADMINISTRATOR**

All notices or other communications required or permitted hereunder shall be in writing and shall be delivered or sent, as the case may be, by any of the following methods: (a) personal delivery with signed receipt; (b) nationally recognized overnight delivery service, such as UPS, Federal Express, or DHL, providing a receipt of delivery; (c) registered or certified mail (with postage prepaid and return receipt requested); or (d) by electronic mail, provided that a confirmation copy is simultaneously sent by one of the methods set forth in the foregoing clauses. The effective date of any such notice or other communication shall be deemed to be the earlier of (i) if personally delivered, the date of delivery; (ii) if delivered by overnight service, one (1) business day following the receipt of such communication by the carrier; (iii) if mailed, three (3) business days after the date of posting as shown on the sender's receipt, or (iv) if delivered by electronic mail, upon the date of delivery thereof, provided that a confirmation copy is simultaneously sent as required above. The addresses for purposes of giving notices hereunder are:

If to HOC:

Housing Opportunities Commission of Montgomery County  




Attn.: \_\_\_\_\_, HOC Contract Administrator

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### **ARTICLE XIII – HOC WORKS & SECTION 3**

Contractor affirms that it will comply with Section 3 or HOC Works, as applicable, and has submitted to HOC either a completed Section 3 Opportunities Plan or HOC Works Opportunity Plan. In the event Contractor has not submitted the required documentation, upon HOC's request, Contractor will complete the required forms and comply with the terms of Section 3 or HOC Works.

### **ARTICLE XIV – LGTCA & SIP**

Contractor acknowledges and accepts that HOC participates in the Montgomery County Self-Insurance Program, Montgomery County Code, Section 20-37 (the "**SIP**"), and that any liability of HOC in this Agreement is limited by the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. §§5-301, et seq. (the "**LGTCA**"), as may be amended from time to time. Nothing in this Agreement shall be construed as a waiver of any rights, defenses, notice requirements, or limitations of liability available to HOC under the LGTCA. If the LGTCA is amended to increase its limits, then the increased limits shall automatically apply to this Agreement.

### **ARTICLE XV — COMPLIANCE WITH LAWS**

Contractor shall perform all work in a workmanlike manner. Contractor shall observe and comply with all federal, state, and local laws, regulations, rules, and ordinances in performing the services listed herein, including all laws requiring nondiscrimination in practices of providing services and employment.

## **ARTICLE XVI — INDEPENDENT CONTRACTOR STATUS**

The parties to this Agreement agree that Contractor is a professional organization and that the relationship created by this Agreement is that of employer-independent contractor. Contractor is not an employee of HOC and is not entitled to the benefits provided by HOC to its employees including, but not limited to, group insurance, leave and pension plan. Further, Contractor shall perform this Agreement as an independent contractor and shall not be considered an agent of HOC nor shall any of the employees or agents of Contractor be considered sub-agents of HOC. Nothing in this Agreement shall be deemed or construed to create a partnership, agency, or joint venture of or between Contractor and HOC.

## **ARTICLE XVII — ASSIGNMENT AND SUBCONTRACTING**

Contractor agrees that it will not assign or transfer this Agreement or any right in or claim Contractor may have hereunder except as expressly authorized in writing by the Executive Director of HOC.

## **ARTICLE XVIII — TERMINATION**

This Agreement may be terminated, in whole or in part, by HOC at any time HOC determines, in its sole discretion, that, for any reason, termination is in its best interests. Termination of services shall be effected by delivery to Contractor of a termination notice specifying the termination effective date (the “**Termination Date**”) and the extent to which the services are being terminated. If termination is for the convenience of HOC, Contractor shall be entitled to an equitable adjustment of the compensation stated above for services properly rendered prior to the Termination Date. HOC will not be liable for services performed after the Termination Date.

## **ARTICLE XIX — ENTIRE AGREEMENT**

The Agreement, the Request for Proposal for [Enter Title Of RFP, RFP # \_\_\_\_\_] (the “**RFP**”), and the Contractor’s response to the RFP dated [ENTER Month, Day, Year] (the “**RFP Response**”), constitutes the entire agreement between the parties and there are no other collateral contracts or agreements of any kind between the parties. In the event of a conflict, the following order of priority shall govern: (1) this Agreement, (2) the RFP, and (3) the RFP Response.

## **ARTICLE XX – MISCELLANEOUS**

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart. This Agreement shall be binding on the parties hereto, and their heirs, executors, personal representatives, successor and assigns. This Agreement shall be construed and enforced in accordance with the laws of the State of Maryland, without regard to principles of conflicts of

laws. Each party hereto irrevocably waives any and all right to a trial by jury in any legal proceeding arising out of or related to this Agreement. Each party represents that it has received all approvals necessary to enter into and perform its obligations under this Agreement and that its execution, delivery and performance of this Agreement has been duly and validly authorized. Each party further represents that the person executing this Agreement has the authority to bind such party hereunder. None of the parties to this Agreement shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by such party. The waiver by any party of any breach of this Agreement shall not operate or be construed to be a waiver of any subsequent breach. Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid, illegal or unenforceable and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid. All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provisions. This Agreement may be signed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties have executed this Agreement for Services as of the day and year first written above.

**HOC:**

Housing Opportunities Commission of  
Montgomery County

By: \_\_\_\_\_  
Name: Chelsea Andrews  
Title: Executive Director

**CONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A**

**Scope of Services**

**[to be inserted]**