

Ethics Committee Meeting
April 10, 2023
Via Zoom

In Attendance:

Committee members: Marc Efron, Lorie Mitchell, Alex Ghesquiere

Council members: Susan Fattig (Council liaison), Arthur Alexander

Village Manager: Michael Silliman

Residents: Naomi Naierman, Susan Kahn, Joel Kliksberg

7:02 pm. – A quorum was established, and the meeting was called to order.

First-order of business – Upon a motion by Marc, which Alex seconded, the Committee voted 3-0 to approve the Feb 6th meeting minutes.

Second-order of business – Lorie issued a welcome. She read an opening statement about the previous Council vote to reject the amendment that the definition of “Official” in the Village Code includes all volunteers required to take the Oath of Office and file a Conflict of Interest (COI) form.

The statement read as follows:

I want to begin by Providing Some Context to Tonight’s Agenda: At the March Council meeting, the Council voted to reject the one-sentence amendment that the Ethics Committee unanimously recommended to expand the definition of “Official” to include all volunteers who are required to take the Oath of Office and complete a Conflict of Interest questionnaire. During the same meeting, the Council voted to adopt a resolution that reaffirmed the requirement that all members of Committees take the oath of office and complete a COI form. In effect, these somewhat conflicting votes maintain inconsistency between the Village Ethics ordinance and Village Ethics regulations.

As a result, the Council has effectively removed the Ethics Committee from receiving COI complaints for a select group of volunteers. This development is inconsistent with Maryland Ethics Law and the best practices of state, county, and other local Ethics Commissions. It also contradicts the Maryland Model Ethics Law. Moreover, it is the first time in Village history that there will be two separate processes for Conflict of Interest and Oath of Office issues, depending on the Committee’s role.

Tonight, we will be compiling and voting on a list of questions for the April Council meeting to seek direction from the Council and Village attorney to address the implications of these votes and their effect on Ethics Committee responsibilities.

First, I want to review some of the histories of the Conflict of Interest Questionnaire and Village Ethics Code relating to COI and impartiality requirements: According to the Village Charter Section 903, the Ethics Committee is assigned responsibility for creating the VMA Conflict of Interest form. In 2019, and again with the 2023 adoption of the resolution, the COI requirement was expanded to all committee and board members.” The introductory paragraph of the current COI questionnaire, which all VMA Committee members complete, identifies the responsibilities of the Ethics Committee as follows:

“The Village of Martin’s Additions is governed by a municipal Charter that provides for a five-member elected Council to appoint an Ethics Committee (Committee). The Committee shall provide advisory opinions to persons subject to the provisions of Chapter 4 of the Village Code (Code) as to its applicability and to make determinations as authorized by Chapter 4 of the Code. This questionnaire is required by Village Charter Section 903 and will assist the Committee in doing its work.” Further, the Current Conflict of Interest Questionnaire Tracks with The Ethics Code, Chapter 4, which begins with “This Chapter establishes requirements to ensure the utmost ethical service by “Officials” and then defines impartiality and COI. Currently, every reference to Conflicts of Interest in the Charter, Code, and on the COI questionnaire is linked to the Ethics Committee. However, since the Council voted against the amendment to define all committees as “Officials,” aren’t those committees, in effect, required to sign oaths and COIs without any definitions of the oath of service or COI? In other words, if the Code does not cover them as “Officials,” the Code definitions don’t apply.

Second, I want to Review Ethics training: This year, ethics training was offered to all staff and volunteers who submitted an Oath of Office and COI form. Ethics training is based on Chapter 4 of the Code, which no longer applies to non-designated committees.

Finally, before we begin work on our list of questions for the Council, I’d like to touch on the issue of the importance of consistency between the Village Code and Regulations. Dating back to a series of Council meetings in 2015, the Village attorney has advised the Council to remove inconsistencies within the Village Code. Moreover, in 2015, the Village Council hired a firm to conduct a compliance review to eliminate inconsistencies with the Village Code and ensure the Code complies with relevant Maryland laws. More recently, the Village attorney has reiterated the necessity of maintaining consistency between the Village Code and regulations.

Third-order of business - The Committee generated a list of questions to present to the Council in order to gain clarity on some consequences of the recent vote. Marc led this question development process with discussion provided by Alex and Lorie. The resulting questions were expanded into the following:

- 1.) Who monitors the completion of the COI and Oath of Office forms for members of committees not specified in the Code, i.e., not “Officials” under the Code? (Note: the Ethics Committee is excluded from this responsibility in the Code.)
- 2.) Who enforces the ethical considerations of the Code for these committee members?
 - a.) Can committee members who are not “Officials” under the Code ask for advisory opinions from the Ethics Committee? (Note: the Code dictates that these opinions be provided to “Officials,” which excludes members of committees not specified in the Code.)
 - b.) How does a resident file a complaint against one of these non-“Official” committee members, and what rules apply to the filing and resolution of any such complaints? (Note: the Code specifies the rules regarding ethics complaints, including due-process, confidentiality, and burden of proof requirements, but these apply only to “Officials,” which does not include members of committees not specified in the Code.)
- 3.) Who is offered training on the ethics provisions in the Code? Training had heretofore been limited to specific/identified committee members that are explicitly subject to the ethics provisions in the Code.

4.) As a matter of good governance, and to close the holes in the Village's ethics provisions, should the Council address and fix the inconsistency between the Code and the Village's regulation requiring all committee members, not just those specified in the Code and defined as "Officials," to complete COI questionnaires and take Oaths of Office?"

The Committee voted 3-0 to send these questions to the council. Marc made the initial motion, which Alex seconded, provided there would be an opportunity to update the questions following the resident comment period.

Council/resident comments- Council member Arthur Alexander suggested that the Committee provide solutions to the inconsistencies and proposed two possible remedies: 1.) exclude these members from having to fill out the forms. 2.) have the Council adjudicate complaints directly, Committee members noted that there is no Code provision authorizing the Council to do this or rules governing such action by the Council. The Committee reminded Arthur that the Committee's recommendation to amend the Code was made following the Council's directive to consider the issue, after a majority of Council members had spoken in favor of the amendment, and after the Council requested the village attorney draft the amendment. Marc expressed the preference to keep the feedback at this meeting limited to open questions and wait for the Council to either address the questions or seek the Committee's advice.

Naomi asked what other municipal areas do – for example, whether the town of Chevy Chase, and Village of Chevy Chase have similar situations. Lorie reiterated the Village attorney's statement at the March meeting that municipalities subject to state ethics laws require that ethics provisions apply to Council appointments. She clarified that provisions for handling these scenarios in other localities already exist in their codes. Arthur noted that some committee members in other local jurisdictions are exempt from ethics requirements.

Susan Kahn asked about the reasoning why committee members did not participate in the listening session. The Committee explained (individually) that there were either availability conflicts or an impression that the Ethics Committee members were not intended to be direct participants in the conversation. Susan challenged the provisions for Committee member recusal. The Committee clarified that recusals would be part of the normal process for resolving conflicts of interest, which the Ethics Committee must comply with. Also, this subject was discussed and resolved the way it appears in the Code during the 2020- 2021 meetings regarding the Code amendment, with no objections from residents. Lorie further explained, in reference to a resident comment at the listening forum suggesting that VMA recusal provisions in the Code be strengthened to reflect MD state recusal laws for judges, that said law granted judges self-determination similar to VMA ethics requirements as to whether recusal is required. Further, Lorie noted that under the current Village Code, following an investigation by the Committee, the Council, unless no quorum can be reached, has the final say on an ethics complaint.

Committee liaison Susan Fattig said that she would add "review of the ethics amendment vote" to the April Council meeting agenda to discuss the questions raised by the Committee.

New business/additional Committee discussion - Lorie revealed that new examples for ethics training were suggested by a resident at the March Council meeting – for example, a case that included a need for recusal. Generating these new scenarios will be handled during administrative sessions in the future

Adjournment -

8:06pm Alex motioned to adjourn the meeting, Marc seconded. The meeting was adjourned.