

Ethics Committee Meeting Minutes
December 1, 2020, via Zoom

In Attendance:

Committee members: Marc Efron (chair), Debbie Roumell, Lorie Mitchell

Council Members: Todd Mann (liaison), Susan Fattig

Village Manager: Niles Anderegg

Residents: Josh Bowers, Naomi Naierman, William LeoGrande, Marty Langelan, Phillip Hurst

The meeting was called to order at 7:07 pm.

Marc Efron introduced the Committee and noted that he would lead the meeting. In compliance with the MD Open Meetings Act, a notice of the meeting, including agenda, and copy of the revised draft ordinance, was posted on the VMA website on November 23rd or November 24th; additionally, a notice of the agenda and a link to the draft was published in the VMA Weekly Wrap-up on November 25th and the VMA newsletter on November 30th, and an email was sent from the Village Manager to Village Residents on December 1st.

The Committee unanimously approved the minutes from its November 9th meeting, which had previously been approved via email and are currently available on the Ethics Committee page of the VMA website.

Marc Efron thanked the residents who had submitted comments in writing, noting that three sets of comments had been received. Marc Efron explained that per the official meeting notice, the Committee asked that comments be submitted at least one day before the meeting to allow Committee members adequate time for review. Marc then explained that one set of comments had been received by the Committee before the deadline, and those comments would be addressed during the Committee discussion. The other two sets of remarks were received shortly before the meeting, without sufficient time to be reviewed by the Committee. Marc Efron noted that several of the late-arriving comments had been previously submitted and rejected by the Committee, while other comments addressed issues beyond the scope of the ordinance and Committee responsibilities. Marc explained that these two sets of comments would not be addressed specifically during the meeting, but all comments sent to the Committee would be forwarded to the Council, as had been done in the past. Marc asked the Committee if this process was acceptable to them; they agreed it was.

Marc noted that, In compliance with the MD Open Meetings Act, attendees were informed that Committee members would be discussing the revised draft for the first time.

Marc Efron provided a brief history of the process to date: During Committee meetings in August, October, and November, and thereafter at Village Council meetings in September, October, and November, the Committee had been asked by the Village Council to recommend

changes to the ethics section of the Village Code that would add to the Code the ethics requirements in Village's the oath of office, specifically the requirement that Village "Officials" act with "impartiality" when executing their official duties. Marc Efron noted that discussions at open meetings throughout this process were guided by comments on a series of revised changes to the Code by both the Committee and by Village residents.

Marc Efron summarized the purpose of the meeting-- to review the fourth draft of changes to the Code, per the Council's request. Marc Efron informed residents that following the Committee discussion, residents would have an opportunity to comment, and the Committee would finalize its recommendations after hearing those comments. Further, he requested that residents refrain from using the "chat" feature until the resident comment period.

Committee discussion:

At Marc Efron's suggestion, the Committee unanimously agreed to eliminate the Council Resolution page (pg.1) of the ordinance from the Committee discussion.

4-202: Marc Efron noted that he received a complimentary comment regarding the insertion of subheadings. The Committee discussed the clarity of the lettering/numbering of sections. Lorie Mitchell agreed to revise the formatting to eliminate the repetition of letters within the provision.

4-202(a): The Committee debated whether to add an informal process to allow a potential complainant to seek an advisory opinion from the Committee before filing a complaint. Debbie Roumell was in favor of some type of informal resolution prior to a complaint being filed. Marc Efron explained that the Committee could not be involved in preliminary discussions concerning the matter without appearing biased, when they were later formally involved. He also thought a complaint needed to be filed to know what the issues were in the matter. The Committee rejected the proposal, unanimously agreeing to leave the provision unchanged.

4-202(g): To address a resident suggestion to eliminate the provision requiring a respondent to cooperate, the majority of the Committee voted to strike the provision, with Debbie Roumell and Lorie Mitchell voting in favor of striking and Marc Efron opposed.

4-202(i): To address a resident suggestion to revise the section, Marc Efron explained that the provision, as written, corresponded with the Maryland Code of Ethics. The Committee unanimously agreed to reject the suggestion.

4-202(j): To address a Committee member's question regarding whether records could be subject to an MPIA request outside the scope of a complaint, Marc Efron explained that the phrase, "as required by law," would cover MPIA requests. Responding to a Committee member

question regarding record retention, Marc Efron explained that in accordance with VMA policy, records are retained for one year.

During a Committee discussion on whether to approve the revised draft, Debbie Roumell suggested the Committee approve the draft, with the qualification that the Committee was not endorsing the draft as the appropriate process for addressing impartiality concerns. Marc Efron and Lorie Mitchell stated that they did not support a Committee statement qualifying the endorsement of the ordinance. Debbie Roumell referenced that the lawyer in the last Council meeting said that neighboring jurisdictions did not have Oath of Office ordinances. Niles Anderegg explained that the lawyer was referring to Ordinances relating to Oath of Office/impartiality, not necessarily other ordinances addressing other issues. Lorie Mitchell cited the Town of Somerset's neutrality ordinance, which governs their election board, as an example of a local jurisdiction with a neutrality provision as part of their Code. Lorie Mitchell also referenced the village attorney's comments at the November Council meeting, stating that local laws were created to address specific issues experienced by a municipality. Citing as an example, she described Section Three's ordinance, which provides a process to address "extended absenteeism." Debbie Roumell said that these ordinances seemed narrower in scope than the impartiality ordinance. Marc Efron reiterated Lorie Mitchell's comments on the Somerset and Section Three Ordinances.

Further, Marc Efron indicated that while he believed deciding on the process was a matter for the Council, since the matter had been raised by Debbie Roumell, he would explain his position concerning the adoption of the ordinance as follows:

"Ethics are fundamental to good government, and there should be no room for partiality or bias. That is why there is an Oath of Office. Further, there should be accountability for an official who acts with partiality, which holds people accountable for what they were sworn to uphold. Code and laws are what government bodies like VMA use universally to establish ethics through codes, which is consistent with the law and codes of both Montgomery County and the state of Maryland to establish their ethical requirements. Our neighboring municipalities also all establish their binding ethical requirements through codes, not through personnel manuals."

Marc Efron went on to explain that impartiality is important to our Village. It would be a mistake to treat bias based on personal agenda as less important than the family and business-related conflict-of-interests currently addressed in the Code. According to Marc, he had first-hand knowledge of a personal partiality allegation last year when he served as chair of the Ethics Committee and had been told of two additional allegations during the past five years. Because there was no Code or other provision that placed the responsibility for dealing with allegations of personal bias with the Ethics Committee, this matter was referred to the Council, which Marc understands was unable to address the allegations. Mr. Efron made clear that while these were allegations only, but if true, the actions would have been a serious breach of the requirement to act with impartiality, and again if true, the consequences were serious. In

summary, Marc Efron reiterated that the ethics-related rules should be part of the VMA Code, not part of a personnel manual.

Debbie Roumell asked how the Council handled termination of a Village employee. Marc Efron indicated that this fell within the jurisdiction of the Council and was confidential.

Committee Action:

The Committee unanimously agreed to approve the substantive language of the draft, with the changes to formatting and elimination of section 402(g) discussed during the meeting, and forward the ordinance to the Council for their consideration. Debbie Roumell qualified her vote, noting that her approval of the language was not necessarily an endorsement of the ordinance as the proper vehicle to address impartiality concerns, while Marc Efron and Lorie Mitchell approved the ordinance without qualification.

Resident comments:

- Resident Marty Langelan asked that the concerns raised in a letter she had submitted, which had been signed by six other residents, be made part of the public record as follows:
 - The Council/ Committee did not consider other options.
 - An adverse ethics finding may negatively impact a security clearance.
 - Residents would be discouraged from volunteering.
 - The proposed revisions to the COI provision was not part of the Committee's mandate.
 - There is no penalty provision for false allegations.
 - Oral evidence should be recorded.
 - The confidentiality provision is inadequate.
 - The definition of "impartiality" is subjective (although as good as possible).
 - A volunteer manual would be preferable.
 - The Committee has a "moral obligation" not to recommend a "draconian ordinance."

In response, Marc Efron reiterated that he believed an ordinance was the proper vehicle to address the commitment of impartiality required by the VMA Oath of Service. Further, he explained that placing the rules related to impartiality in a volunteer manual would be "form over substance" and impractical for the following reasons: First, to protect the Village and an Official who is the subject of an ethics complaint based on bias or impartiality, you would need the same process and protections included in the draft changes to the Code. Moreover, to make ethics provisions in a handbook binding on VMA Officials, a process would have to be developed to assure that they were legally enforceable. Further, he noted that if the impartiality provisions were placed in a handbook and the conflict of interest provisions remain as is in the Code, you would have different processes for the resolution of COI complaints (in the Code) and impartiality complaints (in the manual), which would be confusing at best. Finally, he questioned whether a resident would know to look in a volunteer manual if they had

a concern about an Official's impartiality, adding that the VMA Code would be the logical place to look, not a volunteer manual that addresses personnel matters. In addition, Lorie Mitchell questioned the request to add a penalty for false allegations, reasoning that if discovery of an ethics violation might impede obtaining a security clearance, lying under oath could be equally damaging. Marc Efron clarified that government security clearances do not take into consideration ethical violations at the local government level.

- Resident Naomi Naierman suggested that the Committee recommends to the Council that the ordinance be decided by referendum.

In response, Marc Efron explained that a referendum would be a decision for the Council, not the Committee.

Committee Action:

After listening to resident comments and concerns, the Committee continued to unanimously agree on the revised language of the ordinance, with Debbie Roumell qualifying her vote as noted above.

Councilmember and Committee liaison Todd Mann thanked the members of the Committee for their work on the draft, especially Marc Efron, who had worked with both Mr. Mann and the village attorney on the redrafting of the ordinance. Marc Efron thanked the residents in attendance for their input.

The meeting was adjourned at 8:55 pm.