

Martin's Additions – Ethics Committee Meeting via Zoom.

October 14, 2020

Attendance: Marc Efron (Committee Chair), Lorie Mitchell (Committee Member), Debbie Roumell (Committee Member), Niles Anderegg, Village Manager, and Numerous Non-Committee Members

Meeting was called to order at 7:04.

I. Introduction:

Committee Chair, Marc Efron, and Members of the Committee (Debbie Roumell and Lorie Mitchell) introduced themselves.

Marc Efron noted that he would lead the meeting. In compliance with the Open Meeting Act, notice of this meeting, including the Agenda, and copies of the draft regulations, were posted on the website; additionally, notice of agenda and a link to the draft was published in the VMA Weekly Wrap-up on October 2nd.

Marc Efron summarized the purpose of the meeting—to consider possible changes to the ethics-related provisions in the Village Code to assure that people acting on behalf of the Village do so in accordance with existing Village ethics requirements. Those requirements are (1) to avoid Conflicts of Interest, and (2) to act in accordance with the Oath of Office. Compliance provisions related to the former are in the current Code; the Code has no compliance provisions related to the latter. The draft changes are designed to address the latter, i.e., compliance with the Oath.

Marc Efron summarized the history of this task. In the past there have been allegations related to the Oath of Office's requirement of "strict impartiality" that neither the Committee nor the Council could address.

The Ethics Committee, as a result of its August 27th meeting, including a report by the Council liaison, recommended to the Council, at its September 17th meeting, that the Code be changed to provide a process for handling ethics complaints arising under the Oath. The Council asked the Village attorney to prepare draft changes to the existing Code to codify an enforcement process for violations of the Oath of Office. The Committee received two drafts from the attorney that were the subject of the October 14th meeting.

Attendees at the meeting were reminded by Lorie Mitchell and Marc Efron that Committee members are restrained by the Maryland Open Meeting Act from taking actions without open meetings, that this meeting was the first time Committee members had discussed the drafts, and that no draft had been approved for Council action.

Marc Efron reported that the Committee had received many comments from the community concerning fines and penalties under 4-204 (b) and (c), and that these provisions were not the focus of the Committee, as they are substantively unchanged from the current Code. He explained that these provisions are restricted to Conflict of Interest violations, with the Council making any decision on fines, penalties and criminal referrals, all of which can be imposed only against Village employees or Council members.

Marc Efron explained that non-Committee members would have the opportunity to comment at the meeting, and he requested that the comments be made in a civil manner, without hyperbole or inflammatory language. He explained that emails and other communication had been received before the meeting, and that they had been considered in preparing for the meeting. Going forward, Marc asked that comments be sent to him and/or the Committee members. Residents were made aware that comments posted on the Listserv might not be viewed by Committee members.

Committee Decisions:

A. Which of two approaches should the Committee recommend: the Committee being the ultimate decision maker of complaints of violations of the Oath of Office, or the Council being the ultimate decision maker, except for complaints involving a Council member.

The following considerations were discussed:

- Committee and Council both sign oaths of impartiality, so objectivity is assured in either case.
- In the current Code, the Committee investigates and decides Conflict of Interest complaints. (However, only the Council has the power to initiate fines, penalties and misdemeanors).
- In the current Code, the Committee must work with an attorney and special council for Conflict of Interest violations. This precludes runaway decisions that were a concern in a resident's comment.
- The Council is an elected body and might be more representative/reflective of the community, although it might also be more political.
- If the Council were the final decision-maker, both the Committee and the Council would consider the complaint. More input and a "second look" would result.

Committee Recommendations:

The Committee unanimously decided to recommend the process giving the Council the final decision (unless the complaint is against a Council member), with the Committee receiving and investigating complaints, and reporting to the Council its findings.

The Committee unanimously agreed to recommend that the same process be used for resolving Conflict of Interest complaints.

The Committee unanimously agreed that the advisory opinion provision in 4 -202 (a) for Conflicts of Interest should be expanded to cover ethical issues under the Oath of Office.

B. Whether the draft changes sufficiently address two recommendations of the Committee regarding who is required to take the Oath of Office and complete Conflict of Interest Questionnaires, and when those tasks should occur.

Committee Recommendations:

The Committee unanimously agreed that draft Code changes sufficiently address the two recommendations of the Committee: expanding the individuals taking the Oath of Office and completing the Conflict of Interest questionnaire to include all VMA committee members and task force members (to cover anyone acting on behalf of Martin's Additions), and that such oath be administered annually. The Committee agreed that taking the Oath annually is an important reminder of officials' responsibilities and rejected a resident's comment that it was not necessary for Council members, whose terms are more than one year.

The Committee unanimously agreed that "standing or temporary" be inserted before "Village committee" in 4-101 (c), and to refer to the Council the issue when these tasks are completed – by April 30 (current Code) or "upon entering their positions or prior to executing any responsibilities" (as recommend in a comment by a VMA resident.)

C. How to review the draft changes, focusing on issues or doing a line-by-line review. The Committee unanimously agreed on the former.

Specific Committee Recommendations on Identified Issues:

* The Committee unanimously agreed with the general proposition that the VMA Ethics Code should be amended to provide an enforcement process for violations of Oath of Office.

* The Committee unanimously agreed that the Committee's role with regard to Oath of Office complaints should be limited to the "strict impartiality" part of the Oath, thereby excluding the rest of the Oath's obligations (such as performing "faithfully" and "to the best of my ability.").

* The Committee unanimously agreed that there should be a codified definition of "strict impartiality" in the Code. The Committee will recommend working with the Village attorney to ensure a clear definition.

* The Committee unanimously agreed that it is not necessary to have a separate process for complaints against a member of the Ethics Committee, and that "recusal" of that person was sufficient.

* The Committee unanimously agreed that the confidentiality requirements, 4-202(h) and (b), be revised to ensure that they are comprehensive and adequate. A Committee member asked if it was necessary for both the Committee and the Council to know the identity of the person being charged. Currently, the Ordinance requires that the Council be made aware of all Conflict of Interest complaints upon receipt to the Committee.

* The Committee unanimously agreed that a standard of proof be added – probably "clear and convincing evidence" – for a determination of an ethical violation. A suggestion was made that the Code state that complaints must be fact-based.

* The Committee unanimously agreed to defer judgment on the due process provisions in 4-202(a) until the above items are fleshed out and incorporated in a draft, with a thought that a different process might be appropriate for allegations of violations arising under the Oath of Office than for allegations under the Conflict of Interest provisions.

- The Committee also noted that 4-202 (c) should be reviewed to assure that violations that are not substantial could lead to no or reduced action.

*There was a discussion regarding the deletions in 4-204, which appeared to be unrelated to the enforcement of the Oath of office issue. It was recommended that an explanation from the Village attorney be sought.

D. Unanimously agreed to the following recommendation to the Council:

That the Council not take final action of the draft changes to the Code, and instead consider asking the Village attorney to prepare a new draft that addresses the above issues, and that a member of this Committee and Council liaison to the Committee be authorized to work with the attorney to assure that all of the Committee's observations are communicated and addressed. The new drafts would be posted on the Village website, with notice of an open Committee meeting to discuss them, and an opportunity for Village residents to comment on them.

III. Community Comments

A. Related to the substance of draft ordinances:

- Concern was raised that the two-tiered process recommended in the drafts would result in people needing to defend themselves twice. A Resident suggested that the Council have the sole authority to act on the ethics complaint, unless the Council asks for the ethics Committee's involvement. Marc Efron observed that this would result in the Ethics Committee's role being

effectively eliminated. He also observed that the Council might not have time to take on this responsibility.

- Concern was raised that the consequences of violations should be tailored to the violation, so that disqualification on a specific issue, not of a person's position, would be considered. Marc Efron stated that this matter will be addressed when the new draft is being written.
- Concerns were raised that there were not a sufficient number of ethical issues to warrant employing an attorney both because of the cost and the level of gravity of the issue. Marc Efron observed that violations based on the Oath of Office had been previously made, that the Council was unable to resolve them, and had asked the Committee to consider changes to the Code to address this gap.
- The standard of proof should be willful misconduct because the consequence for the person who is being charged in violation of the Oath is extreme. This will be considered during the preparation of the next draft.
- The entire ethics Code should be revised. Even if many of the provisions of concern were already in the Code, the residents are only now becoming aware of them. Marc Efron explained that this was not the charge for the Ethics Committee, and that this concern should be raised to the Council.

2. Issues unrelated to the substance of the draft:

- Concern: Need for better communication. Suggestion for community forums before drafting ordinances. Notice and the like aren't sufficient, as demonstrated by the reaction at the meeting. Implications are large and there is no real urgency on this issue. Focus for our Community needs to be on Elections and Safety concerns. Issue should be taken off the Agenda for tomorrow night. Residents are only finding out about this ordinance when it is close to completion. Response: There will be many more opportunities for input. Nothing is being decided tomorrow. We will relay concerns to the Council about communication. We do not have jurisdiction to remedy these communication issues. This is the only issue that we can act upon. We do not decide which issues the Council committees will take up.

Concern: All issues raised by the Community should be published – perhaps on the website.

Response: Please forward all concerns to the Committee chair by email and he will respond. The MD Open Meetings Act provides the opportunity for community input, and there is no notice and comment provision in it.

- Feedback is appreciated. The Ethics Committee will take into consideration issues of concern that have been raised.
- The Committee unanimously agreed to recommend to the Council that they continue to consider changes to the Ethics Ordinance, with an additional recommendation that the first draft be revised to address concerns that were discussed at the meeting and submitted in writing.

The meeting was adjourned at 9:30.