

AGENDA

VMA ETHICS COMMITTEE

AGENDA-NOVEMBER 9, 2020 MEETING

7:00 P.M. VIA ZOOM

1. Call to Order (Efron)
2. Minutes of October 14, 2020 Committee Meeting (Efron, Full Committee)
3. Committee/Meeting Responsibilities (Full Committee)
4. Introduction/ Summary of Agenda (Efron)
5. Committee Review of and Recommendations on New Draft of Contemplated Changes to VMA Code (Full Committee)*
6. Comments by Non-Committee Members**
7. Committee Wrap-up of Review, Recommendations, and Report to VMA Council (Full Committee)
8. Other Business (Full Committee)
9. Adjournment (Efron)

*A red-line version, which identifies changes from the draft considered at the Committee's October 14 meeting, is attached.

** The Committee also invites and encourages comments prior to the meeting. Please send any such comments to either the Committee Chair, marc.f.efron@gmail.com, or to the Village Manager, manager@martinsadditions.org. They will distribute the comments to the full Committee.

**The Village of Martin's Additions
(Ethics Committee Jurisdiction)**

Ordinance No.: 2020-9-1

Introduced:

Adopted:

Effective Date:

**ORDINANCE TO EXPAND THE JURISDICTION
OF THE ETHICS COMMITTEE TO INCLUDE OATHS OF SERVICE**

WHEREAS, Maryland Code, Local Government Article, Section 5-202, as amended, grants to the legislative body of every incorporated municipality in Maryland general power to pass such ordinances not contrary to the Constitution of Maryland, or the public general law, as deemed necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality;

WHEREAS, Section 501 of the Charter of the Village of Martin's Additions authorizes the Village Council to pass such ordinances as it may deem necessary for the preservation of the property, rights, and privileges of the Village and its residents;

WHEREAS, after proper notice to the public, the Village Council introduced the following Ordinance in an open meeting conducted on the ____ day of _____, 2020;

WHEREAS, after proper notice to the public, the Council considered this Ordinance in public session assembled on the ____ day of _____, 2020; and

WHEREAS, upon consideration of the testimony and evidence presented at the public hearing, and the recommendation of the Village Ethics Committee, the Village Council finds that the foregoing Ordinance would assure the good government of the municipality, protect and preserve the municipality's rights, property, and privileges, preserve peace and good order, secure persons and property from danger and destruction, and protect the health, comfort and convenience of the citizens of the Village of Martin's Additions, and is necessary for the preservation of the property, rights, and privileges of the Village and its residents.

NOW, THEREFORE, the Village Council does hereby adopt the following Ordinance.

BE IT ORDAINED AND ORDERED, this ____ day of _____, 2020, by the Village Council, acting under and by virtue of the authority given it by the Maryland Code and the Charter of the Village of Martin's Additions, that the Village Code is hereby amended as follows:

* * *

Section 2-101. Village Elections Committee and Ethics Committee

(a) There shall be a Village Elections Committee, which shall be composed of a minimum of three (3) members appointed by the Village Council. Members of the Elections Committee shall be qualified to vote in Village elections and shall not be members of the Village Council. The Elections Committee members shall serve until the end of the fiscal year in which they were appointed. The Elections Committee shall manage all Village elections as provided in Section 602 of the Charter of the Village of Martin's Additions.

(b) There shall be a Village Ethics Committee which shall be composed of a minimum of three (3) members appointed by the Village Council. Members of the Ethics Committee shall be qualified to vote in Village elections and shall not be members of the Village Council or the Elections Committee. The Ethics Committee members shall serve until the end of the fiscal year in which they were appointed. The Ethics Committee shall have the following responsibilities:

(1) To provide advisory opinions to persons subject to the provisions of Chapter 4 of this Code as to its applicability; and

(2) To make determinations as authorized by Chapter 4 of this Code.

* * *

**CHAPTER 4
CONFLICT OF INTEREST ETHICS**

ARTICLE 1. GENERAL

Section 4-101. Definitions

For purposes of this Chapter, the following words and phrases shall have the following meanings:

(a) The "Committee" means the "Village Ethics Committee" as constituted and described in Section 2-101.

(b) "Gift" means the transfer of anything or service of value without identifiable and adequate consideration; "gift" does not mean or include any regulated campaign contribution.

(c) "Impartiality" means making decisions based on objective criteria, rather than based on bias, prejudice, or favoritism. It requires that Officials be fair and not give preferential treatment to any persons or organizations in performing their duties on behalf of the Village.

(e)(d) "Public Official" or "Official" means all members of the Village Council; all members of any standing or temporary Village committee or task force; the Village Tree Supervisor; and all persons employed by the Village.

- ~~(d)~~(e) "Private interest or relationship" includes, without limitation, any existing or prospective interest or relationship of a business, contract, creditor, obligee or employment nature in which an Official or an immediate family member (including spouse, father, mother, brother, sister or child) has a direct or indirect financial interest and by which such Official or immediate family member has a reasonable potential of profiting or otherwise benefiting financially.

(Ord. No. 08-15-01, adopted 09/17/15, effective 10/7/15; Ord. No. 11-15-1, adopted 1/21/16, effective 2/10/16)

Section 4-102. Intent and Application

- (a) This Chapter ~~establishes~~ provides requirements to ensure the utmost ethical service by Officials, specifically that Officials ~~criteria for determining (i) act with impartiality when executing their official duties ("duty of impartiality"), and (ii) avoid the presence or absence of conflicts between their private interests or relationships and public Village interests ("conflicts-of-interests").~~ At the same time this Chapter establishes procedures for remedy when a breach of the duty of impartiality or a conflict of interest has been alleged. Public Officials have an affirmative duty to disclose potential conflicts with a public interest, as provided in this Chapter. Such duty extends to and includes private interests or relationships, the mere outward appearance of which suggests a possible conflict with a public interest. The procedures herein are intended both to preserve the privacy interests of persons subject to this Chapter and to encourage voluntary disqualifications in the event of conflicts of interest under the provisions of this Chapter. Private interests or relationships disclosed hereunder are not to be made a part of the public record, except in the event of the imposition of any order or penalty under the provisions of Section 4-204 herein.
- (b) ~~The provisions of this Chapter shall apply to all Officials and to all persons or entities retained by the Village or who do or seek to do business with the Village.~~
- (e) No part of this Chapter shall be construed to prohibit an Official from appearing in the pursuit of his private interests as a citizen; or from accepting or receiving any benefit by operation of law, or prosecuting or pursuing any claim, right, privilege or remedy which is his by operation of law.

(Ord. No. 11-15-1, adopted 1/21/16, effective 2/10/16)

ARTICLE 2. PROCEDURES

Section 4-201. Duty to Disclose; Solicitation Prohibited; Ex-Parte Communications; Oath of Service

- (a) Before participating, on behalf of the Village, in any debate or determination that may have a reasonable potential of thereafter affecting a public interest, any Public Official who is subject to this Chapter shall have an affirmative duty to disclose in writing to the Council and to the Committee the receipt of any gift and

the existence of any private interest or relationship either having a reasonable potential of conflict with a public interest or having a reasonable potential of giving the outward appearance of conflict with a public interest.

- (b) No Official may solicit any gift or knowingly accept any gift, directly or indirectly, from any person whom the Official knows or has reason to know: (i) is doing or seeking to do business of any kind with the Village; or (ii) has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or non-performance of his or her official duty.
- (c) No Official may solicit any gift or knowingly accept any gift, directly or indirectly, from any person whom is engaged in activities that are regulated or controlled by the Village; except that unsolicited gifts having a value of less than fifty dollars (\$50.00) tendered for personal or social reasons may be accepted.
- (d) An Official shall not consider any ex-parte or private communication from any person, whether oral or written, that said Official knows is, or reasonably may be, intended to influence unlawfully the decision on the merits of any matter. Any such ex-parte or private communication shall be reported to the Village Council, which shall include such disclosure in the minutes of the meeting at which the matter was considered.
- (e) **Officials shall faithfully execute their duties with impartiality in accordance with their oath of service, the Village Charter, the Code of Ordinances, and any applicable rules or procedures adopted by the Village Council.**
- (f) Officials shall file with the Committee, ~~on an annual basis,~~ **upon their entering their positions and prior to executing any duties related to their positions, and thereafter** prior to the 30th day of April of each year, **(i) an oath of service, which includes a duty of impartiality, and (ii) a conflicts of interest disclosure** in a form recommended by the Committee and approved by the Village Council. Such filings shall be in addition to the filing required by the Village Charter, Section 903.

(Ord. No. 08-15-01, adopted 09/17/15, effective 10/7/15; Ord. No. 11-15-1, adopted 1/21/16, effective 2/10/16; Ord. No. 6-17-1, adopted 7/17/17, effective 8/7/17)

Section 4-202. Disqualification Procedures; Complaints; Records

Section 4-202. Disqualification Procedures; Complaints; Records

- ~~(a) After complying with the disclosure requirements of Section 4-201, the Public Official shall either (i) voluntarily disqualify himself and withdraw from participating in further debates or determinations with respect to the public interest in conflict with the Official's private interest or relationship, or (ii) request that the Committee determine the presence or absence of a conflict of interest and advise as to an appropriate course of conduct.~~

- ~~(b) — Any person alleging a violation of this Chapter may file a written complaint, under oath, with the Committee. Upon the receipt of such complaint, the Committee shall send a written acknowledgement of its receipt, notify the Official and the Council of the allegation, and review the complaint with the Village attorney. If the Village attorney recommends that special counsel be appointed, special counsel shall be selected by the Committee and appointed by the Council. If, upon consultation with the Village attorney or special counsel, the Committee determines that the complaint should be addressed by the Committee, the Committee shall request that the Official provide the Committee such information as the Committee finds necessary to determine the presence or absence of a conflict of interest. A written complaint shall not require a formal hearing; such complaints shall be processed under the procedures described in subsections (c), (d), (e), and (f) of this Section. Upon final resolution of the matters alleged, the Committee shall provide a written summary of the resolution to the Official, the Council and the person who filed the complaint.~~
- ~~(c) — For the purposes of this Section, the Committee may find and advise an absence of a disqualifying conflict of interest when the Official's private interest or relationship is found to be too remote and insubstantial to affect the integrity of the Official's public actions. The intent of the foregoing is by no means to be construed as condoning a lax approach on the part of the Committee; rather, the intent is to discourage frivolous charges.~~
- ~~(d) — Upon being advised by the Committee of the presence of a conflict of interest, the Official shall voluntarily disqualify himself and so notify the Committee and the Council. If the Official does not voluntarily disqualify himself, the Committee shall mandate that the Official be disqualified from participating in further debates or determinations with respect to the public interest in conflict with the Official's private interest or relationship.~~
- ~~(e) — Any Official who voluntarily disqualifies himself shall notify the Council, providing a full description of the public interest matters from which the Official has withdrawn from participation. A voluntary disqualification does not require a disclosure of the specific nature of a private interest or relationship considered to be in conflict; only the public interest object of conflict must be disclosed.~~
- ~~(f) — The Committee shall notify the Council and the Official in writing of all mandated disqualifications and shall therein provide a full description of the public interest matters with which the Official has been found to be in conflict and about which such Official is disqualified from participation. The Committee shall mandate a disqualification for any Official who fails or refuses to provide the Committee with such information as the Committee finds necessary to determine the presence or absence of a conflict of interest.~~
- ~~(g) — Any disqualifications relating to any public interest description shall be recorded in the minutes of the Council meeting at which the matter was considered.~~
- ~~(h) — The Committee shall meet in closed session (i) to protect the privacy or reputation of individuals with respect to their private interests or relationships not related to the public business, (ii) to discuss the discipline of an Official under the~~

~~provisions of this Chapter, (iii) to consult with counsel or (iv) to consult with staff, consultants or other individuals about pending or potential litigation.~~

- ~~(i) The Village records maintained under the provisions of this Chapter shall be privileged and not subject to public inspection to the extent that such records contain any of the following: (i) information about the finances of an individual, (including assets, income, liabilities, net worth, bank balances, financial history or activities or credit worthiness), (ii) any otherwise confidential financial information, (iii) confidential commercial information, or (iv) trade secrets. For the purpose of this Section, confidential or secret information shall be such information as is customarily regarded as confidential in business.~~

- (a) After complying with the disclosure and oath-taking requirements of Section 4-201, an Official shall either: (1) voluntarily disqualify or recuse him/herself and withdraw from participating in further debates or determinations with respect to a conflict-of-interest or an inability to execute his/her duties with impartiality, or (2) request that the Council, with the assistance of the Committee, determine the presence or absence of a conflict-of-interest or an inability to execute duties with impartiality and advise the Official of an appropriate course of action. Any such determination and/or advisement shall be relevant to the Committee's and/or the Council's actions under this Section.**
- (b) Any person alleging a violation of this Chapter may file with the Committee a signed written complaint, under oath, attesting that the complaint is based in fact and that the relevant facts are contained in the complaint and are accurate and complete.**
- (c) Upon receipt of a complaint, the Committee shall undertake the following actions:**
- (1) The Committee will send to the person who filed the complaint a written acknowledgment of its receipt, shall notify the Official who is the subject of the complaint and the Council of the allegation(s), and shall review the complaint with the Village attorney;**
 - (2) If the Village attorney recommends that special counsel be appointed, such special counsel shall be selected by the Committee and appointed by the Council;**
 - (3) In consultation with the Village attorney or special counsel, the Committee shall make an initial assessment of whether the allegation(s) in the complaint, if true, constitute a conflict of interest or violation of the duty of impartiality. If the Committee determines that they do not, the complaint shall be dismissed;**

(4) If, upon consultation with the Village attorney or special counsel, the Committee determines that the complaint should be investigated, the Committee shall:

- (a) provide the Official who is the subject of the complaint an un-redacted copy of the complaint, with the exception of material that would identify the person filing the complaint. On request of the Official who is the subject of the complaint, the Committee shall disclose the identity of the complainant to the Official;
- (b) provide the Official reasonable time to submit a written reply, which may include relevant evidence and suggested witnesses with relevant knowledge, and which shall be submitted under oath that the facts contained therein are accurate and complete;
- (c) request that the Official and/or the party filing the complaint provide information the Committee reasonably finds necessary to investigate the complaint;
- (d) provide the Official with an opportunity to review and respond to any evidence produced in the course of the Committee's investigation;
- (e) produce a report of its investigation, including a full description of any conflicts-of-interest and/or violations of the duty of impartiality found by the Committee, and a recommended resolution, including the matters from which the Official should be disqualified; and
- (f) provide the Official with a copy of the report and a reasonable opportunity to respond. Except as prohibited by law, the report given to the Official may be redacted by the Committee to protect the privacy of individuals identified therein.

(5) At the conclusion of its investigation, the Committee shall provide a written report of its investigation to the Council. Summaries of the report, including full descriptions of the conflicts-of-interest and/or violations of the duty of impartiality, and of the Committee's recommended resolution, shall be provided to the Official who is the subject of the complaint and to the person who filed the complaint.

(d) If the Official who is the subject of a complaint is not a Council member, and if the Council has a quorum after any recusals by Council members to act on the complaint, the Council, after receiving the Committee's written report of the investigation, shall (1) provide the Official an opportunity to respond in writing and/or in person to the report, (2) conduct further investigation as

the Council deems necessary, (3) and determine whether the Official should be disqualified from all or certain of his/her responsibilities. If the Council determines that a disqualification is warranted and the Official does not voluntarily accept the disqualification, the Council shall make a final decision that the Official be disqualified.

- (e) If the Official who is the subject of the complaint is a Council member, or if the Council does not have a quorum after recusals from Council members to act on the complaint, the Committee, based on its investigation and report, shall determine whether the Official should be disqualified from all or certain of his/her responsibilities. If, under these circumstances, the Committee determines that a disqualification is warranted and the Official does not voluntarily accept the disqualification, the Committee shall make a final decision that the Official be so disqualified.
- (f) If the Council and/or the Committee recommends or determines that a disqualification of the Official is warranted, the scope of the disqualification shall be tailored to remedy the conflict-of-interest or violation of the duty of impartiality that was determined to exist, so that the disqualification is not broader than necessary to ensure compliance with this Chapter.
- (g) In the course of fulfilling their responsibilities under this Section, including but not limited to before a decision is made by the Committee to investigate a complaint, the Committee and/or the Council may find and advise or determine that the alleged conflict-of-interest or violation of the duty of impartiality is too remote or insubstantial to affect the integrity of the Official's actions, in which case the complaint shall be dismissed with no further action. The intent of this subsection is to discourage complaints about inconsequential matters; the intent is not to condone a lax approach to the ethical requirements established by this Chapter.
- (h) Throughout the process described in this Section, the Committee and/or the Council shall take reasonable steps to resolve the complaint without a formal determination of disqualification, including without limitation when a conflict-of-interest or violation of the duty of impartiality is determined to be the result of a mistake or inadvertence (but not reckless disregard or deliberate ignorance of the applicable ethical requirements) on the part of the Official. If a finding of disqualification is recommended and/or determined to be appropriate, the Committee and/or the Council shall do so only upon (i) clear and convincing evidence of a conflict-of-interest or a violation of the duty of impartiality, and (ii) a finding that the conflict-of-interest or violation of the duty of impartiality is not too remote or insubstantial to affect the integrity of the Official's actions.

- (i) Any failure by the Official who is the subject of the complaint to cooperate with the Committee and/or the Council, including without limitation providing information the Committee and/or the Council finds reasonably necessary to investigate the complaint, shall result in an inference that the cooperation sought would result in evidence that would be adverse to the Official.
- (j) To protect the privacy and reputation of the Official who is the subject of a complaint, the complainant, any identified witnesses to the allegations in the complaint, and any Official seeking advice, the Committee and the Council, when fulfilling their responsibilities under this Section, shall meet only in closed session and make no public disclosure regarding the complaint or the request for advice, except as required by law or court order, including without limitation when consulting with counsel, considering the allegations in the complaint, interviewing witnesses about the allegations in the complaint, and/or considering appropriate action(s) to be taken in response to the complaint.
- (k) Records related to the actions of the Committee and/or Council under this Section shall be privileged and not subject to public inspection, except as required by law and/or court order.

(Ord. No. 11-15-1, adopted 1/21/16, effective 2/10/16; Ord. No. 4-16-1, effective 7/6/16).

Section 4-203. Failure of Quorum [Reserved]

~~If, because of a voluntary or mandatory disqualification under the provisions of this Chapter, less than a quorum of the Council is available to act upon any particular matter, the matter shall be deferred until a quorum is assembled.~~

Section 4-204. Enforcement

- (a) The Council may file a petition for injunctive or other relief in a court of competent jurisdiction for the purpose of requiring compliance with this Chapter.
- (b) ~~Any person who knowingly and willfully violates the provisions of this Chapter is guilty of a misdemeanor and, upon conviction, is subject to a fine of not more than \$1,000.00 or imprisonment for not more than one year, or both. 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.~~

- ~~(e)~~ Any person who violates the provisions of this Chapter shall be guilty of a municipal infraction and shall be subject to a civil penalty of \$100.00.
- ~~(d)~~**(b)** In addition to any other enforcement provisions in this Chapter, any member of any committee or task force, or the Tree Supervisor, who is found by the Committee, the Council, or a court to have violated this Chapter with respect to Oath of Service shall be subject to removal by the Council; and any member of the Council who is found by the Committee or a court to have violated this Chapter shall be subject to recall, as provided in the Village Charter.
- ~~(e)~~**(c)** In addition to any other enforcement provisions in this Chapter, any employee found by the Committee, the Council, or a court to have violated this Chapter shall be subject to disciplinary or other appropriate action, including dismissal or suspension of compensation.

* * *

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, by the Council of the Village of Martin's Additions, acting under and by virtue of the aforementioned authority, that:

(1) If any part or provision of this ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This Ordinance shall take effect on the _____ day of _____, 2020 (at least 20 days after adoption).

ATTEST:

THE VILLAGE OF MARTIN'S ADDITIONS

Katya Hill, Secretary

Susan Fattig, Chair
Village Council

Bold Underline indicates new material
~~Strikethrough~~ indicates material deleted
* * * indicates material unchanged