

Ethics Committee Meeting Minutes
November 9, 2020, via Zoom

In Attendance:

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

Council Members: Todd Mann (liaison), Susan Fattig, Jeff Blander

Village Manager: Niles Anderegg

Residents (partial list): Josh Bowers, Paula Desio, Paula Goldberg, Aleta Margolis, Michael Brodsky, Naomi Naierman, William LeoGrande, Marty Langelan, Lynn Welle, Natalie Welle, Holly Worthington

The meeting was called to order at 7:00 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; additionally, a notice of the agenda and a link to the draft was published in the VMA Weekly Wrap-up on October 30th and November 6th.

The Committee unanimously approved the minutes from its October 14 meeting, which had previously been approved via email and are currently available on the Ethics Committee page of the VMA website.

Debbie Roumell thanked Marc Efron and Todd Mann for their work on revising the original draft.

Marc Efron thanked the residents who had submitted comments in writing. Debbie Roumell requested that in the future, resident comments be submitted with adequate time before the meeting to allow Committee members sufficient time for review, noting the challenge of receiving questions from two residents shortly before the meeting began. 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 summarized the meeting's purpose- to discuss and consider the revised draft of the VMA Ethics Code. Further, Marc Efron suggested that the Committee review the document paragraph by paragraph, considering any substantive comments submitted prior to the meeting. Comments related to editorial changes will be considered when a new draft is prepared, assuming that would occur. Marc Efron noted that several of the resident comments challenged the need to change the Code, which he explained would be a decision for the Council, not the Committee. Marc Efron indicated that following the Committee discussion, residents would have the opportunity to comment.

Committee discussion:

4-101(c): The Committee agreed to add the word "personal, " modifying the definition of bias to read " personal bias."

4-101(e): The Committee agreed to add " inlaws" to the example of conflict of interest relationships so that the Code would now mirror what was in the existing COI questionnaire.

4-102(a): To address a resident comment, Marc Efron explained that this section from the original Code was deleted due to redundancy.

4-103(b): Marc Efron explained that this section was deleted because historically, it hadn't been imposed, and moreover, is covered through an established VMA contract/affidavit process. Niles Anderegg confirmed this.

4-201(f): To address questions regarding the April 30th date for filing Oath of Service and COI forms, Todd Mann explained that he thought the date was related to the state of Maryland requirements. Marc Efron suggested that the Council should weigh-in on this.

4-202(a): The Committee discussed this provision's clarity and agreed that it required revision in the next draft.

4-202(b): Based on a resident suggestion, the Committee agreed to change the wording of the regulation from "may" file to "must" file.

4-202(c) 1: A question was raised about whether the village attorney should be notified upon receipt of a complaint. The Committee reached a split decision; two members agreed that an attorney should be involved from the onset. The third member suggested that an attorney should not be involved until, and if, the complaint was sent to the Council level. The process at the Committee would remain the same as the current draft Code, but there would not be a reference to an attorney. This member thought this would facilitate settlement and keep the process less adversarial. Marc Efron noted that there were two different positions on this and said he would try to revisit the issue in the redrafting process, assuming that occurs.

4-202(c) 2: To address a resident question regarding the potential need for a special counsel, Marc Efron explained that a special counsel would be necessary if the village attorney had a conflict.

4-202(c) 4a: The Committee agreed to change the redaction language to be consistent with the wording in 4-202(c) 4f. Further, in response to a resident question, Marc Efron explained that MD law required that the complainant's name be provided should the person who is the subject of the complaint request it.

4-202(c) 4d: Addressing a resident request to add the words "oral evidence" to the provision, the Committee rejected the suggestion on the basis that the phrase "any evidence" would already include both written and oral evidence.

4-202(c) 5: The Committee agreed to change this provision to stipulate that all evidence will be included with the written report sent to both the Council and Official, who is the subject of the complaint.

4-202(c) 5h: The Committee discussed the provision's clarity and agreed that the section should be revised.

4-202(c) 5i: Discussing a resident request to delete the provision, the Committee agreed that the provision should remain.

General:

The Committee discussed whether a time limit should be imposed and whether to add a moot clause. The Committee agreed to incorporate the word "expeditiously" in the procedural section. Marc Efron said he would consider the mootness/statute of limitations issue in preparing a new draft, assuming that will occur.

A suggestion was made to add subheadings to make the ordinance easier to search and more "user friendly." Marc Efron said he would add subheadings in the next draft, assuming that happened.

Actions:

The Committee unanimously agreed to recommend to the Council that Marc Efron and Todd Mann work with the village attorney to prepare a new draft of the ordinance that addresses the issues detailed above. Once completed, the new draft will be posted on the Village website, with notice of an open Committee meeting to discuss the updated version and provide an opportunity for resident comment.

Resident comments:

- Concern: How much has the VMA spent to date on attorney fees related to the drafting of the ordinance? Mr. Efron estimated that \$730 had been spent thus far on legal fees. Mr. Efron, an attorney, had drafted most of the revised ordinance at no charge to the Village. He further noted that the Committee had made an effort to minimize the legal expenses associated with the draft.
- Concern: Impartiality-related complaints are common and less serious than COI complaints. Marc Efron explained that from his perspective, impartiality complaints could be just as damaging to the Village as COI complaints.

- Concern: Hypothetical impartiality complaints were posted in the meeting chat feature by a resident physically unable to speak during the meeting. Marc Efron responded that it would be inappropriate to respond to a hypothetical situation without all pertinent facts.
- Concern: "Domestic partners" should be added as an example of COI relationships.
- Concern: The proposed ordinance is unnecessary, noting that a majority vote of the Committee could recommend to the Council that the ordinance not be adopted. Marc Efron explained that the Council had asked for a new draft and that the Committee followed the Council's directive.
- Concern: Ethics- related complaints might be discoverable as part of an FBI investigation or security clearance inquiry.
- Concern: The Committee must consider not only the text of the ordinance but also the potential negative impact on the community.
- Concern: The ethics-related changes proposed would be better suited to a Village volunteer manual.
- Concern: Expanding the Ethics Ordinance may make residents more reluctant to volunteer.
- Concern (posted in chat): A Committee member reference to a resident comment made at a previous meeting was not reflected in the last meeting's minutes. Lorie Mitchell directed the resident to review the minutes from the August 27th meeting, which included the resident comment.
- Concern: COI penalties should be reinstated. Marc Efron responded that previous community comments were opposed to village volunteers being subject to fines and criminal prosecution.
- Concern: There should be a penalty for complainants who make a false allegation. Debbie Roumell reasoned that an additional procedure would be required to address false allegations.
- Comment: A request was made to submit all resident remarks to the Council.

After listening to resident comments and concerns, the Committee agreed to recommend to the Council that the process of revising the proposed ordinance changes proceeds based on the discussion, including resident comments, as detailed above. Residents were told that all of their comments would be sent to the full Council for review. Residents were thanked for their input and reminded that they were welcome to submit additional comments directly to the Committee via email.

The meeting was adjourned at 9:01 pm.

***Please note: During the meeting, there was an ongoing " chat conversation" posted within the Zoom interface, which with the exception of two comments as noted above, was not addressed by the Committee.