



**MINUTES OF THE CHESAPEAKE BEACH ETHICS COMMISSION MEETING
December 10, 2019**

Commission Members Present: Phillip Kete, Chair
Ingrid Lamb
Michael Linsenbigler

Staff Members Present: Sharon L. Humm, Town Clerk
Frederick Sussman, Counsel

The meeting convened at 1:00 p.m. at the Chesapeake Beach Town Hall at 8200 Bayside Road, Chesapeake Beach, MD. Those listed as present participated in all portions of the meeting unless otherwise noted. If other individuals participated in aspects of the meeting, they will be identified in the specific line item where their participation occurred.

Item 1: Approval of the minutes of the October 8, 2019 Ethics Commission meeting.

Discussion: The draft minutes of the October 8, 2019 Ethics Commission meeting were presented.

Decision: The Commission unanimously approved the October 8, 2019 Ethics Commission minutes.

ITEM 2: Public comment on agenda items, including suggestions of additional items for consideration. None received.

ITEM 3: Consideration of suggested changes in the Commission's pending recommended revision of the Ethics Ordinance.

Discussion: Chairman Kete stated, after review of the Commission's recommended revision of the ethics ordinance, the town attorney made a number of changes. In addition, he presented a number of additional possible amendments, some substantive and others purely clerical. Chairman Kete presented each change to the Commission for discussion, consideration, and approval.

Decision. Chairman Kete will draft a transmission addressed to the Mayor in the format of amendments, (attached), which were unanimously approved by the Commission, to the pending proposed ordinance. The Town Attorney will review and then position in proper format for reintroduction at the January 2020 Town Council meeting.

ITEM 4: Consideration of suggested changes in the Commission's Rules of Procedure.

Discussion: Chairman Kete distributed a draft copy of the Ethics Rules of Procedure with suggestions for the Commission to review. This will be discussed and considered at a future meeting.

ITEM 5: Comments by Commissioners and members of the public. None received.

ITEM 6: **Consideration, in closed session, to discuss an administrative matter.**

Chairman Kete moved to close the regular meeting at 1:56 pm to go into closed session to discuss an administrative matter, all in favor.

The Commission conducted a close session from 1:56 pm until 2:29 pm in Town Hall to engage in an administrative function – the discussion of a financial matter. Persons in attendance at the closed session were Commission Chair Phil Kete, Commission members Ingrid Lamb and Mike Linsenbigler, Commission Counsel Fred Sussman and Commission staff Sharon Humm.

Chairman Kete re-opened the regular meeting at 2:30 pm.

The meeting adjourned at 2:31 p. m.

Submitted by:

A handwritten signature in cursive script, appearing to read "Sharon L. Humm".

Sharon L. Humm
Town Clerk

December 13, 2019

TO: Pat Mahoney, Mayor, Town of Chesapeake Beach

FROM: Phillip R. Kete, Chair, Ethics Commission

SUBJECT: Further recommendations by the Ethics Commission regarding pending revision of the town's ethic ordinance

INTRODUCTION

In February, 2019, the Mayor submitted to the state for review a draft replacement, prepared by the Ethics Commission, for the existing ethics ordinance. After the state approved it, the commission submitted the draft to the mayor, for consideration of adoption by the Town Council. The document introduced for this purpose in November, 2019, was not identical to that we had provided in September. Specifically, the town attorney had made a number of non-substantive editorial changes in the document.

Because we believe the council has a right to know whether any proposed change in the ethics ordinance is in fact recommended by the commission, we met on December 10, 2019. At that meeting we considered not only the changes made by the town attorney, but others—some editorial, some substantive—that appeared possibly beneficial.

In sum, we are reporting to the mayor that we endorse some of the changes that were made by the town attorney, we ask that our original language be restored in other cases, and we recommend several other amendments to our original language.

As you see, in each of the categories we state our position, provide a draft resolution, and show the effect that would on the relevant text.

I ENDORSED CHANGES MADE BY TOWN ATTORNEY

The Ethics Commission endorses the changes made in the following sections:

§ 25-3(u)
§ 25-12
§ 25-20

RESOLVED: that the record show that the Ethics Commission endorses the language in §§ 25-3(u), 25-12, and 25-20, as introduced, as improvements in those sections as originally recommended by the commission.

II CORRECTION OF TYPOGRAPHICAL AND GRAMMATICAL ERRORS

The Commission endorses the basic change made in § 25-3(w), but suggests correction of the apparent typographic error that changed "veto" to "vet."

RESOLVED: That in the first paragraph of § 25-3(w) the word "vet" be replaced by "veto".

(W) *LEGISLATIVE ACTION* MEANS AN OFFICIAL ACTION INCLUDING INTRODUCTION, SPONSORSHIP, CONSIDERATION, DEBATE, AMENDMENT, PASSAGE, DEFEAT, APPROVAL, AND ~~VET~~ VETO, OR NON-ACTION RELATING TO:

The commission requests correction of the following typographical or grammatical errors in the text it originally present to the mayor: add the word "or" between the subparagraphs of § 25-21(a), to eliminate the possible interpretation that both conditions must be met; in § 25-35, change "filed" to "file"; in § 25-39(b) make format subparagraph [iii] the same as the other subparagraphs and add the word "and" between subparagraphs [ii] and [iii], to make clear that all three conditions must be met.

RESOLVED: That in § 25-21(a) the word "or" be inserted between numbered paragraph (1) and numbered paragraph (2).

§ 25-21 Exceptions

- (A) THE PROHIBITIONS OF SECTIONS 25-17 THROUGH 25-20 DO NOT APPLY IF:
- (1) PARTICIPATION IS ALLOWED BY REGULATION OR OPINION OF THE COMMISSION; OR
 - (2) THE PERSON IS ACTING OR PARTICIPATING IN A DECISION IN THE EXERCISE OF AN ADMINISTRATIVE OR MINISTERIAL DUTY THAT DOES NOT AFFECT THE DISPOSITION OR DECISION WITH RESPECT TO THE MATTER.

RESOLVED: that in § 25-35 the word "filed" be replaced by the word "file".

§ 25-35 Fees for failure to timely file financial reports

THE COMMISSION MAY ASSESS A LATE FEE OF \$2 PER DAY FOR A FAILURE TO TIMELY ~~FILED~~ FILE A FINANCIAL DISCLOSURE STATEMENT REQUIRED UNDER § 25-31 OF THIS CHAPTER. THE COMMISSION MAY PETITION THE CIRCUIT COURT FOR AN ORDER COMPELLING PAYMENT OF AN ASSESSED FEE.

RESOLVED: that in § 25-39(b)(2) the material beginning [iii] be formatted as a separate subparagraph.

RESOLVED: that in § 25-39(b)(2) the word "and" be inserted between numbered subparagraph [ii] and numbered subparagraph [iii].

§ 25-39 Judicial enforcement

(A) IF EFFORTS TO RESOLVE THE MATTER INFORMALLY ARE UNSUCCESSFUL, THE COMMISSION MAY PETITION THE CIRCUIT COURT TO ENFORCE COMPLIANCE AND PUNISH VIOLATIONS.

(B) THE COURT MAY:

- (1) ISSUE AN ORDER TO CEASE AND DESIST FROM THE VIOLATION;
- (2) VOID AN OFFICIAL ACTION TAKEN BY A COVERED PERSON WITH A CONFLICT OF INTEREST PROHIBITED BY THIS CHAPTER WHEN THE ACTION ARISES FROM OR CONCERNS THE SUBJECT MATTER OF THE CONFLICT PROVIDED:

[I] THE COURT DEEMS VOIDING THE ACTION TO BE IN THE BEST INTEREST OF THE PUBLIC;

[II] THE LEGAL ACTION IS BROUGHT WITHIN 90 DAYS OF THE OCCURRENCE OF THE OFFICIAL ACTION; AND ~~[III] THE OFFICIAL ACT DOES NOT APPROPRIATE PUBLIC FUNDS, IMPOSE A TAX, OR PROVIDE FOR THE ISSUANCE OF A BOND, A NOTE, OR ANY OTHER EVIDENCE OF PUBLIC OBLIGATION.~~

[III] THE OFFICIAL ACT DOES NOT APPROPRIATE PUBLIC FUNDS, IMPOSE A TAX, OR PROVIDE FOR THE ISSUANCE OF A BOND, A NOTE, OR ANY OTHER EVIDENCE OF PUBLIC OBLIGATION.

III RESTORATION OF HEADINGS

A. The Commission suggests the restoration of the headings in § 25-16(a) and (b), which alert the reader that there are two different types of advisory opinions.

RESOLVED: that in § 25-16(a) the phrase "Appearance of conflict of interest" be inserted in front of the current text.

§ 25-16 Advisory opinions

(A) APPEARANCE OF CONFLICT OF INTEREST. WHERE CONDUCT PRESENTS AN APPEARANCE OF A CONFLICT OF INTEREST, ANY COVERED PERSON, WHETHER OR NOT INVOLVED IN THE CONDUCT GIVING RISE TO AN APPEARANCE OF A CONFLICT, MAY OBTAIN AN ADVISORY OPINION FROM THE COMMISSION AS TO WHETHER THERE IS AN ACTUAL CONFLICT OF INTEREST.

RESOLVED: that in § 25-16(b) the word "Other" be inserted in front of the current text.

(B) OTHER. ANY COVERED PERSON CAN ASK FOR AN ADVISORY OPINION IN CASES NOT INVOLVING THE APPEARANCE OF A CONFLICT OF INTEREST BUT IN THESE CASES THE COMMISSION MAY DENY THE REQUEST.

B. The Commission suggests restoring the heading "Participation Restrictions" before § 25-17, changing the heading in § 25-17 itself from "participation restrictions to "General", and restoring the heading "Other Restrictions and Prohibitions" before § 25-23. These headings alert the reader that there will now be a general participation restriction, that all the other sections from § 25-17 through § 25-22 are specific participation provisions, and that all the sections from § 25-23-29 forbids conduct other than participation.

RESOLVED: That the heading "Participation Restrictions" be inserted before § 25-17.

PARTICIPATION RESTRICTIONS

RESOLVED: That in § 25-17 the heading "Participation restrictions" be replaced by "General".

§ 25-17 ~~Participation restrictions~~ General

EXCEPT AS PROVIDED § 25-21, A COVERED PERSON IS DISQUALIFIED FROM PARTICIPATING IN ANY MATTER, INCLUDING ATTEMPTING TO INFLUENCE THE DECISION IN THAT MATTER, WHICH INVOLVES A CONFLICT OF INTEREST.

RESOLVED: That the heading "Other restrictions and prohibitions" be inserted before § 25-23.

OTHER RESTRICTIONS AND PROHIBITIONS

§ 25-23 Employment and financial interest restrictions

(A) IN GENERAL, A COVERED PERSON MAY NOT BE EMPLOYED BY OR HAVE A FINANCIAL INTEREST IN ANY ENTITY WHERE THAT WOULD IMPAIR HIS OR HER IMPARTIALITY OR INDEPENDENCE OF JUDGMENT.

IV SUBSTANTIVE CHANGES

A. CORRECT THE OMISSION OF DISCLOSURE DEADLINE FOR APPOINTED OFFICIALS.

The commission requests correction of the omission of a deadline for appointed officials to submit their financial disclosures.

RESOLVED: that in § 25-32(a)(1) the word "local" be struck.

RESOLVED: that in § 25-32(a)(1) the phrase "or appointed" be inserted after the word "elected".

§ 25-32 Deadlines

(A) DEADLINES FOR INCUMBENT ELECTED AND APPOINTED OFFICIALS

(1) AN INCUMBENT ~~LOCAL~~ ELECTED OR APPOINTED OFFICIAL SHALL FILE A FINANCIAL DISCLOSURE STATEMENT ANNUALLY NO LATER THAN APRIL 30 OF EACH YEAR FOR THE PRECEDING CALENDAR YEAR.

B. CHANGES TO CONFORM TO REVISED ELECTION CODE LANGUAGE

Section 25-32(b) was drafted in consultation with the chair of the town Board of Elections. He has informed us that that board has since changed the term "certificate of nomination" to "declaration of candidacy", and he requested that we do so as well.

RESOLVED: that in sections 25-32(b)(1) and (2) the phrase "certificate of nomination" be replaced with the phrase "declaration of candidacy".

§ 25-32 Deadlines

* * *

(B) DEADLINE FOR STATEMENTS BY CANDIDATES FOR ELECTED OFFICE.

(1) CANDIDATES FOR ELECTED OFFICE, INCLUDING INCUMBENTS, SHALL INCLUDE A FINANCIAL DISCLOSURE STATEMENT ALONG WITH THEIR ~~CERTIFICATE OF NOMINATION~~ DECLARATION OF CANDIDACY WHICH IS FILED WITH THE TOWN CLERK AT LEAST 56 DAYS PRIOR TO THE ELECTION (SEE § 22-26A). THE BOARD OF ELECTIONS MAY NOT ISSUE A CERTIFICATE OF CANDIDACY FOR A CANDIDATE THAT HAS NOT PROVIDED A FINANCIAL DISCLOSURE STATEMENT AT LEAST 56 DAYS PRIOR TO THE ELECTION.

(2) THE TOWN CLERK SHALL FORWARD THE ORIGINAL SIGNED DISCLOSURE FORM TO THE ETHICS COMMISSION AND A COPY OF THE DISCLOSURE FORM TO THE BOARD OF ELECTIONS WITH THE CANDIDATE'S ~~CERTIFICATE OF NOMINATION~~ DECLARATION OF CANDIDACY .

C. REDUCE THE DISCLOSURE REQUIREMENTS FOR APPOINTED OFFICIALS.

The state law provides that we must require a great deal of unnecessary information from elected officials about their real estate interests, wherever located, and business interests regardless of whether they do business with the town. Our earlier submission recommended that appointed officials disclose real estate interests within the town limits and interests in businesses that do business with the town—in both cases providing the same types of information as are required from elected officials.

On further consideration we are changing our recommendation in three ways. First, because it is possible for town decisions to affect property values outside the town limits, we think appointed officials should identify property that is within five miles of the town limits. Second, we think appointed officials should be required to disclose the existence and location of their property, not all the other information about the property that is required from elected officials. Third, although we think appointed officials should be required to disclose ownership interests in entities doing business with the town, they should not have to provide all the other information. Our original recommendation did not make this clear.

RESOLVED: that in § 25-33(a) the first sentence be struck.

RESOLVED: that in § 25-33(a) the phrase "a list" be struck.

RESOLVED: that in § 25-33(a) the phrase "For each interest in real property, a statement of:" be struck.

RESOLVED: that in § 25-33(a) after the phrase "For appointed officials," the phrase "the addresses" be inserted.

RESOLVED: that in § 25-33(a) before the phrase "Chesapeake Beach" the phrase "the town of" be inserted.

RESOLVED: that in § 25-33(a) after the phrase "Chesapeake Beach" the phrase "or within five miles of the boundaries of Chesapeake Beach" be inserted.

RESOLVED: that at the end of § 25-33(a) the phrase " For elected officials, a list of all interests in real property, wherever located, and for each property of the elected official a statement of:" be inserted.

§ 25-33 Content of statement

EACH STATEMENT MUST INCLUDE SCHEDULES PROVIDING THE FOLLOWING INFORMATION:

(A) INTERESTS IN REAL PROPERTY

~~FOR ELECTED OFFICIALS, A LIST OF ALL INTERESTS IN REAL PROPERTY WHEREVER LOCATED. FOR APPOINTED OFFICIALS, A LIST~~ THE ADDRESSES OF INTERESTS IN REAL PROPERTY LOCATED IN THE TOWN OF CHESAPEAKE BEACH OR WITHIN FIVE MILES OF THE BOUNDARIES OF CHESAPEAKE BEACH. FOR EACH INTEREST IN REAL PROPERTY, A STATEMENT OF: ~~FOR ELECTED OFFICIALS, A LIST OF ALL INTERESTS IN REAL PROPERTY, WHEREVER LOCATED, AND FOR EACH PROPERTY OF THE ELECTED OFFICIAL A STATEMENT OF:~~

RESOLVED: that in § 25-33(b) the sentence "For appointed officials, the name and address of any business entity, other than mutual funds, doing business with the town, in which the filer has a financial interest." be inserted as the first sentence of the paragraph.

RESOLVED: that in § 25-33(b) the sentence "Appointed officials need identify only business entities doing business with the town." be deleted.

RESOLVED: that in the last line of § 25-33(b) the period after "interest" be replaced by a comma and then the word "and."

(B) INTEREST IN BUSINESS ENTITIES.

~~FOR APPOINTED OFFICIALS, THE NAME AND ADDRESS OF ANY BUSINESS ENTITY, OTHER THAN MUTUAL FUNDS, DOING BUSINESS WITH THE TOWN IN WHICH THE FILER HAS A FINANCIAL INTEREST. APPOINTED OFFICIALS NEED IDENTIFY ONLY BUSINESS ENTITIES DOING BUSINESS WITH THE TOWN. FOR ELECTED OFFICIALS, THE NAME AND ADDRESS OF ANY BUSINESS ENTITY, OTHER THAN MUTUAL FUNDS, REGARDLESS OF WHETHER OR NOT IT DOES BUSINESS WITH THE TOWN, IN WHICH THE FILER HAS A FINANCIAL INTEREST, AND FOR EACH ENTITY, A STATEMENT OF:~~

D. DELAY EFFECTIVE DATE OF STRICT DEFINITION OF 'INDEPENDENT COUNSEL.'

The commission believes it will be best served if any lawyer who advises it does not provide advice to the town or anyone covered by the ordinance. If the language designed to achieve this goes into effect immediately, it would force us to lose the services of our current attorney, even though he has done excellent work for us. We therefore request that the effective date of the strict definition be delayed for one year.

RESOLVED: that in § 25-10(b) the phrase "For purposes of this section" be replaced by the phrase "Effective January 1, 2021".

§ 25-10 Legal counsel

(A) THE MAYOR SHALL ASSIGN INDEPENDENT LEGAL COUNSEL TO ADVISE AND REPRESENT THE COMMISSION.

(B) EFFECTIVE JANUARY 1, 2021, FOR PURPOSES OF THIS SECTION, AN ATTORNEY OR LAW FIRM IS NOT INDEPENDENT IF, CURRENTLY OR WITHIN THE PREVIOUS CALENDAR YEAR, HE, SHE, OR IT HAS REPRESENTED OR ADVISED, OTHER THAN THE ETHICS COMMISSION:

- (1) ANYONE COVERED BY THIS ORDINANCE;
- (2) THE MAYOR OR TOWN COUNCIL AS AN INSTITUTION; OR
- (3) ANY ENTITY THAT DID, OR PROPOSED TO DO, BUSINESS WITH THE TOWN.

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