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Director: J. Christoph Amberger

BALTIMORE CITY BOARD OF ETHICS

November 21, 2022

Via Electronic Mail

The Honorable President
Members of the City Council
c/o Natawna Austin, Executive Secretary
Room 409, City Hall
100 N. Holliday St.
Baltimore, MD 21202

Re: City Council Bill 22-0260 (“An Ordinance Concerning Ethics Board Financial Disclosures etc.”)

Dear President and City Council Members:

You have referred City Council Bill 22-0260 (“Bill”) to the Ethics Board for comment. The Bill amends Baltimore City Code Article 8—specifically, § 7-4 of Art. 8 of the City Code—to prohibit the Ethics Board from “PROVID[ING] PUBLIC ACCESS TO A PORTION OF A [FINANCIAL DISCLOSURE] STATEMENT THAT EXPRESSLY IDENTIFIES THE ADDRESS OF A FAMILY MEMBER OF THE INDIVIDUAL WHO FILED THE DISCLOSURE.”

In addition, the Bill amends the Ethics Law by eliminating § 7-4 (b) for the stated “purpose of repealing the requirement that an individual provide certain identifying information when inspecting a financial disclosure for a public servant.”

(1). Prohibition of providing public access to certain portions of a financial disclosure statements identifying the home address of a family member.

The Ethics Law requires many City officials and employees to file annual financial disclosure statements. City Code, Article 8, Subtitle 7. On Schedule 7, a public servant lists (a) each place of compensated employment at any time during the reporting period; and (2) each business entity: (i) of which the public servant, spouse, or child was a sole or partial owner; and (ii) from which, at any time during the reporting period, he or she received earned income.

For each source of income subject to this section, the schedule must include (1) the name and address of the place of salaried employment or business entity; (2) for each family member, that individual’s name and relationship to the public servant; and (3) if the individual’s spouse is a lobbyist, any entity that has engaged the spouse for lobbying purposes. *See*, Art. 8, § 7-27.

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Section 7-27 does not require that a family member’s private residence is supplied, but only the name and address of the business entity.¹

Upon review of instructions and electronic financial disclosure forms provided by the Ethics Board at <https://ethics.baltimorecity.gov/financial-disclosure>, the Board found that (a) some instructions provided for filling out the various schedules were ambiguous and that (b) the design of Schedule 7 in particular may have led public servants to enter family members’ home addresses, where only the business name and address of any employer for spouse and child(ren) were required.

Ethics Board staff revised both the instructions and the online forms, adding language advising filers expressly not to enter a family member’s home address. In addition, Board staff requested that Baltimore City Information Technology (“BCIT”) modify the form template to prevent the erroneous entering of that information, as well as the publicly viewable information. On or around August 31, 2022, those changes were implemented and family members’ home addresses are neither collected nor available publicly in full compliance with the Ethics Law.

Accordingly, the Board considers that particular change to the Ethics Law to be moot and, for that reason, takes no position on the Bill’s proposed change.

(2). Proposed elimination of § 7-4 (b).

Section 7-4 (b) pertains to “Record of inspections,” and mandates that:

The Executive Director must:

- (1) require each person who inspects a statement filed under this subtitle to identify him- or herself; and
- (2) record:
 - (i) the inspecting person’s name, address, telephone number, and organization represented; and
 - (ii) the name of the person whose statement was inspected.

The Bill seeks to “repeal[] the requirement that an individual provide certain identifying information when inspecting a financial disclosure for a public servant.”

The Maryland Public Ethics Law, MD. CODE ANN., General Provisions (“GP”), Title 5, at Section 5-606 (b) [*Requirements and notice*] governs the retention of public examiners’ information:

- (1) The Ethics Commission and the Joint Ethics Committee shall maintain a record of:
 - (i) the name and home address of each individual who examines or copies a statement under this section; and
 - (ii) the name of the individual whose statement was examined or copied.

(Emphasis supplied.)

¹ In addition, a proposed amendment to Article 8, Section 7-27, which “prohibits financial disclosure filers from disclosing a minor child’s place of employment or affiliated business entities unless the employer/business entity is regulated by/under the authority of the filer’s agency or has contracts in excess of \$10,000 with the filer’s agency,” conforming to MD. CODE ANN., GP § 5-607 (i)(2), is currently before the City Council (22-0275).

The Maryland Public Ethics Law, at 5-101 *et seq.*, requires that local ethics codes adopt provisions that are "similar" or "substantially similar" to analogous provisions set forth in State law with respect to conflict of interest, financial disclosure, and lobbying. *See*, GP 5-807, 5-808(a), 5-809(b)(1), and 5-810. Local provisions applicable to elected officials must be "equivalent" to analogous State provisions. *See* GP 5-808(b) and 5-809(b)(2). GP Section 5-807 *et seq.* requires the City's Ethics Law to contain provisions similar to the State Ethics Law pertaining to conflicts of interest and financial disclosure requirements.

Specifically, at 5-809 (b), the State's Ethics Law mandates that the "financial disclosure provisions enacted by a county or municipal corporation under § 5-807 of this subtitle,

- (i) shall be similar to the provisions of Subtitle 6 of this title; but
- (ii) in accordance with regulations adopted by the Ethics Commission and consistent with the intent of this title, may be modified to the extent necessary to make the provisions relevant to the prevention of conflicts of interest in that jurisdiction."

(Emphasis supplied.)

The primary intent of the relevant subtitle appears to be the "prevention of conflicts of interest"—not the unencumbered and anonymous ease of access to the financial disclosures.

Currently, members of the public access the City records through the Ethics Board's online filing and viewing system. The viewer is required to register by providing a name as well as the information required by § 7-4 (b), *supra*. In addition, the entry form asks for a valid email address. After entering the information, an individual user account is created. The account cannot be accessed until the individual activates a verification link that is provided in an email sent automatically to the email address provided. The information provided by the viewer is not verified.²

The system automatically creates a record that enables a public servant to see who has accessed his or her disclosures.

² The corresponding State form also requires a valid email address and password set up to create a viewer account. Upon entry of email address and password, an automatic email is sent to the entered address, containing a link that has to be clicked to activate the account. The activation of the account then requires First and Last Name, Email, and complete Mailing Address before the registration is completed. This registration process complies with the financial disclosure provisions of the Maryland Public Ethics Law, requiring the State Ethics Commission and Joint Ethics Committee to maintain a record of the name and home address of each individual who examines or copies a financial disclosure statement. MD. CODE ANN., GP, § 5-606 (b):

- (b) (1) The Ethics Commission and the Joint Ethics Committee shall maintain a record of:
 - (i) the name and home address of each individual who examines or copies a statement under this section; and
 - (ii) the name of the individual whose statement was examined or copied.
- (2) On the request of the individual whose statement was examined or copied, the Ethics Commission or the Joint Ethics Committee shall forward to that individual a copy of the record specified in paragraph (1) of this subsection.

(Emphasis supplied.)

The email address provided is the only information that is confirmed via the two-step process, i.e., a viewer can provide false information and a temporary email address to gain access to a public servant's financial disclosure.

The practical benefit of the two-step process is that it provides an intermediate step that makes it less easy for automated data harvesters, "bots", etc. to "scrape" the information contained in Baltimore City's financial disclosures, which include the names and workplace addresses of a public official's family, including those of spouses and children.

Based on the language and intent of both the State and Baltimore City Ethics Laws, the Board sees neither a need for nor a legal impediment to the proposed elimination of § 7-4 (b), with the caveat that, if the subsection is eliminated, all aspects concerning data security need to be evaluated and addressed by BCIT prior to implementation.

Wherefore, the Ethics Board takes no position on the proposed elimination of § 7-4 (b).

Sincerely,

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

J. Christoph Amberger
Director, Ethics Board

Cc: Stephan Fogleman, Ethics Board Chair
Members of the Ethics Board
Isabel Cumming, Ethics Board Executive Director
Nina Themelis, Deputy Director, Mayor's Office of Government Affairs