
CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



BOARD OF ETHICS
OF BALTIMORE CITY

LINDA B. "LU" PIERSON, Chair
AVERY AISENSTARK, Director
626 City Hall
Baltimore, Maryland 21202

February 26, 2019

The Honorable President and Members
of the Baltimore City Council
Fourth Floor, City Hall
Baltimore, Maryland 21202
c/o Natawna Austin, Executive Secretary

Re: Bill 19-0336 {"Public Ethics Law – Conforming Modifications"}

You have referred Bill 19-0336 {"Public Ethics Law – Conforming Modifications"} to the Ethics Board for comment.

The Maryland Public Ethics Law, Md. Code Ann., General Provisions ("GP") § 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 §§ 5-808(a), 5-809(b)(1), and 5-810. Furthermore, local provisions applicable to elected officials must be "equivalent" to analogous State provisions. *See* GP §§ 5-808(b) and 5-809(b)(2).

During its 2017 Session, the General Assembly enacted Chapter 31 {"Public Integrity Act of 2017"}, which made several changes to the State Public Ethics Law that now require several conforming modifications to the City Ethics Code as well as several changes that may be adopted, but that are not expressly required. Please find attached to this report a letter from the State Ethics Commission, dated October 3, 2017, setting forth the a summary of Chapter 31, the amendments the City is required to make to its Ethics Code, and those changes that the City may make. To that end, Bill 19-0336 seeks to amend the Ethics Code to make the required modifications to comply with State law and also seeks to make several of the optional changes, as the Ethics Board finds them to be clarifying and beneficial.

Bill 19-0336 makes 4 State-required conforming modifications to the Ethics Code, which would:

- add a new § 6-6.1 {"Restrictions for former lobbyists"} prohibiting former lobbyists who later become a City public official from participating in a case, contract, or other specific matter for 1 calendar year after terminating their representation, if the former lobbyist previously assisted or represented another party in that same matter for compensation;
- extend to all elected officials an existing prohibition in § 6-22 {"Post-employment restrictions"} restricting councilmembers from assisting or representing another party for compensation in any matter that is the subject of legislative action and extend the existing 6-month "cooling-off period" to 1 calendar year from the date the elected official leaves office;



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From: Tony DeFranco

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- amend § 7-4 {Financial Disclosure: “Public inspections”} to prohibit public disclosure of any portion of a person’s financial disclosure that expressly identifies that person’s home address;¹ and
- amend § 7-27 {Financial Disclosure: “Sources of earned income”} to require that, if an individual’s spouse is a registered lobbyist in Baltimore City, the individual’s financial disclosure statement include information regarding entities that have engaged the spouse for lobbying purposes in Baltimore City during the reporting period.

As mentioned above, State law also made several other changes, which the City is not required to adopt, but that the Board finds to be clarifying and beneficial. These proposed changes would:

- add mutual funds and exchange-traded funds to the list of exclusions from the definition of “interest” set forth in § 2-19 {“Interest”} for the purpose of determining what is and what is not a conflict of interest under the Code; and
- restrict, for the purposes of financial disclosures, reportable debts under § 7-25 {“Indebtedness”} to only those entities doing business with the public servant’s agency, not the entire City.

The Ethics Board has attached a technical amendment for consideration and respectfully requests your consideration and approval of Bill 19-0336.

Very truly yours,



Tony DeFranco
Deputy Ethics Director

Attachments:

- (1) October 3, 2017 Letter from the State Ethics Commission, Re: “Local Government Ethics Update”
- (2) Proposed Amendments

cc: Honorable Eric Costello
Matthew Peters

¹ There has been some discussion in the media that this required amendment may make it more difficult to ensure that certain City officials are complying with the residency requirements set forth in Article I, § 7-10 of the City Code. To clarify, the Ethics Board is not the official custodian of City employee residency information nor is the Board empowered to enforce the Code’s residency requirements. Cf. City Code Art. 1, § 7-7 (City employees must submit and update as necessary their current legal address to the Department of Finance, Payroll Division).

Rec'd 10/23/17

EXECUTIVE DEPARTMENT
STATE OF MARYLAND



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GOVERNOR

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STATE ETHICS COMMISSION

45 CALVERT STREET, 3RD FLOOR
ANNAPOLIS, MARYLAND 21401
410-260-7770
Toll Free 1-877-669-6085
FAX: 410-260-7746

MICHAEL W. LORD
Executive Director
JENNIFER K. ALLGAIR
General Counsel
WILLIAM J. COLQUHOUN
Staff Counsel
KATHERINE P. THOMPSON
Assistant General Counsel

October 3, 2017

Avery Aisenstark, Director
Baltimore City Ethics Board
626 City Hall
Baltimore, Maryland 21202

Re: Local Government Ethics Update

Dear Mr. Aisenstark:

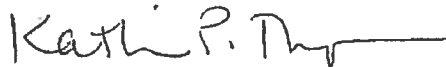
As you are aware, there were significant changes mandated to county and municipal ethics laws and county boards of education ethics regulations by legislation (SB315 – Chapter 277 of the Acts of 2010) enacted during the 2010 General Assembly session. The law became effective October 1, 2010. Counties and municipalities required to adopt a local ethics law must include conflict of interest and financial disclosure provisions for local elected officials that are at least equivalent to the State’s provisions; financial disclosure provisions for candidates for local elected office that are at least equivalent to State provisions; conflict of interest and financial disclosure provisions for local employees and appointed officials that are similar to State provisions; and local lobbying provisions that are substantially similar to State provisions. The State Ethics Commission previously approved Baltimore City’s local Ethics Law as being in compliance with Subtitle 8 of the Maryland Public Ethics Law (Md. Code Ann., Gen. Prov., Title 5 (Supp. 2016)).

We are writing to notify Baltimore City that the requirements under the State Ethics Law are changing. House Bill 879, enacted during the 2017 Legislative session, made multiple modifications to the State Ethics Law, some of which will change the requirements for local government ethics laws. Those changes include additional disclosures for State elected officials that local governments must incorporate into their Ethics Ordinances for their elected officials. However, a number of changes relax certain of the financial disclosure requirements, particularly for debt and stock holding disclosures, and make home addresses confidential from public disclosure. We have included an attachment describing the changes that need to be included in the new drafts of Ethics Law, highlighting the additional provisions that must be included in a law to be compliant with State law, and the changes that relax some requirements and may be adopted if desired by the County. In addition, we have also included our new model laws with the changes highlighted on our website. Most of the changes take effect October 1, 2017 and our regulations implementing these changes are in the approval process.

Commission staff is available to provide guidance and assistance to Baltimore City as you work through updating your law to incorporate the new changes. Please do not hesitate to contact us should you have any questions regarding the new local government ethics law requirements. As a reminder, any and all future changes to the ethics ordinance must be submitted to the Commission for review and approval in compliance with Subtitle 8 of the Maryland Public Ethics Law and COMAR 19A.04.

Finally, Section §5-807(b) of the Public Ethics Law requires each local jurisdiction to file the Local Government Ethics Law Annual Certification by October 1 of each year. Our office has not received Baltimore City's certification for 2017. Given the timing of these legislative changes, we do not anticipate 2017 certifications will include any of the changes discussed above, however all local governments are still required to certify for the 2017 year. A copy of the certification form is enclosed. Please complete the attached form and return to our office, along with a copy of your jurisdiction's current enacted ethics law. Please contact our office if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kath P. Thompson", with a long horizontal flourish extending to the right.

Katherine P. Thompson
Assistant General Counsel

Enclosures

Changes that must be adopted for local government compliance with the requirements of Subtitle 8 of the Public Ethics Law or COMAR 19A.04.:

1. 5-504(d)(2). Precludes Governor, Lieutenant Governor, AG, Comptroller, Treasurer or a Member of the General Assembly from lobbying (legislative matters) for one calendar year after leaving office. *Needs to be added to the conflict of interest section covering local elected officials.*
2. 5-606(a)(3). Effective January 1, 2019, Commission may not provide public access to the portion of a financial disclosure statement that includes an individual's home address as identified by the individual (i.e. the Commission must redact the information before making it publicly available). Applies to all statements, whether posted on the Internet or viewable only in the Office. *Home addresses should be redacted from public disclosure. Local employees and elected officials don't have to worry about the public being able to see their home address on their filings submitted after January 1, 2019.*

Changes that must be adopted for local government compliance with the requirements of Subtitle 8 of the Public Ethics Law or COMAR 19A.04. for those local governments with lobbying provisions:

1. 5-501(a-1). Adds new subsection prohibiting former lobbyists who become a public official or State employee (i.e. take job with the State) from participating in a case, contract or other specific matter for 1 calendar year after terminating their registrations if they previously assisted or represented another party in the matter (a "reverse" post-employment restriction for lobbyists). Does not apply to uncompensated or minimally compensated (less than 25% of grade 16) board/commission members or elected officials. *ONLY FOR JURISDICTIONS WITH LOBBYING PROVISIONS. Needs to be added the conflict of interest provisions to cover employees compensated over a certain amount.*
2. 5-607(i). Adds another category to Schedule H – for a statement filed on or after January 1, 2019, if the filer's spouse is a regulated lobbyist, must disclose the entity that has engaged the spouse to lobby. *ONLY FOR JURISDICTIONS WITH LOBBYING PROVISIONS. Requires spouses of lobbyists to disclose the entities that engage the lobbyist spouse on their annual disclosure filings.*

Changes that may be adopted if the local government chooses:

1. 5-101(t). Removes "exchange-traded funds" from the definition of "interest". An ETF is a diversified collection of assets (like a mutual fund) that trades on an exchange (like a stock). *Now, as is the case with mutual funds, financial disclosure filers will no longer have to disclose interests they hold in ETFs.*
2. 5-506. Adds three specific circumstances that constitute violation of the prestige of office provision (influencing the award of a State or local contract to a specific person; initiating a solicitation for a person to retain the compensated services of a particular lobbyist or firm; using public resources or title to solicit a political contribution regulated in accordance with the Election Law Article). In the last situation, employees and public officials may not use title or public resources, State officials may not use public

resources. *The State Ethics Commission has already interpreted these kinds of actions to be in violation of the prestige of office provision. Local governments are able to include these specific circumstances in their law if they would like or any other for clarifying purposes.*

3. 5-607(g). Changes the Schedule F disclosure (indebtedness to entities doing business with the State) to indebtedness to entities doing business with or regulated by the individual's governmental unit. *Instead of disclosing all indebtedness to entities doing business with the local government, only debts with entities doing business with the specific governmental unit must be disclosed by filers.*
4. 5-606(a)(2). Effective January 1, 2019, Ethics Commission must provide Internet access, through an online registration program, to financial disclosure statements submitted by State officials, candidates for office as State officials, and Secretaries of a principal department of the Executive Branch. *Local governments can now decide to put the local disclosure forms online for public viewing.*
5. 5-704. Codifies disclosure requirements for lobbyists who serve on State boards and commissions. Also codifies a requirement for such a lobbyist who is disqualified from participating in a specific matter to file a statement of recusal with the board or commission. *ONLY FOR JURISDICTIONS WITH LOBBYING PROVISIONS. Requires lobbyists who serve on local boards to submit disclosure forms that mirror the forms for local elected officials.*

**AMENDMENTS TO COUNCIL BILL 19-0336
(1st Reader Copy)**

By: The Baltimore City Board of Ethics

{To be offered to the Judiciary and Legislative Investigations Committee}

Amendment No. 1

On page 3, in line 28, strike “AN OFFICIAL” and substitute “A PUBLIC SERVANT”; and, on that same page, in line 31, after “STATEMENT”, insert “THAT”.