

Repealing and re-enacting the Public Ethics Ordinance
Sponsored by: Councilmember Thompson

LEGISLATIVE RESOLUTION 15-0-11

Resolution and Ordinance of the Town of University Park, to repeal and re-enact Chapter 12, "Public Ethics", of the Code of the Town of University Park, Sections 12-101, 12-102, 12-104, 12-105, 12-106, 12-107, 12-108, and 12-109 and to add 12-110, to clarify the applicability of the Code; delete a publicly traded mutual fund from the definition of interest; clarify the procedures for filing and retention of the required financial and other disclosures by elected Town officials and candidates; clarify the procedures for filing and retention of the required financial and other disclosures by appointed officials and Town employees; delete the requirements for and enforcement of lobbying disclosure; authorize the Town Clerk to receive filings on behalf of the Ethics Commission and Supervisors of Elections; change the complaint procedure when ethics counsel determines that the complaint is time barred under or does not assert facts that if proven true would constitute an ethics violation; and make provision to require filing of conflict of interest statements and correction of inaccurate or incomplete filings.

CHAPTER 12 PUBLIC ETHICS

Section 1: Be it resolved and ordained by the Mayor and Common Council of the Town of University Park that Chapter 12 "Public Ethics", Section 12-101 "Applicability" be repealed, re-enacted and amended to read as follows:

Section 12-101. Applicability.

The provisions of this chapter apply to the elected officials, TOWN appointed OFFICIALS[~~es Boards, COMMITTEES and Commissions~~] and employees of University Park.

Section 2: Be it resolved and ordained by the Mayor and Common Council of the Town of University Park that Chapter 12 "Public Ethics", Section 12-101 "Definitions" be repealed, re-enacted and amended to read as follows:

CAPS
[Brackets]
Asterisks * * *

: Indicate matter added to existing law.
: Indicate matter deleted from law.
: Indicate matter remaining unchanged in existing law but not set forth in Ordinance

Section 12-102 Definitions.

For the purpose of this Chapter, the following words have the meanings indicated:

(a) – (e) * * *

(f) "Interest" means:

1. – 2. * * * *

3. "Interest" does not include:

A. An interest held in the capacity of a personal agent, custodian, fiduciary, or personal representative, trustee, unless the holder has an equitable interest in the subject matter;

B. An interest in a time or demand deposit in a financial institution;

C. An interest in an insurance policy, endowment policy or annuity contract under which an insurer promises to pay a fixed amount of money either in a lump sum or periodically for life or a specified period;

D. A common trust fund or a trust which forms part of a pension or profit sharing plan which has more than 25 participants and which has been determined by the internal revenue service to be a qualified trust under the internal revenue code; or

E. A college savings plan under the internal revenue code.

F. A MUTUAL FUND THAT IS PUBLICLY TRADED ON A NATIONAL SCALE UNLESS THE MUTUAL FUND IS COMPOSED PRIMARILY OF HOLDINGS OF STOCKS AND INTERESTS IN A SPECIFIC SECTOR OR AREA THAT IS REGULATED BY THE TOWN.

(g) – (h) * * * *

Section 3. Be it further resolved and ordained by the Mayor and Common Council of the Town of University Park that Chapter 12 "Public Ethics", Section 12-104 "Conflicts of interest" be repealed, re-enacted and amended to read as follows:

Section 12-104. Conflicts of interest.

(a) * * * *

(b) All Town elected officials, [~~officials~~] TOWN appointed OFFICIALS, [~~to Town boards and Commissions subject to this chapter~~] and employees are subject to this section.

(c) * * * *

(d) Employment and financial interest restrictions.

1. Except as permitted by regulation of the Commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official or employee may not:

A. Be employed by or have a financial interest in any entity:

(i) Subject to the authority of the official or employee or the Town agency OR APPOINTED BODY [~~board, Commission~~] with which the official or employee is affiliated; or

(ii) That is negotiating or has entered a contract with the TOWN agency, OR APPOINTED BODY [~~board, or Commission~~] with which the official or employee is affiliated;

or

B. * * * *

2. This prohibition does not apply to:

A. * * * *

B. Subject to other provisions of law, [~~a member of a board or Commission~~] AN APPOINTED OFFICIAL in regard to a financial interest or employment held at the time of

appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;

C. – F. * * * *

(e) – (g) * * * *

(h) Solicitation and acceptance of gifts.

1. – 2. * * * *

3. An official or employee may not knowingly accept a gift, directly or indirectly, from a person that the official or employee knows or has the reason to know:

A. Is doing business with or seeking to do business with the Town office, agency, [board or Commission] OR APPOINTED BODY with which the official or employee is affiliated;

B. – D. * * * *

4. – 5. * * * *

(i) – (j) * * * *

Section 3. Be it further resolved and ordained by the Mayor and Common Council of the Town of University Park that Chapter 12 “Public Ethics”, Section 12-105 “Financial disclosure” be repealed, re-enacted and amended to read as follows:

Section 12-105. Required disclosures by elected Town officials and candidates to be Town elected officials.

(a) * * * *

(b) REQUIRED DISCLOSURE STATEMENTS UNDER THIS SECTION INCLUDE:

1. ANNUAL FINANCIAL DISCLOSURE STATEMENTS;
2. CANDIDATE FINANCIAL DISCLOSURE STATEMENTS; AND
3. STATEMENTS OF ACTUAL OR POTENTIAL CONFLICT OF INTEREST.

(c)(1) [~~Except as provided in subsection (e) of this section, a~~] A Town elected official or a candidate to be a Town elected official shall file the financial disclosure statement required under this section:

A. On a form provided by the Commission;

B. Under oath or affirmation; and

C. With the TOWN CLERK, WHO SHALL FORWARD THE STATEMENTS TO THE Commission AND/OR THE SUPERVISORS OF ELECTIONS, AS APPROPRIATE.

(2) Deadlines for filing statements.

A. An incumbent Town elected official shall file an annual financial disclosure statement no later than April 30th of each year for the preceding calendar year.

B. An individual who is appointed to fill a vacancy in an office for which an annual financial disclosure statement is required and who has not already filed a financial disclosure statement for the reporting period, shall file a statement for the preceding calendar year and the portion of the current calendar year to date of filing prior to appointment.

C. (i) An individual who, other than by reasons of death, leaves an office for which a statement is required shall file a statement within 60 days after leaving the office.

(ii) The statement shall cover:

(A) The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and

(B) The portion of the current calendar year during which the individual held the office.

D. AN ELECTED OFFICIAL SHALL FILE A STATEMENT OF ACTUAL OR POTENTIAL CONFLICT OF INTEREST DISCLOSING EMPLOYMENT AND INTERESTS THAT RAISE CONFLICTS OF INTEREST OR POTENTIAL CONFLICTS OF INTEREST IN A TIMELY MANNER.

~~{(e)}~~ (D) Candidates to be Town elected officials.

1. A candidate to be an elected Town official shall file a financial disclosure statement each year beginning with the year in which the petition of candidacy is filed through the year of election.

2. A candidate to be an elected official shall file a statement required under this section:

A. In the year the petition of candidacy is filed, THE FINANCIAL DISCLOSURE STATEMENT SHALL BE FILED WITH THE TOWN CLERK no later than the filing of the petition of candidacy. THE TOWN CLERK SHALL FORWARD THE STATEMENT TO THE SUPERVISORS OF ELECTIONS AND TO THE ETHICS COMMISSION. The reporting period shall be the calendar year immediately preceding the year in which the petition OF CANDIDACY is filed, and the portion of the current calendar year to the date the petition is filed;

B. In the year of the election, if other than the year in which the petition of candidacy is filed, on or before [~~the earlier of April 30 or the last day for the withdrawal of~~] THE DATE BY WHICH THE PETITION OF candidacy MUST BE FILED; and

C. In all other years for which a statement is required, on or before April 30.

3. A candidate to be an elected Town official:

A. Shall file the statement required under §12-105~~{(e)}~~(D)(2)(A) of this chapter with the Supervisors of Elections at the time of filing of the petition of candidacy and with the Commission prior to or at the time of filing the petition of candidacy; and

B. Shall file the statements required under §12-105~~{(e)}~~(D)(2)(B) and (C) with the Commission.

4. If a candidate fails to file a statement required by this section WITHIN FIVE (5) CALENDAR DAYS after written notice is provided by the Supervisors of Elections [~~at least 20~~

~~days before the last day for the withdrawal of candidacy],~~ the candidate is deemed to have withdrawn the candidacy.

5. The Supervisors of Elections may not accept any PETITION~~[certificate]~~ of candidacy unless ~~[a statement has been filed in proper form]~~ IT IS ACCOMPANIED BY THE CANDIDATE'S FINANCIAL DISCLOSURE STATEMENT THAT INCLUDES ALL REQUIRED IDENTIFYING AND CONTACT INFORMATION, IS SIGNED UNDER OATH, AND INCLUDES ANSWERS TO EVERY MANDATORY QUESTION.

6. UPON ~~[Within 30 days of the]~~ receipt of a statement required under this section, the TOWN CLERK shall forward the statement to the Commission or the office designated by the Commission AND SHALL DO SO NO LATER THAN THE CLOSE OF BUSINESS ON THE DAY OF THE DEADLINE FOR FILING THE PETITION OF CANDIDACY.

~~{(d)}~~ (E) Public record.

1. – 4. * * * *

~~{(e)}~~ (F) Retention requirements. The Commission or the office designated by the Commission shall retain financial disclosure statements AS REQUIRED BY THE TOWN'S RECORDS RETENTION AND DISPOSAL SCHEDULE AND AT A MINIMUM for four years from the date of receipt.

~~{(f)}~~ (G) Contents of statement.

1. – 9. * * * *

~~{(g)}~~ (H) For the purposes of §12- 105~~{(f)}~~(G)(1), (2) and (3) of this chapter, the following interests are considered to be the interests of the individual making the statement:

1. – 3. * * * *

~~{(h)}~~ (I) The Commission shall review the financial disclosure statements submitted under this section for compliance with the provisions of this section and shall notify an individual submitting the statement of any omissions or deficiencies.

~~{(i)}~~ (J) The Town Ethics Commission may take appropriate enforcement action to ensure compliance with this section.

Section 4. Be it further resolved and ordained by the Mayor and Common Council of the Town of University Park that Chapter 12 “Public Ethics”, Section 12-106 “Financial Disclosure – Employees And Appointed Officials Financial” be repealed, re-enacted and amended to read as follows:

SECTION 12-106 ~~REQUIRED~~ [Financial} Disclosure – Employees And Appointed Officials.

(a) This section only applies to the following appointed officials and employees:

1. Town Clerk
2. Town Treasurer
3. Chief of Police AND THE DESIGNATED ACTING CHIEF OF POLICE
4. Public Works director
5. ~~[All other employees]~~

Members of ~~[all boards and commissions]~~THE SUPERVISORS OF ELECTIONS, THE ETHICS COMMISSION, AND ANY OTHER BOARD, COMMISSION OR COMMITTEE,AND ANY OTHER APPOINTED OFFICIAL DESIGNATED BY THE COUNCIL.

6. ANY OTHER APPOINTED OFFICIAL AS REQUIRED BY LAW.
7. Town A[~~a~~]ttorney

(b) – (d) * * * *

(e) A NEWLY APPOINTED TOWN OFFICIAL SHALL FILE A [FINANCIAL] REQUIRED DISCLOSURE FORM WITHIN 30 DAYS OF APPOINTMENT. THE REPORTING PERIOD FOR THE STATEMENT IS THE CALENDAR YEAR IMMEDIATELY PRECEDING THE YEAR IN WHICH THE DISCLOSURE FORM IS FILED, AND THE PORTION OF THE CURRENT CALENDAR YEAR TO THE DATE THE FORM IS FILED.

(F) The Commission shall maintain all disclosure statements filed under this section as public records available for public inspection and copying as provided in §12-105[(d)] (E) and [(e)] (F) of this chapter.

Section 5. Be it further resolved and ordained by the Mayor and Common Council of the Town of University Park that Chapter 12 “Public Ethics”, Section 12-107 “Lobbying Disclosure” be deleted as follows:

~~[Section 12-107 Lobbying Disclosure~~

~~(a) All lobbyists shall file a registration statement with the Town Clerk on or before the latter of January 15 of the calendar year or within 5 days after first performing an act that requires registration in the calendar year.~~

~~(b) The registration statement referred to in subsection (a) above shall include complete identification of the registrant and any other person on whose behalf the registrant acts. It shall also identify the subject matter on which the registrant proposes to make such appearances.~~

~~(c) In addition to the registration statement set forth above, all lobbyists shall file an annual report within thirty (30) days after the end of any calendar year during which they were registered, disclosing the value, date and nature of any food, entertainment or other gift provided to a town official(s). Where a gift or series of gifts to a single official exceed fifty dollars (\$50) in value, the official(s) shall also be identified.~~

~~(d) All registration statements and annual reports filed hereunder shall be retained by the Town Clerk for a period of at least three (3) years and shall be open for inspection and copying at the Town offices during regular business hours.]~~

Section 6. Be it further resolved and ordained by the Mayor and Common Council of the Town of University Park that Chapter 12 “Public Ethics”, Section 12-107 “Filing with the Town Clerk” be added to read as follows:

Section 12-107 FILING WITH THE TOWN CLERK

THE TOWN CLERK IS AUTHORIZED TO RECEIVE ANY FORM REQUIRED BY THIS CHAPTER TO BE FILED WITH THE SUPERVISORS OF ELECTIONS OR THE ETHICS COMMISSION.

Section 7. Be it further resolved and ordained by the Mayor and Common Council of the Town of University Park that Chapter 12 “Public Ethics”, Section 12-108 “Procedure” be repealed, re-enacted and amended to read as follows:

Section 12-108 Procedure

(a) Advisory opinions. * * *

(b) Complaints

1. – 2. * * * *

3. The Commission may refer a complaint to the town attorney, or other legal counsel if appropriate, for investigation and review. IF THE ETHICS COUNSEL DETERMINES THAT THE COMPLAINT IS TIME BARRED OR DOES NOT ASSERT FACTS THAT IF PROVEN TRUE WOULD CONSTITUTE A VIOLATION OF THIS CHAPTER, THE ETHICS COUNSEL MAY RECOMMEND THAT THE COMMISSION DISMISS THE COMPLAINT WITHOUT NOTICE TO THE SUBJECT OF THE COMPLAINT OR A HEARING. UPON RECEIPT OF THE RECOMMENDATION, THE COMMISSION MAY DISMISS THE COMPLAINT.

4. – 8. * * * *

Section 8. Be it further resolved and ordained by the Mayor and Common Council of the Town of University Park that Chapter 12 “Public Ethics”, Section 12-109 “Enforcement” be repealed, re-enacted and amended to read as follows:

Section 12-109 Enforcement.

(a) – (b) * * * *

(c) ~~[If the Commission finds that a respondent has violated Section 12-107 of this chapter, the Commission may:~~

~~1. Require a respondent who is a registered lobbyist to file any additional reports or information that reasonably related to the information that is required under section 12-107 of this chapter;~~

~~2. Impose a fine not exceeding \$1,000 for each violation; and~~

~~3. Suspend the registration of an individual registered lobbyist if the Commission finds that the lobbyist has knowingly and willfully violated section 12-107 of this chapter or has been convicted of a criminal offense arising from lobbying activities.~~

~~(d)}~~ Upon request by the Commission, the Town attorney may file a petition for injunctive or other relief in the Circuit Court of Prince George’s County, or in any other court having proper venue, for the purpose of requiring compliance with the provisions of this chapter and for assessment of a fine not to exceed \$1,000.00.

~~{(e)}~~(D) In addition to any other enforcement provisions in this chapter, a person who the Commission or a court finds has violated this chapter:

1. Is subject to termination or other disciplinary action; and

2. May be suspended from receiving payment of salary or other compensation pending full compliance with the terms of an order of the Commission or a court.

~~{(E)}~~ (E) A Town official or employee found to have violated this chapter is subject to disciplinary or other appropriate personnel action, including removal from office, disciplinary action, suspension of salary, or other sanction.

Section 9. Be it further resolved and ordained by the Mayor and Common Council of the Town of University Park that Chapter 12 “Public Ethics”, Section 12-110 “Additional conflict of interest statements and correction of inaccurate or incomplete filings” be added to read as follows:

SECTION 12-110 ADDITIONAL CONFLICT OF INTEREST STATEMENTS AND CORRECTION OF INACCURATE OR INCOMPLETE FILINGS.

ANY PERSON REQUIRED TO FILE A CONFLICT OF INTEREST OR FINANCIAL DISCLOSURE STATEMENT PURSUANT TO THIS CHAPTER SHALL CORRECT ANY INACCURATE OR INCOMPLETE FILINGS WITH THE COMMISSION WITHIN 15 DAYS OF LEARNING OR BEING NOTIFIED THAT THE STATEMENT IS INACCURATE OR INCOMPLETE. ANY CANDIDATE FOR OFFICE NOTIFIED THAT A STATEMENT IS, OR APPEARS TO THE COMMISSION TO BE, INACCURATE OR INCOMPLETE MUST PROVIDE THE ADDITIONAL INFORMATION REQUIRED TO THE COMMISSION OR CONFIRM THE ACCURACY AND COMPLETENESS OF THE STATEMENT WITHIN FIVE (5) CALENDAR DAYS OF NOTIFICATION. IF ADDITIONAL INFORMATION IS NOT PROVIDED OR THE ACCURACY AND COMPLETENESS OF THE INFORMATION IS NOT CONFIRMED, IN WRITING, WITHIN THE REQUIRED TIME TO THE SATISFACTION OF THE COMMISSION THAT IT IS IN COMPLIANCE WITH THE ETHICS CODE, THEN THE CANDIDATE IS DEEMED TO HAVE WITHDRAWN THE CANDIDACY.

Section 10: Be it further resolved that this resolution shall become effective twenty (20) day after enactment by the Mayor and Common Council of University Park, Maryland and approval by the Maryland State Ethics Commission.

Section 11: Be it further resolved that a complete and exact copy of this proposed Ordinance shall be posted on the entrance door of the Town Building of University Park, Maryland, for a period of not less than ten (10) days, and a fair summary of this Ordinance shall be published at least once in a newspaper having general circulation in the community.

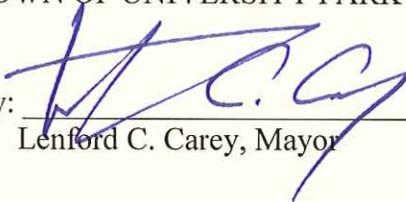
APPROVED this 22nd day of September, 2015.

ATTEST:

MAYOR AND COMMON COUNCIL
TOWN OF UNIVERSITY PARK

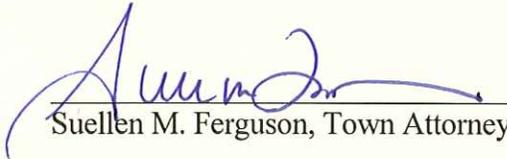


By:



Lenford C. Carey, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



Suellen M. Ferguson, Town Attorney

SEP 25 2015

EXECUTIVE DEPARTMENT
STATE OF MARYLAND



LARRY HOGAN
GOVERNOR

COMMISSION MEMBERS:
PAUL M. VETTORI, *Chairman*
KIM L. COBLE
JANET E. McHUGH
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STATE ETHICS COMMISSION

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September 21, 2015

Suellen M. Ferguson, Esq.
Council Baradel
125 West Street, Fourth Floor
Annapolis, Maryland 21401

Re: University Park Ethics Ordinance

Dear Ms. Ferguson:

At its September 10, 2015 meeting, the State Ethics Commission reviewed the proposed draft revisions to the Town of University Park's Ethics Ordinance, which you forwarded to the Commission for approval on August 14, 2015 in compliance with Subtitle 8 of the Maryland Public Ethics Law (Md. Code Ann., Gen Prov. Title 5 (2014)). As you are aware, legislation (SB315 – Chapter 277 of the Acts of 2010) enacted during the 2010 General Assembly session mandated significant changes to county and municipal ethics laws and county boards of education ethics regulations and policies. The law became effective October 1, 2010. The State Ethics Commission revised its local government regulations in COMAR 19A.04 in April 2011 to reflect changes in the Public Ethics Law in recent years and to incorporate changes made by SB 315. The Town of University Park submitted its revised, enacted ethics ordinance in compliance with the legislative changes and current statutory and regulatory requirements. The current amendments forwarded to the Commission for review reflect several administrative changes, as well as amendments to some conflict of interest and financial disclosure provisions. The Town of University Park also proposes to remove lobbying provisions from its local ethics law under its current partial exemption from the requirement to enact lobbying provisions as part of its local ethics law. The Commission previously granted this partial exemption to this jurisdiction.

The State Ethics Commission approved the proposed revisions to the ethics ordinance for the Town of University Park as being at least equivalent to State law for local elected officials for conflict of interest provisions and at least equivalent to State law for financial disclosure provisions for local elected officials and candidates for local elected office. The State Ethics Commission also determined that the amended ordinance is similar to the provisions of the Maryland Public Ethics Law for conflict of interest and financial disclosure provisions applicable to local employees and local appointed officials. The removal of the lobbying provisions is approved pursuant to the partial exemption from this requirement previously granted by the Commission in September 2013. Several proposed changes were administrative in nature and approved by the Commission.

The State Ethics Commission's review was in accord with the Commission's review authority pursuant to Subtitle 8 of the Maryland Public Ethics Law and consisted of a comparison of the proposed revisions to the review criteria of COMAR 19A.04. The review was also in accord with the Commission's understanding of the requirements stated in the Court of Appeals decision in *Seipp v. Baltimore City Board of Elections*, 377 Md. 362, 833 A 2d 551, 2003, as discussed in Opinion No. 06-01 of the Commission's Advisory Opinions¹.

Please file a Local Government Ethics Law Annual Certification, in compliance with § 15-803(b) of the Public Ethics Law after the proposed changes are enacted. Certification is an annual requirement. Certification is due each year by October 1st.

The Town of University Park must submit all future changes to its ethics ordinance for review and approval in compliance with Subtitle 8 of the Maryland Public Ethics Law and COMAR 19A.04. Please contact our office if you have any questions regarding this or any other matter. Thank you for your work on this project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jennifer K. Allgair', with a long horizontal flourish extending to the right.

Jennifer K. Allgair
General Counsel

¹ The Commission's formal opinions may be accessed at the website of the Division of State Documents in the Office of the Secretary of State. www.dsd.state.md.us/comar.